

## CONVERTIBLE NOTE AGREEMENT

This Agreement by and between **Example LLC**, duly organized and existing under the laws of the State of **LLC State** and note issuer, "Note Holder".

W I T N E S S E T H:

WHEREAS, the LLC is willing to lend the Note Holder the aggregate sum of **\$X.00** which shall be evidenced by a 20 percent Convertible Promissory Note.

In consideration of the mutual covenants and conditions contained in this agreement, the parties agree, represent and warrant as follows:

### 1. Issue of Notes

A. The LLC will authorize the issue of its 20 percent Convertible notes, "Notes" in the aggregate principal amount of **\$X.00** to be dated 45 days after the close of escrow to mature on \_\_\_\_\_ to bear interest on the unpaid principal thereof at the rate of \_\_\_\_\_ percent per annum until maturity, payable \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in each year, commencing on \_\_\_\_\_, \_\_\_\_\_, and after maturity at the rate of \_\_\_\_\_ percent per annum until paid, and to be substantially in the form of Exhibit A attached hereto. For the purposes of calculating interest for any period for which the interest shall be payable, such interest shall be calculated on the basis of a \_\_\_\_\_ day month and a \_\_\_\_\_ day year. The LLC will promptly and punctually pay to Note Holders or their nominee the interest on any of the Notes held by Note Holders without presentment of the Notes. In the event that Note Holders shall sell or transfer any of the Notes, they shall notify the LLC of the name and address of the transferee. In the event the LLC defaults on any installment of interest or principal, then any Note Holder of these Notes may, at his option, without notice, declare the entire principal and the interest accrued thereon immediately due and payable and may proceed to enforce the collection thereof. All the Notes shall contain a confession of judgment provision.

B. The LLC will also authorize the issue of \_\_\_\_\_ shares of its common stock, "Stock" and will authorize the issuance of and reserve for such purchase such a number of additional shares of common stock, "Conversion Stock" as may from time to time be the maximum number required for issuance upon conversion of the Notes pursuant to the conversion privileges hereinafter stated.

### 2. Sale and Purchase of Notes and Stock

The LLC will sell the Notes to the purchasers listed on Exhibit A, each of whom agrees to purchase the principal amount of the Notes set opposite their names, subject to the terms and conditions of and in reliance upon the representations and warranties of the

LLC contained in this agreement, at the purchase price of \_\_\_\_\_ percent of the principal amount.

### 3. Representations and Warranties by the LLC

A. LLC, a duly organized LLC existing in good standing under the laws of the State of \_\_\_\_\_ has the corporate power to own its own property and to carry on in the business as it is now being conducted.

B. LLC has on its corporate records the names of the following individuals who each own \_\_\_\_\_ shares of common stock which constitute all the issue and outstanding capital stock of the LLC as of this date.

C. The LLC has furnished to the Note Holders an Offering Circular which is attached as Exhibit B. The financial statements contained in Exhibit B are true and correct and have been prepared in accordance with generally accepted accounting principles consistently followed throughout the period indicated.

D. There is no action or proceeding pending or threatened against the LLC before any court or administrative agency, the determination of which might result in any material adverse change in the business of the LLC.

E. The LLC has title to the respective properties and assets including the properties and assets reflected on the financial statement for the year ending \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ which assets and properties are subject to no liens, mortgages, encumbrances or charges except a security interest to \_\_\_\_\_

F. The LLC is not a party to any contract or agreement or subject to any restriction which materially and adversely affects its business, property, assets, or financial condition, and neither the execution nor delivery of this Agreement, nor the confirmation of the transactions contemplated herein, nor the fulfillment of the terms hereof, nor the compliance with the terms and provisions hereof and of the Notes, will conflict with or result in the breach of the terms, conditions or provisions or constitute a default, under the Articles of Organization or of any Agreement or instrument to which the LLC is now a party.

G. The LLC has not declared, set aside, paid or made any dividend or other distributions with respect to its capital stock and has not made or caused to be made directly or indirectly, any payment or other distribution of any nature whatsoever to any of the holders of its capital stock except for regular salary payments for services rendered and the reimbursement of business expenses.

H. All of the equipment and automobiles of the LLC are in good condition and repair.

I. There are no outstanding options or rights to purchase shares of the LLC and no outstanding securities with the right of conversion into shares of the LLC.

J. The LLC owns or possesses adequate licenses or other rights to use, all patents, trademarks, trade names, trade secrets, and copyrights used in its business. No one has asserted to the LLC that its operations infringe on the patents, trademarks, trade secrets or other rights utilized in the operation of its business.

K. Neither the LLC nor any agent or employee acting in its behalf has offered the Notes or the Stock or any portion thereof for sale to or solicited in any offer to buy the same from anyone other than the purchasers listed in the attached Exhibit A, and neither the LLC nor any agent or employee acting in its behalf will sell or offer for sale the Notes or Stock or any portion thereof to or solicit any offer to buy the Notes or the Stock from anyone so as to bring the issuance or sale thereof within the provisions of Section 5 of the Securities Act of 1933.

#### 4. Representations and Warranties by the Note Holders

The Note Holders represent and warrant that:

A. The Note Holders are subscribing for the Notes and Stock for investment purposes and not with the view to or for sale in connection with any distribution thereof and that they have no present intent to sell, give or otherwise transfer the Notes or Stock.

B. The Note Holders state that they are residents of the State of \_\_\_\_\_.

C. The Note Holders understand that this is a highly speculative investment in a LLC which is insolvent both from a legal and an equity standpoint.

D. Individuals represent and warrant that they have a net worth in excess \_\_\_\_\_ dollars exclusive of their residences and that they are sophisticated investors who are knowledgeable about the \_\_\_\_\_ business.

E. Note Holders state that they will be active in the affairs of the business of the LLC.

#### 5. Prepayment of the Notes

LLC shall have the right to make prepayments on principal of the Notes at any time on \_\_\_\_\_ days written notice. Such prepayment shall be accompanied by a payment of all accrued interest to date. There shall be no premium for the amount so prepaid.

#### 6. Conversion.

A. The Holder of any of the Notes at any time up to and including the maturity date (or, as to any of the Notes to which notice of prepayment shall have been given, at any time

up to the close of business on the third business day prior to the day fixed for prepayment) but not thereafter may convert the Notes in whole or in part into as many fully paid and nonassessable shares of Common Stock of the LLC as the principal amount of the Note so converted in a multiple of \_\_\_\_\_ per share, and upon surrender of the certificate representing the Notes to the LLC at its principal office in the City of \_\_\_\_\_. If any of the Notes shall be converted in part, the LLC shall, at its option and without charge to the Holder, either (I) execute and deliver to the Holder Notes for the balance of the principal amount so converted, or (ii) make note thereon of the principal of the amount converted.

B. Upon conversion of any of the Notes, all accrued and unpaid interest on the principal amount converted shall be paid to the Holder by the LLC.

C. The LLC shall take all necessary steps to maintain the registration for the shares held subject to the conversion privilege as described in this section.

D. In the case the LLC shall issue or sell any share of its Common Stock (other than the Stock Shares issued upon conversion of any of the Notes) without consideration or for consideration per share less than the conversion price of \_\_\_\_\_ per share, then upon such issuance or sale, the conversion price shall be adjusted to a price (computed to the nearest cent) determined by dividing (i) an amount equal to the sum of the number of shares of Common Stock outstanding immediately prior to such issue or sale multiplied by \_\_\_\_\_ and the consideration, if any, received by the LLC upon such issue or sale, by (ii) the total amount of shares of Common Stock immediately outstanding after such issue or sale.

E. In case the LLC shall at any time divide its outstanding shares of Common Stock into a greater number of shares, the conversion price in effect immediately prior to such subdivision should be proportionately reduced, and, conversely, in the case of outstanding shares of Common Stock of the LLC shall be combined into a smaller number of shares, the actual conversion price in effect immediately prior to such combination shall be proportionately increased.

F. In case the LLC shall declare a dividend or make a distribution of any Stock of the LLC payable in Common Stock or in Convertible Securities, the aggregate maximum number of shares of Common Stock available for issue in payment of such dividend or distribution, or upon conversion of or in exchange for such Convertible Securities available for issue in payment of such dividend or distribution, shall be deemed to have been issued or sold without consideration.

G. No fractional share of Common Stock shall be issued upon conversion of any of the Notes. If any Holder of the Notes shall have converted all the Notes held by him other than a principal amount so small that less than a whole share of Common Stock would be available for issue upon conversion thereof, the LLC may elect to prepay such balance, with interest accrued thereon to the date fixed for prepayment, or leave the same outstanding until the maturity of the Note.

H. In any reclassification or change of outstanding shares of Common Stock available for issue upon conversion of the Notes (other than a change in stated value or from no par to par value) or in the case of any consolidation or merger of the LLC with any other LLC, or in the case of the sale and conveyance to another to another LLC or person of the property of the LLC in its entirety or substantially as an entirety, the LLC shall, as a condition precedent to such transaction, cause effective provisions to be made that each Holder of the Notes then outstanding shall have the right thereafter to convert the Notes into the kind and amount of shares of Stock and other securities and property receivable upon such reclassification, change, consolidation, merger, sale or conveyance by a Holder of the number of shares of Common Stock in the LLC into which such Notes might have been converted immediately prior to such reclassification, change, consolidation, merger, sale or conveyance.

## 7. Covenants

A. The LLC covenants that so long as the Notes are in existence, it will deliver to the Holders thereof (i) as soon as practical, in any event within forty-five (45) days after the end of such quarterly period, in each fiscal year, consolidated income and surplus statements of the LLC; (ii) as soon as practical, and in any event within ninety (90) days after the end of each fiscal year, a consolidated income and surplus statement of the LLC, and (iii) with reasonable promptness, such other financial data as the Holders may request in writing.

B. The LLC covenants that, so long as any of the Notes are outstanding, it will permit any Holder of the Notes to visit and inspect, at the Holder's expense, any of the property of the LLC, including its books and records, and to discuss affairs, finances and accounts with its officers.

C. The LLC covenants that, without the written consent of the Holders of

\_\_\_\_\_ in principal amount of the Notes, it will not:

1) Create or suffer to exist any mortgage, pledge, encumbrance, lien or charge of any kind on any of its properties or assets, whether now owned or hereafter acquired except for (i) mortgages, encumbrances, liens or charges which are now in existence; (ii) mortgages, liens, charges and encumbrances (a) for taxes, assessments or governmental charges or levies on property of the LLC if the same shall not be due or delinquent or thereafter can be paid without penalty, or being contested in good faith and by appropriate proceedings; (b) of mechanics and material men for sums not yet due or being contested in good faith and by appropriate proceedings; or (c) in connection with workers' compensation, unemployment insurance and other state employment legislation.

(2) Make any loan or advance to any person, firm or LLC.

(3) Assume, guarantee, endorse or otherwise become liable in connection with the obligations, stock or dividends of any person, firm or LLC except in the ordinary course of business by endorsement of a negotiable instrument in the course of collection.

(4) Merge or consolidate with any other LLC or sell, lease or transfer or otherwise dispose of all or a substantial part of its assets to any person, firm or LLC.

(5) Enter into any material transaction in which any stockholder owning of record or beneficially more than ten percent (10%) of the Common Stock of the LLC shall have, at the time, a beneficial interest, direct or indirect.

#### 8. Event of Default

A. The breach of any of the events or conditions contained in Section 7 of this Agreement shall constitute an event of default under this Agreement. Any one or more of the Holders of the Notes may give written notice of such breach and if the LLC shall within thirty (30) days after receipt of such written notice have failed to correct such occurrence or condition, then the Holder of any one of the Notes may, at its option and without notice, declare the entire principal and interest accrued thereon immediately due and payable and may proceed with collection.

B. If the LLC has made a material misrepresentation in connection with this Agreement or with the transactions contemplated by this Agreement, or if the LLC makes an assignment for the benefit of creditors, or a trustee or receiver is appointed for the LLC; or if any proceeding involving the LLC is commenced under any bankruptcy, reorganization, arrangement, insolvency, statute or law, such event shall be deemed a default which will immediately entitle Holders of the Notes, at their option and without notice, to declare the entire amount of interest accrued thereon immediately due and payable and proceed to enforce the collection thereof.

C. In case of default in the payment of any installment or principal, the Holders of the Notes may, at their option and without notice, declare the entire principal and the interest accrued thereof immediately due and payable and may proceed to enforce the collection thereof.

#### 9. Miscellaneous

A. Any and all notices, approvals or other communications to be sent to the parties shall be deemed validly and properly given if made in writing and delivered by hand or by registered or certified mail, return receipt requested, and addressed to the LLC at its principal office or to the Holders of the Notes at the addresses given to the LLC by such Note Holders.

B. This Agreement may not be modified, amended or terminated except by written agreement executed by all the parties hereto.

C. The waiver of any breach or default hereunder shall not be considered valid unless in writing and signed by the party giving such notice and no waiver shall be deemed a waiver of any subsequent breach or default of same.

D. The paragraph headings contained herein are for the purpose of convenience only and are not intended to define or limit the contents of such.

E. The validity, construction, interpretation and enforceability of this Agreement and the Notes executed pursuant to this Agreement shall be determined and governed by the laws of the State of \_\_\_\_\_.

F. This Agreement shall be binding upon and inure to the benefit of the company and its successors and assigns.

G. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Note Holder

\_\_\_\_\_  
Note Holder

\_\_\_\_\_  
President