UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHN CARMACK,	§	
	§	
Plaintiff	§	**Civil Case No. _____**
	§	
v.	§	
	§	
ZENIMAX MEDIA INC.,	§	**JURY TRIAL DEMANDED**
	§	
Defendant.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE COURT:

1. Defendant ZeniMax Media Inc. will soon be obligated to pay Plaintiff John Carmack more than $45 million in cash under the terms of the Asset Purchase Agreement and a Convertible Promissory Note by which ZeniMax bought the assets of id Software, Inc. in 2009. Mr. Carmack's right to receive that money ripens no later than June 23, 2017, the eighth anniversary of id Software's sale to ZeniMax. It is the final payment due to Mr. Carmack for the sale of id Software, the world-famous video game studio he founded and led for more than 20 years.

2. But ZeniMax clearly doesn't want to pay. And while Mr. Carmack awaits ZeniMax's seemingly inevitable refusal to honor its obligation to pay the remainder of the purchase price, ZeniMax is already in breach of the Asset Purchase Agreement and Convertible Promissory Note. Pursuant to those contracts, Mr. Carmack has the absolute right "to convert all or any portion of the Unpaid Principal Balance solely into shares of ZeniMax's Common Stock . . . ." All of those shares are subject to a $45 per share put option that will mature no later than June 23, 2017.

3. On February 16, 2017, Mr. Carmack elected to convert the remaining balance of his Convertible Promissory Note into shares of ZeniMax common stock, and offered to sell all of his shares back to the company at the put option price of $45 per share. But ZeniMax failed to issue any shares of stock in response to Mr. Carmack's conversion notice, depriving him of the ability to either sell the shares or exercise the put option when it ripens later this year. This lawsuit seeks to rectify ZeniMax's existing breach of the Asset Purchase Agreement and Convertible Promissory Note. It further seeks declaratory judgment to confirm ZeniMax's payment obligations under the put option, and will serve as a vehicle for further breach of contract claims in the highly likely event of ZeniMax's upcoming refusal to honor the put option.

4. When ZeniMax bought id Software in 2009, it agreed to pay a total of $150 million for that purchase. Now that the final installment of that bill is coming due, ZeniMax is simply refusing to pay. But sour grapes is not an affirmative defense to breach of contract. This Court should enter judgment against ZeniMax for all the money that it agreed to pay Mr. Carmack for the sale of his former company.

PARTIES

5. John Carmack is an individual who is a citizen of the State of Texas and a resident of Dallas County, Texas. He is a computer programmer. In 1991, at the age of 20, he became one of the founders of id Software, Inc. With Mr. Carmack's innovative graphics programming, id Software became a pioneer in the genre of first-person shooter games. Under his technical guidance, id Software generated a number of highly successful game tiles, including the *Doom*, *Quake*, and *Wolfenstein* franchises. After ZeniMax allowed his Employment Agreement to lapse in 2013, Mr. Carmack left the company and became the Chief Technology Officer of Oculus VR, a leader in the emerging field of virtual reality.

6. ZeniMax Media Inc. is a Delaware corporation with its principal place of business located in Rockville, Maryland. ZeniMax is a holding company that owns a number of videogame studios and its in-house game publisher, Bethesda Softworks. In 2009, ZeniMax purchased the assets of id Software, Inc. for what was agreed to be a total of $150 million. At that same time, ZeniMax entered into a four-year Employment Agreement with Mr. Carmack, which expired on June 23, 2013. ZeniMax may be served with process through its registered agent for service of process, CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, TX 75201-3136.

JURISDICTION AND VENUE

7. This Court has original jurisdiction because the matter in controversy exceeds the sum or value of $75,000 and is between citizens of different states. 28 U.S.C. § 1332(a)(1).

8. Venue is proper in the United States District Court for the Northern District of Texas, Dallas Division because a substantial part of the events or omissions giving rise to the claim occurred in this District. 28 U.S.C. § 1391(b)(2). Furthermore, ZeniMax voluntarily and irrevocably submitted to the jurisdiction and venue of this Court in Section 14.06(d) of the parties' Asset Purchase Agreement.

FACTS

9. On June 23, 2009, ZeniMax purchased the assets of id Software, Inc. and placed them into a newly created company, id Software LLC. From that day to the present, ZeniMax has been the sole owner of id Software LLC.

10. The sale was accomplished via an Asset Purchase Agreement, which obligated ZeniMax to pay id Software's selling shareholders a total of $150 million for the sale. Of that sum, $45 million was paid in cash at closing. An additional $40 million was paid to the shareholders pursuant to cash promissory notes over the course of the next four years.

11. The final $65 million in consideration for the purchase came in the form of Convertible Promissory Notes, whereby ZeniMax agreed to pay the selling shareholders that amount in cash or shares of ZeniMax's common stock. Each of the Convertible Promissory Notes permitted their holders to convert the notes to shares of common stock at any time prior to their Maturity Date, which was defined to occur upon the earliest of an initial public offering, a change of control, or the eighth anniversary of the closing of the sale of id Software.

12. At the time of the sale, Mr. Carmack was the majority shareholder of id Software, Inc., and his Convertible Promissory Note was issued with the face value of $45,118,094.77. In early 2011, Mr. Carmack converted approximately half of the original Convertible Promissory Note into shares of ZeniMax's common stock. As a result, his original Convertible Promissory Note was canceled and replaced with a new Convertible Promissory Note in the amount of $22,559,047.77. A true and correct copy of that Convertible Promissory Note is attached hereto as Exhibit 1. Also as a result of that conversion, he is currently the owner of stock certificate number 97, representing 500,527 shares of common stock. A true and correct copy of that stock certificate is attached hereto as Exhibit 2.

13. All of the common stock that Mr. Carmack has previously received under his Convertible Promissory Note, plus the stock that he has the right to receive in the future, is subject to a $45 per share put option under section 9.07 of the Asset Purchase Agreement. The put option will ripen no later than the eighth anniversary of the sale of id Software, which will occur on June 23, 2017. Mr. Carmack intends to exercise that put option for the full $45,118,094.77 that ZeniMax still owes him from the sale of id Software, Inc.

14. Neither the Asset Purchase Agreement nor the Convertible Promissory Note allow ZeniMax to ignore its obligation to issue stock after Mr. Carmack issues a conversion notice. But that is precisely what ZeniMax has now done.

15. On February 16, 2017, written notice was delivered to ZeniMax to convert the entire $22,559,047.77 balance of Mr. Carmack's Convertible Promissory Note to shares of ZeniMax's common stock. That conversion was requested in preparation for two events. *First*, Mr. Carmack was offering to sell all of his stock to ZeniMax at the price of $45 per share pursuant to the terms of the company's shareholders' agreement. *Second*, he was preparing to exercise his $45 per share put option in the event that neither the company nor any of its other shareholders elected to purchase the offered shares.

16. ZeniMax is obligated by its written shareholders' agreement to either purchase the shares on the terms offered by Mr. Carmack or to notify the other shareholders of the company that they have the right to purchase the offered shares. It remains to be seen whether ZeniMax will follow through on that contractual obligation. In any event, the $45 per share offer price represents a substantial discount from the valuation that the company's CEO, Robert Altman, recently swore to under oath.

17. All told, Mr. Carmack's offer to sell included 1,004,418 shares of stock, consisting of the 500,527 shares of common stock he already owns, the 501,312 shares of common stock he sought to convert under the Convertible Promissory Note, and 2,579 shares of Series A Preferred stock that he purchased in 2011. In total, it would amount to approximately 5% of ZeniMax's issued and outstanding shares as of the end of 2015.

18. Pursuant to Section 2.5(a) of the Convertible Promissory Note and Section 2.04(c)(ii) of the Asset Purchase Agreement, Mr. Carmack was to become the owner of 501,312

shares of ZeniMax common stock on March 3, 2017, ten business days after the company received the conversion notice and the original of Mr. Carmack's Convertible Promissory Note.

19. On March 2, 2017, ZeniMax's general counsel responded to Mr. Carmack's conversion notice and sale offer. By that letter, ZeniMax made it clear that the company would not voluntarily comply on a timely basis with the conversion notice. The content and tone of the letter also made it clear that ZeniMax was unlikely to comply with its obligations under the shareholders' agreement by either buying the offered shares or notifying the other shareholders of their right to purchase them. ZeniMax also kept the original copy of Mr. Carmack's Convertible Promissory Note, which had been delivered to the company along with the conversion notice.

20. ZeniMax's failure to issue the conversion shares is a breach of the Asset Purchase Agreement and the Convertible Promissory Note. ZeniMax's failure and refusal to issue common stock to Mr. Carmack for the unpaid $22,559,047.77 balance of the Convertible Promissory Note deprives Mr. Carmack of the bargained-for consideration ZeniMax agreed to pay in exchange for acquiring the assets of id Software, Inc.

21. Pursuant to section 2.3(a) of the company's shareholders' agreement, ZeniMax has until March 18, 2017 – 30 days after delivery of the offer of sale – to provide notice to Mr. Carmack whether it will elect to purchase some or all of the offered shares. If it declines to purchase the offered shares, ZeniMax would then have 10 additional days to notify the other shareholders of their own right to purchase the offered shares.

22. ZeniMax is a private company. Its stock is not traded on any public exchange, and the shareholders' agreement imposes significant restrictions on the ability of any shareholder to sell or transfer shares privately. If, as appears highly likely, ZeniMax refuses to notify

shareholders that they have the right to purchase Mr. Carmack's shares, he will be deprived of access to the only meaningful market for the sale of his shares.

23. ZeniMax's stated basis for its failure to comply with the Convertible Promissory Note is a series of allegations regarding claimed violations of Mr. Carmack's Employment Agreement and ZeniMax's alleged intellectual property rights. Those allegations were recently put to trial in *ZeniMax Media Inc. v. Oculus VR, LLC*, Case No. 3:14-CV-01849-K (N.D. Tex.). Mr. Carmack was a Defendant in that case, and there was extensive testimony and evidence about the alleged conduct that ZeniMax now asserts as the basis for its current refusal to comply with its contracts. Yet ZeniMax did not bring any claim for breach of contract against Mr. Carmack as part of that lawsuit, and all such claims are now plainly barred by the doctrines of claim and issue preclusion. Furthermore, the jury returned a verdict in favor of Mr. Carmack, finding that he was not liable for misappropriation of trade secrets or copyright infringement, and only ruling for ZeniMax on a conversion claim for which the company neither sought nor recovered any damages. ZeniMax's invocation of the same alleged acts that it just went to trial on is an exercise in bad faith and distraction, not a legitimate basis to avoid paying the money it owes from its purchase of id Software.

24. ZeniMax's obvious unwillingness to honor its forthcoming put option obligations pursuant to the Asset Purchase Agreement also gives rise to a justiciable controversy that can and should be resolved by declaratory judgment. Tellingly, Mr. Altman has pointedly declined to confirm the company would honor its financial commitment, and ZeniMax's recent correspondence indicates that the company is actively considering litigation over the issue of Mr. Carmack's rights in the stock.

FIRST CAUSE OF ACTION: BREACH OF CONTRACT

25. Mr. Carmack incorporates by reference each of the facts alleged above.

26. The Asset Purchase Agreement is a valid and enforceable contract between Mr. Carmack and ZeniMax, whereby Mr. Carmack and the other shareholders of id Software, Inc. agreed to sell the assets of their company to the ZeniMax-owned entity that became known as id Software LLC.

27. The Convertible Promissory Note is also a valid and enforceable contract between ZeniMax and Mr. Carmack, made in consideration for the covenants and agreements set forth in the Asset Purchase Agreement and representing a substantial portion of the purchase price by which ZeniMax acquired the assets of id Software, Inc.

28. Pursuant to the Asset Purchase Agreement and the Convertible Promissory Note, ZeniMax owes Mr. Carmack $22,559,047.77 in cash and/or ZeniMax stock.

29. Mr. Carmack performed his obligations under the Asset Purchase Agreement and the Convertible Promissory Note.

30. ZeniMax is in breach of its contractual obligations under Section 2.04(c)(ii) of the Asset Purchase Agreement and Section 2.2 of the Convertible Promissory Note. Under both of those provisions, ZeniMax is obligated to convert the unpaid principal balance of the Convertible Promissory Note to shares of ZeniMax's common stock upon at least 10 business days' prior written notice from Mr. Carmack. Mr. Carmack's conversion notice and the original of the Convertible Promissory Note were delivered to ZeniMax on February 16, 2017, but ZeniMax failed to comply with its obligation to issue the stock to Mr. Carmack.

31. ZeniMax's breach of the Asset Purchase Agreement and the Convertible Promissory Note have caused serious injury to Mr. Carmack, as the breach has deprived him of 501,312.17 shares of ZeniMax's common stock with a value of at least $22,559,047.77.

SECOND CAUSE OF ACTION: DECLARATORY RELIEF

32. Mr. Carmack incorporates by reference each of the facts alleged above.

33. A justiciable controversy exists between ZeniMax and John Carmack regarding the parties' rights and obligations under the Asset Purchase Agreement and the Convertible Promissory Note.

34. Pursuant to the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201-2202, Mr. Carmack seeks a declaration regarding the put option rights he has under the terms of the Asset Purchase Agreement and the Convertible Promissory Note. Specifically, Mr. Carmack asks the Court to declare that ZeniMax is obligated to honor the $45 per share put option provided for in section 9.07 of the Asset Purchase Agreement for all shares of ZeniMax's common stock acquired under his original Convertible Promissory Note and the replacement for the original Convertible Promissory Note.

ATTORNEY FEES

35. Mr. Carmack incorporates by reference each of the facts alleged above.

36. Under Section 22.3 of the Employment Agreement between Mr. Carmack and ZeniMax, the parties agreed as follows:

> In the event of any legal proceeding between the parties to this Agreement, the parties hereby agree the prevailing litigant shall be entitled to recover his/its attorneys' fees, expenses, and costs of court from the losing litigant, in addition to such other relief which may be awarded by a court of competent jurisdiction.

Accordingly, Mr. Carmack seeks recovery for his attorney fees, expenses, and costs of court incurred in bringing this lawsuit.

DEMAND FOR JURY TRIAL

37. Mr. Carmack demands a trial by jury on all issues so triable.

RESERVATION OF RIGHT TO AMEND

38. ZeniMax is already in breach of its contractual obligations under the Asset Purchase Agreement and the Convertible Promissory Note. In all likelihood, ZeniMax will soon

be further violating those agreements and even its own shareholders' agreement. Accordingly, Mr. Carmack reserves all right to amend, whether as of right or through motion for leave, to address any future breaches of ZeniMax's contracts with Mr. Carmack or violations of any other legal obligations ZeniMax owes to him.

PRAYER FOR RELIEF

Based on the foregoing, Mr. Carmack asks that the Court issue citation for Defendant ZeniMax Media Inc. to appear and answer, and that Mr. Carmack be awarded judgment against ZeniMax for monetary damages of at least $22,559,047.77, plus recovery of his attorney fees, pre- and post-judgment interest, and costs of court. Mr. Carmack further requests that the Court enter a declaratory judgment that ZeniMax is obligated to honor the $45 per share put option provided for in section 9.07 of the Asset Purchase Agreement for all shares of ZeniMax's common stock acquired under his original Convertible Promissory Note and the replacement for the original Convertible Promissory Note. Mr. Carmack further requests all additional and alternative relief to which he may show himself to be justly entitled.

DATED: March 7, 2017

Respectfully submitted,

/s/ Richard A. Smith

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ATTORNEY FOR PLAINTIFF
JOHN CARMACK

THIS CONVERTIBLE PROMISSORY NOTE AND THE COMMON STOCK ISSUABLE UPON CONVERSION HEREOF (COLLECTIVELY, THE "SECURITIES") HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF APPLICABLE STATES. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT AND THE APPLICABLE STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

This Convertible Promissory Note was issued with original issue discount ("OID") which must be reported as ordinary interest income by the holder hereof as it accrues in accordance with applicable federal tax accounting rules. The name and contact information of a representative of the issuer who will, beginning no later than 10 days after the issue date hereof, promptly make available to the holder upon request the issue price of this Convertible Promissory Note, the amount of its OID, its issue date and its yield to maturity are as follows: Cindy Tallent, Chief Financial Officer, ZeniMax Media Inc., 1370 Piccard Drive, Suite 120, Rockville, Maryland 20850; Phone Number: (301) 948-2200.

No. CN-5

ZENIMAX MEDIA INC.

Convertible Promissory Note

$22,559,047.77 January 3, 2011

In consideration for the covenants and agreements set forth in the Purchase Agreement (as hereinafter defined), ZENIMAX MEDIA INC., a Delaware corporation (the "**Maker**" or "**ZeniMax**") hereby promises to pay JOHN DEE CARMACK II, an individual resident in the State of Texas (the "**Holder**," which term shall include the Holder's permitted assignees, if any, pursuant to Section 2.04(f) of the Purchase Agreement) the principal amount of **Twenty-Two Million Five Hundred Fifty-Nine Thousand Forty-Seven and 77/100 Dollars ($22,559,047.77)**, or such lesser amount as may be outstanding hereunder, as set forth in this Convertible Promissory Note (this "**Note**"). This Note is issued as a replacement note of that certain Convertible Promissory Note No. CN-1 issued by the Maker in favor of ID SOFTWARE, INC., a Texas corporation, ID DISTRIBUTION, INC., a Texas corporation, and ID COMMUNICATIONS, INC., a Texas corporation, as transferred, assigned and endorsed to the Holder on June 23, 2009 ("***Convertible Note CN-1***"), upon a partial conversion of Convertible Note CN-1 by the Holder in accordance with the provisions of Section 2.5(c) of Convertible Note CN-1.

1. Reference to Purchase Agreement; Unpaid Principal Balance. This Note evidences an obligation under, and is subject to the provisions of, the Asset Purchase Agreement dated May 19, 2009 among ZMI Acquisition Sub, LLC (now known as Id Software LLC), a

Delaware limited liability company (the "**Buyer**"), the Maker, the Holder, and the other parties named therein, as amended, modified or supplemented from time to time (the "**Purchase Agreement**"). Terms not otherwise defined herein shall have the meaning ascribed to them in the Purchase Agreement. As used in this Note, the term "**Unpaid Principal Balance**" means the outstanding, unconverted and unpaid principal balance of this Note after giving effect to (a) payments made on this Note, (b) reductions in the principal balance of this Note due to conversions to Common Stock under this Note, and (c) such reductions in the principal balance of this Note as may apply in accordance with the terms of Section 9.09 and/or Section 12.08 of the Purchase Agreement.

2. Payment and Conversion. This Note shall be payable in cash or convertible into Common Stock of ZeniMax as set forth in this Section and in the Purchase Agreement.

2.1 Payment in Cash or Common Stock of ZeniMax. In accordance with the Purchase Agreement and Section 2.5 hereof, the Unpaid Principal Balance shall be paid in cash, in shares of Common Stock of ZeniMax or a combination of cash and shares of Common Stock of ZeniMax (as the Holder may elect in the Holder's sole discretion) promptly upon the earliest of the following dates (such earliest date, the "**Maturity Date**"): (a) the date of an initial public offering of ZeniMax's Common Stock that is not a Qualified Initial Public Offering, (b) the date of a Change of Control of ZeniMax that is not a Qualified Change of Control, or (c) the eighth (8th) anniversary of the Closing Date. In the case of (x) an initial public offering of ZeniMax's Common Stock that is not a Qualified Initial Public Offering or (y) a Change of Control of ZeniMax that is not a Qualified Change of Control, ZeniMax shall send written notice of such event, if permitted, as soon as practicable prior to such event or otherwise as soon as practicable after such event. The number of shares of Common Stock that the Holder shall be entitled to receive upon the Maturity Date shall be determined by dividing the Conversion Amount (as defined below) by the Conversion Price (as defined below) as in effect as of the Conversion Date (as defined below), which shares of Common Stock shall not exceed a maximum of **Five Hundred One Thousand Three Hundred Twelve and Seventeen Hundredths (501,312.17)** shares (the "**Maximum Number of Shares**") of Common Stock of ZeniMax in the aggregate (as may be adjusted for stock splits, stock dividends, recapitalizations, combinations, reclassifications and similar events which affect such shares).

2.2 Conversion to Common Stock at Option of Holder. In accordance with the Purchase Agreement and Section 2.5 hereof, at any time and from time to time prior to the Maturity Date, the Holder shall be entitled at his, its or their option and election upon at least ten (10) Business Days' prior written notice to ZeniMax to convert all or any portion of the Unpaid Principal Balance solely into shares of ZeniMax's Common Stock at the Conversion Price and which shall not exceed the Maximum Number of Shares of Common Stock of ZeniMax in the aggregate (as may be adjusted for stock splits, stock dividends, recapitalizations, combinations, reclassifications and similar events which affect such shares).

2.3 Automatic Conversion to Common Stock. In accordance with the Purchase Agreement, the Unpaid Principal Balance shall automatically convert prior to the Maturity Date into shares of ZeniMax's Common Stock upon the earlier of (such earlier event, an "**Automatic Conversion Event**"): (i) a Qualified Initial Public Offering, or (ii) a Qualified Change of Control. The number of shares of Common Stock that the Holder shall be entitled to

receive upon an Automatic Conversion Event shall be determined by dividing the Unpaid Principal Balance by the Conversion Price as in effect as of date of the Automatic Conversion Event, which shares of Common Stock shall not exceed the Maximum Number of Shares of Common Stock of ZeniMax in the aggregate (as may be adjusted for stock splits, stock dividends, recapitalizations, combinations, reclassifications and similar events which affect such shares). In the case of an Automatic Conversion Event, the Maker shall send written notice of such event, if permitted, as soon as practicable prior to such event or otherwise as soon as practicable after such event. Upon the Automatic Conversion Event, the Unpaid Principal Balance shall be converted automatically, without any further action on the part of ZeniMax or the Holder (or their permitted successors or assigns pursuant to Section 2.04(f) of the Purchase Agreement) and whether or not this Note is surrendered to ZeniMax; provided that neither ZeniMax (or, in the case of a Qualified Change of Control, any successor assign of ZeniMax) nor its transfer agent shall be obligated to issue to the Holder any certificate or certificates evidencing the shares of Common Stock issuable upon such conversion (or any proceeds in respect of such shares) unless this Note is surrendered to ZeniMax or an affidavit of loss or destruction thereof in form and substance satisfactory to ZeniMax (including indemnification provisions in favor of ZeniMax) (**"Lost Note Affidavit"**) is delivered to ZeniMax.

2.4. Joinder Agreements. In accordance with the Purchase Agreement, as a condition precedent to ZeniMax's obligations to issue any shares of the Common Stock of ZeniMax pursuant to this Note, the Holder shall be required to execute and deliver to ZeniMax a joinder agreement to each of the Stockholders' Agreement and the Registration Rights Agreement, in each case, in substantially the forms provided in the Purchase Agreement.

2.5. Mechanics of Conversion.

(a) To convert all or any portion of the Unpaid Principal Balance into shares of Common Stock pursuant to Sections 2.1 or 2.2, the Holder shall surrender, at the principal office of the Maker on or before a Conversion Date (as hereinafter defined), this Note (or a Lost Note Affidavit) together with a written notice (a **"Conversion Notice"**) stating (i) that the Holder elects to convert all or part of the Unpaid Principal Balance into shares of Common Stock, (ii) the amount of the Unpaid Principal Balance that the Holder desires to convert into shares of Common Stock (the **"Conversion Amount"**), (iii) the Holder's name in which the Holder wishes the certificate or certificates for shares of Common Stock to be issued, and (iv) solely for purposes of any optional conversion pursuant to Section 2.2, the date on which the Holder desires to convert the Conversion Amount into shares of Common Stock, which date shall be at least ten Business Days after this Note (or a Lost Note Affidavit) and the Conversion Notice shall have been surrendered and given to the Maker. The term **"Conversion Date"** means (a) for purposes of Section 2.1, the date of the Maker's receipt of this Note (or a Lost Note Affidavit) and a Conversion Notice, and (b) for purposes of Section 2.2, the date specified for conversion in the Conversion Notice, which date shall be at least ten Business Days after Maker's receipt of this Note (or a Lost Note Affidavit) and a Conversion Notice.

(b) The number of shares of Common Stock into which the Conversion Amount is convertible shall be determined by dividing the Conversion Amount by the Conversion Price (as hereinafter defined) in effect as of the Conversion Date, which shares of Common Stock shall not exceed the Maximum Number of Shares of Common Stock of ZeniMax

in the aggregate (as may be adjusted for stock splits, stock dividends, recapitalizations, combinations, reclassifications and similar events which affect such shares). For purposes of Section 2.3 and this Section 2.5, the term "**Conversion Price**" means the conversion price of Forty-Five and 00/100 Dollars ($45.00) per share (as may be adjusted for stock splits, stock dividends, recapitalizations, combinations, reclassifications and similar events which affect the shares of ZeniMax's Common Stock).

(c) The Maker shall (or shall cause its transfer agent to), as soon as practicable after the Conversion Date, issue and deliver to the Holder a certificate or certificates for the number of shares of Common Stock to which the Holder shall be entitled pursuant to Section 2.5(b), together with cash in lieu of any fraction of a share. Such conversion shall be deemed to have been made immediately prior to the close of business on the Conversion Date, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of the Conversion Date. In connection with a conversion pursuant to Section 2.1 of this Note, if less than all of the Unpaid Principal Balance is converted to Common Stock, the Maker shall pay the Holder an amount equal to the Unpaid Principal Balance prior to the conversion less the Conversion Amount in cash by wire transfer of immediately available funds to an account or the accounts specified by the Holder in writing or by certified or banker's check. In connection with a conversion pursuant to Section 2.2 of this Note, if less than all of the Unpaid Principal Balance is converted to Common Stock, the Maker shall deliver to the Holder a replacement note having the same terms and conditions as this Note but a principal amount equal to the Unpaid Principal Balance prior to the conversion less the Conversion Amount.

3. No Interest. No interest shall accrue or be payable on this Note.

4. Prepayment. If the Maker obtains the prior written consent of the Holder, which consent may be withheld in the sole discretion of the Holder, the Maker may prepay in cash the Unpaid Principal Balance of this Note before due, in whole or in part, at any time and from time to time, without penalty.

5. Events of Default; Acceleration. If one or more of the following occurs (each, an "**Event of Default**"):

(a) the Maker shall fail to make any payment of Unpaid Principal Balance when required hereunder, which failure has not been cured within 30 days after written notice thereof from the Holder of this Note to the Maker;

(b) the Maker's commencement of a voluntary case under the United States Bankruptcy Code as from time to time in effect (the "**Bankruptcy Code**");

(c) the Maker's filing an answer or other pleading admitting or failing to deny the material allegations of a petition filed against it commencing an involuntary case under the Bankruptcy Code, or seeking, consenting to or acquiescing in the relief therein provided, or by the Maker's failing to controvert timely the material allegations of any such petition;

(d) the entry of an order for relief in any involuntary case commenced against the Maker under the Bankruptcy Code;

(e) the entry of an order by a court of competent jurisdiction (A) finding the Maker to be bankrupt or insolvent, (B) ordering or approving the Maker's liquidation, reorganization or any modification or alteration of the rights of the Maker's creditors, or (C) assuming custody of, or appointing a receiver or other custodian for, all or a substantial part of the Maker's property and such order shall not be vacated or stayed on appeal or otherwise stayed within 90 days;

(f) the filing of a petition against the Maker under the Bankruptcy Code which shall not be vacated within 90 days; or

(g) the Maker making an assignment for the benefit of the Maker's creditors, or appointing or consenting to the appointment of a receiver or other custodian for all or a substantial part of the Maker's property;

then, and in any such event, and at any time thereafter if any Event of Default shall be continuing, but in all cases subject to the provisions of Section 6 hereof, at the option of the Holder of this Note upon written notice to the Maker, the Unpaid Principal Balance shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Maker.

6. Subordination. The Maker agrees, and the Holder by accepting this Note also agrees, that the payment of Convertible Note Indebtedness (as defined herein) is hereby subordinated, as hereinafter set forth, in the right of payment to the prior payment in full of the Future Indebtedness (if any) and other obligations of the Maker in respect of Future Indebtedness; *provided* that no Future Indebtedness shall restrict the obligation of the Maker to make timely payments under this Note other than as set forth in Section 6.1, and *provided further* that a failure to make a payment on this Note when due shall be an Event of Default as provided in Section 5.1(a) of this Note. As used herein, "**Future Indebtedness**" means all secured indebtedness (other than any indebtedness secured by a Restricted Pledge) of, or guaranteed by, the Maker for borrowed money from an unaffiliated third party arising after the date hereof, including all principal of and interest (including interest that may accrue after the initiation of bankruptcy proceedings, without regard as to whether such interest is an allowed claim in such bankruptcy proceedings) on such indebtedness, and all fees, expenses and other obligations owing by the Maker in respect thereof. As used herein, "**Convertible Note Indebtedness**" means the Unpaid Principal Balance of this Note and all other obligations of the Maker under this Note.

As used herein, the following terms have the following meanings.

"**Doom Assets**" means the U.S. trademark rights in and to the following: DOOM, DOOM3, DOOM II, DOOM RPG or FINAL DOOM.

"**Quake Assets**" means the U.S. trademark rights in and to the following: ENEMY TERRITORY, ENEMY TERRITORY: QUAKE WARS, Q (stylized), Q II (stylized), Q III A (stylized), QUAKE, QUAKE 4, QUAKE II, QUAKE II MISSION PACK: THE RECKONING, QUAKE III ARENA, QUAKE III: TEAM ARENA or QUAKELIVE.

"**Rage Assets**" means the U.S. trademark rights in and to the following: RAGE or RAGE: ANARCHY.

"**Restricted Pledge**" means a Restricted Game Assets Pledge or a Restricted Membership Interests Pledge.

"**Restricted Game Assets Pledge**" means a financing transaction for borrowed money between the Buyer or ZeniMax and an unaffiliated third party involving the grant by the Buyer of a security interest (whether in the form of a pledge, security interest or mortgage) in (a) the Doom Assets or (b) two or more of the following (i) the Rage Assets, (ii) the Quake Assets or (iii) the Wolfenstein Assets, if such security interest constitutes the sole or primary collateral for the indebtedness secured thereby; *provided* that if a security interest granted in such financing transaction covers other substantial assets of the Buyer or ZeniMax, then the security interest in the assets described in clause (a) or clause (b) shall not be a Restricted Game Assets Pledge; and *provided further* that the Permitted Actions (as defined below) shall be deemed not to be Restricted Game Assets Pledges. The Doom Assets, Quake Assets, Rage Assets and Wolfenstein Assets may be referred to, singly or collectively, as "**Game Assets.**"

"**Restricted Membership Interests Pledge**" means a financing transaction for borrowed money between the Buyer or ZeniMax and an unaffiliated third party involving the grant by ZeniMax of a security interest (whether in the form of a pledge, security interest or mortgage) in the limited liability company membership interests in the Buyer, if such security interest constitutes the sole or primary collateral for the indebtedness secured thereby; *provided* that if (a) a security interest granted in such financing transaction covers other substantial assets of the Buyer or ZeniMax or (b) if the Buyer owns substantial assets other than the Game Assets, then the security interest in such limited liability company membership interests in the Buyer shall not be a Restricted Pledge; and *provided further* that the Permitted Actions (as defined below) shall be deemed not to be Restricted Pledges.

"**Permitted Actions**" means any of the following with respect to any Doom Assets, Rage Assets, Quake Assets or Wolfenstein Assets: publishing or co-publishing Contracts, licensing Contracts, distribution Contracts, development Contracts, porting Contracts, any and all commercial exploitation of Game Assets, including sequels, in any and all media, and by any and all manner or means, and/or other Contracts and transactions similar to any of the foregoing, whether such Contracts or transactions are exclusive or otherwise. The Permitted Actions may be with or without cash advances, or other consideration.

"**Wolfenstein Assets**" means the U.S. trademark rights in and to the following: RETURN TO CASTLE WOLFENSTEIN, RETURN TO CASTLE WOLFENSTEIN: OPERATION RESSURECTION, RETURN TO CASTLE WOLFENSTEIN: TIDES OF WAR, WOLFENSTEIN or WOLFENSTEIN 3D.

6.1. Liquidation. In the event of any distribution of the assets of the Maker upon any dissolution, winding up, liquidation or reorganization of the Maker (whether in bankruptcy, insolvency or receivership proceedings), or upon any assignment for the benefit of creditors, or upon any other marshaling of the assets and liabilities of the Maker for the benefit of any creditor or creditors (a "**Liquidation**"): (a) all Future Indebtedness shall first be indefeasibly

paid in full before any payment or distribution, whether in cash, securities or other property, shall be made in respect of the Convertible Note Indebtedness; and (b) any payment or distribution, whether in cash, securities or other property, which (but for the terms of this Section 6.1) would be payable or deliverable in respect of the Convertible Note Indebtedness shall be paid or delivered directly to the holders of Future Indebtedness to the extent necessary to pay all Future Indebtedness in full. Prior to a Liquidation, unless an event of default has occurred under the Future Indebtedness, the Maker shall be permitted to make, and the Holder shall be permitted to retain, payments on Convertible Note Indebtedness made in accordance with Section 2 of this Note.

6.2 Rights of Subrogation. Upon payment in full of all Future Indebtedness, the holders of the Convertible Note Indebtedness shall be subrogated to the rights of such holders of Future Indebtedness to receive payments and distributions in respect of Future Indebtedness until all such holders of the Convertible Note Indebtedness shall have been paid in full. No payment or distribution to the holders of Future Indebtedness by virtue of the provisions of this Section 6, which would otherwise have been made to the holders of the Convertible Note Indebtedness, shall, as between the Maker and its creditors other than the holders of Future Indebtedness, be deemed to be a payment by the Maker in respect of Future Indebtedness, it being understood that the terms of this Section 6 are for the purpose of defining the relative rights of the holders of Future Indebtedness on the one hand and the holders of Convertible Note Indebtedness on the other hand.

6.3 Modifications of Future Indebtedness and Security. The holders of the Future Indebtedness may, at any time and from time to time with or without notice, without impairing or releasing the subordination provisions of this Section 6, do any one or more of the following: (a) change the manner, place, terms or amount of payment of, or change or extend the time of payment of or renew or alter, the Future Indebtedness, or amend, modify, supplement or terminate in any manner any instrument, document or agreement relating to the Future Indebtedness; (b) release any person or entity liable in any manner for the payment or collection of the Future Indebtedness; (c) exercise or refrain from exercising any rights in respect of the Future Indebtedness against the Maker or any other person or entity; (d) apply any monies or other property paid by any person or entity or otherwise released in any manner to the Future Indebtedness; or (e) accept or release any security for the Future Indebtedness. Furthermore, the Holder shall not object to any borrowing from the holders of the Future Indebtedness or the grant of a security interest to the holders of the Future Indebtedness pursuant to Section 364 of the United States Bankruptcy Code by Maker, as debtor in possession.

6.4 Agreements with Holders of Future Indebtedness. The Holder shall promptly execute such agreements as any holder of Future Indebtedness may request to confirm the provisions of this Note and otherwise providing for the subordination of the Convertible Note Indebtedness.

6.5 Incorrect Payments. If any payment or distribution on account of the Convertible Note Indebtedness not permitted by the terms of this Note is received by the Holder hereof prior to the payment in full of the Future Indebtedness, such payment or distribution, as the case may be, shall be held in trust by such Holder for the benefit of the holders of the Future

Indebtedness, and shall immediately be paid over to the holders of the Future Indebtedness for application to the payment of the Future Indebtedness until paid in full.

6.6 Third Party Beneficiaries. All holders of Future Indebtedness from time to time are intended third party beneficiaries of the provisions of this Section 6 and, as such, are entitled to enforce such provisions. No modification or waiver of the terms of Section 6 of this Note shall be effective without the prior written consent of such holders of the Future Indebtedness necessary to bind all of the holders of Future Indebtedness.

6.8 Common Stock. Nothing in this Section 6 shall prohibit or restrict the conversion of all or part of this Note into Common Stock in accordance with the terms of this Note and the Purchase Agreement.

7. Set-off. Payment of any Convertible Note Indebtedness is expressly subject to the Maker's rights pursuant to the Purchase Agreement or the Transaction Documents to offset the Unpaid Principal Balance or other amounts under this Note (whether or not then due and payable) against any obligation of the Holder to the Maker, ZeniMax or their respective successors and assigns, and each of their respective Affiliates and Representatives.

8. Waiver of Demand. Except as expressly set forth herein, the Maker hereby waives presentment, demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance or enforcement of this Note.

9. Incorporation by Reference of Certain Provisions of the Purchase Agreement. The provisions of Sections 14.07 ("Notices"), 14.06 ("Choice of Law; Venue") and 14.12 ("Titles and Subtitles") of the Purchase Agreement are hereby incorporated by reference into this Note as if fully set forth herein and shall apply *mutatis mutandis* to this Note.

10. Business Days. If the last day permitted for the giving of any notice, the making of any payment or the performance of any other act required or permitted under this Note falls on a day which is not a Business Day, the time for the giving of such notice or the performance of such act will be extended to the next succeeding Business Day.

11. Modifications and Waivers. Subject to Section 6.6 hereof, this Note shall be amended, modified or waived only by a written instrument signed by the Maker and the Holder. No delay or omission in exercising any right under this Note shall operate as a waiver of that or any other right. No waiver of any single breach or default shall be deemed a waiver of any other breach or default.

12. Transfer and Assignment. Except as provided in Section 2.04(f) of the Purchase Agreement, and subject to the Maker being given prompt written notice of and a copy of each transfer, assignment or endorsement executed by Holder and each transferee or assignee pursuant to Section 2.04(f) of the Purchase Agreement (if any), this Note may not be transferred or assigned by the Holder without the prior written consent of the Maker, which consent may be conditioned upon an opinion of counsel satisfactory to the Maker that any such transfer or assignment is being made in compliance with applicable securities laws. If consent is granted by the Maker, this Note may be transferred and assigned by endorsement and delivery in the same manner as in the case of a negotiable instrument negotiable by endorsement and delivery. The

subordination provisions of this Note shall survive any sale, assignment, disposition or other transfer of all or any portion of the Convertible Note Indebtedness, and shall be binding upon the transferees, successors and assignees of each Holder.

[Signature page follows.]

The undersigned has caused this Note to be executed as of the date first above written.

ZENIMAX MEDIA INC., a
Delaware corporation

By:_____
Name:
Title:

Agreement and Acceptance

The undersigned signs below to evidence his or its agreement to, and acceptance of, this Convertible Promissory Note.

_____
John Dee Carmack II

[Signature page to Convertible Promissory Note]

The undersigned has caused this Note to be executed as of the date first above written.

ZENIMAX MEDIA INC., a
Delaware corporation

By:_____
Name:
Title:

Agreement and Acceptance

The undersigned signs below to evidence his or its agreement to, and acceptance of, this Convertible Promissory Note.

John Dee Carmack II

[Signature page to Convertible Promissory Note]

Incorporated Under the Laws of the

STATE OF DELAWARE

Fully paid NUMBER ***97*** *Non-assessable* SHARES ***500,527***

ZENIMAX MEDIA INC.

Common Stock

$0.01 par value per share

This Certifies that John Dee Carmack II is the registered holder of Five Hundred Thousand, Five Hundred Twenty-Seven (500,527) --- Shares of the Common Stock, par value $0.01 per share, fully paid and non-assessable, transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 22nd day of June A.D. 20 12

Robert A. Altman, Chairman of the Board

J. Griffin Lesher, Secretary

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For Value Received, hereby sell, assign and transfer unto

Shares

represented by the within Certificate, and do hereby irrevocably constitute and appoint

Attorney

to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated 20

In presence of

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATEVER.

Certificate No.

97

FOR

500,527

SHARES

of

ZENIMAX MEDIA INC.

ISSUED TO
John Dee Carmack II

DATED
June 22, 2012

THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE APPLICABLE SECURITIES ACT OF ANY STATE, AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED OR HYPOTHECATED UNLESS THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT COVERING SUCH SECURITIES, THE SALE IS MADE IN ACCORDANCE WITH RULE 144 UNDER THE ACT, OR THE COMPANY RECEIVES AN OPINION OF COUNSEL FOR THE HOLDER OF THESE SECURITIES REASONABLY SATISFACTORY TO THE COMPANY STATING THAT SUCH SALE, TRANSFER, ASSIGNMENT OR HYPOTHECATION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SUCH ACT.

THE TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO CERTAIN RESTRICTIONS SET FORTH IN A STOCKHOLDERS' AGREEMENT BETWEEN THE COMPANY AND THE REGISTERED HOLDER OF THESE SECURITIES, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THIS COMPANY.

THE TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO CERTAIN RESTRICTIONS SET FORTH IN A REGISTRATION RIGHTS AGREEMENT BETWEEN THE COMPANY AND THE REGISTERED HOLDER OF THESE SECURITIES, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THIS COMPANY

THE TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO CERTAIN RESTRICTIONS SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE REGISTERED HOLDER OF THESE SECURITIES, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THIS COMPANY.