



GNCC CAPITAL, INC.

SUPPLEMENTAL INFORMATION

FEBRUARY 26, 2013

Entry of a Material Agreement – Convertible Loan Note

Entry of a Material Agreement – Letter of Credit Agreement

On June 30, 2012, GNCC Capital, Inc. (“GNCC”) entered into a Letter of Credit Agreement with Diamond Peak Resource Corporation (“Diamond Peak”).

The Letter of Credit Agreement provided GNCC with a Credit Facility of \$800,000 (Eight hundred thousand dollars). The Loan shall be used to retire nominal outstanding trade debt, debt to Stockholders and as working capital. This Loan from Diamond Peak to GNCC was unsecured and bore interest at 4% (Four percent) per annum.

As at the end of the first quarter dated December 31, 2012, the Loan outstanding to Diamond Peak was in the amount of \$814,318 (Eight hundred and fourteen thousand three hundred and eighteen dollars) plus accrued interest of \$14,990 (Fourteen thousand nine hundred and ninety dollars); totaling \$829,308 (Eight hundred and twenty nine thousand three hundred and eight dollars).

This Letter of Credit Agreement was annexed as an Exhibit to the Annual Report for the year ended September 30, 2012 and filed with the OTC Markets on February 3, 2013.

On February 26, 2013, Diamond Peak entered into a Convertible Loan Note Agreement with GNCC in the amount of \$829,308 (Eight hundred and twenty nine thousand three hundred and eight dollars). This terminated the existing Letter of Credit Agreement between GNCC and Diamond Peak.

The Convertible Loan Note Agreement bears interest at 6% per annum and is unsecured. Diamond Peak has the right to convert this Convertible Loan Note on or after February 26, 2015.

On February 26, 2013, GNCC and Diamond Peak entered in a new Letter of Credit Agreement providing GNCC with a new Credit Facility in the amount of \$1,000,000 (One million dollars), expiring on February 26, 2015.

The Loan shall be used primarily as working capital for developing GNCC Mining Exploration Properties. This Loan from Diamond Peak to GNCC was unsecured and bears interest at 6% (Six percent) per annum.

It was also agreed that Diamond Peak will advance the necessary funds to GNCC order for GNCC to expend the necessary sums of monies as are required to prepare and file the necessary information to ensure that both North American Gold & Minerals Fund and ASPA Gold Corp. are “Current Information” Filers with the OTC Markets.

It is recorded that Diamond Peak owns an amount of 12,591,540 (Twelve million five hundred and ninety one thousand five hundred and forty) shares of restricted Common Stock of GNCC. In addition to these shares of Common Stock, Diamond Peak holds additional Convertible Loan Notes issued by GNCC in the total amount of \$1,206,556 (One million two hundred and six thousand five hundred and fifty six dollars) plus accrued interest. This excluded the Convertible Loan issued today to Diamond Peak by GNCC.

EXHIBITTS:

- 1. LETTER OF CREDIT AGREEMENT BETWEEN GNCC CAPITAL, INC. AND DIAMOND PEAK RESOURCE CORPORATION DATED FEBRUARY 26, 2013.**
- 2. CONVERTIBLE LOAN NOTE ISSUED BY GNCC CAPITAL, INC. TO DIAMOND PEAK RESOURCE CORPORATION DATED FEBRUARY 26, 2013.**

LINE OF CREDIT LOAN AGREEMENT
(Unsecured)

This Line of Credit Loan Agreement (this “*Loan Agreement*”) dated as of February 26, 2013 is between DIAMOND PEAK RESOURCE CORPORATION, a corporation with a service address of Condominio Hoyo 5, No. 2 Bosques de Dona Rosa, C. Cariari, Belen – Heredia, Costa Rica 43-4006 “(*Lender*”), and GNCC CAPITAL, INC., a Delaware corporation with an address of 244 5th Avenue, Suite 2525, New York, N.Y. 10001 “(*Borrower*”). Lender has agreed to provide this loan to Borrower on the terms and conditions set forth herein.

1. **LOAN AMOUNT AND TERMS**

1.1 Loan Amount.

On the Closing Date, Lender will provide a loan to Borrower, subject to the terms and conditions of this Loan Agreement; in the maximum aggregate amount of \$1,000,000 (One million dollars) (the “*Loan*”). The Loan shall be used primarily as working capital for the development of the Borrower’s Mining Exploration Properties and as working capital.

- (a) This is a revolving line of credit. Borrower may re-borrow principal amounts that are repaid.

1.2 Maturity Date.

- (a) Subject to earlier maturity if there is an Event of Default, the Loan shall mature on February 26, 2015 (the “*Maturity Date*”).
- (b) If there is an Event of Default, then in addition to Lender’s other remedies, Lender (as defined below) may require Borrower to repay any amounts outstanding under the loan immediately.

1.3 Interest Rate.

Borrower is executing a promissory note in favor of Lender in the form of Exhibit “A” (the “*Note*”) in the amount of the Loan evidencing the Loan and payable to Lender. The Note sets forth the interest rate and certain other terms and conditions applicable to the Loan.

1.4 Loan Documents.

The “*Loan Documents*” are the documents indicated below, each dated as of the date of this Loan Agreement unless indicated otherwise. A capitalized term used in this Loan Agreement but not defined herein has the meaning given in the other Loan Documents. In the event of conflict between this Loan Agreement and the Loan Documents, this Loan Agreement shall control.

- (a) This Loan Agreement; and
- (b) The Note.

2. FEES AND EXPENSES

2.1 Expenses and Costs.

- (a) Borrower will pay all costs and expenses incurred by Lender in connection with the administration of the Loan, and the exercise of any of Lender’s rights or remedies under the Loan Documents by Lender. Such costs and expenses include legal fees and expenses of Lender’s counsel and any other reasonable fees and costs for services, regardless of whether such services are furnished by Lender’s employees or by independent contractors.
- (b) Borrower agrees to indemnify Lender from and hold it harmless against any transfer or documentary taxes, assessments or charges imposed by any governmental authority by reason of the execution, delivery and performance of the Loan Documents. Borrower’s obligations under this Section 2.1 shall survive payment of the Loan of credit and assignment of any rights hereunder.

3. CONDITIONS

That the Lender will advance the necessary funds to the Borrower in order for the Borrower to expend the necessary sums of monies as are required to prepare and file the necessary information to ensure that both North American Gold & Minerals Fund and ASPA Gold Corp. are “Current Information” Filers with the OTC Markets.

4. REPRESENTATIONS AND WARRANTIES

When Borrower signs this Loan Agreement, and until Lender is repaid in full, Borrower makes the following representations and warranties, each of which is made to the actual knowledge of Borrower's Chief Financial Officer.

4.1 Enforceable Agreement.

The Loan Documents do not conflict with any law, agreement, or obligation by which Borrower is bound, and (i) this Loan Agreement is a legal, valid and binding agreement of Borrower, enforceable against Borrower in accordance with its terms (except as such enforceability may be limited by general principals of equity), and (ii) any instrument or document required hereunder, when executed and delivered, will be similarly legal, valid, binding and enforceable (except as such enforceability may be limited by general principals of equity).

4.2 Financial Information.

All financial and other information that has been or will be supplied to Lender, and any financial statements of Borrower:

- (a) Is sufficiently complete to give Lender accurate knowledge of Borrower's financial condition, including all material contingent liabilities;
- (b) Is in compliance with any governmental regulations that apply, if any; and
- (c) Does not fail to state any material facts necessary to make the information contained therein not misleading.

Since the dates of the financial information specified above, there has been no material adverse change in the business condition (financial or otherwise), operations, properties or prospects of

4.3 Lawsuits.

To Borrower's Knowledge, other than as has been previously disclosed to Lender in writing, which is acknowledged by Lender, there is no lawsuit, arbitration, claim or other dispute pending or threatened against Borrower which, if lost, would materially and substantially impair Borrower's financial condition or ability to repay the Note, except as has been previously disclosed in writing to Lender.

4.4 Title to Assets.

Borrower has good and clear title to its assets, and the same are not subject to any mortgages, deeds of trust, pledges, security interests or other encumbrances, other than those expressed in the agreements previously disclosed to Lender pursuant to which it has acquired its assets.

4.5 Income Tax Returns.

Borrower has filed or will file all tax returns and reports required to be filed and have paid or will pay all applicable federal, state and local franchise, income and property taxes which are due and payable.

4.6 Other Obligations.

To Borrower's Knowledge, Borrower is not in default on any obligation for borrowed money, any purchase money obligation or any other material lease, commitment, contract, instrument or obligation, except as has been previously disclosed in writing to Lender.

4.7 No Event of Default.

To Borrower's Knowledge, there is no event which is, or with notice or lapse of time or both would be, a material default under the Loan Documents.

4.8 Permits, Franchises.

To Borrower's Knowledge, Borrower possesses all material permits, franchises, contracts and licenses required and all material trademark rights, trade name rights, and fictitious name rights necessary to enable it to conduct the business in which it is now engaged, provided that additional permits will be required to open Borrower's mines.

5. **COVENANTS**

Borrower agrees, so long as credit is available under this Loan Agreement and until Lender is repaid in full:

5.1 Use of Proceeds.

To use the proceeds of the Loan to develop its Mining Exploration Properties and for working capital.

5.2 Financial Information.

To provide financial information and statements and such additional information as requested by Lender from time to time.

5.3 Taxes and Other Liabilities.

To pay and discharge, before the same become delinquent and before penalties accrue thereon, all taxes, assessments and governmental charges upon or against Borrower or any of its properties, and all its other liabilities at any time existing, except to the extent and so long as:

- (a) The same are being contested in good faith and by appropriate proceedings in such manner as not to cause any materially adverse effect to Borrower's financial condition or the loss of any right of redemption from any sale thereunder; and
- (b) Borrower shall have set aside on its books reserves (segregated to the extent required by GAAP) adequate with respect thereto.

5.4 Liens.

Without the prior written consent of Lender, which consent may be granted or withheld in Lender's reasonable discretion, not to create, assume, or allow any security interest or lien (including judicial liens) on property Borrower now or later owns, except:

- (a) Deeds of trust and security agreements in favor of Lender;
- (b) Liens for property taxes not yet due;
- (c) Liens outstanding on the date of this Agreement and previously disclosed in writing to and permitted by Lender; and
- (d) Additional purchase money security interests in personal property acquired after the date of this Agreement.

5.5 Notices to Lender.

To promptly notify Lender in writing of:

- (a) Any Event of Default hereunder or any event which would become an Event of Default hereunder upon the giving of notice, the lapse of time, or both;
- (b) Any lawsuit or arbitration;
- (c) Any material failure to comply with this Loan Agreement;
- (d) Any material adverse change in Borrower's business condition (financial or otherwise), operations, properties or prospects;
- (e) Any change in Borrower's state of residence.

5.6 Compliance with Laws.

To materially comply with the laws (including any fictitious name statute), regulations, and orders of any government body with authority over Borrower's business.

5.7 Additional Negative Covenants.

Not to take any of the following actions, without Lender's written consent:

- (a) Engage in any business activities substantially different from Borrower's present business; or
- (b) Use any proceeds of the Loan, directly or indirectly, to purchase or carry, or reduce or retire any loan incurred to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

5.8 No Consumer Purpose.

Not to use this Loan for personal, family, or household purposes.

5.9 Cooperation.

To take any action reasonably requested by Lender to carry out the intent of the Loan Documents.

5.10 Trusts.

Not to transfer any of Borrower's assets to a trust unless the trust is acceptable to Lender in form and content, and the trustee guaranties payment of Borrower's obligations under this Loan Agreement prior to any such transfer.

5.11 Preservation of Rights.

To maintain and preserve all rights, privileges, and franchises Borrower now has.

5.12 Audits; Books and Records.

To maintain adequate books and records and to allow Lender and its agents to inspect Borrower's properties and examine, audit and make copies of books and records at any reasonable time. If any of Borrower's properties, books or records is in the possession of a third party, Borrower hereby authorizes that third party to permit Lender or its agents to have access to perform inspections or audits and to respond to Lender's requests for information concerning such properties, books and records. Lender has no duty to inspect Borrower's properties or to examine, audit, or copy books and records and Lender shall not incur any obligation or liability by reason of not making any such inspection or inquiry. In the event that Lender inspects Borrower's properties or examines, audits, or copies books and records, Lender will be acting solely for the purposes of protecting Lender's security and preserving Lender's rights under this Loan Agreement. Neither Borrower nor any other party is entitled to rely on any inspection or other inquiry by Lender. Lender owes no duty of care to protect Borrower or any other party against, or to inform Borrower or any other party of, any adverse condition that may be observed as affecting Borrower's properties or premises, or Borrower's business. Lender may in its discretion disclose to Borrower any findings made as a result of, or in connection with, any inspection of Borrower's properties.

5.13 Maintenance of Properties.

To make repairs, renewals, or replacements to keep Borrower's properties in good working condition.

6. **COLLATERAL.**

The Loan shall be unsecured.

7. **DEFAULT.**

If any of the following events occurs and continues for more than thirty (30) days following written notice thereof from Lender to Borrower (an "*Event of Default*"), Lender may declare Borrower in default and require Borrower to repay its entire debt immediately and without prior notice. However, if a bankruptcy petition is filed with respect to Borrower, the entire debt outstanding under this Loan Agreement shall automatically be due immediately.

7.1 Failure to Pay.

Notwithstanding the foregoing, Borrower fails to make a payment due under the Loan Documents within fifteen (15) days after the date when due.

7.2 False Information.

Borrower has given Lender false or misleading material information or material representations.

7.3 Bankruptcy.

Borrower files a bankruptcy petition or makes a general assignment for the benefit of creditors, or a bankruptcy petition is filed against Borrower. The default will be deemed cured if any bankruptcy petition filed against Borrower is dismissed within a period of 45 (Forty five) days after the filing; provided, however, that Lender will not be obligated to extend any additional credit to Borrower during that period.

7.4 Receivers.

A receiver or similar official is appointed for Borrower's business (or any general partner or majority shareholder of either), or the business is terminated.

7.5 Judgments.

Any judgment or arbitration award is entered against Borrower that remains unsatisfied for more than 90 (Ninety) days, or Borrower enters into any settlement agreement with respect to any litigation, claim or arbitration that remains unsatisfied for more than 90 (Ninety) days in an aggregate amount of US\$500,000 (Five Hundred Thousand Dollars); or more.

7.6 Government Action.

Any government authority takes action that materially adversely affects Borrower's financial condition or ability to repay the Loan.

7.7 Material Adverse Change.

A material adverse change occurs, in Borrower's business condition (financial or otherwise), operations or properties.

7.8 Default Under Related Documents.

An Event of Default exists under any of the other Loan Documents.

7.9 Other Breach under This Loan Agreement.

If Borrower is in breach of this Loan Agreement (other than Section 7.01) and the breach is incapable of being cured within 30 (Thirty) days, and Borrower is diligently pursuing the cure of such breach, the breach will not be considered an Event of Default under this Loan Agreement for a period up to 60 (Sixty) days after the date on which Lender gives notice of the default to Borrower; provided, however, that Lender will not be obligated to extend any additional credit to Borrower during that period.

8. ENFORCING THIS LOAN AGREEMENT; MISCELLANEOUS

8.1 Remedies.

If an Event of Default occurs under the Loan Documents, Lender may exercise any right or remedy which they have under any of the Loan Documents or which is otherwise available at law or in equity. All of Lender's rights and remedies shall be cumulative. In the Event of Default, at Lender's option, exercisable in their sole discretion on behalf of all Lenders, all of Borrower's obligations under the Loan Documents will become immediately due and payable without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind.

8.2 Nevada Law.

This Loan Agreement and the Loan Documents shall be governed by Nevada law.

8.3 Presentment, Demands and Notice.

Lender shall be under no duty or obligation to make or give any presentment, demands for performances, notices of nonperformance, protests, and notices of protest or notices of dishonor in connection with any obligation or indebtedness under the Loan Documents.

8.4 Indemnification.

Borrower shall indemnify, save, and hold harmless Lender and its parent and affiliates and all of their directors, officers, employees, agents, successors, attorneys and assigns (collectively, the "*Indemnitees*") for, from and against the following matters (collectively, the "*Indemnified Matters*"):

- (a) Any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, charges, expenses and disbursements (including attorneys' fees, including the reasonable estimate of the allocated cost of in-house counsel and staff) of any kind with respect to the execution, delivery, enforcement, performance and administration of this Loan Agreement and the other Loan Documents, and the transactions contemplated hereby, and with respect to any investigation, litigation or proceeding related to this Loan Agreement, the other Loan Documents, the Loan or the use of the proceeds thereof, whether or not any Indemnitee is a party thereto.

- (b) Any and all writs, subpoenas, claims, demands, actions, or causes of action that are served on or asserted against any Indemnitee (if directly or indirectly related to a writ, subpoena, claim, demand, action, or cause of action against Borrower or any affiliate of Borrower); and any and all liabilities, losses, costs, or expenses (including attorneys' fees, including the reasonable estimate of the allocated cost of in-house counsel and staff) that any Indemnitee suffers or incurs as a result of any of such Indemnified Matters.

The obligations of Borrower under this Section shall survive payment of the Loan and assignment of any rights hereunder. The foregoing notwithstanding, Borrower shall have no obligation hereunder to any Indemnitee with respect to Indemnified Matters arising from the gross negligence or willful misconduct of such Indemnitee.

8.5 Attorneys' Fees.

In the event of a lawsuit, reference or arbitration proceeding, including any tort proceeding, between or among the parties hereto, the prevailing party is entitled to recover costs and reasonable attorneys' fees (including any allocated costs of in-house counsel) incurred in connection with the lawsuit, reference or arbitration proceeding, as determined by the court, referee or arbitrator.

8.6 Notices.

Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified, or registered mail postage prepaid, directed to the addresses shown on the signature page of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address. Unless otherwise provided or required by law, if there is more than one Borrower, any notice given by Lender to any Borrower is deemed to be notice given to all Borrowers.

8.7 Successors and Assigns.

This Loan Agreement is binding on Borrower's heirs, successors and assigns, and Lender's successors and assignees. Borrower agrees that it may not assign this Loan Agreement or the other Loan Documents without Lender's prior consent. Lender may sell participations in or assign this Loan, and may provide financial information about Borrower to actual or potential participants or assignees, without notice to or consent of Borrower.

8.8 No Third Parties Benefited.

This Loan Agreement is made and entered into for the sole protection and benefit of Lender and Borrower and their successors and assigns. No trust fund is created by this Loan Agreement and no other persons or entities shall have any right of action under this Loan Agreement or any right to the Loan proceeds.

8.9 Integration; Relation to the Loan Headings.

The Loan Documents (a) integrate all the terms and conditions in or incidental to this Loan Agreement, (b) supersede all oral negotiations and prior writings with respect to their subject matter, including any loan commitment to Borrower, and (c) are intended by the parties as the final expression of the agreement with respect to the terms and conditions set forth in those documents and as the complete and exclusive statement of the terms agreed to by the parties. No representation, understanding, promise or condition shall be enforceable against any party unless it is contained in the Loan Documents. If there is any conflict between the terms, conditions and provisions of this Loan Agreement and those of any other agreement or instrument, including any other Loan Document, the terms, conditions and provisions of the Agreement shall prevail. Headings and captions are for reference only and shall not affect the interpretation or meaning of any provisions of this Loan Agreement. The exhibits to this Loan Agreement are hereby incorporated in this Loan Agreement.

8.10 Interpretation.

Time is of the essence in the performance of this Loan Agreement by Borrower. The word “**include(s)**” means “include(s), without limitation,” and the word “**including**” means “including but not limited to.” No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Loan Agreement.

8.11 Severability; Waivers; Amendments.

This Loan Agreement may not be modified or amended except by a written agreement signed by the parties. Any consent or waiver under this Loan Agreement must be in writing. If any part of this Loan Agreement is not enforceable, the rest of the Loan Agreement may be enforced. If Lender waives a default, it may enforce a later default. No waiver shall be construed as a continuing waiver. No waiver shall be implied from Lender's delay in exercising or failure to exercise any right or remedy against Borrower. Consent by Lender to any act or omission by Borrower shall not be construed as consent to any other or subsequent act or omission or as a waiver of the requirement for Lender's consent to be obtained in any future or other instance. Lender retains all of its rights and remedies, even if it makes an advance after a default. Notwithstanding the foregoing, Lender may amend this Agreement and waive defaults by the Company hereunder, except that no amendment may reduce the principal amount or interest rate of any Note or extend the maturity date of any Note without the consent of all of the Note holders.

8.12 Counterparts.

This Loan Agreement may be executed in counterparts each of which, when executed, shall be deemed an original, and all such counterparts shall constitute one and the same agreement.

8.14 Electronic Transmission of Data.

Lender and Borrower agree that certain Loan related data (including confidential information, documents, applications and reports) may be transmitted electronically, including over the internet. This data may be transmitted to, received from or circulated among agents and representatives of Borrower and/or Lender and their affiliates, and other persons or entities involved with the subject matter of this Loan Agreement. Borrower acknowledges and agrees that (a) there are risks associated with the use of electronic transmission and that Lender does not control the method of transmittal or service providers, (b) Lender has no obligation or responsibility whatsoever and assumes no duty or obligation for the security, receipt or third party interception of such transmissions, and (c) Borrower will release, hold harmless and indemnify Lender from any claim, damage or loss, including that arising in whole or part from Lender's strict liability or sole, comparative or contributory negligence which is related to the electronic transmittal of data.

8.15 USA Patriot Act Notice.

Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), Lender is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Act.

8.16 Business Days.

A Business Day shall mean any day other than a Saturday, a Sunday or a legal holiday on which national banks are not open for business in the State of Nevada. All payments and disbursements which would be due on a day which is not a Business Day will be due on the next Business Day. All payments received on a day which is not a Business Day will be applied to the Loan on the next Business Day.

9. **OTHER**

It is recorded that the Lender owns an amount of 12,591,540 shares of restricted Common Stock of the Borrower. In addition to these shares of Common Stock, the Lender holds Convertible Loan Notes issued by the Borrower in the total amount of \$1,206,556 plus accrued interest.

This Loan Agreement is executed as of the date stated at the top of the first page.

LENDER:

BORROWER:

**DIAMOND PEAK RESOURCE
CORPORATION**

GNCC CAPITAL, INC.

By: _____
DULY AUTHORIZED

By: _____
**Name: RONALD YADIN LOWENTHAL
DIRECTOR (Duly Authorized)**

EXHIBIT "A"

PROMISSORY NOTE (Unsecured)

\$1,000,000

February 26, 2013

FOR VALUE RECEIVED, GNCC Capital, Inc., a Delaware Corporation with an address of 244 5th Avenue, Suite 2525, New York, N.Y. 10001 ("**Borrower**"), hereby promises to pay to the order of Diamond Peak Resource Corporation with an address of Condominio Hoyo 5, No. 2 Bosques de Dona Rosa, C. Cariari, Belen – Heredia, Costa Rica 43-4006 ("**Lender**"), without offset, in immediately available funds in lawful money of the United States of America, at such location designated by Lender, the principal sum of \$1,000,000 (One million dollars) (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Note from day to day outstanding as hereinafter provided. This Note evidences the loan (the "**Loan**") from Lender to Borrower, and is one of several Loan Documents, as defined and designated in that certain Line of Credit Loan Agreement (Unsecured) (as amended, restated or otherwise modified from time to time, the "**Loan Agreement**") dated of even date herewith between Lender and Borrower.

1. Payment Schedule and Maturity Date.

- (a) Prior to the Maturity Date, unpaid interest shall accrue commencing on the first day of the month following the first Advance (as defined in the Loan Agreement). The entire principal balance of this Note then unpaid, together with all accrued and unpaid interest and all other amounts payable hereunder and under the other Loan Documents (as defined in the Loan Agreement), shall be due and payable in full on February 26, 2015 (the "**Maturity Date**"). Some or all of the Loan Documents, including the Loan Agreement, contain provisions for the acceleration of the maturity of this Note.
- (b) This Note represents a revolving line of credit. Borrower may re-borrow principal amounts that are repaid.
- (c) At Borrower's option, Borrower may repay the Loan by issuance of its common stock, par value US\$0.00001 per share. For purpose of repayment of the Loan, such common stock shall be valued at the price per share at which it is sold in such capital raise.

2. Interest Rate.

2.1 Interest Rate.

Prior to the Maturity Date, the Principal Debt from day to day outstanding which is not past due shall not bear interest. From and after the Maturity Date, the Principal Debt shall bear interest at a rate of 6% (Six percent) per annum (the "**Interest Rate**") (computed as provided in Section 2.2 hereof).

2.2 Computations and Determinations.

All interest shall be computed on the basis of a year of 360 (Three hundred and sixty) days and paid for the actual number of days elapsed (including the first day but excluding the last day). Unpaid interest shall be compounded annually. The books and records of Lender shall be conclusive evidence, in the absence of manifest error, of all sums owing to Lender from time to time under this Note, but the failure to record any such information shall not limit or affect the obligations of Borrower under the Loan Documents.

2.3 Past Due Rate.

If any amount payable by Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), such amount shall thereafter bear interest at the Past Due Rate (as defined below) to the fullest extent permitted by applicable Law. Accrued and unpaid interest or past due amounts (including interest on past due interest) shall be due and payable on demand, at a fluctuating rate per annum (the "**Past Due Rate**") equal to the Interest Rate plus 100 (One hundred) basis points.

2.4 Additional Defined Terms.

Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement. In addition to other terms defined herein, as used herein the following terms shall have the meanings indicated, unless the context otherwise requires:

"Indebtedness" means any and all of the indebtedness to Lender evidenced, governed or secured by or arising under this Note or any other Loan Document.

"Laws" means all constitutions, treaties, statutes, laws, ordinances, regulations, rules, orders, writs, injunctions, or decrees of the United States of America, any state or commonwealth, any municipality, any foreign country, any territory or possession, or any Tribunal.

"Note" means this promissory note, and any renewals, extensions, amendments or supplements hereof.

"Principal Debt" means the aggregate unpaid principal balance of this Note at the time in question.

3. Prepayment.
 - (a) Borrower may prepay without penalty the principal balance of this Note, in full at any time or in part from time to time.
4. Late Charges.

If Borrower shall fail to make any payment under the terms of this Note (other than the payment due at maturity) within 15 (Fifteen) days after the date such payment is due, Borrower shall pay to Lender on demand a late charge equal to 4% (Four percent) of the amount of such payment. Such 15 (Fifteen) day period shall not be construed as in any way extending the due date of any payment. The late charge is imposed for the purpose of defraying the expenses of Lender incident to handling such delinquent payment. This charge shall be in addition to, and not in lieu of, any other amount that Lender may be entitled to receive or action that Lender may be authorized to take as a result of such late payment.

5. Certain Provisions Regarding Payments.

All payments made under this Note shall be applied, to the extent thereof, to late charges, to accrued but unpaid interest, to unpaid principal, and to any other sums due and unpaid to Lender under the Loan Documents, in such manner and order as Lender may elect in its sole discretion, any instructions from Borrower or anyone else to the contrary notwithstanding. Remittances shall be made without offset, demand, counterclaim, deduction, or recoupment (each of which is hereby waived) and shall be accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due on any Indebtedness shall be deemed an acceptance on account only, notwithstanding any notation on or accompanying such partial payment to the contrary, and shall not in any way (a) waive or excuse the existence of an Event of Default (as hereinafter defined), (b) waive, impair or extinguish any right or remedy available to Lender hereunder or under the other Loan Documents, or (c) waive the requirement of punctual payment and performance or constitute a novation in any respect. Payments received after 2:00 p.m. shall be deemed to be received on, and shall be posted as of, the following Business Day. Whenever any payment under this Note or any other Loan Document falls due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day.

6. Security.

This Note is unsecured.

7. Events of Default.

The occurrence of any one or more of the following shall constitute an "*Event of Default*" under this Note:

- (a) Borrower fails to pay when and as due and payable any amounts payable by Borrower to Lender under the terms of this Note.
- (b) Any covenant, agreement or condition in this Note is not fully and timely performed, observed or kept, subject to any applicable grace or cure period.
- (c) An Event of Default (as therein defined) occurs under any of the Loan Documents other than this Note (subject to any applicable grace or cure period).

8. Remedies.

Upon the occurrence of an Event of Default, Lenders may exercise one or more of the following rights, powers and remedies on behalf of all of the lenders under the Loan Agreement:

- (a) Lender may accelerate the Maturity Date and declare the unpaid principal balance and accrued but unpaid interest on this Note and all other amounts payable hereunder and under the other Loan Documents, at once due and payable, and upon such declaration the same shall at once be due and payable.
- (b) Lender may exercise any of its other rights, powers and remedies at law or in equity.

9. Remedies Cumulative.

All of the rights and remedies of Lender under this Note and the other Loan Documents are cumulative of each other and of any and all other rights at law or in equity, and the exercise by Lender of any one or more of such rights and remedies shall not preclude the simultaneous or later exercise by Lender of any or all such other rights and remedies. No single or partial exercise of any right or remedy shall exhaust it or preclude any other or further exercise thereof, and every right and remedy may be exercised at any time and from time to time. No failure by Lender to exercise, or delay in exercising, any right or remedy shall operate as a waiver of such right or remedy or as a waiver of any Event of Default.

10. Costs and Expenses of Enforcement.

Borrower agrees to pay to Lender on demand all costs and expenses incurred by them in seeking to collect this Note or to enforce any of Lender's rights and remedies under the Loan Documents, including court costs and reasonable attorneys' fees and expenses, whether or not suit is filed hereon, or whether in connection with arbitration, judicial reference, bankruptcy, insolvency or appeal.

11. Service of Process.

Borrower hereby consents to process being served in any suit, action, or proceeding instituted in connection with this Note by (a) the mailing of a copy thereof by certified mail, postage prepaid, return receipt requested, to Borrower. Borrower irrevocably agrees that such service shall be deemed to be service of process upon Borrower in any such suit, action, or proceeding. Nothing in this Note shall affect the right of Lender to serve process in any manner otherwise permitted by law and nothing in this Note will limit the right of Lender otherwise to bring proceedings against Borrower in the courts of Los Angeles County, California, subject to any provision or agreement for arbitration, judicial reference or other dispute resolution set forth in the Loan Agreement.

12. Heirs, Successors and Assigns.

The terms of this Note Agreement and of the other Loan Documents shall bind and inure to the benefit of the heirs, devisees, representatives, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Borrower to assign the Loan except as otherwise permitted under the Loan Documents.

13. General Provisions.

Time is of the essence with respect to Borrower's obligations under this Note. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the Indebtedness evidenced hereby. Borrower and each party executing this Note as Borrower hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note; (b) agree to any subordination or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that Lender shall not be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; and (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the state and county in which payment of this Note is to be made for the enforcement of any and all obligations under this Note and the other Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any title, security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (h) hereby subordinate to the Loan and the Loan Documents any and all rights against Borrower and any security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full. A determination that any provision of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Note to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances. This Note may not be amended except in a writing specifically intended for such purpose and executed by the party against whom enforcement of the amendment is sought. Captions and headings in this Note are for convenience only and shall be disregarded in construing it. This Note and its validity, enforcement and interpretation shall be governed by the laws of the State of Nevada (without regard to any principles of conflicts of Laws) and applicable United States federal law. Whenever a time of day is referred to herein, unless otherwise specified such time shall be the local time of the place where payment of this Note is to be made. The term "**Business Day**" shall mean a day on which national banks are open for the conduct of substantially all of its banking business at its office in the city in which this Note is payable (excluding Saturdays and Sundays). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement. The words "include" and "including" shall be interpreted as if followed by the words "without limitation".

14. Notices.

Any notice required to be given under this Note shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified, or registered mail postage prepaid, directed to the addresses shown on the signature page of the Loan Agreement. Any party may change its address for notices under this Note by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address. Unless otherwise provided or required by law, if there is more than one Borrower, any notice given by Lender to any Borrower is deemed to be notice given to all Borrowers.

15. No Usury.

It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Section shall control every other covenant and agreement in this Note and the other Loan Documents. If applicable state or federal law should at any time be judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Loan, or if Lender's exercise of the option to accelerate the Maturity Date, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the principal balance of this Note, and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use or forbearance of the Loan shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan.

Section 16. Amendments and Waivers.

Lender may amend the Loan Agreement and waive defaults by the Company thereunder, except that no amendment may reduce the principal amount or interest rate of this Note or extend the maturity date of this Note without the consent of the holder of this Note.

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the date first above written.

BORROWER:

GNCC CAPITAL, INC.

By: _____
Name: RONALD YADIN LOWENTHAL
DIRECTOR, Duly Authorized

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.

6% (Six percent) Convertible Note due

ISSUE DATE: FEBRUARY 26, 2013

GNCC CAPITAL, INC., a Delaware Corporation promises to pay to DIAMOND PEAK RESOURCE CORPORATION or its registered assigns, the principal sum of \$829,308 (Eight hundred and twenty nine thousand three hundred and eight dollars) on February 26, 2015.

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: FEBRUARY 26, 2013

GNCC CAPITAL, INC.

By



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 February 26, 2015. On and after February 26, 2015, 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 September 28, 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.

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:

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

(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 February 26, 2015.

“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).