

## **AMENDED AND RESTATED CONVERTIBLE LOAN NOTE**

THE SECURITY EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THE HOLDER HEREOF, BY PURCHASING THIS NOTE, AGREES FOR THE BENEFIT OF GNCC CAPITAL, INC. (THE "COMPANY") THAT THIS NOTE MAY NOT BE RESOLD, PLEDGED OR OTHERWISE, OTHER THAN (1) TO THE COMPANY, (2) SO LONG AS THIS NOTE IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A, PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (3) TO AN INSTITUTIONAL ACCREDITED INVESTOR" AS DEFINED IN RULE 501 (A)(1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT ("INSTITUTIONAL ACCREDITED INVESTOR") THAT IS ACQUIRING THIS NOTE FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION, AND THAT, PRIOR TO SUCH TRANSFER, DELIVERS TO THE COMPANY AND THE AGENT A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE NOTE EVIDENCED HEREBY (THE FORM OF WHICH LETTER MAY BE OBTAINED FROM THE AGENT), (4) PURSUANT TO RULE 144 UNDER THE SECURITIES ACT, (5) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OR (6) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES PRIOR TO A TRANSFER OF THIS NOTE (OTHER THAN A TRANSFER PURSUANT TO CLAUSE (6) ABOVE), THE HOLDER OF THIS NOTE MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE COMPANY AND THE TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AND LEGAL OPINIONS AS THEY MAY REASONABLY REQUIRE. THE HOLDER HEREOF, BY PURCHASING THIS NOTE, REPRESENTS AND AGREES FOR THE BENEFIT OF THE COMPANY THAT IT IS AN ACCREDITED INVESTOR OR A QUALIFIED INSTITUTIONAL BUYER AND THAT IT IS HOLDING THIS NOTE FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION. IN ANY CASE THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THIS NOTE OR ANY COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE EXCEPT AS PERMITTED BY THE SECURITIES ACT.

**GNCC CAPITAL, INC.**

**Amended and Restated**  
**5% (Five percent) Convertible Note due**

Original Issue Date: MAY 3, 2010

Amendment Date: DECEMBER 1, 2011

GNCC CAPITAL, INC., a Delaware Corporation promises to pay to EMERALD INTERNAL CORPORATION or its registered assigns, the principal sum of US\$449,739 on May 2, 2014.

This Note shall bear interest as specified in paragraph 1 of this Note. This Note is convertible into shares of common stock as specified in paragraph 7 of this Note at the Conversion Rate.

Additional provisions of this Note are set forth on the following pages of this Note.

**Dated: DECEMBER 1, 2011**

**GNCC CAPITAL, INC.**

**By**



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**Name: RONALD Y LOWENTHAL**  
**Title: PRESIDENT**

Capitalized terms used herein but not defined shall have the meanings assigned to them in Exhibit D attached hereto and incorporated by reference herein unless otherwise indicated.

1. Cash Interest.

The Company promises to pay interest at the Interest Rate in cash on the principal amount of this Note. The Company will pay cash interest semiannually in arrears on June 30 and December 31 of each year (each an “Interest Payment Date”), beginning on December 31, 2010, to Holders of record at the close of business on the preceding June 15 and December 15 (whether or not a business day) (each a “Regular Record Date”), as the case may be, immediately preceding such Interest Payment Date. Cash interest on the Notes will accrue from the most recent date to which interest has been paid or duly provided or, if no interest has been paid, from the Issue Date. Cash interest will be computed on the basis of a 360-day year of twelve 30-day months. The Company shall pay cash interest on overdue principal at the rate borne by the Notes, and it shall pay interest in cash on overdue installments of cash interest at the same rate to the extent lawful. All such overdue cash interest shall be payable on demand. Upon conversion, accrued and unpaid interest shall be deemed paid in full rather than cancelled, extinguished or forfeited.

2. Method of Payment.

The Company will make payments in respect of the principal of, and cash interest on this Note and in respect of Redemption Prices, if any, to Holders who surrender Notes to a Paying Agent to collect such payments in respect of the Notes. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts. However, the Company may make such cash payments by check or wire transfer payable in such money. Any payment required to be made on any day that is not a Business Day will be made on the next succeeding Business Day.

3. Paying Agent, Conversion Agent and Registrar.

Initially, the Agent will act as Paying Agent, Conversion Agent and Registrar. The Company may appoint and change any Paying Agent, Conversion Agent, Registrar or co-registrar without notice, other than notice to the Agent, which shall initially be an office or agency of the Agent. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent, Registrar or co-registrar.

4. The Notes

The Notes are general unsecured subordinated obligations of the Company limited to US\$30,000,000 (Thirty million dollars) aggregate principal amount plus any additional accrued interest on these Notes. The Company may incur other Indebtedness, secured or unsecured.

## 5. Optional Redemption.

This Note is not redeemable prior to December 31, 2010. On and after December 31, 2010, the Company may at its option, redeem the Notes in whole or in part at any time or in part from time to time, in cash. If the Company redeems the Notes at its option, the Notes will be redeemed at a redemption price equal to 100% (One hundred percent) of the principal amount (the "Redemption Price"), plus accrued and unpaid interest, if any, to (but not including) the Redemption Date. If a Redemption Date is after a Regular Record Date but on or prior to the corresponding Interest Payment Date, the accrued and unpaid interest becoming due on such date shall be payable to the Holders of such Notes, or one or more predecessor Notes, registered as such on the relevant Regular Record Date according to their terms, and the Redemption Price shall not include such interest payment. If fewer than all the Notes are to be redeemed, the Agent shall select the particular Notes to be redeemed from the outstanding Notes by lot or shall redeem each note proportionally.

On and after the Redemption Date, interest ceases to accrue on Notes or portions of Notes called for redemption, unless the Company defaults in the payment of the Redemption Price and accrued and unpaid interest.

30 (Thirty) days prior notice of redemption will be given by the Company to the Holders at their registered address of record.

No sinking fund is provided for the Notes.

## 6. Conversion.

Except as set forth in the next sentence, a Holder of a Note may convert such Note (or any portion thereof equal to US\$1,000 or any integral multiple of US\$1,000 in excess thereof) into Common Stock at any time on or after May 2, 2014 at the Conversion Rate then in effect. The Note may only be converted prior to that date if such conversion is requested in writing by resolution of the Board of Directors of the Company. If such Note is called for redemption, such conversion right shall terminate at the close of business on the second Business Day prior to the Redemption Date for such Note (unless the Company shall default in making the redemption payment when due, in which case the conversion right shall terminate at the close of business on the date such default is cured and such Note is redeemed).

The number of shares of Common Stock issuable upon conversion of a Note shall be determined by dividing the principal amount of the Note or portion thereof surrendered for conversion by US\$1,000, and then multiplying the quotient by the Conversion Rate in effect on the Conversion Date. The "Conversion Rate" is based on the average trading price as reported for the 5 (Five) trading days preceding the date of conversion. The Company shall pay cash adjustment in lieu of any fractional share of Common Stock.

To convert a Certificated Note, a Holder must (1) complete and manually sign a conversion notice in the form of Exhibit A hereto (or complete and manually sign a facsimile of such notice) and deliver such notice to the Conversion Agent, (2) surrender the Note to the Conversion Agent, (3) furnish appropriate endorsements and transfer documents if required by the Conversion Agent, the Company or the Agent and (4) pay any transfer or similar tax, if required.

## 7. Adjustment of Conversion Rate

The Conversion Rate shall be subject to adjustments, calculated by the Company, from time to time as follows:

- (a) In case the Company shall hereafter pay a dividend or make a distribution to all holders of the outstanding Common Stock in shares of Common Stock, the Conversion Rate in effect at the opening of business on the date following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be increased by multiplying such Conversion Rate by a fraction:
  - (1) the numerator of which shall be the sum of the number of shares of Common Stock outstanding at the close of business on the Record Date fixed for such determination and the total number of shares constituting such dividend or other distribution, and
  - (2) The denominator of which shall be the sum of such number of shares.

Such increase shall become effective immediately after the opening of business on the day following the Record Date. If any dividend or distribution of the type described in this paragraph 7(a) is declared but not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate which would then be in effect if such dividend or distribution had not been declared.

- (b) In case the outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock (commonly referred to as a “forward split”), the Conversion Rate in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately increased, and in case outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock (commonly referred to as a “reverse split”), the Conversion Rate in effect at the opening of business on the day following the day upon which such combination becomes effective shall be reduced, in each such case, by multiplying such Conversion Rate by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately after giving effect to such subdivision or combination and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such subdivision or combination. Such reduction or increase, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.
- (c) In case the Company shall issue rights or warrants to all holders of its outstanding shares of Common Stock entitling them (for a period of not more than 60 days) to subscribe for or purchase shares of Common Stock (or securities convertible into Common Stock) at a price per share (or having a Conversion Price per share) less than the Current Market Price on the Record Date fixed for the determination of stockholders entitled to receive such rights or warrants, the Conversion Rate shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Rate in effect at the opening of business on the date after such Record Date by a fraction:
- (1) the numerator of which shall be the number of shares of Common Stock outstanding on the close of business on the Record Date plus the total number of additional shares of Common Stock so offered for subscription or purchase (or into which the convertible securities so offered are convertible), and
  - (2) the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the Record Date plus the number of shares which the aggregate offering price of the total number of shares so offered for subscription or purchase (or the aggregate Conversion Price of the convertible securities so offered) would purchase at such Current Market Price.

Such adjustment shall become effective immediately after the opening of business on the day following the Record Date fixed for determination of stockholders entitled to receive such rights or warrants. To the extent that shares of Common Stock (or securities convertible into Common Stock) are not delivered pursuant to such rights or warrants, upon the expiration or termination of such rights or warrants the Conversion Rate shall be readjusted to the Conversion Rate which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock (or securities convertible into Common Stock) actually delivered. In the event that such rights or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Current Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, the value of such consideration if other than cash, to be determined by the Board of Directors.

- (d) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of capital stock of the Company (other than any dividends or distributions to which paragraph 7(a) applies) or evidences of its indebtedness or other assets, including securities, but excluding (1) any rights or warrants referred to in paragraph 7(c) and (3) dividends and distributions paid exclusively in cash referred to in paragraph 7(e) (the securities described in foregoing clauses (1) and (2) hereinafter in this paragraph 7(d) called the “excluded securities”), then, in each such case, subject to the second succeeding paragraph of this paragraph 7(d), the Conversion Rate shall be adjusted so that the same shall be equal to the price determined by multiplying the Conversion Rate in effect immediately prior to the close of business on the Record Date with respect to such distribution by a fraction:
- (1) The numerator of which shall be such Current Market Price, and
  - (2) The denominator of which shall be the Current Market Price on such date, less the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution) on

Such date of the portion of the securities or other assets so distributed (other than excluded securities) applicable to one share of Common Stock (determined on the basis of the number of shares of the Common Stock outstanding on the Record Date).

Such increase shall become effective immediately prior to the opening of business on the day following the Record Date. However, in the event that the then fair market value (as so determined) of the portion of the securities so distributed (other than excluded securities) applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion of a Note (or any portion thereof) the amount of securities so distributed (other than excluded securities) such Holder would have received had such Holder converted such Note (or portion thereof) immediately prior to such Record Date. In the event that such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if such dividend or distribution had not been declared.

If the Board of Directors determines the fair market value of any distribution for purposes of this paragraph 7(d) by reference to the actual or when issued trading market for any securities comprising all or part of such distribution (other than excluded securities), it must in doing so consider the prices in such market over the same period (the "Reference Period") used in computing the Current Market Price pursuant to paragraph 7(g) to the extent possible, unless the Board of Directors in a Board Resolution determines in good faith that determining the fair market value during the Reference Period would not be in the best interests of the Holder.

For purposes of this paragraph 7(d) and paragraphs 7(a), 7(b) and 7(c), any dividend or distribution to which this paragraph 7(d) is applicable that also includes shares of Common Stock, a subdivision or combination of Common Stock to which paragraph 7(b) applies, or rights or warrants to subscribe for or purchase shares of Common Stock (or securities convertible into Common Stock) to which paragraph 7(c) applies (or any combination thereof), shall be deemed instead to be:

- (1) a dividend or distribution of the evidences of indebtedness, assets, shares of capital stock, rights or warrants other than such shares of Common Stock, such subdivision or combination or such rights or warrants to which paragraphs 7(a), 7(b) and 7(c) apply, respectively (and any Conversion Rate increase required by this paragraph 7(d) with respect to such dividend or distribution shall then be made), immediately followed by
- (2) a dividend or distribution of such shares of Common Stock, such subdivision or combination or such rights or warrants (and any further Conversion Rate increase required by paragraphs 7(a), 7(b) and 7(c) with respect to such dividend or distribution shall then be made), except:

- (A) the Record Date of such dividend or distribution shall be substituted as (x) “the date fixed for the determination of stockholders entitled to receive such dividend or other distribution”, “Record Date fixed for such determinations” and “Record Date” within the meaning of paragraph 7(a), (y) “the day upon which such subdivision becomes effective” and “the day upon which such combination becomes effective” within the meaning of paragraph 7(b), and (z) as “the date fixed for the determination of stockholders entitled to receive such rights or warrants”, “the Record Date fixed for the determination of the stockholders entitled to receive such rights or warrants” and such “Record Date” within the meaning of paragraph 7(c), and
  - (B) any shares of Common Stock included in such dividend or distribution shall not be deemed “outstanding at the close of business on the date fixed for such determination” within the meaning of paragraph 7(a) and any increase or reduction in the number of shares of Common Stock resulting from such subdivision or combination shall be disregarded in connection with such dividend or distribution.
- (e) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock, cash (excluding any cash that is distributed as part of a distribution referred to in paragraph 7(d) hereof), then and in each such case, immediately after the close of business on such date, the Conversion Rate shall be increased so that the same shall equal the price determined by multiplying the Conversion Rate in effect immediately prior to the close of business on such Record Date by a fraction:
- (i) The numerator of which shall be equal to the Current Market Price on such Record Date, and
  - (ii) the denominator of which shall be equal to the Current Market Price on the Record Date less an amount equal to the quotient of (x) the aggregate amount of the cash distributed and (y) the number of shares of Common Stock outstanding on the Record Date.

In the event that such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if such dividend or distribution had not been declared.

- (f) In case the Company or any of its Subsidiaries pays holders of the Common Stock in respect of a tender offer or exchange offer, other than an odd-lot offer, by the Company or any of its Subsidiaries for shares of Common Stock to the extent that the cash and fair market value of any other consideration included in the payment per share of Common Stock exceeds the Sale Price per share of Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender offer or exchange offer (the “Expiration Time”), then, and in each such case, the Conversion Rate shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Rate in effect immediately prior to close of business on the date of the Expiration Time by a fraction:
- (1) the numerator of which shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender offer or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the “Purchased Shares”) and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the Sale Price of the Common Stock on the Trading Day next succeeding the Expiration Time, and
  - (2) the denominator of which shall be the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time multiplied by the Sale Price of the Common Stock on the Trading Day next succeeding the Expiration Time.

Such increase (if any) shall become effective immediately prior to the opening of business on the day following the Expiration Time. In the event that the Company is obligated to purchase shares pursuant to any such tender offer or exchange offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate which would then be in effect if such tender offer or exchange offer had not been made. If the application of this paragraph 7(f) to any tender offer or exchange offer would result in an increase in the Conversion Rate, no adjustment shall be made for such tender offer or exchange offer under this paragraph 7(f).

- (g) For purposes of this paragraph 7, the following terms shall have the meanings indicated:

“Current Market Price” shall mean the average of the daily Sale Prices per share of Common Stock for the 5 (Five) consecutive Trading Days ending not later than the earlier of the date immediately prior to the date in question and the day before the “ex” date with respect to the issuance, distribution, subdivision or combination requiring such computation. If another issuance, distribution, subdivision or combination to which paragraph 7 applies occurs during the period applicable for calculating “Current Market Price” pursuant to the preceding definition, then “Current Market Price” shall be appropriately adjusted to reflect the impact of such issuance, distribution, subdivision or combination on the Sale Price of the Common Stock during such period. For purposes of this paragraph, the term “ex” date, when used:

- (A) With respect to any issuance or distribution, means the first date on which the Common Stock trades regular way on the relevant exchange or in the relevant market from which the Sale Price was obtained without the right to receive such issuance or distribution;
- (B) with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective, and
- (C) with respect to any tender or exchange offer, means the first date on which the Common Stock trades regular way on such exchange or in such market after the Expiration Time of such offer.

Notwithstanding the foregoing, whenever successive adjustments to the Conversion Rate are called for pursuant to this paragraph 7, such adjustments shall be made to the Current Market Price as may be necessary or appropriate to effectuate the intent of this paragraph 7 and to avoid unjust or inequitable results as determined in good faith by the Board of Directors.

- (2) “Fair market value” shall mean the amount which a willing buyer would pay a willing seller in an arm’s length transaction.

- (3) “Record Date” shall mean for purposes of this paragraph 7, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).
- (h) The Company may make such increases in the Conversion Rate, in addition to those required by paragraph 7(a), (b), (c), (d), (e) or (f), as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

To the extent permitted by applicable law, the Company from time to time may increase the Conversion Rate by any amount for any period of time if the period is at least 20 (Twenty) days and the increase is irrevocable during the period and the Board of Directors determines in good faith that such increase would be in the best interests of the Company, which determination shall be conclusive and set forth in a Board Resolution. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to the Agent and each Holder at the address of such Holder as it appears in the Register a notice of the increase at least 15 (Fifteen) days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

- (i) No adjustment in the Conversion Rate shall be required unless such adjustment would require an increase or decrease of at least 1% (One percent) in the Conversion Price then in effect; provided, however, that any adjustments which by reason of this paragraph 7(i) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. In the event that, on the date that is five Business Days prior to the maturity of the Notes (whether at Stated Maturity or otherwise), an adjustment has been carried forward pursuant to the preceding sentence but has not yet been taken into account in an adjustment to the Conversion Rate and notwithstanding the first sentence of this paragraph (i), an adjustment to the Conversion Rate will be made on such date in accordance with the relevant paragraph of this paragraph 7. All calculations under this Article 10 shall be made by the Company and shall be made to the nearest cent or to the nearest one hundredth of a share, as the case may be. No adjustment need be made for a change in the par value or no par value of the Common Stock. No adjustment in the Conversion Rate shall be required if the Holders participate in the transactions that would otherwise lead to an adjustment in the Conversion Rate pursuant to this paragraph 7.

- (j) In any case in which this paragraph 7 provides that an adjustment shall become effective immediately after a Record Date for an event, the Company may defer until the occurrence of such event (i) issuing to the Holder of any Note converted after such Record Date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (ii) paying to such Holder any amount in cash in lieu of any fraction.
- (k) For purposes of this paragraph 7, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.
- (l) Whenever the Conversion Rate is adjusted as herein provided (other than in the case of an adjustment pursuant to the second paragraph of paragraph 7(h) for which the notice required by such paragraph has been provided), the Company shall promptly file with the Agent and any Conversion Agent other than the Agent an Officers' Certificate setting forth the adjusted Conversion Rate and showing in reasonable detail the facts upon which such adjustment is based. Promptly after delivery of such Officers' Certificate, the Company shall prepare a notice stating that the Conversion Rate has been adjusted and setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective, and shall mail, or cause the Agent to mail, at the Company's expense, such notice to each Holder at the address of such Holder as it appears in the Register within 20 (twenty) days of the effective date of such adjustment. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

#### 8. Denominations; Assignment; Transfer; Exchange.

The Notes are in fully registered form, without coupons, in denominations of US\$1,000 of principal amount and whole multiples of US\$1,000. The Registrar may require a Holder, in order to assign, transfer or exchange Notes, among other things, to furnish appropriate endorsements and assignment or transfer documents (in the form of Exhibit B or Exhibit C attached hereto, as applicable) and to pay any taxes and fees required by law. The Registrar need not transfer or exchange any Notes selected for redemption (except, in the case of a Note to be redeemed in part, the portion of the Note not to be redeemed) or any Notes for a period of 15 (Fifteen) days before the mailing of a notice of redemption of Notes to be redeemed.

#### 9. Persons Deemed Owners.

The registered Holder of this Note shall be treated as the owner of this Note for all purposes.

#### 10. Unclaimed Money or Notes.

The Agent and the Paying Agent shall return to the Company upon written request any money, Notes or shares of Common Stock held by them for the payment of any amount with respect to the Notes that remains unclaimed for two years, subject to applicable unclaimed property law. After such return to the Company, Holders entitled to the money or Notes must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

#### 11. Amendment; Waiver.

Except as set forth below, (i) this Note may be amended with the written consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding and (ii) certain Defaults may be waived with the written consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding. Without the consent of any Holder, the Company and the Agent may amend the Notes to, among other things, cure any ambiguity, omission, defect or inconsistency, to provide for uncertificated Notes in addition to or in place of certificated Notes or to make any change that does not adversely affect the rights of any Holder. The foregoing notwithstanding, without the consent of the Holder of this Note, no amendment may be made reducing the principal or the Interest Rate of this Note or extending the Stated Maturity of this Note.

## 12. Defaults and Remedies.

Events of Default include (1) the Company fails to pay when due the principal of any of the Notes at Stated Maturity, upon redemption or otherwise; (2) the Company fails to pay an installment of interest on any of the Notes that continues for 30 (Thirty) days after the date when due; (3) the Company fails to deliver shares of Common Stock, together with cash in lieu of fractional shares, when such Common Stock or cash in lieu of fractional shares is required to be delivered upon conversion of a Note and such failure continues for 10 days after written notice of default is given to the Company by the Agent or to the Company and the Agent by the Holder of such Note; (4) the Company fails to perform or observe any other term, covenant or agreement contained in the Notes for a period of 60 (Sixty) days after written notice of such failure, requiring the Company to remedy the same, shall have been given to the Company by the Agent or to the Company and the Agent by the Holders of at least 50% (Fifty percent) in aggregate principal amount of the Notes then outstanding (a "Notice of Default"); (5) in the event of bankruptcy, insolvency or reorganization with respect to the Company or any Significant Subsidiary and (6) the Company's filing of, or any Significant Subsidiaries' filing of, a voluntary petition seeking liquidation, reorganization arrangement, readjustment of debts or for any other relief under the federal bankruptcy code. If an Event of Default (other than an Event of Default specified in clause (5) or (6) of this paragraph 12) occurs and is continuing, the Agent, or the Holders of at least 50% (Fifty percent) in aggregate principal amount of the Notes at the time outstanding, may declare all the Notes to be due and payable immediately. An Event of Default under clause (5) or (6) of this paragraph 12 will result in the Notes becoming due and payable immediately upon the occurrence of such Events of Default.

Holders may not enforce this Note, except with the approval of Holders of a majority in aggregate principle amount of the Notes. The Agent may refuse to enforce the Notes unless it receives reasonable indemnity or security.

## 13. Subordination.

The payment of principal of and interest on the Notes will be subordinated in right of payment to the prior payment in full in cash or cash equivalents (or otherwise to the extent Holders accept satisfaction of amounts due by settlement in other than cash or cash equivalents) of all Senior Indebtedness whether outstanding on the date of this Note or thereafter incurred.

## 14. Agent Dealings with the Company.

The Agent, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Agent.

15. No Recourse Against Others.

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Notes or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Holder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Notes.

16. Abbreviations.

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with right of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

17. GOVERNING LAW.

THIS NOTE WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEVADA.

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**Exhibit A**

**CONVERSION NOTICE**

To convert this Note into Common Stock of the Company, check the box:

To convert only part of this Note, state the principal amount to be converted (which must be US\$1,000 or an integral multiple of US\$1,000):

US\$\_\_\_\_\_

If you want the stock certificate made out in another person's name, fill in the form below:

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(Insert other person's social sec. or tax ID no.)

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(Print or type other person's name, address and zip code)

- If you want the stock certificate made out in another person's name, you are required to complete and deliver to the Conversion Agent a duly completed Transfer Certificate which is in the form of Exhibit B to this Note.

**EXHIBIT B**

**ASSIGNMENT FORM**

For value received \_\_\_\_\_ hereby sell(s), assign(s), and transfer(s) unto \_\_\_\_\_ (Please insert social security or other Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with the transfer of this Note, the undersigned registered owner of this Note hereby certifies with respect to US\$ \_\_\_\_\_ principal amount of this Note presented or surrendered on the date hereof (the "Surrendered Note") for registration of transfer, or for exchange where the Notes issuable upon such transfer or exchange are to be registered in a name other than that of the undersigned registered owner (each such transaction being a "transfer"), that such transfer complies with the restrictive legend set forth on the face of the Surrendered Note for the reason checked below:

- A transfer of the Surrendered Note is made to the Company; or
- The transfer of the Surrendered Note complies with Rule 144A under the U.S. Securities Act of 1933, as amended (the "Securities Act"); or
- The transfer of the Surrendered Note complies with Rule 501(a)(1), (2), (3) or (7) of Rule 501 under the Securities Act; or
- The transfer of the Surrendered Note is pursuant to an effective registration statement under the Securities Act, or
- The transfer of the Surrendered Note is pursuant to another available exemption from the registration requirement of the Securities Act,

and unless the box below is checked, the undersigned confirms that, to the undersigned's knowledge, the Surrendered Note is not being transferred to an "affiliate" of the Company as defined in Rule 144 under the Securities Act (an "Affiliate").

- The transferee is an Affiliate of the Company.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature(s)

Signature(s) must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“STAMP”) or such other “signature guarantee program” as may be determined by the Notes registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

**Exhibit C**

**Transfer Certificate**

In connection with any transfer (or exchange or conversion as provided below) of any of the Notes, the undersigned registered owner of this Note hereby certifies with respect to US\$\_\_\_\_\_ principal amount of the above-captioned Notes presented or surrendered on the date hereof (the "Surrendered Notes") for registration of transfer, or for exchange or conversion where the Notes or Common Stock issuable upon such exchange or conversion, as the case may be, are to be registered in a name other than that of the undersigned registered owner (each such transaction being a "transfer"), that such transfer complies with the restrictive legend set forth on the face of the Surrendered Notes for the reason checked below:

- A transfer of the Surrendered Notes is made to the Company or any Subsidiaries; or
- The transfer of the Surrendered Notes complies with Rule 144A under the U.S. Securities Act of 1933, as amended (the "Securities Act"); or
- The transfer of the Surrendered Note complies with Rule 501(a)(1), (2), (3) or (7) of Rule 501 under the Securities Act; or
- The transfer of the Surrendered Notes is pursuant to an effective registration statement under the Securities Act, or
- The transfer of the Surrendered Notes is pursuant to another available exemption from the registration requirement of the Securities Act,

and unless the box below is checked, the undersigned confirms that, to the undersigned's knowledge, such Notes are not being transferred to an "affiliate" of the Company as defined in Rule 144 under the Securities Act (an "Affiliate").

- The transferee is an Affiliate of the Company.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Signature(s)

(If the registered owner is a corporation, partnership or fiduciary, the title of the Person signing on behalf of such registered owner must be stated.)

## **Exhibit D**

### **Definitions**

“Affiliate” of any specified person means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For purposes of this definition, “control” when used with respect to any specified person means the power to direct or cause the direction of the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Agent” means the Company until a successor replaces it as agent with respect to the Notes and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

“Board of Directors” means either the board of directors of the Company or any duly authorized committee of such board.

“Board Resolution” means a resolution duly adopted by the Board of Directors, a copy of which, certified by the Secretary or an Assistant Secretary of the Company to be in full force and effect on the date of such certification, shall have been delivered to the Agent.

“Business Day” means each day of the year other than a Saturday or a Sunday on which banking institutions are not required or authorized to close in The City of New York.

“Capital Stock” of any corporation means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock or other equity issued by that corporation.

“Common Stock” means the Common Stock, par value US\$0.00001 per share, of the Company as it exists on the date of this Note. Shares issuable on conversion of Notes shall include only shares of Common Stock or shares of any class or classes of common stock resulting from any reclassification or reclassifications thereof; provided, however, that if at any time there shall be more than one such of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

“Common stock” means any stock of any class of Capital Stock which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the issuer.

“Company” means the party named as the “Company” in the first paragraph of this Note until a successor replaces it pursuant to the applicable provisions of this Note, and, thereafter, “Company” shall mean such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

“Conversion Agent” means any person authorized by the Company to convert Notes in accordance with Article 10 hereof. On the date of this Note, the Company hereby appoints the Agent as the Conversion Agent.

“Conversion Price” means US\$1,000 divided by the applicable Conversion Rate.

“Conversion Value” for the Notes is equal to the product of (i) the Sale Price per share of the Common Stock on a given day and (ii) the then current Conversion Rate.

“Default” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“Dollar” or “U.S.\$” means a dollar or other equivalent unit in such coin or currency of the United States as at the time shall be legal tender for the payment of public and private debts.

“GAAP” means United States generally accepted accounting principles as in effect from time to time.

“Holder” means a person in whose name a Note is registered on the Registrar’s books.

“Indebtedness” means, with respect to any person, without duplication:

- (1) all obligations and other liabilities, contingent or otherwise, of such person for borrowed money (including overdrafts) to the extent such obligations and other liabilities would appear as a liability upon the consolidated balance sheet of such a person in accordance with GAAP or for the deferred purchase price of property or services, excluding any trade payables and other accrued current liabilities incurred in the ordinary course of business, but including, without limitation, all obligations, contingent or otherwise, of such person in connection with any letters of credit and acceptances issued under letter of credit facilities, acceptance facilities or other similar facilities;
- (2) all obligations of such person evidenced by bonds, credit or loan agreements, notes, debentures or other similar instruments to the extent such obligations would appear as a liability upon the consolidated balance sheet of such a person in accordance with GAAP;

- (3) indebtedness of such person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such person (even if the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), but excluding trade payables arising in the ordinary course of business;
- (4) All obligations and liabilities, contingent or otherwise, in respect of leases of the person required, in conformity with GAAP, to be accounted for as capitalized lease obligations on the consolidated balance sheet of the person;
- (5) all net obligations of such person under or in respect of interest rate agreements, currency agreements or other swap, cap floor or collar agreements, hedge agreements, forward contracts or similar instruments or agreements or foreign currency, hedge, exchange or purchase or similar instruments or agreements;
- (6) all indebtedness referred to in (but not excluded from) the preceding clauses (1) through (5) of other persons, the payment of which is secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on or with respect to property (including, without limitation, accounts and contract rights) owned by the referent person, even though such person has not assumed or become liable for the payment of such indebtedness (the amount of such obligation being deemed to be the lesser of the value of such property or asset or the amount of the obligation so secured);
- (7) All guarantees by such person of indebtedness referred to in this definition or of any other person;
- (8) All Redeemable Capital Stock of such person valued at the greater of its voluntary or involuntary maximum fixed purchase price plus accrued and unpaid dividends;
- (9) the present value of the obligation of such person as lessee for net rental payments (excluding all amounts required to be paid on account of maintenance and repairs, insurance, taxes, assessments, water, utilities and similar charges to the extent included in such rental payments) during the remaining term of the lease included in any such sale and leaseback transaction including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP; and

- (10) any and all refinancings, replacements, deferrals, renewals, extensions and refundings of or amendments, modifications or supplements to, any indebtedness, obligation or liability of the kind described in clauses (1) through (9) above.

“Interest Payment Date” means the date specified in the Notes as the fixed date on which an installment of interest on the Notes is due and payable.

“Interest Rate” means 10% (Ten percent) per annum.

“Issue Date” of any Note means the date on which the Note was originally issued or deemed issued as set forth on the face of the Note.

“Lien” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset given to secure Indebtedness, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction with respect to any such lien, pledge, charge or security interest).

“Notes” mean the Company’s convertible Notes due May 3, 2011.

“Officer” means the Chairman of the Board, the Vice Chairman, the Chief Executive Officer, the President, any Executive Vice President, any Senior Vice President, any Vice President, the Treasurer or the Secretary or any Assistant Treasurer or Assistant Secretary of the Company.

“Officers’ Certificate” means a written certificate signed in the name of the Company by any one Officer, and delivered to the Agent

“person” or “Person” means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof, including any subdivision or ongoing business of any such entity or substantially all of the assets of any such entity, subdivision or business.

“Principal” of a Note means the principal amount due on the Stated Maturity as set forth on the face of the Note.

“Redeemable Capital Stock” means any class of the Company’s Capital Stock that, either by its terms, by the terms of any securities into which it is convertible or exchangeable or by contract or otherwise, is, or upon the happening of an event or passage of time would be, required to be redeemed (whether by sinking fund or otherwise) prior to the date that is 91 days after the Stated Maturity of the Notes or is redeemable at the option of the holder thereof at any time prior to such date. Securities at any time prior to such date (unless it is convertible or exchangeable solely at the Company’s option).

“Redemption Date” or “redemption date” means the date specified for redemption of the Notes in accordance with the terms of this Note.

“Redemption Price” or “redemption price” shall have the meaning set forth in paragraph 5 of this Note.

“Regular Record Date” means, with respect to the interest payable on any Interest Payment Date, the close of business on the March 15 or September 15 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date.

“Rule 144” means Rule 144 under the Securities Act (or any successor provision), as it may be amended from time to time.

“Rule 144A” means Rule 144A under the Securities Act (or any successor provision), as it may be amended from time to time.

“Sale Price” as of any date means the closing per share sale price (or if no closing sale price is reported, the average bid price and ask prices or, if more than one in either case, the average of the average bid and average ask prices) on such date on the Nasdaq National Market or such other principal United States securities exchange on which the Common Stock is traded or, if the Common Stock is not listed on a United States national or regional securities exchange, as reported by the National Association of Securities Dealers Automated Quotation System or by the National Quotation Bureau Incorporated. In the absence of a quotation, the Company will determine the sale price on the basis of such quotations as the Company considers appropriate.

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the United States Securities Act of 1933 (or any successor statute), as amended from time to time.

“Senior Indebtedness” means any Indebtedness of the Company, unless by the terms of the instrument creating or evidencing such Indebtedness, such Indebtedness is expressly designated equal or junior in right of payment to the Notes.

Notwithstanding the foregoing, “Senior Indebtedness” shall not include:

- (a) Indebtedness evidenced by the Notes;

- (b) Indebtedness of the Company that by operation of law is subordinate to any general unsecured obligations of the Company;
- (c) any liability for federal, state or local taxes or other taxes, owed by the Company.
- (d) accounts payable or other liabilities owed or owing by the Company to trade creditors (including guarantees thereof or instruments evidencing such liabilities);
- (e) amounts owed by the Company for compensation to employees or for services rendered to the Company;
- (f) Indebtedness of the Company to any Subsidiary or any other Affiliate of the Company or any of such Affiliate's Subsidiaries;
- (g) Capital Stock of the Company, including Redeemable Capital Stock; and
- (h) Indebtedness of the Company which, when incurred and without regard to any election under Section 1111(b) of Title 11 of the United States Code, is without recourse to the Company.

“Significant Subsidiary” means any Subsidiary that would be, as of the date of the applicable action set forth in this Note, a “significant subsidiary” of the Company within the meaning of Rule 1-02(w) of Regulation S-X promulgated by the SEC.

“Stated Maturity”, when used with respect to any Note, means the date specified in such Note as the fixed date on which the principal of such Note is due and payable.

“Subsidiary” means, with respect to any Person, (i) a corporation, a majority of whose Capital Stock with voting power, under ordinary circumstances, to elect directors is, at the date of determination, directly or indirectly owned by such Person, by one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person, (ii) a partnership in which such Person or a Subsidiary of such Person holds a majority interest in the equity capital or profits of such partnership, or (iii) any other entity (other than a corporation) in which such Person, a Subsidiary of such Person or such Person and one or more Subsidiaries of such Person, directly or indirectly, at the date of determination, has (x) at least a majority ownership interest or (y) the power to elect or direct the election of a majority of the directors or other governing body of such entity.

“Trading Day” means a day during which trading in securities generally occurs on the Nasdaq National Market or, if the Common Stock is not listed on a national or regional securities exchange, on the National Association of Securities Dealers Automated Quotation System, or, if the Common Stock is not quoted on the National Association of Securities Dealers Automated Quotation System, on the principal other market on which the Common Stock is then traded.

“United States” means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction (its “possessions” including Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands).