



## Bridge Loan Agreement

**Document 2048A**

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**[This Document implements a “Bridge Loan” to a private company which already has a series of preferred stock outstanding. The Notes are convertible into preferred stock in the next round of financing (if sold by a certain date) or otherwise the existing preferred stock.]**

**[TAX ISSUES:**

- (a) It is possible that a transaction of this type would be characterized by the IRS as a purchase of equity rather than debt (giving rise to non-deductible dividends instead of deductible interest) because of the subordinated nature of the debt, the precarious financial condition of the Company, etc.**
- (b) The conversion of principal and interest of the Notes into equity is a taxable event to the extent of interest converted.**
- (c) If the Notes are demand or short-term (less than one-year maturity), OID accrues to the extent of the value allocated to the Warrants. The right to receive Warrants should be assigned a value at the time of the Closing.**

**Please consult a tax attorney before releasing documents in connection with this type of transaction.]**

**[SECURED][SENIOR][SUBORDINATED] CONVERTIBLE PROMISSORY NOTE  
[AND WARRANT] PURCHASE AGREEMENT**

THIS [SECURED][SENIOR][SUBORDINATED] CONVERTIBLE PROMISSORY NOTE [AND WARRANT] PURCHASE AGREEMENT (this “**Agreement**”) is entered into by and among [NAME OF BORROWER], a [\_\_\_\_\_] corporation (the “**Company**”), and the persons listed on Schedule 1 hereto (the “**Investors**”) as of [\_\_\_\_], 20[\_\_\_].

**1. The Notes.** The Company has authorized the issuance and sale, in accordance with the terms of this Agreement, of the Company’s [Secured][Senior][Subordinated] Convertible Promissory Notes in the original aggregate principal amount of \$[\_\_\_\_\_] (collectively, the “**Notes**”, and each individually, a “**Note**”). Each Note will be substantially in the form of Exhibit A attached hereto.

**2. The [Initial] Closing.** The Company agrees to issue and sell to the Investors, and, subject to and in reliance upon the representations, warranties, terms and conditions contained herein, each Investor, severally and not jointly, agrees to purchase a Note in the principal amount set forth opposite such Investor’s name on Schedule 1 hereto under the heading “Aggregate Purchase Price of Note [and Warrant].” Such purchase and sale shall take place at a closing (the “[**Initial**] **Closing**”) to be held at [TIME] on [DATE OF CLOSING] at [ADDRESS] (or such other place and time as shall be mutually agreed upon).

**[3. Subsequent Closings.** From and after the Initial Closing, if requested by the Company, the Investors may purchase from the Company at one or more subsequent closings (individually, a “**Subsequent Closing**”, and collectively, the “**Subsequent Closings**”) additional Notes [and Warrants]. The Company may request a Subsequent Closing by delivering to the Investors (or to any member of the board of directors of the Company who represents the Investors thereon (a “**Board Representative**”)) a written request to hold a Subsequent Closing, specifying the amount of Notes [and Warrants] it wishes to sell [which amount must be at least \$[\_\_\_\_\_] for each proposed Subsequent Closing] and the proposed date and time of the Subsequent Closing. The Investors may, in their sole judgment and discretion, without liability to the Company or to any third party, accept or reject the Company’s offer to purchase additional Notes. [If holders of [66 2/3]% of the aggregate face amount of the outstanding Notes agree to purchase such additional Notes, each Investor must purchase its pro rata share of such additional Notes.] The Company will not sell additional Notes to any person other than the Investors without the [unanimous] written consent of [the] Investors [holding Notes whose aggregate face amount is at least 66 2/3% of the aggregate face value of all Notes issued hereunder]. At each Subsequent Closing, if any, the Company shall deliver to the Investors such documents as shall be reasonably requested by them.]

**4. Closing Conditions.** The [Initial] Closing shall be subject to the following conditions:

(a) The execution of this Agreement by the Company and all Investors.

[(b) The execution of a Security Agreement, substantially in the form attached as Exhibit B hereto (the “**Security Agreement**”), by the Company and all Investors.]

[(c) The execution of a Stockholders' Agreement, substantially in the form attached as Exhibit C hereto, by the stockholders of the Company named therein.]

[(d) The receipt by the Company of an agreement (the "**Bank Agreement**") from [NAME OF SENIOR LENDER] (the "**Bank**") satisfactory to the Investors and their counsel pursuant to that certain Credit Agreement dated [DATE OF CREDIT AGREEMENT] by and between the Company and the Bank (i) granting the Company permission to enter into this Agreement and the transactions contemplated herein and (ii) agreeing to defer collection on all amounts due and payable under the Bank Agreement until at least [NEGOTIATED DATE].]

[(e) The execution by [the Company, the Investors and the Bank] [holders of existing notes of the Company] of a Subordination Agreement substantially in the form of Exhibit D hereto (the "**Subordination Agreement**") pursuant to which [the holders of such notes agree to become subordinated to the Investors] [the Investors agree to become subordinated to the Bank].]

[(f) The delivery to the Investors of an opinion of [NAME OF COMPANY'S OUTSIDE COUNSEL], counsel to the Company, satisfactory in form and substance to the Investors and their counsel.]

**5. Conversion of Notes into Preferred Stock.** The Company contemplates that, on or before [\_\_\_\_], 20[\_\_\_\_] (the "**Financing Date**"), it will issue and sell to some or all of the Investors and certain third parties (if any) shares of a newly-designated series or class of the Company's preferred stock, \$[\_\_\_\_] par value per share, (the "**Subsequent Financing Securities**") for an aggregate sale price of at least \$[\_\_\_\_] (the "**Subsequent Financing**"). Each holder of a Note outstanding on the Financing Date [may, at its sole option and discretion, elect to] [shall] convert [some or] all of the principal of and interest due on any such Note into shares of Subsequent Financing Securities at a conversion price equal to the per share purchase price of the Subsequent Financing Securities (the "**Subsequent Financing Price**"), and on the additional terms and conditions applicable generally to such Subsequent Financing. If a Subsequent Financing has not occurred on or before the Financing Date, a holder of any Note outstanding after such date may, at its option and discretion, at any time and from time to time, elect to convert some or all of the principal and interest of such Note into shares of the Company's Series [\_\_\_\_] Convertible Preferred Stock, \$[\_\_\_\_] par value per share (the "**Existing Preferred**"), at a conversion price of \$[EXISTING PREFERRED PRICE] per share (the "**Existing Preferred Price**") (such price subject to adjustment for stock splits, stock dividends and the like). [NOTE: This language can appear in the Note instead of in this Agreement.] [NOTE: If the conversion price is different from the original purchase price of Existing Preferred, a second class of stock may inadvertently be created.]

**[6. Warrants.** In consideration of the purchase of the Notes, the Company covenants and agrees[, in the event that the Notes have not been repaid in full on or prior to the Financing Date,] to issue a warrant (individually a "**Warrant**", and collectively, the "**Warrants**") to each Investor [in the form attached as Exhibit E hereto][in form and substance satisfactory to the Investors] for [common stock, \$[\_\_\_\_] par value per share, of the Company ("**Common Stock**")][Eligible Shares (as defined below)]. The exercise price of the Warrants (the "**Exercise Price**"), the number of Warrants to be issued to such Investor (the "**Warrant Number**")[, and the type of Eligible Shares] shall be determined as follows:

[(a) The Warrant Number for each Investor shall be equal to [\_\_]% of the principal amount of the Note issued to such Investor pursuant to this Agreement, divided by the Exercise Price.]

[(a) The Warrant Number shall, except in the case set forth in Section 6(c) of this Agreement, mean the quantity  $(A \times B) / C$ , where:

A = [\_\_]% of the aggregate principal amount of the Note issued to such Investor pursuant to this Agreement;

B = the number of calendar months, including any portion of a month, that the Note is outstanding as of the date of the Subsequent Financing; and

C = the Exercise Price.]

[(b) If the Subsequent Financing shall occur on or before the Financing Date, the term “**Eligible Shares**” shall mean shares of Subsequent Financing Securities and the Exercise Price shall be equal to the Subsequent Financing Price. If the Subsequent Financing does not occur on or before the Financing Date, the such term shall mean shares of Existing Preferred and the Exercise Price shall be equal to the Existing Preferred Price.]

(c) If, as of the Financing Date, the Subsequent Financing has not occurred, the Notes have not been repaid in full and the holders of the Notes have not, on or before such date, elected to convert the Notes into shares of Existing Preferred in accordance with the terms of such Notes, then the Warrant Number shall be [NEGOTIATED AMOUNT].

**[NOTE: The parties may negotiate numerous variations on this Section 6.]**

## **7. Representations and Warranties of the Company.**

**[NOTE: Representations and warranties can vary significantly depending on the Investors’ level of involvement with the Company. Representations, warranties and covenants may be unnecessary where the Investors already control the Company’s board of directors.]**

The Company hereby represents and warrants as follows:

(a) The Company is a duly organized and validly existing corporation under the laws of the [JURISDICTION].

(b) Except for the authorization and issuance of (i) Subsequent Financing Securities or Existing Preferred, as the case may be, issuable upon conversion of the Notes (hereinafter referred to as “**Note Shares**”) [and exercise of the Warrants (hereinafter referred to as “**Warrant Shares**”)] and (ii) shares of Common Stock issuable upon conversion of the Note Shares and Warrant Shares (the “**Conversion Shares**”) (all such securities now or hereafter reserved or required to be reserved pursuant to (i) or (ii) above being hereinafter referred to as “**Reserved Shares**”), the Company has taken or will take all corporate action required to make all the obligations of the Company reflected in the provisions of this Agreement, [the Security

Agreement, the Stockholders' Agreement, the Bank Agreement, the Subordination Agreement (together, the "**Ancillary Documents**"),] the Notes [and the Warrants] the valid and enforceable obligations they purport to be.

(c) Except as otherwise indicated in Section 7(b) above, the issuance of the Notes[, the Warrants], the Note Shares[, the Warrant Shares] and the Conversion Shares will not require any further corporate action and will not be subject to preemptive rights of any present or future stockholders of the Company which have not been waived in writing. **[NOTE: Make sure all outstanding preemptive rights held by persons other than the Investors are waived with respect to this transaction.]**

(d) Neither the authorization, execution and delivery of the Notes, [the Warrants] [and the Ancillary Documents,] nor the issuance and delivery of this Agreement, the Note Shares[, the Warrant Shares] and the Conversion Shares, has constituted or resulted in, nor will constitute or result in, a default or violation of any law or regulation applicable to the Company or any term or provision of the Company's [NAME OF CHARTER] ("**Charter**") or Bylaws, both as amended, or any agreement or instrument by which it is bound or to which its properties or assets are subject.

(e) A complete, correct listing of the authorized and outstanding capital stock of the Company and all outstanding options, warrants, convertible securities or other rights to acquire securities of the Company is attached hereto as Exhibit F.

(f) **[NOTE: This paragraph could replace most or all of Section 7.]** Except as set forth on Schedule 2, the representations and warranties of the Company set forth in the Series [ ] Convertible Preferred Stock Purchase Agreement of the Company (the "**Stock Purchase Agreement**") dated [ ], 20[ ] (the "**Series [ ] Closing Date**") are true, complete and correct on and as of the date hereof with the same effect as though such representations and warranties had been made on and as of the date hereof, except for (i) events since the Series [ ] Closing Date in the ordinary course of business and consistent with past practices of the Company and (ii) those events described in the minutes of the board of directors of the Company, copies of which have been provided to the Investors.

(g) Attached hereto as Exhibit G is a schedule of Indebtedness of the Company and its subsidiaries. "**Indebtedness**" means all obligations, contingent and otherwise, which should, in accordance with generally accepted accounting principles consistently applied, be classified upon the Company's balance sheet as liabilities, but in any event including liabilities secured by any mortgage on property owned or acquired subject to such mortgage, whether or not the liability secured thereby shall have been assumed, and also including (i) all guaranties, endorsements and other contingent obligations, in respect of Indebtedness of others, whether or not the same are or should be so reflected in said balance sheet, except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business and (ii) the present value of any lease payments due under leases required to be capitalized in accordance with applicable Statements of Financial Accounting Standards, determined in accordance with applicable Statements of Financial Accounting Standards.

(h) The Company has good and merchantable title to all of its assets other than real property now carried on its books, free of any material mortgages, pledges, liens or other security interests (other than mechanics', workmen's and other liens arising by operation of law). The Company owns or has a valid right to use the patents, patent rights, licenses, trademarks, trademark rights, trade names or trade name rights or franchises, copyrights, inventions and intellectual property rights being used to conduct its business as now operated. The Company has no obligation to compensate any person or entity for the use of any such patents.

(i) Attached as Exhibit H is a copy of the Charter, as amended through and including the date of the Closing, as certified by the Secretary of State of the [STATE].

## **8. Covenants of the Company.**

(a) For so long as any Note [or Warrant] is outstanding, the Company covenants not to issue any of its current or future authorized but unissued Reserved Shares without the unanimous written consent of the Investors or the Board Representatives, except upon the conversion of the Notes [or exercise of the Warrants] in accordance with their terms. Further, the Company agrees to use its best efforts to reserve an adequate number of Reserved Shares for conversion of the Notes, [exercise of the Warrants] and conversion of the Note Shares [and Warrant Shares], free of any preemptive rights of any present or future stockholders of the Company, whether or not such securities are currently authorized.

[(b) The Company agrees not to incur any additional Indebtedness in excess of \$[\_\_\_\_], individually or in the aggregate, without the unanimous written consent of the Investors or the Board Representatives[, and to keep the collateral for the Notes free and clear of all security interests other than as permitted in the Security Agreement.] [All such additional Indebtedness not requiring the Investors' consent shall be unsecured, except for purchase money security interests for equipment not in excess of the cost of such equipment, and shall be fully subordinated and junior to the Notes as to all payments of principal and interest.]]

(c) To the extent shares of Existing Preferred or Subsequent Financing Securities shall ultimately be issued as [Warrant Shares or] Note Shares, the Company agrees to use its best efforts to provide the holders of such shares with identical contractual rights (including, but not limited to, registration rights and rights of first refusal) as those provided (i) with respect to shares of Existing Preferred pursuant to the Stock Purchase Agreement and (ii) with respect to shares of Subsequent Financing Securities pursuant to such contractual rights afforded participants in the Subsequent Financing generally. The Company further agrees to use its best efforts to cause its [NAME OF CHARTER] and any agreement applicable to such equity securities to be amended to achieve this result. **[NOTE: Use next sentence only if form of Warrant is not attached:]** [The Warrants shall be exercisable for a period of [\_\_\_\_] years.]

## **[9. Character of the Warrants.**

The Company and the Investors, having adverse interests and as a result of arm's-length bargaining, agree that (a) none of the Investors nor any of their affiliates has rendered or has agreed to render any services to the Company in connection with this Agreement or the issuance of the Notes and Warrants; and (b) the Warrants, when issued, shall not be issued as

compensation. The Company and the Investors agree that the fair market value of each Investor's right hereunder to be issued a Warrant is equal to [\_\_]% of the principal amount of such Investor's Note, and they agree to adhere to such agreed value for tax purposes.][NOTE: Consult a tax attorney before using this section.]

#### **10. Representations and Warranties of the Investors.**

[Each of the Investors hereby reaffirms its respective representations and warranties contained in Section [\_\_] of the Stock Purchase Agreement as the same shall apply to such Investor's purchase of its Note [and Warrant] hereunder.]

[Each Investor hereby represents and warrants as follows:

(a) Such Investor has full power and authority and has taken all required action necessary to permit it to execute and deliver and to carry out the terms of this Agreement and all other documents or instruments required hereby.

(b) Such Investor's present intention is to acquire its Note [and Warrant] for its own account and that its Note, [its Warrant], its Note Shares, [its Warrant Shares] and its Conversion Shares (together, its "**Securities**") are being or will be acquired by it for the purpose of investment and not with a view to distribution. Such Investor will not sell or transfer any of its Securities without registration under applicable federal and state securities laws, or the availability of exemptions therefrom, and that the documents evidencing the Securities will each bear a restrictive legend stating that the Securities represented thereby have not been registered under applicable federal and state securities laws and referring to restrictions on their transferability and sale.

(c) Such Investor acknowledges that

- (i) it currently has, and had immediately prior to its receipt of the offer of sale from the Company, such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of this investment and further acknowledges that it is able to bear the economic risk of this investment;
- (ii) during the course of this transaction and prior to the sale to the Investors of the Notes [and the Warrants] hereunder, such Investor had the opportunity to ask questions of, and receive answers from, management of the Company concerning the terms and conditions of this investment and to obtain any additional information of the same kind that is specified in Rule 502 of Regulation D of the Securities Act of 1933, or that is necessary to verify the accuracy of the other information obtained; and
- (iii) it has received such information as it deems necessary to enable it to make an informed investment decision with respect to the Notes [and Warrants].

**[11. Waiver and Consent.** Each of the Investors further agrees (a) to waive the provisions of Section [PREEMPTIVE RIGHTS SECTION] of the Stock Purchase Agreement; and (b) to



consent, pursuant to Section [ ] of the Charter, in each case to the issuance of the Securities upon the terms and conditions hereof.]

**12. Amendments, Waivers, Etc.** [It is intended that the Investors will act in concert with respect to all actions taken regarding this Agreement[and][,] the Notes [and the Warrants]. To accomplish such result, the Investors hereby agree that neither this Agreement, the Notes, [the Warrants], nor any term hereof or thereof may be amended, waived, discharged or terminated except by a written instrument signed by each Investor expressly referring to this Agreement and to the provisions and instruments so modified or limited.] [This Agreement [and][,] the Notes [and the Warrants] may be amended as to all Investors with the written consent of holders of Notes whose aggregate face value equals or exceeds 66 2/3% of the aggregate face value of all Notes issued hereunder.]

**13. Legal Fees.** The Company agrees to pay at the Closing and thereafter on demand the fees and out-of-pocket expenses of [NAME OF LAW FIRM], counsel to the Investors, with respect to the transactions contemplated herein.

**14. Miscellaneous.**

14.1 Governing Law. This Agreement will be construed in accordance with and governed by the laws of the [ ], without giving effect to the conflict of law principles of the [ ].

14.2 Successors and Assigns. Except as otherwise expressly provided in this Agreement, this Agreement will be binding on, and will inure to the benefit of, the successors and permitted assigns of the parties to this Agreement. Nothing in this Agreement is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights or obligations under or by reason of this Agreement, except as expressly provided in this Agreement.

14.3 Notices. All notices and other communications required or permitted hereunder will be in writing and will be delivered by hand or sent by overnight courier, fax or e-mail to:

if to the Company:

\_\_\_\_\_  
\_\_\_\_\_

fax: \_\_\_\_\_

e-mail: \_\_\_\_\_

Attention: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_

fax: \_\_\_\_\_

e-mail: \_\_\_\_\_  
Attention: \_\_\_\_\_

if to an Investor, to the address set forth under such Investor's name on Schedule 1 hereto  
with a copy to:

\_\_\_\_\_  
\_\_\_\_\_

fax: \_\_\_\_\_  
e-mail: \_\_\_\_\_  
Attention: \_\_\_\_\_

Each party may furnish an address substituting for the address given above by giving notice to the other parties in the manner prescribed by this Section 14.3. All notices and other communications will be deemed to have been given upon actual receipt by (or tender to and rejection by) the intended recipient or any other person at the specified address of the intended recipient.

14.4 Severability. In the event that any provision of this Agreement is held to be unenforceable under applicable law, this Agreement will continue in full force and effect without such provision and will be enforceable in accordance with its terms.

14.5 Construction. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole, (b) references to one gender include all genders, (c) "or" has the inclusive meaning frequently identified with the phrase "and/or," (d) "including" has the inclusive meaning frequently identified with the phrase "including but not limited to" or "including without limitation," and (e) references to "hereunder," "herein" or "hereof" relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time.

14.6 Disputes. Any controversy, claim or dispute arising out of or relating to this Agreement, shall be settled by binding arbitration in [CITY/STATE]. Such arbitration shall be conducted in accordance with the then prevailing commercial arbitration rules of [NAME OF ARBITRATOR], with the following exceptions if in conflict: (a) one arbitrator shall be chosen by [ARBITRATOR]; (b) each party to the arbitration will pay its pro rata share of the expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator; and (c) arbitration may proceed in the absence of any party if written notice (pursuant to the Arbitrator's rules and regulations) of the proceeding has been given to such party. The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive and may be entered in any court having jurisdiction thereof as a basis of judgment and of the issuance of execution for its collection. All such controversies, claims or disputes shall be settled in this

manner in lieu of any action at law or equity, provided however, that nothing in this subsection shall be construed as precluding bringing an action for injunctive relief or other equitable relief. The arbitrator shall not have the right to award punitive damages or speculative damages to either party and shall not have the power to amend this Agreement. IF FOR ANY REASON THIS ARBITRATION CLAUSE BECOMES NOT APPLICABLE, THEN EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO

14.7 Entire Agreement. This Agreement embodies the entire agreement and understanding among the parties hereto with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements and understanding other than this Agreement relating to the subject matter hereof.

14.8 Amendment and Waiver. This Agreement may be amended only by a written agreement executed by the parties hereto. No provision of this Agreement may be waived except by a written document executed by the party entitled to the benefits of the provision. No waiver of a provision will be deemed to be or will constitute a waiver of any other provision of this Agreement. A waiver will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver.

14.9 Counterparts. This Agreement may be in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

*[The remainder of this page has been intentionally left blank.]*

IN WITNESS WHEREOF, the undersigned have executed this [Secured] [Senior] [Subordinated] Convertible Promissory Note [and Warrant] Purchase Agreement as of the date first written above.

COMPANY:

[NAME OF COMPANY]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

INVESTORS:

[NAME OF INVESTOR]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[NAME OF INVESTOR]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE OF INVESTORS**

<b>NAME AND ADDRESS OF INVESTOR</b>	<b>AGGREGATE PURCHASE PRICE OF NOTE [AND WARRANT]</b>
-------------------------------------	---

\$

\$

\$\_\_\_\_\_

Total:      \$\_\_\_\_\_

**SCHEDULE 2**

**EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES**

## **LIST OF EXHIBITS**

- Exhibit A - Form of Note
- [Exhibit B - Form of Security Agreement]
- [Exhibit C - Form of Stockholders' Agreement]
- [Exhibit D - Form of Subordination Agreement]
- [Exhibit E - Form of Warrant]
- Exhibit F - Capitalization Table
- Exhibit G - Schedule of Indebtedness
- Exhibit H - Charter