[Introductory note: This form instrument has been prepared under the direction of Echoing Green, Inc. to assist social and environmental entrepreneurs in raising funding. The form has been prepared on the basis that investors are principally concerned with assisting the social or environmental cause and not with speculative appreciation on their investment. Debt has been used in order to permit the entrepreneur to retain control of the new entity, to ensure investors are long-term investors and to give the entrepreneur time to develop its social or environmental goal. However, the holder of the note may convert the note at a premium into equity securities issued in a subsequent capital raise. This instrument contemplates that so-called Additional Notes may be issued and that all such notes, even if the terms differ, are treated as one series of notes. This form is not intended to provide any tax advice, and tax counsel should be consulted with respect to the consequences of issuing this Note. In addition, tax counsel will need to be consulted for a term in excess of five years. THIS FORM SHOULD ONLY BE USED IN CONSULTATION WITH LEGAL COUNSEL.]

[NOTE TO DRAFT: THIS INSTRUMENT HAS BEEN PREPARED AS A NEW YORK LAW GOVERNED DOCUMENT FOR USE IN REGULATION D OFFERINGS BY AN ISSUER THAT IS A CORPORATION OR LIMITED LIABILITY COMPANY ORGANIZED UNDER DELAWARE OR NEW YORK LAW. TAX COUNSEL SHOULD BE CONSULTED WITH RESPECT TO THE CONSEQUENCES OF THE ISSUANCE OF THIS NOTE.]

[COMPANY]

Seed Impact Investment Template Note (the “Note”)

Series [\_\_\_]

No. [\_\_\_]

|  |  |
| --- | --- |
| Date of Issuance: [Date] | [US$][Principal Amount] |
| Maturity Date: [Date indicated in fourth paragraph below] | Interest Rate: [●]% per annum  (compounded quarterly) |

THIS NOTE (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE “ACT”) AND MAY NOT BE SOLD, PLEDGED, FRACTIONALIZED, REHYPOTHECATED OR OTHERWISE TRANSFERRED VOLUNTARILY OR INVOLUNTARILY, BY OPERATION OF LAW OR OTHERWISE, IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM.

THE HOLDER OF THIS NOTE REPRESENTS AND WARRANTS TO, AND AGREES WITH, THE COMPANY THAT SUCH HOLDER WILL NOT SELL, PLEDGE, FRACTIONALIZE, REHYPOTHECATE OR OTHERWISE TRANSFER, VOLUNTARILY OR INVOLUNTARILY, BY OPERATION OF LAW OR OTHERWISE, THIS NOTE WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMPANY (OTHER THAN A TRANSFER OF THIS NOTE IN WHOLE TO A WHOLLY-OWNED SUBSIDIARY OF THE HOLDER FOR SO LONG AS SUCH SUBSIDIARY IS WHOLLY-OWNED). ANY SALE, PLEDGE, FRACTIONALIZATION, REHYPOTHECATION OR TRANSFER OF THIS NOTE IN VIOLATION OF THE PRIOR SENTENCE SHALL BE NULL AND VOID.

FOR UNITED STATES FEDERAL INCOME TAX PURPOSES, THIS NOTE BEARS ORIGINAL ISSUE DISCOUNT (“OID”). INFORMATION INCLUDING THE ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT, THE ISSUE DATE, AND THE YIELD TO MATURITY WILL BE MADE AVAILABLE TO THE HOLDER UPON REQUEST BY [*INSERT NAME, TITLE, ADDRESS, AND TELEPHONE NUMBER OF REPRESENTATIVE THAT WILL, BEGINNING NO LATER THAN 10 DAYS AFTER THE DATE OF ISSUANCE, PROVIDE THE FOREGOING INFORMATION*].

[Company’s name], a [corporation] duly organized under the laws of [jurisdiction of incorporation/organization] (herein called the “Company”), for value received, hereby promises to pay to [name of investor], or its permitted successors or assigns (the “Holder”), the principal sum of [US$][principal amount] on [date up to five years after the date of issuance] (the “Maturity Date”) and to pay interest on the outstanding principal amount in effect from time to time at a rate equal to [interest rate]% per annum compounded quarterly, on each [•], [•], [•] and [•] (each an “Interest Payment Date”), commencing on the date the Holder pays for this Note in accordance with Section 2 below, to the Holder [5] Business Days (as defined below) prior to each Interest Payment Date. Any interest not paid in cash when due on any Interest Payment Date will, without any further action of any person, automatically on the relevant Interest Payment Date increase the principal amount of this Note, and for the sake of clarity such a failure to pay in cash will not be deemed an Event of Default under this Note. Interest shall accrue from the date of the payment for this Note as provided in Section 2 below and shall continue to accrue on the then-outstanding principal balance of this Note until paid in full or converted as provided herein.

## The Notes

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### [This Note is one of a duly authorized issue of notes of the Company, issued as part of the series designated above.]

### The Company may, without the consent of the Holder, issue additional notes of this series (“Additional Notes”, and together with this Note, the “Notes”) having the same ranking and such other terms as the Company may agree with holders of Additional Notes. This Note, together with any Additional Notes, shall constitute one and the same series of Notes, it being understood that, as provided in this Note, the Company is not required to treat all holders of the Notes (the “Holders”) the same.

### This Note is an unsecured general obligation of the Company.

### The person or entity in whose name this Note is registered shall be deemed the sole and exclusive Holder of this Note for all purposes and the Company may rely and treat such person or entity as the Holder of this Note regardless of any notice to the contrary. All payments, notices, actions, consents, waivers, amendments or other actions will only be given to, or made by, the Holder.

## Payment for this Note

.Upon the execution of this Note by the Company and the Holder, the Holder must deliver to the Company a Fed Funds same day check, or wire transfer funds, in an amount equal to the principal amount of this Note. The Company must provide a receipt to the Holder indicating that it has received such funds. All terms of this Note are subject to receipt of such funds by the Company, and until such funds are received by the Company, this Note shall not be valid or obligatory for any purpose.

## Interest and Prepayment of Principal

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### All interest on this Note must be paid by a check mailed to the Holder at the address of the Holder as set forth in Section 14, but for the sake of clarity any interest not paid on an Interest Payment Date will increase the principal amount of this Note in the manner set forth on the face of this Note. Principal of this Note shall be payable by check mailed to the Holder of this Note on the Maturity Date at the address of the Holder as set forth in Section 14, unless previously prepaid or converted.

### The Company may prepay in cash all or any portion of the principal amount of this Note and accrued but unpaid interest on such principal amount at any time without the consent of the Holder. Upon payment of all principal and accrued interest outstanding on this Note, the Company shall be released from all of its obligations and liabilities under this Note. The Company may pay interest in cash on, or prepay in cash the principal of, one of the Notes of this series but not another one of the Notes of this series. The Holder understands and agrees that the payment of interest, or the prepayment of principal, in cash of one of the other Notes of this series will not be an Event of Default under this Note.

### If any due date for any payment under this Note, or any increase in the principal amount of this Note, falls on a day that is not a Business Day, then payment of principal or interest, or increase of such principal amount, may be made on the next Business Day, and no interest shall accrue for the period after such due date if payment, or increase, is made on the next Business Day. For purposes of this Note, “Business Day” means any day which is not a day on which banking institutions in the [City of New York] are authorized or obligated by law to close.

### The Company must keep a record of the principal amount of this Note in substantially the form of Annex A. The Company’s recording of the principal amount shall be conclusive and binding absent manifest error.

## Conversion

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### Subject to Sections 4(b), 4(c), 4(e) and the other terms of this Note, upon the closing of any sale or series of sales of common stock, preferred stock or other equity interest of the Company (an “Equity Raise”), the Holder may, at the option of the Holder without the prior consent of the Company, elect to convert this Note, in whole or in part, into common stock, preferred stock or other equity interests of the Company having the same terms as the common stock, preferred stock or other equity interests that were issued to the group of investors that received the greatest amount of common stock, preferred stock or other equity interests in the Equity Raise among investors not controlled by, controlling or under common control of the Company (the “Largest Unaffiliated Investor Group”). For purposes of valuing this Note for such conversion, the principal amount surrendered shall be treated as if the Holder had been a member of the Largest Unaffiliated Investor Group and made a cash payment equal to [120]% of the principal amount surrendered plus, if the entire Note is surrendered, 100% of the amount of accrued interest outstanding on this Note at the time of the closing of the Equity Raise (the “Closing”). The Holder must exercise this right in an amount that results in the Holder acquiring a number of shares of common stock, liquidation value of preferred stock or amount of other type of equity interests that results in the Holder owning not less than the minimum permitted purchase amount under the Equity Raise or a permitted amount in excess thereof. In the event the Holder converts this Note in full, the Holder must pay such additional amount in cash as is necessary to acquire the minimum permitted purchase amount under the Equity Raise or permitted amount in excess thereof.

### The Company must notify the Holder not less than [15] calendar days prior to the Closing of the Equity Raise and provide the Holder the same information (subject to the Holder entering into an appropriate confidentiality agreement) as that given to other prospective investors in the Equity Raise. The Holder must notify the Company at least [5] calendar days prior to the Closing of the Equity Raise of whether or not it is electing to convert this Note pursuant to Section 4(a) above and, if converting, the principal amount to be converted. If the Holder so elects, on the date of the Closing, the Holder shall acquire the securities issued in the Equity Raise on the same terms and subject to the same conditions as members of the Largest Unaffiliated Investor Group, except the Holder will make payment through the conversion and cancellation of all or a portion of this Note. In order to participate in the Equity Raise, the Holder must execute and deliver and complete all such documents, instruments and certificates that members of the Largest Unaffiliated Investor Group are required to execute, deliver and complete. This Note shall be deemed automatically amended and the principal amount automatically reduced at the Closing. Promptly after Closing, the Company must amend Annex A to reflect the conversion.

### Subject to Section 4(e) and the other terms of this Note, the Company and the Holder may mutually agree at any time and from time to time to convert this Note, in whole or in part, into any amount of common stock, preferred stock or other equity interests on any terms mutually agreed upon by the Company and the Holder. Such a conversion of any of the Notes of this series will not constitute an Equity Raise under this Note.

### If the Holder elects to convert this Note as provided in Section 4(b) above or if the Holder and the Company mutually agree in writing to convert this Note as provided in Section 4(c) above, the Company and the Holder must promptly authorize and carry out all steps necessary to effect such conversion, including amending Annex A. Once the outstanding principal amount of this Note has been converted in full pursuant to Section 4(a) or 4(c) above, then such principal and interest shall be deemed to have been paid in full by the Company on the date of such conversion, and the Company shall be released from all of its obligations and liabilities under this Note.

### Upon any Change in Control of the Holder, the Company shall have the right to unilaterally cause this Section 4 to terminate and have no subsequent binding effect on either the Company or the Holder. This right of the Company must be exercised no later than [thirty (30)] days after the later of (x) the consummation of the Change in Control of the Holder and (y) receipt by the Company of written notice of such Change in Control from the Holder. For the purposes of this provision, “Change in Control” means (i) a sale, transfer, lease or other disposition of all or substantially all assets; (ii) an acquisition by any person, entity, or “group” (within the meaning of Rule 13d-5 under the Securities Exchange Act of 1934, as amended from time to time) (the “Exchange Act”)), of “beneficial ownership” (as defined in Rule 13d-3 under the Exchange Act as in effect on the Date of Issuance of this Note) of more than fifty percent (50%) of outstanding voting securities; or (iii) a reorganization, consolidation or merger in which the holders of outstanding voting securities prior to the closing of such reorganization, consolidation or merger do not retain voting securities representing a majority of the voting power of the surviving entity (or a holding company of the surviving entity).

### [If a dispute arises out of or relates to this Section 4, or the breach thereof, the parties shall seek to resolve the dispute through good faith discussions between a representative of the Holder or Holders party to a dispute and the CEO of the Company for a period of up to [15] days or until such discussions are terminated by mutual agreement. If the dispute remains unresolved after such discussions, the parties agree to engage in mediation for a period of up to [15] days, or until the mediation is terminated by mutual agreement. The mediation shall be administered by a mediator mutually agreed upon by the parties, or if the parties cannot agree upon a mediator, a mediator appointed by [•]. Neither party may initiate litigation or arbitration proceedings with respect to any dispute arising out of or relating to this Section 4 until the discussion and mediation of such dispute is complete with the sole exception of seeking emergency or injunctive relief from a court of competent jurisdiction to enforce this Section 4(f).]

## Sale of the Company

. The Company must notify the Holder at least [twenty (20)] days in advance of the closing date of any Change of Control of the Company (“Sale Date”). By notice to the Company not less than [10] days prior to the proposed Sale Date, the Holder may, at the option of the Holder, require the Company to repay the principal amount of this Note, in whole and not in part, plus any interest accrued and unpaid up to the closing of such Sale. Upon receiving written notice from the Holder in accordance with Section 14 that the Holder has elected to exercise this right, the Company must repay the outstanding principal and accrued interest of this Note on the Sale Date. For the sake of clarity, the Company shall have no obligation to repay this Note unless and until a Change of Control of the Company actually occurs.

For the purposes of this provision, Change of Control shall have the same meaning as defined in Section 4(e) above, except that (x) it shall not include any transaction or series of related transactions principally for bona fide equity financing purposes (including, but not limited to, an Equity Raise) in which cash is received by the Company or indebtedness of the Company is cancelled, exchanged or converted or a combination thereof occurs and (y) the fifty percent (50%) in clause (ii) of the definition of Change of Control shall be [seventy five] percent ([75]%).

The Company must provide (without representation or warranty as to the accuracy or completeness thereof) the Holder with all materials provided to the holders of the Company’s equity securities in connection with any Change of Control of the Company. The Company must provide to the Holder (without representation or warranty as to the accuracy or completeness thereof) with such other information with respect to any Change of Control of the Company as the Holder may reasonably request.

To the extent that this Note remains outstanding after a Change of Control of the Company, this Note shall automatically and without the further action of any person become solely and exclusively the obligation of any entity succeeding to the Company’s business as a result of such sale, transfer, lease or other disposition or resulting from any reorganization, consolidation or merger (any such entity, a “Successor Company”). All rights and obligations of the Company under this Note shall accrue to and become the sole and exclusive obligations of the Successor Company, and the Company will be released from all its obligations and liabilities under this Note. This paragraph shall apply to successive Changes of Control.

## Maturity

. Unless this Note has been previously converted or satisfied in accordance with the terms of this Note, the entire outstanding principal balance and all unpaid accrued interest shall become fully due and payable on the Maturity Date. Upon such payment of outstanding principal and accrued interest, the Company shall be released from all of its obligations and liabilities under this Note.

## Covenants

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### *Financial reporting.*The Company must deliver to the Holder:

#### within [30] days after the end of each Fiscal Quarter, an unaudited summary balance and income statement of the Company for such Fiscal Quarter;

#### within [60] days after the end of each Fiscal Year, a budget for the next succeeding Fiscal Year; and

#### within [150] days after the end of each Fiscal Year, an unaudited balance sheet and income statement (excluding footnotes, statements of cash flow and changes in shareholders’ equity) of the Company for such Fiscal Year.

For purposes of this provision and Section 7(b) below, “Fiscal Year” and “Fiscal Quarter” mean the year ending on the date approved by the Company’s management from time to time and the quarterly periods of such Fiscal Year.

### *Impact reporting.* Within [150] days after the end of each Fiscal Year, the Company must deliver to the Holder a report of reasonable length and detail on the Company’s progress on its achievement of its [social] [and] [environmental] mission.

### *Compliance with law*. The Company must comply in all material respects with the requirements of all material Applicable Laws. For purposes of this provision, “Applicable Laws” means the statutes, rules, regulations and orders of the United States, any state thereof or municipality therein or of any foreign governmental body or of any regulatory agency (including any self-regulatory organization) applicable to the Company or its operations or properties, and all orders, judgments and decrees of all courts and arbitrators in suits, proceedings or actions in which the Company is a party or by which it is bound.

### *Books and Records*.

#### The Company must maintain at its office a register (the “Register”) in which, subject to such reasonable regulations as it may prescribe, the Company will provide for the registration of Notes of this series and of permitted transfers of Notes of this series.

#### For as long as this Note and any amounts owed under it remain outstanding, the Company must maintain books and records in reasonable detail consistent with the scope of its activities, including (without limitation) copies of the Company’s federal, state and local tax returns for each fiscal year and the Register. Such books and records, including the Register, must be open to inspection by the Holder, or its designated representatives, at any reasonable time during normal business hours upon [five (5)] days’ written notice to the Company.

## Events of Default

. In the event of:

### default in the performance or breach of any covenant or agreement contained in this Note for a period of [60] days after the Company receives from the Holder written notice of such default stating that such notice is a “Notice of Default”;

### any representation or warranty in this Note or any report or financial information that has been furnished to the Holder pursuant to this Note being proved to have been false in any material respect when made or delivered;

### default under any other indebtedness for money borrowed of the Company in excess of $[10,000], which default results in an acceleration of such indebtedness or constitutes a failure to pay such indebtedness at maturity, without such default being cured by the Company or waived by the lender, for a period of [60] days after the Company receives from the Holder written notice of such default stating that such notice is an “Notice of Default”;

### failure to pay or discharge any lien, judgment or other claim in excess of $[10,000], other than any such lien, judgment or other claim which the Company is contesting in good faith, for a period of [60] days after the Company receives from the Holder written notice of such failure stating that such notice is an “Notice of Default”;

### the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (ii) a decree or order adjudging the Company bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or State law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of the property of the Company, or ordering the winding up or liquidation of the affairs of the Company, and any such decree or order for relief or any such other decree or order shall continue unstayed and in effect for a period of 60 consecutive days; or

### commencement by the Company of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated bankrupt or insolvent, or the consent by the Company to the entry of a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against the Company, or the filing by the Company of a petition or answer or consent seeking reorganization or relief under any such applicable Federal or State law, or the consent by the Company to the filing of such petition or to the appointment of or the taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by the Company of an assignment for the benefit of creditors, or the taking of action by the Company in furtherance of any such action,

### the Holder may, at the Holder’s option, declare the principal of this Note and the interest accrued hereon to be due and payable immediately by written notice to the Company, and unless all such Events of Default shall have been cured by the Company prior to receipt of such written notice, the principal of this Note and the interest accrued thereon shall become and be immediately due and payable.

## Representations and Warranties of the Company

. The Company hereby represents and warrants to, and agrees with, the Holder as of the date hereof that:

### The Company is a [corporation][limited liability company] duly organized, validly existing, and in good standing under the laws of [jurisdiction of incorporation/organization] and has all requisite [corporate][limited liability company] power and authority to carry on its business as now conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on its business or properties.

### The Company has all necessary power, authority and legal right to execute, deliver and perform its obligations under this Note; the execution, delivery and performance by the Company of this Note has been duly authorized by all necessary action on its part; and this Note has been duly and validly executed and delivered by the Company and, subject to the due execution and delivery by the Holder, constitutes its legal, valid and binding obligations, enforceable against the Company in accordance with its terms, except as such validity and enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors’ rights and (ii) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

### Subject to the truth and accuracy of the Holder’s representations set forth herein, the offer, sale and issuance of this Note are exempt from the registration requirements of any applicable state and federal securities laws, and neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemption.

### The execution, delivery and performance of this Note, and the consummation of the transactions contemplated hereby, will not constitute or result in a default, violation, conflict or breach in any material respect of any provision of the Company’s current organizational documents, or in any material respect of any instrument, judgment, order, writ, decree, privacy policy or contract to which it is a party or by which it is bound, or, to its knowledge, in any material respect, of any provision of any federal or state statute, rule or regulation applicable to the Company.

### To the Company’s knowledge, there is no private or governmental action, suit, proceeding, claim, arbitration or investigation pending before any agency, court or tribunal, foreign or domestic, or threatened in writing against the Company or any of its properties that could prevent, enjoin, or materially alter or delay any of the transactions contemplated by this Note, or that could reasonably be expected to have a material adverse effect on the Company. There is no judgment, decree or order binding on the Company that could prevent, enjoin, or materially alter or delay any of the transactions contemplated by this Note, or that could reasonably be expected to have a material adverse effect on the Company.

## Representations and Warranties of the Holder

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### The Holder hereby represents and warrants to, and agrees with, the Company as of the date hereof that:

#### The Holder has all necessary power, authority and legal right to execute, deliver and perform its obligations under this Note;

#### the execution, delivery and performance by the Holder of this Note has been duly authorized by all necessary action on its part;

#### this Note has been duly and validly executed and delivered by the Holder and, subject to the due execution and delivery by the Company, constitutes its legal, valid and binding obligations, enforceable against the Holder in accordance with its terms, except as such validity and enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors’ rights and (ii) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); and

#### this Note is being acquired for the Holder’s own account, solely for investment purposes.

### The Holder acknowledges that this Note has not been and will not be registered under the Act or any state or other securities law and that Additional Notes may be issued by the Company in transactions exempt from the registration requirements of the Act. If the Holder should in the future decide to dispose of this Note pursuant to its terms (and the Company agrees to such disposition), the Holder understands and agrees that it may do so only in compliance with the Act and applicable state securities laws, as then in effect, and subject to the provisions of this Note.

### The Holder hereby: (i) acknowledges that it has received all the information it has requested from the Company, (ii) represents and warrants that it has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Note and to obtain any additional information as it deems necessary or appropriate in connection with its investment in this Note and (iii) represents and warrants that it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risk of this investment.

### The Holder acknowledges that an investment in this Note involves a high degree of risk and represents and warrants that it has no need for liquidity and has the financial capacity to withstand a complete loss of its investment in this Note.

### The Holder represents and warrants that it is an institutional “accredited investor” as such term is defined in Rule 501(a)(1) or (3) under the Act.

## Tax

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### The parties agree that, for U.S. federal income tax purposes, this Note will be treated as debt. The parties agree to treat and report this Note for U.S. federal income tax purposes as debt, and not take any action inconsistent with such treatment, except to the extent it is required to adopt a contrary position as a result of (x) a final judicial decision, judgment, decree or other order binding upon it (and not subject to further appeal) or (y) a conclusive closing agreement it has entered into with an applicable taxing authority.

### Notwithstanding anything to the contrary contained in this Note, the Company may, to the extent it is required to do so by law, deduct or withhold income or other taxes imposed by an Applicable Jurisdiction from principal or interest payments hereunder.  The Company shall not be required to pay any additional amounts with respect to amounts deducted or withheld.

The Company is authorized to take any action that it determines to be necessary or appropriate to comply with any withholding requirements imposed under the laws of the United States, an Applicable Jurisdiction or any other jurisdiction. The Holder must furnish to the Company a valid IRS Form W-8 or IRS Form W-9, as applicable, and must certify under penalties of perjury that the information contained therein is correct. The Holder must promptly inform the Company of any change in such information and must execute a new IRS Form W-8 or IRS Form W-9, as applicable, reflecting the change in such information.

For purposes of this Section 11, an “Applicable Jurisdiction” means each jurisdiction in which the Company is organized, tax resident or engaged in business, and any political subdivision or governmental authority thereof or therein having the power to tax.

## Consents, Amendments, Waivers, Etc.

### Subject to Section 12(c) below, no modification, amendment or waiver of any provision of any of this Note or any of the Additional Notes, and no consent to any departure by the Company herefrom or therefrom, shall in any event be effective unless the same shall be in writing and signed by the Company and the Requisite Holder(s) (as defined below) and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

### The “Requisite Holder(s)” means:

#### in the case of a modification, amendment, waiver or consent with respect to the principal amount, Maturity Date or interest rate of this Note (whether or not also carried out with respect to other Notes of this series), the Holder;

#### in the case of a modification, amendment, waiver or consent with respect to this Section 12 of this Note (whether or not also carried out with respect to other Notes of this series), the Holder; and

#### in all other cases, either (A) the Holder or (B) any combination of Holders affected by such modification, amendment or waiver who, collectively, represent a majority of the outstanding principal of all the outstanding Notes held by Holders affected by such modification, amendment or waiver, as conclusively indicated by the Register at that time.

### Notwithstanding Section 12(a) above, the terms of this Note may be modified or amended by the Company, without the consent of any Holders, for the purpose of (i) adding to the covenants of the Company for the benefit of the Holder, or (ii) surrendering any right or power conferred upon the Company, or (iii) securing the Notes pursuant to the requirements of the Notes or otherwise, or (iv) evidencing the succession of another entity to the Company and the assumption by any such successor of the covenants and obligations of the Company in the Notes pursuant to Section 5 hereof or (v) correcting or supplementing any defective provision contained in the Notes, to all of which the Holder, by acceptance hereof, consents. The Holder acknowledges and agrees that modifications, amendments, waivers and consents may be made to one or more Notes of this series and not to any other Notes of this series and such selective modifications, amendments, waivers and consents will not constitute an Event of Default or violate this Section 12.

### Any modification, amendment, supplement, consent, waiver or other action taken pursuant to this Section 12 shall be conclusive and binding on the Holder and on all future holders of this Note, whether or not notation thereof is made upon this Note.

## Governing Law

. This Note shall be governed by and construed in accordance with the laws of [the State of New York].

## Notices

. All notices and other communications given or made pursuant to this Note shall be in writing and shall be deemed effectively given (a) upon personal delivery to the party to be notified; (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day; (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one (1) Business Day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the Holder at the address set forth on the books and records of the Company or at such other place as may be designated by the Holder in writing to the Company in accordance with the provisions of this Section 14, and to the Company at the address listed immediately below, or to such e-mail address, facsimile number or address as subsequently modified by written notice in accordance with the provisions of this Section 14.

[Company’s mailing address]  
Attention: [\_\_\_\_\_\_]   
Facsimile: [Company’s fax number]  
Email: [Company’s email address for official notices]

## Miscellaneous

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### *No Stockholder Rights*. The Holder is not entitled, as a holder of this Note, to vote or receive dividends or be deemed the holder of an equity interest in the Company for any purpose, nor will anything contained herein be construed to confer on the Holder, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action or to receive notice of meetings, or to receive subscription rights or otherwise, unless and until equity interests have been issued upon the terms described herein.

### *Successors and Assigns*. Subject to the terms of Sections 4(e) and 5 above, the terms and conditions of this Note shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Nothing in this Note, expressed or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Note.

### *Confidentiality*. The Holder must keep confidential, and cause its affiliates (that is, any entities who are controlled by, controlling or under common control of it) and its and their officers, directors, employees and advisors to keep confidential, the terms of this Note and any related transactions, and all non-public information it has received or hereafter receives from or on behalf of the Company in connection herewith (the “Confidential Information”), except:

#### as required by Applicable Laws or any order, writ, injunction or decree of any Governmental Authority, *provided* that if the Holder is so required to disclose any Confidential Information, the Holder must promptly notify the Company and must use commercially reasonable efforts to obtain confidential treatment of such Confidential Information;

#### with respect to information that is or becomes known to the public at the time of disclosure, or thereafter becomes known to the public other than as a result of a breach of this Section 15(c); and

#### with respect to information that is or was received from a third party that, to the knowledge of the Holder, is or was (at the relevant time) not in breach of a confidentiality obligation with regard to such information.

#### For purposes of this provision, “Applicable Laws” shall have the same meaning as defined in Section 7(c) except that the word “Holder” shall be substituted for the word “Company”, and “Governmental Authority” means any federal, state, provincial, municipal or other governmental department, commission, board, bureau, agency or instrumentality, any self-regulatory agency, or any court, in each case whether of the United States or any foreign jurisdiction.

### *Severability*. In the event any one or more of the provisions of this Note is for any reason held to be invalid, illegal or unenforceable, in whole or in part or in any respect, then and in any such event, such provision(s) only will be deemed null and void and will not affect any other provision of this Note and the remaining provisions of this Note will remain operative and in full force and effect and will not be affected, prejudiced, or disturbed thereby.

### *Captions*. The captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Note.

### *Counterparts*. This Note may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and the Company and the Holder may each execute this Note by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Note by facsimile or in electronic format (i.e., “pdf” or “tif”) shall be as effective as delivery of a manually executed counterpart of this Note.

### *Company Sole Obligor*. The Company is the sole and exclusive obligor on this Note. The Holder agrees that no other person or entity has any liability or responsibility for the Company’s performance of its obligations under this Note and the Holder agrees not to bring any suit, action or proceeding, or make any claim, that any other person or entity is liable for, responsible or otherwise obligated for the Company’s obligations under this Note.

### *Representations and Warranties*. The representations and warranties of the Company and the Holder will not survive the original issuance of this Note other than Section 9(c) and Sections 10(b), (c), (d) and (e).

*[Signature pages follow]*

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed as of the date first written above.

|  |  |  |
| --- | --- | --- |
| [COMPANY] | | |
|  | | |
| By: |  | |
|  | Name: |  |
|  | Title: |  |

Accepted and agreed as of the date first written above:

|  |  |  |
| --- | --- | --- |
| [HOLDER] | | |
|  | | |
| By: |  | |
|  | Name: |  |
|  | Title: |  |

| No. | Principal Amount (Prior to Change) | Date of Increase/Decrease | Amount of Increase/Decrease | New Principal Amount |
| --- | --- | --- | --- | --- |
| 1. | $ |  | $ | $ |
| 2. | $ |  | $ | $ |
| 3. | $ |  | $ | $ |
| 4. | $ |  | $ | $ |
| 5. | $ |  | $ | $ |