

THE SECURITIES EVIDENCED BY THIS NOTE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. SUCH SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SAID ACT.

THIS PROMISSORY NOTE HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF THIS PROMISSORY NOTE OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION FOR SUCH SECURITIES PRIOR TO SUCH QUALIFICATION IS UNLAWFUL, UNLESS THE SALE OF SECURITIES IS EXEMPT FROM QUALIFICATION BY SECTION 25100, 25102 OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS PROMISSORY NOTE ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

CONVERTIBLE PROMISSORY NOTE

[\$Principal Amount]

**Date of Issuance: [date]
[City, State]**

1. **Principal and Interest.** For value received, the undersigned, [Company Name], a [state] corporation (the "Company"), hereby promises to pay to the order of [Lender Name] (the "Lender") the principal sum of \$[*] plus interest on the principal amount hereof, at the annual rate of [*] percent ([*]%), and if such rate is determined to be usurious, then the rate shall be reduced to the highest legally permissible rate.

[The term "Notes" shall refer to this Note along with all other convertible promissory notes issued by the Company in exchange for cash advances to the Company at any time from [Date Bridge Loan Begins] until [Date Bridge Loan Ends]. The terms "Lenders" may be used herein to refer to the Lender along with all other lenders, if any, who advance or have advanced funds to the Company in exchange for Notes.]

2. **Maturity.** Unless converted as provided in Section 3, principal and any accrued but unpaid interest under this Note shall be due and payable on the date which is [twenty-four (24) months] after the Date of Issuance (the "Maturity Date"). Subject to Section 3 below, interest shall accrue on this Note and shall be due and payable on the Maturity Date. Notwithstanding the foregoing, the entire unpaid principal sum of this Note, together with accrued and unpaid interest thereon, shall become immediately due and payable upon the insolvency of the Company, the commission of any act of bankruptcy by the Company, the execution by the Company of a general assignment for the benefit of creditors, the filing by or against the Company of a petition in bankruptcy or any petition for relief under the federal bankruptcy act or the continuation of such petition without dismissal for a period of 90 days or more, or the appointment of a receiver or trustee to take possession of the property or assets of the Company.

3. **Conversion.**

(a) **Automatic Conversion in a Qualified Financing.** Upon the closing of the first sale or series of sales of equity securities by the Company after the date hereof which results in proceeds to the Company (inclusive of the amount represented by the Note) in the aggregate amount of at least \$[*] (a “Qualified Financing”), the outstanding principal balance of this Note together with accrued interest shall automatically convert on the date of the closing of such Qualified Financing, into the same securities issued in the Qualified Financing on the same terms and conditions applicable to the other investors participating in the Qualified Financing; provided, however, that the price per equity security applicable to the conversion of this Note (and other similar Notes) shall be equal to the lesser of (i) [*] percent ([*]%) of the price per security paid by the other investors participating in the Qualified Financing, or (ii) a price per share calculated at such time based on a \$[*] pre-money valuation, rounded down to the nearest whole share; subject to the Lender executing customary stock purchase documentation (which execution shall not be unreasonably withheld).

(b) **Optional Conversion on a Change of Control.** In the event of a Change of Control (as defined below) prior to repayment in full of the Note, immediately prior to such Change of Control, the outstanding principal and any accrued but unpaid interest on each Note shall convert into shares of the Company’s Common Stock at a price per share equal to the quotient obtained by dividing (x) [*] by (y) the sum of (1) the total number of shares of Common Stock outstanding (assuming full conversion and exercise of all convertible or exercisable securities but excluding shares issued upon conversion of the Note, and any other notes that are issued by the Company) and (2) shares of Common Stock issuable to employees, consultants or directors pursuant to a stock option plan, restricted stock plan, or other stock plan approved by the Board of Directors; provided, however, that in the event of a Change of Control, in lieu of converting this Note into shares of the Company’s Common Stock pursuant to this Section 3(b), the Lender may elect to accelerate the Maturity Date of this Note such that the outstanding principal and any accrued but unpaid interest shall become due and payable as of the date of the Change of Control. Before the Lender shall be entitled to convert this Note into shares of the Company’s Common Stock pursuant to this Section 3(b), the Lender shall execute and deliver to the Company a common stock purchase agreement reasonably acceptable to the Company containing customary representations and warranties and transfer restrictions. The term “Change of Control” shall mean the sale, conveyance or other disposition of all or substantially all of the Company’s property or business, or the Company’s merger with or into or consolidation with any other corporation, limited liability company or other entity (other than a wholly owned subsidiary of the Company); provided that the term “Change of Control” shall not include (a) a merger of the Company effected exclusively for the purpose of changing the domicile of the Company, (b) an equity financing in which the Company is the surviving corporation, or (c) a transaction in which the stockholders of the Company immediately prior to the transaction own 50% or more of the voting power of the surviving corporation following the transaction.

(c) **Mandatory Conversion into Common Stock on Maturity.** If no Qualified Financing or Change of Control occurs by the Maturity Date, then the Note shall automatically convert immediately prior to the Maturity Date into the right to receive a number

of shares of Common Stock of the Company equal to **[formula for calculating the number of shares]**, rounded down to the nearest whole share.

4. **Mechanics of Conversion.** As soon as practicable after conversion of this Note pursuant to Section 3 hereof, the holder of this Note agrees to surrender this Note for conversion at the principal office of the Company at the time of such closing and agrees to execute all appropriate documentation necessary to effect such conversion, including, without limitation, the applicable stock purchase agreement. The Company, at its expense, will cause to be issued in the name of and delivered to the holder of this Note, a certificate or certificates for the number of shares or other equity securities to which that holder shall be entitled on such conversion (bearing such legends as may be required by applicable state and federal securities laws in the opinion of legal counsel for the Company), together with any other securities and property to which the holder is entitled on such conversion under the terms of this Note. Such conversion shall be deemed to have been made immediately prior to the close of business on the applicable date set forth in Section 2 above, regardless of whether the Note has been surrendered on such date, provided that the Company shall not be required to issue a certificate for shares to any Lender who has not surrendered such Lender's Note. No fractional shares will be issued on conversion of this Note. If upon any conversion of this Note a fraction of a share results, the Company will pay the cash value of that fractional share.

5. **Payment.** All payments hereunder shall be made in lawful money of the United States of America directly to the Lender at the address of Lender set forth in Section 7(e), or at such other place or to such account as the Lender from time to time shall designate in a written notice to the Company. The Company may not prepay the outstanding amount hereof in whole or in part at any time, except with the written consent of Lender.

Whenever any payment hereunder shall be stated to be due, or any other date specified hereunder would otherwise occur, on a day other than a Business Day (as defined below), then, except as otherwise provided herein, such payment shall be made, and such payment date or other date shall occur, on the next succeeding Business Day. As used herein, "**Business Day**" means a day (i) other than Saturday or Sunday, and (ii) on which commercial banks are open for business in **[City, State]**.

6. **Representations and Warranties of Lender.** The Lender hereby represents and warrants to the Company and agrees that:

(a) **Authorization.** Lender has full power and authority to enter into this Note and such agreement constitutes its valid and legally binding obligation, enforceable in accordance with its terms.

(b) **Purchase Entirely for Own Account.** This Note (and any securities issued upon conversion of the Notes, herein, collectively, the "**Securities**") has been purchased by the Lender for such Lender's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and such Lender has no present intention of selling, granting any participation in, or otherwise distributing the same. Such Lender does not have any

contract, undertaking, agreement or arrangement with any person to sell, transfer, or grant participation to any person with respect to the Securities.

(c) **Disclosure of Information.** Such Lender acknowledges that it has received all the information that it has requested in connection with the purchase of the Securities. Lender further represents that it has had an opportunity to ask questions and receive answers from the Company, as well as to consult their own legal, tax and other advisors, regarding the information provided and the terms and conditions of the offering of the Securities.

(d) **Investment Experience.** Lender is an investor in securities of companies in the start-up or early development stage and acknowledges that it is able to fend for itself, can bear the economic risk of its investment and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Securities. If other than an individual, such Lender also represents it has not been organized for the purpose of acquiring the Securities.

(e) **Restricted Securities.** Such Lender understands that the Securities are characterized as “restricted securities” under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Securities Act of 1933, as amended (the “Act”), only in certain limited circumstances. In this connection, such Lender represents that it is familiar with SEC Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Act.

(f) **Accredited Lender.** Lender is an “accredited investor” as that term is defined under the Act.

(g) **Further Limitations on Disposition.** Without in any way limiting the representations set forth above, the Lender further agrees not to make any disposition of all or any portion of the Securities unless and until each of the following have been satisfied:

(i) There is then in effect a Registration Statement under the Act covering such proposed disposition and such disposition is made in accordance with such Registration Statement, or (i) the Lender shall have notified the Company of the Proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition and (ii) the Company shall have obtained an opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration under the Act.

(ii) If such transfer is not being made pursuant to Rule 144 or a registration statement under the Act, the transferee shall have agreed in writing, for the benefit of the Company, to be bound by this Section 6.

(iii) Notwithstanding the provisions of paragraphs (i) and (ii) above, no such registration statement or opinion of counsel shall be necessary for a transfer by the Lender which is a partnership to a partner of such partnership or a retired partner of such partnership

who retires after the date hereof, or to the estate of any such partner or retired partner or the transfer by gift, will, or in testate succession of any partner to the partner's spouse or to the siblings, lineal descendants, or ancestors of such partner or spouse, if the transferee agrees in writing to be subject to the terms hereof to the same extent as if he were an original Lender hereunder.

(h) **Foreign Investors.** If Lender is not a United States person (as defined by Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended), Lender hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to purchase the Securities, including (i) the legal requirements within its jurisdiction for the purchase of the Securities, (ii) any foreign exchange restrictions applicable to such purchase, (iii) any governmental or other consents that may need to be obtained, and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale or transfer of the Securities. Lender's payment for, and his or her continued beneficial ownership of the Securities, will not violate any applicable securities or other laws of Lender's jurisdiction.

(i) **Standoff Agreement.** Lender agrees, in connection with the Company's initial public offering of its equity securities, and upon request of the Company or the underwriters managing such offering, not to sell, make any short sale of, loan, grant any option for the purchase of or otherwise dispose of any shares of the Securities (other than those included in the registration, if any) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed one hundred eighty (180) days) from the effective date of such registration as may be requested by the Company or such underwriters; provided, that the officers and directors of the Company who own stock of the Company also agree to such restrictions.

(j) **Legends.** It is understood that in addition to or in place of the legends currently on the Securities, the Securities may bear any legend required by the laws of the State of California, including any legend required by the California Department of Corporations and Sections 417 and 418 of the California Corporations Code or other applicable state blue sky laws, and a legend referring to the restrictions on transfer described in this Section 6.

7. **Miscellaneous.**

(a) **Assignment.** This Note, and the conversion rights described herein, shall not be assignable by the holder without the prior written consent of the Company, which consent shall not be unreasonably withheld. Subject to the restrictions set forth in the foregoing sentence, the rights and obligations of the Company and the holder of this Note shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

(b) **Waiver and Amendment.** Any provision of this Note may be amended, waived or modified upon the written consent of the Company and the [Lender][Lenders **holding Notes with cumulative outstanding principal amounts representing at least a majority of the total principal amount of all Notes, so long as such amendment, waiver or modification applies equally to all Notes**].

(c) **Interpretation.** Whenever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of this Note shall be prohibited by or invalid under any such law or regulation in any jurisdiction, it shall, as to such jurisdiction, be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provision of this Note, or the validity or effectiveness of such provision in any other jurisdiction.

(d) **Jurisdiction.** The Company and each Lender hereby (i) submit to the exclusive jurisdiction of the courts of the State of California and the United States Federal courts of the United States sitting in the State of California for the purpose of any action or proceeding arising out of or relating to this Note and any other documents and instruments relating hereto, (ii) agree that all claims in respect of any such action or proceeding may be heard and determined in such courts, (iii) irrevocable waive (to the extent permitted by applicable law) any objection which it now or hereafter may have to the laying of venue of any such action or proceeding brought in any of the foregoing courts, and any objection on the ground that any such action or proceeding in any such court has been brought in an inconvenient forum and (iv) agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner permitted by law. This Note shall be governed by the law of the State of California, without regard to choice of law principals.

(e) **Notices.** Any notice required or permitted by this Note shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile or confirmed electronic mail, or three business days after being deposited in the U.S. mail as certified or registered mail with postage prepaid, if the notice is addressed to the party to be notified at the party's mailing or email address or facsimile number as set forth below or as subsequently modified by written notice.

To the Company: **[COMPANY NAME]**
 Attention: [Officer Name]
 [Street Address]
 [City, State Zip]
 Email: [email address]

To the Lender: **[LENDER NAME]**
 Attention: [Officer Name]
 [Street Address]
 [City, State Zip]
 Email: [email address]

(f) **Arbitration.** Any claims arising under this Note, except for any such claims for which injunctive relief is sought, shall be resolved in binding arbitration with a duly authorized representative of the American Arbitration Association (“AAA”) in accordance with the provisions hereof and thereof. Either the Company or the Lender may submit the matter to

binding arbitration before the AAA in [San Francisco County, California], which arbitration shall be final and binding on the parties and the exclusive method, absent agreement between the Company and the Lender, for purposes of determining the ability of the Company or the Lender to satisfy such claim. All claims shall be settled by a single arbitrator appointed in accordance with the Commercial Arbitration Rules then in effect of the AAA (the “AAA Rules”). The arbitrator shall render a final decision pursuant to the AAA Rules within thirty (30) days after filing of the claim. The final decision of the arbitrator shall be furnished to the Company and the Lender in writing and shall constitute the conclusive determination of the issue in question binding upon the Company and the Lender, and shall not be contested by any of them. Such decision may be used in a court of law only for the purpose of seeking enforcement of the arbitrator’s decision. The prevailing party shall be entitled to reasonable attorneys’ fees, costs and necessary disbursements in addition to any other relief that such party may be entitled. For purposes of this Agreement, the prevailing party shall be that party in whose favor final judgment is rendered or who substantially prevails, if both parties are awarded judgment.

(g) **Counterparts.** This Note may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

(h) **Entire Agreement.** This Note is the entire agreement between the parties hereto relating to the subject matter hereof and supersedes any prior arrangement or agreement, written or oral.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Note to be issued this [*] day of [month], [year].

[COMPANY NAME]

By: _____
[Name], [Title]

Accepted and Agreed by Lender:

Printed Name of Lender

Signature

Title, if applicable

Address

E-mail address (optional)