

# Private Placement Memorandum

## CONFIDENTIAL

To:

\_\_\_\_\_ Offering of \$ \_\_\_\_\_, \_\_\_\_\_, Offered at  
\_\_\_\_\_ Per share.

Name: \_\_\_\_\_ Memorandum Identification Number: \_\_\_\_\_

\_\_\_\_\_ was formed on \_\_\_\_\_ as a new  
\_\_\_\_\_ corporation.

Information concerning initial directors:

\_\_\_\_\_

This corporation is formed for the purpose of:

\_\_\_\_\_

The interests are speculative in nature; they are subject to certain restrictions on transfer which may result in the lack of a ready market for resale; they are subject to certain material risks; there are material income tax considerations associated with their purchase; and, the operation of the corporation may involve transactions between the corporation and the founders which could result in conflicts of interest. (Please see "Risk Factors.")

This offering will result in \$ \_\_\_\_\_ ( \_\_\_\_\_ & \_\_\_/100 dollars) cash to the corporation.

This Memorandum supersedes any and all previous information supplied by the corporation. It has been prepared solely for the benefit of persons interested in the proposed private placement of the shares offered hereby, and any reproduction or distribution of this Memorandum in whole or in part, or the divulgence of any of its contents without the prior written consent of the corporation, is prohibited. By accepting delivery of this Memorandum, the recipient agrees to return it and all enclosed documents to the corporation if the recipient does not purchase the interests offered in this Memorandum. Only the information expressly set forth in this Memorandum, or contained in documents furnished by the corporation upon request, may be relied upon in connection herewith. All recipients of this document have been required to execute a prior "non-disclosure" agreement. This document and all exhibits is a trade secret and confidential.

This Memorandum does not constitute an offer or solicitation in any jurisdiction in which such an offer or solicitation is not authorized. In addition, this Memorandum constitutes an offer only if a name and memorandum identification number appear in the appropriate spaces provided on the cover page, and then only to such person.

Prospective investors should carefully consider that there are tax risks associated with this offering.

Prospective investors are not to construe the contents of this Memorandum, or any prior or subsequent communication from the corporation, its affiliates, or agents, as legal or tax advice.

Each prospective investor should consult his own counsel and accountant as to tax matters and related matters concerning this investment.

The interests are offered only to a limited number of persons who have knowledge and experience in financial and business matters, who are capable of evaluating and bearing the economic risks of this investment, and who are acquiring these interests for investment purposes and not with a view to a resale or distribution. These securities are issued in reliance on the exemption from registration granted by \_\_\_\_\_ law. Exemptions from registration afforded by the Securities Act of 1933 and similar statutes in the states in which this offering is made may also apply. The interests may not be transferred in the absence of an effective registration statement or an opinion of counsel acceptable to the corporation's counsel that an exemption from registration is available.

No person is authorized to give any information or to make any representation relative to this offering that is not contained in this Memorandum. Any information or representation not contained herein must not be relied upon as having been authorized by the corporation. Except as otherwise indicated, this private placement memorandum speaks as of the date on the cover page. Neither the delivery of this private placement memorandum nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the corporation since the respective dates at which the information is given herein or the date hereof.

#### THE OFFERING

The offering consists of \_\_\_\_\_ shares of \_\_\_\_\_ par, \_\_\_\_\_ at \$ \_\_\_\_\_ at \_\_\_\_\_ per share.

The shares will be offered for a period of \_\_\_\_\_ which period may be extended at the discretion of the corporation. The corporation may subscribe to the shares offered hereby.

The shares will be evidenced by certificates executed by the president and secretary of the corporation. The shares offered hereby will be sold only to those persons who take such shares for investment and not with a view to offer for sale, or for resale, in connection with the distribution or any transfer thereof. No shares will be sold to any person unless such person represents and warrants to the corporation that he is not participating, directly or indirectly, in a distribution or transfer of such shares, nor participating, directly or indirectly, in the underwriting of any such distribution or transfer of such shares. Each person purchasing shares pursuant to this Memorandum will also be required to warrant and represent to the corporation that he will not act in any way that would constitute him to be an underwriter within the meaning of the Securities Act of 1933.

The shares will carry preemptive rights for purchase of any secondary offerings. In addition investors will be required to execute a shareholders agreement providing a right of first refusal to other shareholders and to the corporation upon any resale.

#### USE OF PROCEEDS

The proceeds from the offering described in this Memorandum will be used to fund:

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#### CONFLICTS OF INTEREST

Because the founders may, on behalf of the corporation, engage in transactions with himself or affiliates, prospective shareholders should recognize that such transactions might place the trustees of the corporation in "conflicts of interest" situations. A summary of the agreements to be entered into is attached hereto.

## RISK FACTORS

The purchase of the shares involves certain risk factors. It is suitable only for persons of adequate means who have no need for liquidity in a portion of their investments. The following risk factors should be considered before making an investment decision; they are not a complete list:

**Tax treatment of the investment.** Tax treatment of the results of this investment will vary by investor. There is the risk in any venture that the tax treatment desired by investors or the venture will not occur, or that the tax rules will change.

**Long-term Nature of Investment.** Potential investors should be aware of the long-term nature of the investment in the corporation. Each investor must warrant that he is purchasing the shares for investment purposes and not for resale. Also, transfer of the shares will not be permitted without the receipt of an opinion of counsel, acceptable to the Board of Directors of the company as well as company counsel that such transfer would not violate applicable securities laws. Such an opinion may not be available unless the corporation elects to register under applicable securities laws. The corporation presently has no plans to so register. Even if transfer were possible it is likely that no market would exist for the shares. Because the success or failure of the venture may not be known for many years, an investor may find himself the owner of an interest which may not be profitable, and which he cannot transfer.

**Indemnification of the Management and Board of Directors.** Agents and directors of the corporation are, subject to certain conditions, to be indemnified by the corporations against certain liabilities.

**Absence of Independent Counsel.** Unless an individual investor's counsel has reviewed this Memorandum and advised the investor concerning an investment decision, the shareholders and corporation will not have been represented by independent counsel in connection with this offering. Interested investors should seek legal and accounting advice from independent persons prior to proceeding. (Please note such advisors must also execute a non-disclosure.)

**Dilution of equity.** Predicting the future is difficult. However, reason dictates that there will be a dilution of the equity position of investors in future fund raising, if needed.

**Debt to Equity Ratio.** The investment contemplated herein may have a high debt-to-equity ratio. If later operating revenues decline because products cannot be successfully marketed, there will be a disproportionately severe effect on the values of the corporation interests and the cash flow available for distribution. Risk of decline of the economy. The economy of the world or the United States may return to recession, which could result in the target businesses not committing capital to new products, no matter how attractive.

## INVESTOR SUITABILITY STANDARDS

Purchase of the shares offered hereby is suitable only for persons of adequate financial means who have no need for liquidity to the extent of their investment herein.

Prospective purchasers should invest in this offering only after considering the following:

1. The prospective purchaser of any shares should have a net worth (i.e., total assets in excess of total liabilities) of at least \$1,000,000, (individually or combined with a spouse) exclusive of home, furnishings and automobiles; or, the investor should have annual gross income of at least \$200,000 or the investor should purchase in excess of \$150,000 of this offer, which amount does not exceed 20% of investor's net worth (individually or combined with a spouse).
2. The overall commitment of the prospective purchaser to investments which are not readily marketable or transferable should not be disproportionate to his net worth, and his investment in

the shares subscribed to should not cause such overall commitment to become excessive.

3. The prospective purchaser should have adequate means of providing for his current needs and personal contingencies; should have no need for liquidity in his investment in the shares; and should have the ability to bear the economic risk of this investment; and,

4. The prospective purchaser, or his offeree or purchaser representative, if any, should have such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of this investment.

#### HOW TO SUBSCRIBE

The corporate shares offered by this Memorandum are being offered and sold by the corporation.

#### RESTRICTIONS ON RESALE, READ CAREFULLY

The corporation interests offered hereby have not been registered under the Securities Act of 1933 nor have they been registered by any similar review process in any state. The corporation has no plans to seek such registration. Accordingly, the interests must be held indefinitely unless they are subsequently registered under that Act or unless an exemption from such registration is available, and until the corporation has been provided with an opinion of counsel satisfactory to it and its counsel to the effect that registration is not required, and that any such transfer complies with all federal and state securities laws and will not jeopardize the corporation's status. Purchasers have no right to require any registration to be effected by the corporation and the corporation is not obligated to supply any shareholder with information necessary to enable them to make sales.

All shareholder certificates issued will bear a restrictive legend which, in substance, will state: "The interests have been sold in reliance on exemptions from registration afforded by the Securities Act of 1933, as well as registration exemptions provided by similar statutes in the various states in which this offering is made. The interests may not be transferred in the absence of an effective registration statement, or an opinion of counsel acceptable to the corporation's counsel that an exemption from registration is available." In addition, the shares shall be endorsed with proper language regarding the first right of refusal held by the corporation and other shareholders.

#### ACCESS TO ADDITIONAL INFORMATION

The founders offer the opportunity to each potential investor to have access and to review at the corporation's office, prior to sale, material which would assist an investor in reaching an investment decision. The founders will also be available, prior to sale, so that potential investors may have the opportunity to ask questions of, and receive answers from, the founder concerning the terms and conditions of the offering, and to obtain any additional information (to the extent the incorporator possess such information or can acquire it without unreasonable effort or expense) which may be necessary to verify the accuracy of the information contained in this Memorandum.

#### Notices.

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or a recognized over night delivery service such as FedEx.

If to the Corporation: \_\_\_\_\_.

If to the Investor: \_\_\_\_\_.

No Waiver.

The waiver or failure of either party to exercise in any respect any right provided in this agreement shall not be deemed a waiver of any other right or remedy to which the party may be entitled.

Entirety of Agreement.

The terms and conditions set forth herein constitute the entire agreement between the parties and supersede any communications or previous agreements with respect to the subject matter of this Agreement. There are no written or oral understandings directly or indirectly related to this Agreement that are not set forth herein. No change can be made to this Agreement other than in writing and signed by both parties.

Governing Law.

This Agreement shall be construed and enforced according to the laws of the State of \_\_\_\_\_ and any dispute under this Agreement must be brought in this venue and no other.

Headings in this Agreement

The headings in this Agreement are for convenience only, confirm no rights or obligations in either party, and do not alter any terms of this Agreement.

Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

In Witness whereof, the parties have executed this Agreement as of the date first written above.

\_\_\_\_\_  
Corporation

\_\_\_\_\_  
Investor  
Social Security Number:

\_\_\_\_\_  
Date

## Private Placement Memorandum Review List

This review list is provided to inform you about this document in question and assist you in its preparation. This document is required for capital raises of private companies. It is a pro forma agreement that will stand up as well as any with regards to investor litigation. No document can protect you from litigation in this regard. They can minimize the negative consequences of such a suit. As an investor, no document can protect you adequately from a poor choice of investments. Investors rarely recover on these matters as a practical matter. Therefore, decide on the practical merits of the investment and do not rely on any documents to “get you whole.”

1. Make multiple copies. Give one to each investor and keep a record of all signed copies in the corporate records. Be sure to ratify the acceptance of such investments; have the investors sign for their actual stock certificates.