SHAREHOLDER AGREEMENTS, BUY/SELL AGREEMENTS AND VOTING TRUSTS

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CHAPTER 2.1

Table of Contents

EXHIBITS

SHAREHOLDER AGREEMENTS, BUY/SELL AGREEMENTS AND VOTING TRUSTS

I. INTRODUCTION

A. Overview

This outline analyzes the use of shareholder agreements and voting trusts in connection with a start-up or venture capital funded company. Shareholder agreements and voting trusts are contractual control mechanisms that are designed to address various issues, including: (i) restrictions on the transfer of equity ownership, (ii) rights of first refusal and (iii) buy-sell provisions.

Shareholder agreements, which modify and restrict the right to transfer ownership, versus voting trusts, which create voting power disproportionate to economic ownership, are more likely to be used by business entity owners. Most owners of start-up businesses are comfortable with the concept that each owner's vote is directly proportionate to the owner's percentage ownership of the equity in the enterprise and will seek to structure the equity ownership in a way that results in majority control through straight voting. However, in the early stages of start-up and emerging companies, most owners are resistant to any ownership interest being transferred outside of the initial core group. Consequently, the existing owners of the business entity will seek a shareholder agreement that restricts the transfer of stock ownership in every conceivable fashion.

B. Choice of Entity

This outline and the sample shareholder agreement contained in Exhibit A are designed for the business corporation. Currently, there are numerous forms of business entities a business owner may choose from including: general partnerships, limited partnerships, limited liability companies, registered limited liability partnerships and statutory close corporations. Regardless of the type of business entity a business owner chooses, all entities are very similar in terms of the concepts and techniques used in restricting the transfer of their equity ownership. The main concepts that must be taken into accounting when drafting restrictions on equity ownership include:

1. events triggering the buy-sell transaction;
2. identity of the purchaser;
3. determination of price;
4. mechanics of giving notice and closing the transaction;
5. financing the purchase;
6. remedies in the event of a breach or default;
7. how are the remaining owners of the entity affected;
8. federal and state tax consequences to the entity, the selling owner and the remaining owners;
9. modification or termination of the agreement under future circumstances;
10. notice and information that must be given to third parties so that the desired transaction is binding upon them; and
11. how disputes will be resolved.

II. ETHICAL ISSUES

A. Who Am I Representing?

Many times when a shareholder agreement is to be put in place, the company is not the one seeking to accomplish it. It is the shareholders. When that group of shareholders enters your office, who are you representing? What if this is a start-up company that has yet to be formed?

Most times, you will seek to represent the company and not a particular shareholder or all of the shareholders. Consider, however, Comment 14 to Texas Rule 1.06 that states ". . . a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation may be permissible where the clients are generally aligned in interest even though there is some difference of interest among them."

When an attorney represents both the company and any of its shareholders, Texas Rule 1.12(a) states, "A lawyer employed or retained by an organization represents the entity." In addition, Texas Rule 1.12(e) provides that:

"In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing or when explanation appears reasonably necessary to avoid misunderstanding on their part."

Comment 4 to Texas Rule 1.12 recognizes that there are times when the organization's interest may be or become adverse to those of one or more of its constituents. In that circumstance:

". . . the lawyers should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care should be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged insofar as that individual is concerned. Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case."

It is generally cost-prohibitive to require that each shareholder obtain counsel before proceeding with a shareholder agreement, but each party involved in the transaction needs to understand who you are representing.

B. They're My Client?

Some courts have implied an attorney-client relationship where an unrepresented party believed that the other party's lawyer was representing his interests. What occurs is that lawyers have been deemed by the courts to have been in an attorney-client relationship with an individual or entity the attorney did not consider at the time to be a "client." Usually, this is framed as a duty to warn. For example, Texas courts have said that an attorney may be liable for failing to warn a party that the lawyer is not representing that person where conduct of the lawyer could reasonably be expected to lead the person to believe otherwise. See, *Kotzur v. Kelly*, 791 S.W.2d 254 (Tex. App. -- Corpus Christi 1990); *Parker v. Carnaham,* 772 S.W.2d 151 (Tex. App.--Texarkana 1989).

An example is *Burnap v. Linnartz*, 914 S.W.2d 142 (Tex. App.-- San Antonio 1995). The defendant law firm was engaged to draft the papers concerning the withdrawal of partners from a partnership, which included a mutual release and indemnity agreement by the remaining partners to the withdrawing partners. A subsequent default resulted in the calling of the personal guarantees of the partners. One of the partners sued the law firm for failing to explain the conflicts that arose under the indemnity agreement. The law firm had no contact with the plaintiff. The plaintiff contended that the law firm had prepared many documents for his signature and no one said that the firm was not representing him or that his interests were adverse to the others in the transaction. To establish negligence, the court said, "The fact finder must determine whether the attorney was aware or should have been aware that his conduct would have led a reasonable person to believe that the attorney was representing that person." *Id*. at 149.

Texas Rule 4.03 states, "In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding."

The comment to Texas Rule 4.03 goes further in saying that "An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. During the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel."

Exhibit D contains a sample non-representation letter that should be sent to all parties that are not represented by counsel in a transaction. Juries have not appeared hesitant in requiring an attorney to police the parties on "your side" who are not represented, perhaps even to the extent of ensuring fairness in the transaction. This, of course, contradicts your duty to zealously protect your client's interests.

C. They're Not My Client

A growing, but inconsistent, authority exists concerning whether and when an attorney can be liable for a negligent misrepresentation. The issue arises when the claim is made by a nonclient since a cause of action exists for negligence, despite whether involving conduct or a misrepresentation. When the remedy is present, there is a duty of care not to make a misrepresentation, but usually no direct undertaking to the plaintiff. Because there is no attorney-client relationship, there is no fiduciary obligation of loyalty or confidentiality to that person. Historically, most courts have rejected a duty of care by lawyer in making statements to third persons because, generally, lawyer's statements are opinion and not actionable. The relatively recent case law is expanding that boundary of liability. The most common basis for a claim of negligent misrepresentation is an opinion expressed by an attorney upon which the plaintiff claims to have relied detrimentally.

III. SHAREHOLDER AGREEMENTS

A. Purpose of Agreements

The need for shareholder agreements stems from the fact that, subject to compliance with securities law, all shares of stock in a corporation are freely transferable. Original shareholders of a corporation use shareholder agreements to prevent hostile outsiders from becoming shareholders by executing a shareholder agreement that provides for the purchase of the shares by the corporation or the remaining shareholders.

All shareholder groups have different goals for entering into a shareholder agreement. Among the possible shareholder goals are the following:

1. Simplify estate tax problems;

2. Provide liquidity for the estate of a deceased shareholder;

3. Retain core management until value can be maximized with an acquisition or public offering;

4. Proved an assured market for the corporate stock upon death, retirement or withdrawal;

5. Protect interest of minority shareholders;

6. Provide for dividends and other distributions;

7. Preserve tax elections and status (S-Corporations);

8. Provide a way to resolve managerial deadlock; and

9. Maintain proportionate ownership and/or voting control.

In addition, Texas law (Section 21.101(a) of the Texas Business Organizations Code (the "TBOC") contained in Exhibit C) permits a wide array of other modifications that may be made to Texas corporate law.

It is very important that the shareholders' goals are determined prior to the drafting of the shareholder agreement to ensure the goals are met through precise drafting. Additionally, tax counsel should be involved the process of drafting the agreement, especially if the corporation is an S corporation and/or the parties are interested in estate tax planning consequences.

B. Papering the Shareholder Agreement

Under Section 21.210 of the TBOC, the restriction on transfer of a security may be imposed by the articles of incorporation/certificate of formation, bylaws or a written agreement. Each document has its benefits and its drawbacks, which include:

1. Certificate of Formation
a. Simpler to document;
b. No requirement for an additional separate agreement or for shareholders to execute separate agreement;
c. On file for public scrutiny;
d. Requires formalities and fees to amend;
e. Unclear as to binding effect on transferees; and
f. Less likely to be enforced in family situations such as divorce.

2. Bylaws
a. Simpler to document;
b. No requirement for an additional separate agreement or for shareholders to execute separate agreement;
c. Unclear as to binding effect on transferees; and
d. Less likely to be enforced in certain family situations such as divorce.

3. Written Agreement
a. Parties are specifically identified and sign the agreement;
b. For courtroom purposes, the written agreement has the appearance of consensual contract that the average juror understands as binding on a signatory;
c. Complies with the Texas Family Code requirements;
d. Generally, more administration to ensure that all transferees properly become a party;
e. More difficult to document; and
f. Requires separate document and shareholders execution.

C. The Parties to a Shareholder Agreement

1. Sellers
a. Generally, all or a subset of the shareholders will be subject to certain restrictions, as for example an employee shareholder that leaves the corporation.
b. Others may also have certain rights in the shares of stock and need to be considered:
- Community property interests
- Parties that have acquired interests without having currently signed an agreement
- Personal representatives, guardians and executors
- Trust or estate beneficiaries

2. Buyers
a. The corporation is generally structured as a buyer, but consider:
- limitations on legal ability to purchase its shares
- limitations on financial ability to purchase its shares:
  - inhibit ability to operate according to its business plan
  - requirements for higher level of liquidity of its assets

- selling shareholder's confidence in ability to be paid if purchase price is deferred
- compliance with the corporation's debt agreements.

b. The other shareholders many times will be granted the right to purchase the shares if the corporation declines or is unable to do so. Certain issues:

- pro rata or assignable among shareholders
- option or obligation
- if obligated, is obligation joint and several.

3. The Corporation

Should the corporation be a party if it is not a potential buyer of its shares?

- No legal requirement in Delaware or Texas for the corporation to be a party
- Benefits
  - Corporation will be more likely to monitor the provisions especially those related to transfers as it keeps the stock transfer records.
  - Corporation can be named as a party to a lawsuit to enforce provisions of the agreement.

D. Triggering Events. There are numerous events that may trigger the provisions of a shareholder agreement. The following are a few of the events:

1. Voluntary transfers for value

In a newly formed corporation, many times the goal is to retain the core investors and not allow insiders into the corporation. To retain the core group, many new corporations seek buy-sell provisions, typically "rights of first refusal" in their shareholder agreements.

There are two basic types of agreements for the sale of an interest in a corporation. An "entity purchase agreement" allows for the purchase of the business interest by the corporation. Conversely, a "cross-purchase" agreement allows for the remaining shareholders to purchase the business interest. Both of these agreements may provide for optional or mandatory purchase provisions.

2. Death

Upon the death of a shareholder, most shareholder agreements are triggered. This is especially true when the deceased shareholder is a key employee of the corporation. A shareholder agreement triggered by the shareholder's death is important to the corporation because it allows the corporation to retain the investors it chooses. It is also beneficial to the shareholders because it provides for the liquidity of their shares for their estate, which may not exist in a close corporation.

3. Bankruptcy

The bankruptcy or insolvency of a shareholder usually triggers the corporation and other shareholders' obligation to repurchase all of the shares of the insolvent or bankrupt shareholder. An important point to remember is that the obligation of the corporation and the other shareholders to repurchase the insolvent or bankrupt shareholder's shares should also include the trustee or receiver in bankruptcy. Sometimes, agreements attempt to set an extremely low price for the shares that may allow the trustee to avoid the buy-sell agreement entirely.

4. Termination of Employment

Most businesses, especially closely-held corporations, will deem it essential that the buy-sell provisions of a shareholder agreement are triggered upon the termination of a shareholder's employment. Closely-held corporations usually involve very active participation by the shareholders. If a shareholder is terminated for some reason, the corporation will usually want to make sure the shareholder no longer has any rights to the business. This can be accomplished by requiring the terminated shareholder to sell his shares in the corporation to either the remaining shareholders or the corporation.

5. Divorce

Corporate lawyers preparing shareholder agreements should constantly bear in mind that some or all of the parties to a shareholders or voting agreement may be residents of a community property state such as Texas. It doesn't matter if the corporation is formed in any other jurisdiction: the character of the property ownership is determined by the jurisdiction of the marital domicile. It also doesn't matter if the stock certificates are in one name, or the name of a nominee, or in the name of a brokerage company. If the stock was acquired during the marriage, other than by gift, inheritance or with the clearly traceable proceeds of separate property, the stock is community property and the spouse of the shareholder of record is entitled to certain marital property rights.

Under Texas Family Code § 3.104(a), third parties (such as the corporation) are entitled to rely on the management and control of the spouse in whose name the stock is registered. As such, the record shareholder can vote the shares, receive dividends and transfer the stock certificate to a transferee. But community property rights exist, and in certain situations (such as divorce and death of the spouse) the

corporation and other shareholders will have to recognize the spousal interest.

The buy-sell provisions relating to divorce contained in a typical shareholder agreement can be argued to constitute partition and exchange agreements subject to the requirements of the Chapter 4 of the Texas Family Code. An agreement may be enforced if it is executed voluntarily by both spouses, is not unconscionable and the spouse receives adequate disclosure. *See* Texas Family Code §§ 4.104 and 4.105. For this reason, among many others, if any shareholder group desires that the buy-sell provisions apply in divorce situations, the documentation should (i) be in a written agreement signed by the shareholders and all spouses, (ii) contain representations of the spouses that they have received adequate disclosure, the opportunity to consult with separate counsel and have voluntarily executed the agreement and (iii) require than any future spouses of the shareholders be required to execute a counterpart of the agreement.

Clients should also be counseled that courts deciding family law matters have wide equitable discretion in the division of marital assets and may decide to divide other community assets in a way that cancel out the perceived adverse affect that a buy-sell agreement has on the shareholder's spouse.

6. Disability of Shareholder

a. Disability occurs where the shareholder is unable to continue to perform his duties as an employee of the corporation.

b. Usually the disability determination is based on a number of days that the shareholder is unable to work.

- Consider tying this to same provisions as the long-term disability plan a corporation may have.
- Consider purchasing disability insurance so that corporation is able to finance the share purchase.

c. The options and obligations are generally similar to the death triggering events.

E. Valuation Methods

1. Overview

Determining the purchase price of the shares in a shareholder agreement is the most important part of agreement and requires special attention. Before a method of valuation can be chosen, a careful analysis of the nature of the business involved must be made as well as the parties entering into the agreement. While there is no perfect valuation method, by exploring all of the valuation options, the attorney drafting the shareholder agreement will better be able to tailor a pricing provision that meets both the requirements of the parties and the particular business. The remainder of this section discusses some of the more popular valuation techniques.

2. Agreement of the Parties

The easiest method of establishing the purchase price in a buy-sell agreement is to have the parties agree on the value of the interest in a closely held corporation. This is done by assigning each party's interest a specific price in the agreement. A provision is also included that provides for the periodic recalculation of their interest. This valuation method has its advantages because it does not involve a complicated formula and it allows the parties to know up front the value of their interest in the corporation. However, there are also difficulties involved in such a valuation method. For one, the parties may fail to periodically recalculate their interests in the business. Additionally, the parties may not be able to agree on a new price.

3. Appraisal of the Interest at the Time of Purchase

Appraisal of the interest at the time of the purchase of the interest, although relatively expensive, is one method that allows for a fair price to be set for the interest that accurately reflects the value of the interest. However, this method only works well if the business is one in which the assets may be accurately and reliably appraised. If this method is used, the shareholder agreement should include provisions explaining the procedure to be used to establish the purchase price. Included in these provisions should be the name of a competent appraiser or a person specified by the parties. Furthermore, the provisions should explain in detail the formula utilized to determine the amount of the appraiser's compensation and the parties responsible for such compensation. Lastly, an alternate appraiser should be named in the event the designated appraiser is unavailable.

The appraisal method is an expensive and time-consuming process. Additionally, this method fails to consider all of the factors that the parties to the agreement may consider if they set the purchase price. Furthermore, the appraisal method allows the appraiser to place great emphasis on existing economic conditions that results in valuations that may be unreasonably depressed or inflated depending on the current economy.

4. Book Value

Close corporations many times use the book value or a similar method to value the interests in the business. Buy-sell provisions of shareholder agreements many times provide that the book value of the business, computed on the valuation date, will be

used in establishing a purchase price. Although this may at first appear to be an easy and accurate way to value the interest in a business, this method has many disadvantages. First, there are numerous definitions for the term "book value." Therefore, unless the agreement explicitly defines "book value," this method can result in disagreement among the parties. Another typical problem with this method is determining the method of accounting that will be applied to determine the "book value." This accounting problem ranges from the method used to develop the company's balance sheet to the rate of depreciation used to value the company's inventory. Taking into account these inherent problems in the "book value" method, if this method is utilized, it is advisable to carefully review and consider the accounting methods used by the company.

IV. VOTING TRUSTS

A. Overview

A voting trust is an agreement among a group of the shareholders of a corporation where record title to their stock is irrevocably transferred to a designated trustee for a term of years or for a period contingent on a certain event. The result is that the voting rights and other attributes of ownership in the corporation is separated from the shareholders. A voting trust operates to ensure that the votes are cast in the manner specified.

B. The Voting Trust Agreement

Generally, both a voting trust agreement among the group of shareholders and a voting trust certificate are necessary. The voting trust must be in writing and it must meet all of the requirements of a contract. The shares transferred to the trustee pursuant to the voting trust are registered in the name of the trustee. The TBCA and TBOC require that a copy of the voting trust agreement be deposited with the corporation at its principal place of business or registered office where it will be subject to the same right of examination by the shareholders of the corporation as the books and records of the corporation. Furthermore, the voting trust agreement deposited with the corporation is subject to examination by any holder of a beneficial interest in the voting trust, at any reasonable time for any proper purpose.

C. The Voting Trust Certificate

Upon deposit of their shares with the trustee, a shareholder will receive a voting trust certificate. This voting trust certificate is somewhat analogous to a stock certificate in that it evidences the shareholder's beneficial interest in the stock. Voting trust certificates are transferable in basically the same manner as a stock certificate. The form of the voting trust certificate is usually delineated in the voting trust agreement and typically contains the following information:

1. The name of the registered holder of the certificate;

2. The number of shares of stock the certificate holder delivered to the trustee in exchange for the certificate;

3. A summary or description of the fundamental rights and obligations, if any, of the certificate holder; and

4. Any transfer restrictions.

EXHIBIT A

SHAREHOLDER AGREEMENT

AMONG

THE CORPORATION OF TEXAS

AND

ITS SHAREHOLDERS

APRIL 29, 2010

Table of Contents

Page

SHAREHOLDER AGREEMENT

THE CORPORATION OF TEXAS

THIS SHAREHOLDER AGREEMENT (this "Agreement") is entered into effective as of April 29, 2010, by and among The Corporation of Texas, a Texas corporation (the "Company"), the shareholders of the Company listed on Exhibit "A" attached hereto, the spouses of such shareholders, and any persons who subsequently become parties to this Agreement pursuant to the terms hereof.

ARTICLE 1.

NATURE AND PURPOSES OF AGREEMENT

To secure continuity and stability of the policies and management of the Company, all parties to this Agreement agree to restrict the transfer of Shares under certain circumstances, to preserve the closely held nature of the Shares and to establish a plan for the purchase of Shares on a shareholder's bankruptcy, divorce, death (including the death of a shareholder's spouse) or the imposition of a creditor lien on the Shares.

Therefore, for and in consideration of the premises and mutual promises contained in this Agreement, the parties agree as follows:

ARTICLE 2.

DEFINITIONS

2.1 Defined Terms. As used in this Agreement, each parenthetically or otherwise defined capitalized term in other Articles or Sections of this Agreement has the meaning ascribed to it, and each of the following terms has the meaning ascribed to it in this Article 2 regardless of whether the term is parenthetically defined in the opening paragraph of this Agreement:

"Accredited Investor" means an "accredited investor" as defined in Regulation D promulgated under the Securities Act.

"Affiliate" means, in respect of any Person, any other Person who or which, directly or indirectly (through one or more intermediaries), controls, is controlled by, or is under common control with that Person. For purposes of this definition, "control" (including "controlled by" and "under common control with"), when used in respect of any Person, means the power to direct the management and policies of that Person, directly or indirectly, whether through the ownership of voting securities, by contract, or otherwise.

"Agreement" means this Shareholder Agreement as amended or restated from time to time.

"Board" means the Board of Directors of the Company.

"Business Day" means any day other than a Saturday, Sunday or a day that is a legal holiday in the State of Texas.

"Buy-Out Offer" means an offer made by any Person who or which is not then a Shareholder to purchase for cash all but not less than all then issued and outstanding Shares at a price per Share that is greater than or equal to the price per Share determined in accordance with Section 8.1.

"Buy-Out Offeror" means the Person who or which makes a Buy-Out Offer.

"Certificate of Formation" means the Company's Certificate of Formation, as amended or restated from time to time.

"Common Stock" means the common stock, [$ ● / no] par value per share, of the Company authorized by the Certificate of Formation.

"Company" means The Corporation of Texas, a Texas corporation.

"Controlling Interest" means, at any time, one or more Shareholders who or which, at such time, own of record and beneficially more than [two-thirds] of the Shares.

"Employee Shareholders" means every Shareholder that is not a Passive Shareholder, a Founder Shareholder or a Venture Capital Shareholder.

"Founder Shareholders" means [the original founders of the Company].

"GAAP" means United States generally accepted accounting principles, as adopted and consistently applied by the Company.

"Immediate Family" means parents, siblings, a spouse during marriage and not incident to divorce, lineal descendants (including those by adoption) and spouses of lineal descendants.

"Initial Public Offering" means an underwritten public offering pursuant to an effective registration statement under the Securities Act covering the offering and sale of shares of Common Stock at a price per share equal to or greater than [$5.00] and in which gross proceeds exceed [$10.0] million for the account of the Company.

"Involuntary Transfer" means, with respect to any Shares, any Transfer of such Shares other than a Voluntary Transfer or Pledge Transfer of those Shares. Examples of an "Involuntary Transfer" include an attachment, seizure or sheriff's sale in connection with the perfection of a judgment lien, sequestration, appointment of a guardian for the estate of a mentally incompetent individual, the filing of a petition or transfer in bankruptcy, an award of property to a Spouse in a divorce proceeding and a Transfer at Death.

"Offer Notice" means with respect to a proposed Voluntary Transfer to be made by a Shareholder, a written notice provided by the Shareholder of the terms, conditions and other information relating to the proposed Voluntary Transfer, including (1) the name and notice address of the Shareholder proposing to make the Voluntary Transfer; (2) the number of Shares that the Shareholder owns; (3) the number of Shares that the Shareholder proposes to Transfer; (4) a copy of the proposed transferee's offer to purchase; (5) the proposed transferee's name and notice address; (6) the price per Share that the proposed transferee will pay; (7) how the proposed transferee determined the purchase price per Share; (8) the terms and conditions of payment to be made by the proposed transferee; and (9) any other agreements, documents or instruments relating to the proposed Voluntary Transfer. Notwithstanding the date thereof, no Offer Notice will be effective, and time periods set forth herein will not begin to run, until that Offer Notice is deemed given in accordance with Section 10.2 to all parties entitled to receive it.

"Other Shareholders" means, with respect to any event or transaction, all of the Shareholders other than the Shareholder or Shareholders that are the subject of the event or transaction.

"Permitted Transferee" means any of the transferees of Shares described in Section 4.1.

"Person" means an individual, a corporation, a limited liability company, a trust, a partnership, a joint stock association, a business trust, or a government or agency or subdivision thereof.

"Personal Representative" means the executor, administrator, guardian or conservator of the estate of a Shareholder or a Spouse.

"Pro Rata" means, with respect to any Shareholder, the number of Shares owned by that Shareholder divided by the total number of Shares owned by the Other Shareholders.

"Securities Act" means the United States Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Shareholder" means, at any time, any Person who or which is or becomes a party to this Agreement pursuant to its terms and owns Shares at that time.

"Shares" means issued and outstanding shares of the Common Stock excluding treasury shares. All references to "Shares" owned by a Shareholder include the community interest, if any, of the Spouse of that Shareholder.

"Spousal Interest" means any interest in the Shares owned or claimed by Spouse pursuant to community property laws, gift, inheritance, partition or otherwise.

"Spouse" means the spouse by marriage of an individual Shareholder.

"Successor" means, with respect to any deceased individual who owned any Shares at the time of that individual's death, (i) that deceased individual's heirs or legatees then owning title to the deceased individual's Shares or the deceased individual's Personal Representative, as the case may be, and (ii) the deceased individual's surviving Spouse, to the extent that Spouse owns a community interest in the deceased individual's Shares.

"Third Party Offer" means a bona fide offer from a Person to purchase or otherwise acquire Shares from a Shareholder, other than an offer from the Company, an Affiliate of that Shareholder or another Shareholder.

"Third Party Offeror" means a Person that makes a Third Party Offer.

"Transfer" means (i) when used as a noun, any direct or indirect sale, assignment, gift, devise, pledge, hypothecation or other encumbrance, or any other disposition of Shares (or any interest in or voting power of Shares) either voluntarily or by operation of law and (ii) when used as a verb, the act of directly or indirectly selling, assigning, granting by gift, devising, pledging, hypothecating, or otherwise encumbering or disposing of Shares (or any interest in or voting power of Shares) either voluntarily or by operation of law. In connection with the use of the term "Transfer," the following terms have the meanings indicated below:

"Pledge Transfer" means, with respect to any Shares, the Transfer of all or any portion of the transferor's interest in those Shares pursuant to a pledge, hypothecation or other voluntary encumbrance.

"Transfer at Death" means, with respect to any Shares owned by an individual, the Transfer of those Shares to that individual's heirs, devisees or legatees at the death of the individual, whether the Shares pass by the laws of intestate succession, the terms of a last will and testament or pursuant to the marital property laws of any state.

"Transfer by Gift" means, with respect to any Shares, a Voluntary Transfer of all or any portion of the transferor's interest in those Shares for less than adequate consideration in money or property, but specifically excluding any Transfer at Death.

"Venture Capital Shareholder" means [names of the Venture Capitalists that invested in the Company].

"Voluntary Transfer" means, with respect to any Shares, a Transfer of any interest in those Shares by the free and voluntary act of the transferor (other than a Pledge Transfer or a Transfer of Shares resulting from the filing of a petition in bankruptcy), a Transfer by Gift and a Transfer by sale.

2.2 Additional Defined Terms. Each of the capitalized terms shown below are defined in the Section of the Agreement indicated below:

Defined Term	Cross Reference (Section)
Buy-Out Notice	5.3(b)
Call Closing Effective Date	5.1(a)
Call Notice	5.1
Call Option	5.1
Callable Shareholder	5.2(a)

Called Percentage	5.1(c)
Confidential Information	14.1
Co-Sale Notice	5.4(c)
Co-Sale Offer	5.4(a)
Designating Shareholders	9.2
Disabled	7.4(a)
Dispute	14.5
Dragged Seller	5.3(a)
Electing Participating Shareholders	5.4(d)
Full Number	5.1(d)
Mandatory Purchase Price	5.6
Notifying Shareholder	5.3(b)
Offer	3.3(a)
Offeree	5.6
Offered Securities	3.8
Offeror	5.6
Part Time Employee	5.2(c)
Participating Shareholder	5.4(b)
Participating Shares	5.4(c)
Passive Shareholder	5.2(b)
Push/Pull Offer	5.6
Recipient	3.2
Requesting Shareholder	3.8
Sale Notice	5.4(b)
Spousal Interest Purchase Price	7.1(b)
Value of the Company	8.1(a)

ARTICLE 3.

TRANSFER RESTRICTIONS GENERALLY

3.1 Shareholder Agreement. Each Shareholder and Spouse agrees that not to Transfer or permit to be Transferred all or any portion of the Shares now owned or subsequently acquired except in accordance with and subject to the terms and conditions of this Agreement. A counterpart of this Agreement will be maintained by the Company at its principal place of business.

3.2 New Shareholders. Notwithstanding any other provision of this Agreement, no Shares may be issued or Transferred to any Person who is not a party to this Agreement other than a Pledge Transfer (which is governed by Section 3.4). As a condition precedent to the acquisition of Shares by any Person (a "Recipient"), whether by issuance from the Company or by Transfer from a Shareholder, each Shareholder authorizes the Company, before Transferring or issuing Shares to a Recipient, to sign, on its behalf and as agent for each Shareholder and Spouse, with the Recipient and, if applicable, the Recipient's spouse, an adoption agreement, in substantially the form attached hereto as Exhibit 3.2, pursuant to which the Recipient and, if applicable, the Recipient's spouse agree to be bound by this Agreement. By signing the adoption agreement, the Recipient and the

Recipient's spouse agree for themselves and for their respective successors, successors in interest, heirs, legatees, devisees and legal representatives to be bound by the terms and conditions of this Agreement. On execution of the adoption agreement, the Recipient and the Recipient's spouse will become a "Shareholder" and a "Spouse" for all purposes of this Agreement. The Company will promptly deliver to each Shareholder a conformed copy of each signed adoption agreement, and attach each signed adoption agreement to the Company's copy of this Agreement.

3.3 Voluntary Transfer Restrictions. Except for a Voluntary Transfer made to the Company, Pledge Transfers approved under the provisions of Section 3.4, or under the provisions of Article 4 or Article 5, any proposed Voluntary Transfer of any Shares by a Shareholder is subject to the following provisions:

(a) Before the Voluntary Transfer, the Shareholder must send an Offer Notice to the Company and the Other Shareholders describing the proposed Voluntary Transfer (the "Offer"). If any term of the proposed Voluntary Transfer changes after the delivery of an Offer Notice, then the Shareholder must promptly notify the Company of the changes, and the subsequent notice will constitute (with the unchanged terms of the original notice) a new Offer Notice for purposes of this Section 3.3(a).

(b) For a period of 60 days after the date of the delivery of the Offer Notice to the Company, the Company has the right to elect to purchase all or any portion of the Shares that are the subject of the Offer for a per Share price equal to the offering price per Share specified in the Offer Notice. The purchase price for the Shares to be redeemed by the Company pursuant to acceptance of the Offer is payable in accordance with Section 8.2(b).

(c) If the Voluntary Transfer is for consideration, the Company has the right to purchase all of the Shares to be transferred on terms identical to the terms of the Offer Notice (or a sum of money equal in value to the total consideration to be paid). If a portion of the consideration consists of property other than cash, in determining the value of the total consideration, the property's value is its fair market value as of the time the Company exercises its right to purchase the Shares subject to the Offer.

(d) If the Company does not give timely notice of its acceptance of the Offer or if the Company rejects the Offer, the Other Shareholders have ten days after the expiration of the Company's 60-day period (plus any remaining time within that 60-day period if the Company rejects the Offer before the expiration of that period), or 70 days from the date of the delivery of the Offer Notice to the Company and the Other Shareholders, to accept or reject the Offer in writing. Each Other Shareholder's response to the Offer must specify the maximum number of Shares that Other Shareholder would be willing to purchase. If any Other Shareholder accepts the Offer, the acceptance arrangements and purchase price will be as described in Section 3.3(b). If more than one Other Shareholder accepts the Offer, each Other Shareholder who accepts the Offer will be entitled to purchase a portion of the Shares being sold equal to a percentage determined by dividing (i) the number of Shares owned by that Other Shareholder by (ii) the number of Shares owned by all Other Shareholders who accept the Offer.

(e) If the Company and the Other Shareholders do not accept the Offer to purchase all of the Shares that are the subject of the Offer by the expiration of the time periods described in Section 3.3(d) or, if before the time periods expire, the Company and the Other Shareholders reject the Offer in writing, then the Shareholder is entitled to sell the remaining Shares strictly in accordance with the terms contained in the Offer Notice.

3.4 Transfer by Pledge. No Shares may be subjected to a Pledge Transfer by any Shareholder unless the Board approves the Pledge Transfer [by a two-thirds vote of its members]. The Board has sole discretion to allow Shares to be subjected to a Pledge Transfer for any purpose. If, for any reason, any Shares subjected to a Pledge Transfer are foreclosed upon, the foreclosure will be considered an Involuntary Transfer and the provisions of Section 6.1 will govern.

3.5 Credit Agreement. A Transfer of Shares will not be permitted if, in the Company's reasonable judgment (as evidenced conclusively by a resolution of the Board), that Voluntary Transfer would cause an event of default under any credit agreement or loan agreement that the Company is a party as a borrower, and the lender in the credit agreement or loan agreement has not waived the default that would result from the proposed Transfer.

3.6 Securities Laws Compliance. Before any Transfer of Shares, the Company may require that the transferring Shareholder provide to the Company a legal opinion (in form and substance satisfactory to the Company) rendered by counsel with substantial experience in securities regulation matters that the proposed Transfer will not violate federal or applicable state securities laws.

3.7 "S" Corporation Restrictions.

(a) The Company has elected to be taxed as an "S" corporation for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"). Notwithstanding any other provision of this Agreement, unless and until the Company effectively terminates its status as an "S" corporation, any attempted Transfer of Shares that would cause the Company to lose its status as an "S" corporation under the Code is prohibited, and any such Transfer is void. Before any Transfer of Shares, the Company may require that the transferring Shareholder provide to the Company a legal opinion (in form and substance satisfactory to the Company) rendered by counsel with substantial experience in federal income taxation, particularly "S" corporations, that the proposed Transfer will not cause the Company to lose its status as an "S" corporation under the Code. Any proposed transferee that is a trust must be a qualified subchapter "S" trust under Section 1361(c)(2) of the Code.

(b) If, notwithstanding the restrictions contained in Section 3.7(a), any of the Shares are effectively made the subject of a Transfer to any Person that would cause the Company to lose its status as an "S" corporation or if any change should occur with respect to a Shareholder that would cause the Company to lose its status as an "S" corporation, then the Company has an option exercisable at any time thereafter by providing notice to that Person or that Shareholder to purchase all of the Shares owned by that Person or that Shareholder at the purchase price per Share determined pursuant to the provisions of Section 8.1 to be payable in accordance with Section 8.2(b).

3.8 Contractual Preemptive Rights. If the Company proposes to issue, sell or otherwise transfer any shares of Common Stock (or any security convertible or exchangeable into Common Stock) (the "Offered Securities"), each Shareholder has the right to purchase the number of Offered Securities provided below in this Section 3.8, *provided, however*, that the provisions of this Section 3.8 will not apply to issuances (a) to an employee (including officers and directors) of the Company or any of its subsidiaries pursuant to a stock option or similar benefit plan, employment agreement or an employee stock offering, (b) in connection with a public offering or (c) in a merger, stock exchange, purchase of assets or similar transaction. The Company must give each Shareholder at least 20 days' prior written notice of any such proposed issuance setting forth in reasonable detail the proposed terms and conditions and offering to each Shareholder the opportunity to purchase the Offered Securities at the same price, on the same terms (including, if more than one type of security is issued, each type of security in the same proportion offered), and at the same time as the Offered Securities are proposed to be issued by the Company. A Shareholder may exercise its preemptive rights by giving an irrevocable written notice to the Company not more than 10 days after delivery of the Company's notice, which notice will state the number of Offered Securities the Shareholder (each a "Requesting Shareholder" and collectively, the "Requesting Shareholders") would like to purchase. If the total number of Offered Securities requested to be purchased exceeds the total number of Offered Securities proposed to be issued and sold by the Company, then the Company will issue and sell the Offered Securities to the Requesting Shareholders pro rata based on the number of Shares (determined on a fully-diluted basis) owned by each Requesting Shareholder prior to the issuance at hand. If the total number of Offered Securities requested to be purchased does not equal the total number of Offered Securities proposed to be issued and sold by the Company, the Company will give notice to each Requesting Shareholder and the Requesting Shareholders will have three days to elect to purchase the remaining Offered Securities, provided, that any over subscription will be subject to the pro rata cut-back provision described in the preceding sentence. The provisions of this Section 3.8 will terminate upon consummation of an Initial Public Offering by the Company.

ARTICLE 4.

PERMITTED TRANSFERS BY GIFT

4.1 Permitted Transfers by Gift.

(a) Subject to the provisions of Section 4.2, the provisions of Section 3.3 do not apply to any Transfer by Gift made by a Shareholder who is a natural Person during his life to:

(i) any member of the Shareholder's Immediate Family;

(ii) a guardian of the estate of the Shareholder; or

(iii) the trustee of an inter vivos trust for the sole benefit of the Shareholder or one or more members of the Shareholder's Immediate Family, or both;

provided, that (in any case) the Company is notified in writing at least 30 days before the proposed Transfer. The notice must specify the exact name of the member, the guardian or the trust and its federal tax identification number (or indicate that the number has been applied for but not received), and the name, address and relationship to the Shareholder of the member, the guardian or all trustees and beneficiaries of the trust or trusts and their respective federal tax identification or social security numbers (or indicate that the numbers have been applied for but not received).

Any Transfer by Gift to a child who is then under 21 years old must be conditioned upon the Shareholder retaining the right to do any act with respect to the transferred Shares on behalf of the transferee that is permitted, authorized or required hereunder.

(b) Subject to the provisions of Section 4.2, the provisions of Section 3.3 do not apply to any Transfer by Gift made by a Shareholder to any Affiliate of that Shareholder; provided, that the Company is notified in writing at least 30 days before the proposed Transfer. The notice will specify the exact name of the Affiliate and its federal tax identification number (or indicate that the number has been applied for but not received) and will describe the relationship to the Shareholder that constitutes the transferee an Affiliate. The exception to Section 3.3 contained in this Section 4.1(b) is not available to any subsequent Transfer by Gift to a Person that is not an Affiliate of the Shareholder who originally made the Transfer by Gift pursuant to this Section 4.1(b).

4.2 Permitted Transfer Restrictions. Before to any Transfer of Shares is made under Section 4.1, the Permitted Transferee must become a party to this Agreement in accordance with the provisions of Section 3.2.

4.3 Transfers by Permitted Transferees. The provisions of Section 3.3 do not apply to any Voluntary Transfer of Shares made by a Permitted Transferee back to the Shareholder who originally made a Transfer by Gift to the Permitted Transferee in accordance with Section 4.1, but a written notice of that Transfer must be given to the Company at least 30 days in advance.

ARTICLE 5.

CALL OPTIONS AND BUY-OUT OFFERS

5.1 Company's Call Option. On and subject to the terms hereof, the Company has the right and option ("Call Option"), exercisable at any time by written notice ("Call Notice") to the Callable Shareholders, to redeem a portion of the Shares then owned by the Callable Shareholders. The Call Option is subject to and governed by the following provisions:

(a) As used herein, the term "Call Closing Effective Date" means with respect to any exercise of the Call Option, the last day of the second month following the month in which the Call Notice is provided to the Callable Shareholders.

(b) The purchase price per share for the Shares being redeemed pursuant to an exercise of the Call Option is equal to (i) 100% of the Company's accrual basis book value as of the Call Closing Effective Date (determined in accordance with GAAP) divided by (ii) the total number of Shares issued and outstanding on the Call Closing Effective Date (determined in accordance with the Company's stock records).

(c) For each exercise of the Call Option, the Company will be required to specify in the Call Notice effecting the exercise of the Call Option a percentage ("Called Percentage") to be used in calculating the number of Shares to be redeemed pursuant to the exercise of the Call Option. The Called Percentage may not exceed a percentage that would result in the sum of the Called Percentages of all exercises of the Call Option by the Company during the same calendar year to exceed 25%. Each Callable Shareholder will then be required to sell to the Company at the closing of the redemption in accordance with the provisions of this Agreement the Full Number of Shares for the Callable Shareholder in connection with the exercise of the Call Option.

(d) As used herein, the term "Full Number" means, with respect to any Callable Shareholder in connection with any exercise of the Call Option by the Company, a number of Shares equal to (A) the Called Percentage for the exercise of the Call Option multiplied by (B) the sum of (i) the total number of the then issued and outstanding Shares of the Callable Shareholder plus (ii) the total number of Shares of the Callable Shareholder that have been previously redeemed by the Company pursuant to prior exercises of the Call Option.

(e) The purchase price to be paid to each Callable Shareholder for the Shares being redeemed pursuant to an exercise of the Call Option will be paid in accordance with Section 8.2(a).

(f) The Call Option may be exercised at any time and from time to time by the Company, but in no event may the sum of the Called Percentages for all exercises of the Call Option during any calendar year exceed 25%.

5.2 Determination of Callable Shareholders. The following provisions determine the Shareholders that are classified as Callable Shareholders as of any particular time:

(a) As used herein, the term "Callable Shareholder" means, as of any time, a Shareholder who has been classified as a Passive Shareholder for each of the last 12 months.

(b) As used herein, the term "Passive Shareholder" means, as of any time, a Shareholder who is, at the time, (i) a Part Time Employee, (ii) deceased or (iii) not employed by the Company.

(c) As used herein, the term "Part Time Employee" means, as of any time, an employee of the Company who (i) failed to actively provide employment services to the Company for 25 hours or more per week on average during any 90 consecutive day period and (ii) received written notification from the Company within 30 days following the end of that 90 consecutive day period that he would be thereafter characterized as a Part Time Employee for purposes hereof. Once an employee has received a notice from the Company designating him as a Part Time Employee pursuant to the provisions in the immediately preceding sentence, that employee will continue to be characterized as Part Time Employee for all purposes hereof, regardless of the number of hours of employment services that may be thereafter provided to the Company by the employee, unless the Company agrees in writing, in its sole discretion, to remove that characterization as to the employee.

5.3 Drag-Along Right.

(a) Subject to the other provisions of this Section 5.3, if any Shareholder or Shareholders receive a Buy-Out Offer and a Controlling Interest elects to accept the offer as to the Controlling Interest's Shares, then the Controlling Interest has the right to require that each Other Shareholder (a "Dragged Seller") sell all of that Other Shareholder's Shares to the Buy-Out Offeror on the terms of the Buy-Out Offer.

(b) The Shareholder or Shareholders receiving a Buy-Out Offer (the "Notifying Shareholder") will promptly give the Company and the Other Shareholders a written notice (the "Buy-Out Notice") that

contains the information that must be contained in an Offer Notice and a statement that the Notifying Shareholder wishes to sell all Shares held by the Notifying Shareholder pursuant to the terms of the Buy-Out Offer as described in the Buy-Out Notice. Solely as among the parties to this Agreement, the statement of intention to sell made in the Buy-Out Notice is irrevocable and binding upon the Notifying Shareholder for a period of 30 days after the date of the delivery of the Buy-Out Notice plus an additional 60 days (or a total of 90 days after the date of the delivery of the Buy-Out Notice) if a Controlling Interest makes the same written commitment within 30 days after the Buy-Out Notice as contemplated by Section 5.3(d). The Notifying Shareholder promptly will notify the Company and the Other Shareholders in writing of any changes in the terms of the Buy-Out Offer as described in the Buy-Out Notice, which subsequent notice (with the unchanged terms of the original notice) will constitute a new Buy-Out Notice for purposes of this Section 5.3.

(c) Each Other Shareholder who desires to participate in the Buy-Out Offer will, within 30 days after the date of the Buy-Out Notice, give written notice to the Company and the Notifying Shareholder stating that all Shares held by the Other Shareholder are to be sold pursuant to the terms of the Buy-Out Offer as described in the Buy-Out Notice. Solely as among the parties to this Agreement, the statement of intention to sell is irrevocable and binding upon the Other Shareholder for a period of 90 days after the date of the delivery of the Buy-Out Notice, if a Controlling Interest makes the same written commitment.

(d) If within 30 days after the date of the delivery of the Buy-Out Notice, a Controlling Interest has given the appropriate written notice(s) indicating that the Controlling Interest wishes to sell Shares in connection with the Buy-Out Offer, then (i) the Company will promptly give written notice of that fact to all Shareholders, (ii) the Notifying Shareholder will advise the Buy-Out Offeror that all communications from the Buy-Out Offeror relating to the Buy-Out Offer must be given to all Shareholders and (iii) for a period of 90 days after the date of the delivery of the Buy-Out Notice, each Shareholder will be obligated to sell all of the Shareholder's Shares to the Buy-Out Offeror pursuant to terms and conditions that are identical for all Shareholders and to those described in the Buy-Out Notice. All Shares transferred by the Shareholders under this Section 5.3 will be sold at the same price and otherwise treated identically with the Shares being sold by the Controlling Interest to the Buy-Out Offeror; except that any Dragged Seller will not be required to make any representations or warranties in connection with the Transfer of the Shares other than representations and warranties as to (A) Dragged Seller's ownership of the Shares to be Transferred, free and clear of all liens, claims and encumbrances, (B) Dragged Seller's capacity or (if an entity) power and authority to effect the Transfer and (C) matters regarding compliance with securities laws as the Buy-Out Offeror may reasonably require (except that the Buy-Out Offeror may not require that each Dragged Seller be an Accredited Investor). Each selling Shareholder will pay the costs and expenses incurred by the selling Shareholder in connection with the sale of the Shares; except that each Shareholder who elected to require all Shareholders to participate in the Buy-Out Offer is liable for, and will pay a pro rata portion of, the out-of-pocket costs and expenses incurred by each Dragged Seller in connection with the sale of Shares (including attorneys' fees and expenses). Each Dragged Seller will take the actions reasonably required and will otherwise cooperate in good faith with the Controlling Interest in connection with consummating the sale of Shares to the Buy-Out Offeror. At the closing of the sale, each selling Shareholder will deliver certificates representing the Shares, duly endorsed, or accompanied by assignment documents signed, for transfer to the Buy-Out Offeror against payment of the applicable purchase price.

5.4 Tag-Along Right.

(a) Subject to the provisions of this Section 5.4, in the event a Controlling Interest desires to sell or otherwise dispose of Shares constituting more than 50% of all of the Shares of Common Stock pursuant to a Third Party Offer, then each of the Other Shareholders will have a co-sale right as set forth in this Section 5.4 (the "Co-Sale Offer").

(b) On the occurrence of a Co-Sale Offer, the Controlling Interest will promptly give the Company and the Other Shareholders a written notice (the "Sale Notice") that contains the information that must be contained in an Offer Notice and a statement that the Controlling Interest wishes to sell all or a specified portion of their Shares pursuant to the terms of the Co-Sale Offer as described in the Sale Notice. Solely as among the parties to this Agreement, the statements of intention to sell made in the Sale Notice are irrevocable and binding upon the Controlling Interest for a period of 60 days after the date of the delivery of

the Sale Notice. The Controlling Interest promptly will notify the Company and the Other Shareholders in writing of any changes in the terms set forth in the Sale Notice, which subsequent notice (with the unchanged terms of the original notice) will constitute a new Sale Notice for purposes of this Section 5.4.

(c) Each of the Other Shareholders has 30 days from the date of the delivery of the Sale Notice to make a demand for the Controlling Interest to cause the Third Party Offeror to purchase the Other Shareholder's Shares by giving to the Controlling Interest a notice (the "Co-Sale Notice") duly signed by the Other Shareholder specifying (i) that the Other Shareholder is making a demand for the Controlling Interest to cause the Third Party Offeror to purchase the Other Shareholder's Shares (any Other Shareholder making a demand being referred to as a "Participating Shareholder") and (ii) the number of Shares that the Participating Shareholder is requiring the Controlling Interest to cause the Third Party Offeror to purchase (the "Participating Shares"), up to the maximum number determined in accordance with Section 5.4(d). Solely as among the parties to this Agreement, the Co-Sale Notice is irrevocable and binding upon the Participating Shareholder for a period of 90 days after the date of the delivery of the Sale Notice.

(d) The participation of a Participating Shareholder in a sale under the terms of the Co-Sale Offer is conditioned upon the signing and delivery by that Participating Shareholder of all agreements and other documents the Controlling Interest is required to sign and deliver in connection with that sale. On the closing date as set forth in the Sale Notice, each Participating Shareholder will deliver to the Controlling Interest certificates representing the Participating Shares, duly endorsed or accompanied by assignment documents signed, for transfer to the Third Party Offeror or its designee, free and clear of all liens, claims or encumbrances whatsoever, and the Controlling Interest will cause the Third Party Offeror to pay to each Participating Shareholder the purchase price for the Participating Shares transferred as set forth in the Sale Notice. The maximum number of Participating Shares that a Participating Shareholder may require the Controlling Interest to cause the Third Party Offeror to purchase pursuant to a Co-Sale Notice equals the number of Shares owned by the Participating Shareholder multiplied by a fraction, the numerator of which is the number of Shares in the Third Party Offer and the denominator of which is the total number of Shares owned by the Controlling Interest; *provided, however*, that if a Participating Shareholder elects to sell less than the maximum number of Participating Shares permitted pursuant to this Section 5.4(d), the Shares not so sold may be sold by the other Participating Shareholders who have elected to sell the maximum number of Shares permitted by this Section 5.4(d) ("Electing Participating Shareholders") based on the proportion that the number of Participating Shares desired to be sold by an Electing Participating Shareholder (up to the maximum number otherwise permitted by this Section 5.4(d)) bears to the aggregate number of Participating Shares desired to be sold by all the Electing Participating Shareholders (up to the maximum number of Participating Shares permitted by this Section 5.4(d)).

5.5 Exceptions to Rights. The provisions of Sections 5.3 and 5.4 do not apply to:

(a) any reorganization, exchange, reclassification, or other conversion of shares into cash [or securities or other property] pursuant to a merger, consolidation or share exchange of the Company or any subsidiary of the Company with or into any other entity; or

(b) any sale or transfer to an underwriter as part of the Initial Public Offering.

5.6 Push/Pull Provision.

(a) Subject to the provisions of this Section 5.6, if at any time after the [second] anniversary of the date of this Agreement, any Shareholder (the "Offeror") wishes to sell all of the Offeror's Shares or purchase all of the Shares of any Other Shareholder (the "Offeree"), then the Offeror will give the Offeree a written offer (a "Push/Pull Offer") to purchase the Shares of the Offeree at a specified cash price (the "Mandatory Purchase Price") or to sell Offeror's Shares to the Offeree at the Mandatory Purchase Price. The Mandatory Purchase Price is to be expressed as a dollar amount to be paid in cash per share of Common Stock. Any Shareholder who makes a Push/Pull Offer must offer to sell all of Offeror's Shares or purchase all of the Shares of the Offeree. The Offeror will, simultaneously with giving the Push/Pull Offer to the Offeree, give to all Other Shareholders a copy of the Push/Pull Offer.

(b) Within 20 days after delivery of the Push/Pull Offer, the Offeror will supply the Offeree with a complete unsigned set of closing documents that addresses the following issues and contains the following provisions, all to be effective at the closing:

(i) a mutual release in full for all claims and liabilities of the Offeror and Offeree to each other or the Company;

(ii) an indemnification of the seller of Shares and its Affiliates and agents by the Company to the fullest extent permissible under Texas law;

(iii) a provision expressly addressing the treatment of the taxes owed by the seller of Shares as a result of ownership in the Company for the portion of the year prior to the closing of the purchase, as well as obligating the buyer of Shares to promptly prepare and file any tax returns relating to the periods in which the seller of Shares owned an interest;

(iv) a provision expressly addressing the treatment of profits, losses and distributions during the period before and up to the closing of the purchase; and

(v) a provision requiring (x) the seller of Shares to either (at the election of the seller of Shares) repay any debt owed to the Company by the seller of Shares at the closing or have the purchase price reduced by that amount or (y) requiring the Company or the buyer of Shares to repay any debt owed by the Company to the seller of Shares.

(c) The Offeree will elect to either (i) sell the Shares to the Offeror for the Mandatory Purchase Price or (ii) purchase the Shares of the Offeror for the Mandatory Purchase Price. The election of the Offeree is binding upon the Offeror.

(d) The Offeree has 30 days from and after the date of delivery of the Push/Pull Offer to notify the Offeror in writing of his election. The failure of the Offeree to give the notice is deemed an election to sell Shares to the Offeror.

(e) The closing of any purchase or sale under this Section 5.6 will occur 60 days after the date of the delivery of the Push/Pull Offer to Offeree, at which time the Mandatory Purchase Price will be paid, the Shares being sold will be delivered to the purchasing Shareholder free and clear of all liens and encumbrances, and any other instruments or documents deemed reasonably necessary by the Shareholder purchasing any of the Shares relating to the transfer or assignment of the Shares being sold will be delivered. Any Shares sold pursuant to this Section 5.6 remain subject to the terms and conditions of this Agreement. Only one Push/Pull Offer may be outstanding at any time.

ARTICLE 6.

INVOLUNTARY TRANSFER RESTRICTIONS

6.1 Involuntary Transfers.

(a) If a Shareholder has any notice or knowledge of any attempted, impending or completed Involuntary Transfer (other than an Involuntary Transfer subject to Article 7) of any of the Shareholder's Shares, whether by operation of law or otherwise, the Shareholder must give immediate written notice to the Company specifying the number of Shares that are subject to the Involuntary Transfer and all pertinent information in the Shareholder's possession relating to the Involuntary Transfer. If any Shares are ever subjected to any Involuntary Transfer (other than pursuant to Article 7), then the Company will have, at all times thereafter, the immediate and continuing option, exercisable by notice to the transferee of the Shares within [six months] after the date the Company first learns or has notice of the Involuntary Transfer, to purchase all the Shares for a purchase price per Share determined pursuant to Section 8.1, payable in accordance with Section 8.2(b).

(b) If the Company does not exercise the option during the [six-month] period, or does not choose to purchase all Shares subject to the Involuntary Transfer, each Other Shareholder whose Shares are not subject to the Involuntary Transfer has an identical option for [30 days] following the [six-month] period. If more than one Shareholder exercises the option, each Shareholder is entitled to purchase that portion of the remaining Shares equal to a percentage determined by dividing (i) the number of Shares owned by the Other Shareholder by (ii) the number of Shares owned by all Other Shareholders who exercise the option.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Company has no obligation to recognize on its books or for any other purposes any Involuntary Transfer of any Shares unless and until (i) the transferee of the Shares pursuant to the Involuntary Transfer has offered all the Shares for sale to the Company and the Other Shareholders, as applicable, at the price per Share determined pursuant to Section 8.1, payable in accordance with Section 8.2(b) and (ii) the transferee of the Shares pursuant to the Involuntary Transfer becomes a party to this Agreement in accordance with the provisions of Section 3.2.

6.2 Transfers in Bankruptcy.

(a) If a Shareholder or Spouse is the named debtor in bankruptcy or receivership proceedings, then the Company will have, at all times thereafter, the immediate and continuing option, exercisable by notice to the bankruptcy or receivership trustee or other applicable party within [six months] after the Shareholder or Spouse first becomes such a debtor, to purchase all of the Shares that are the subject of such bankruptcy or receivership proceedings for a purchase price per Share determined pursuant to Section 8.1, payable in accordance with Section 8.2(b).

(b) If the Company's purchase option described in Section 6.2(a) should not be exercised by the Company for any reason or is not enforceable by the Company for any reason and all or any portion of the Shares subject to the bankruptcy or receivership proceedings are proposed to be made the subject of any kind of Transfer, then the Transfer will be deemed to be a Voluntary Transfer by a Shareholder and the Transfer will be subject to the provisions of Section 3.3.

ARTICLE 7.

BUY-SELL AGREEMENT

7.1 Death of Spouse.

(a) Each Spouse agrees to bequeath the entire Spousal Interest of the Spouse to the Shareholder. This promise is made with Spouse's full knowledge, is made for good and valuable consideration and constitutes a covenant binding on Spouse's estate, Personal Representative, heirs and beneficiaries.

(b) If a Spouse dies and does not leave a valid will admitted to probate bequeathing the entire Spousal Interest to Shareholder, or if any will contest is filed by any Person challenging the validity of the bequest of the Spousal Interest to Shareholder, then Shareholder and Spouse's Personal Representative must each notify the Company of that event. For a period of 90 days following the earliest to occur of (i) the qualification of Spouse's Personal Representative, (ii) the entry of an order of the probate court concluding that Spouse's will does not bequeath the entire Spousal Interest to Shareholder or (iii) the filing of a will contest suit, the Shareholder has the exclusive right and option to purchase all of Spousal Interest or Shares equivalent to the Spousal Interest at the purchase price per Share determined pursuant to Section 8.1 (the "Spousal Interest Purchase Price"), payable in accordance with Section 8.2(b).

(c) If the Shareholder does not purchase the entire Spousal Interest pursuant to Section 7.1(b) within the 90-day period, then for a period beginning on the first day after expiration of the 90-day period and ending one year after the entry of a final order by the probate court disposing of the Spousal Interest in the Shares, the Company has an exclusive option to purchase all or any portion of the Spousal Interest not purchased by or awarded to the Shareholder at the Spousal Interest Purchase Price, payable in accordance with Section 8.2(b). To the extent that the Company elects not to purchase all of the Spousal Interest in the Shares, the Other Shareholders have the right to elect to purchase all or any portion of the remaining Spousal

Interest not purchased by the Company on a Pro Rata basis or as the Other Shareholders may otherwise agree among themselves.

(d) If the Company and the Other Shareholders do not purchase all of the Spousal Interest offered to them under Section 7.1(c), then each Successor of that Spouse is entitled to require the Company to transfer that remaining Spousal Interest, or Shares equivalent to it, to that Successor upon (i) the Successor providing the Company documentation as requested by the Company to evidence the rightful ownership interest of the Successor in and to that remaining Spousal Interest, or Shares equivalent to it and (ii) the Successor becoming a party to this Agreement in accordance with the provisions of Section 3.2.

7.2 Death of Shareholder.

(a) On the death of a Shareholder, the Company and the Other Shareholders have the exclusive right and option to purchase all or any portion of the Shares owned by the Shareholder, and the Shareholder (or Personal Representative) has the right and option to require the Company to purchase all or any portion of the Shares in each case at the purchase price per Share determined pursuant to Section 8.1, payable in accordance with Section 8.2(a). On the exercise of this option, the Shareholder's Personal Representative is obligated and bound to sell the Shares to the Company and the Other Shareholders on these terms, and the Company is obligated to purchase the Shares, to the extent it may lawfully do so. Notice of the exercise of the option granted pursuant to this Section 7.2 is to be given to or by the Shareholder (or Personal Representative) within [30 days] after the Company receives notice of the qualification of Shareholder's Personal Representative.

(b) As between the Company and the Other Shareholders, the Company has the first and prior right to purchase all or any portion of the Shares and the Other Shareholders have the right to purchase all or any portion of the remaining Shares not purchased by the Company on a Pro Rata basis or as the Other Shareholders may otherwise agree among themselves.

(c) If, and to the extent that, the Company and the Other Shareholders do not purchase all of the Shares, then each Successor of that Shareholder is entitled to require the Company to Transfer the appropriate portion of the Shareholder's Shares to the Successor on (i) the Successor providing the Company documentation as requested by the Company to evidence the rightful ownership interest of the Successor in and to the Shareholder's Shares and (ii) the Successor becoming a party to this Agreement in accordance with the provisions of Section 3.2.

7.3 Divorce of Shareholder and Spouse. If any Shares are owned by a Shareholder and Spouse jointly and that Shareholder or Spouse files a petition for divorce or institutes any other legal proceedings to terminate their marriage, then the following procedures apply:

(a) If the marriage of Shareholder and Spouse is terminated by divorce or annulment, and Shareholder does not obtain all of Spouse's interest in the Shares incident to the divorce or annulment, then Shareholder and Spouse will simultaneously give written notice to the Company within 30 days after the effective date of the final, non-appealable divorce decree or of the annulment. The written notice will specify the effective date of termination of the marriage and the number of Shares in which the Shareholder's former Spouse retains an interest. For a period of 60 days after the effective date of termination of the marriage, the Shareholder has an exclusive option to purchase all or any portion of the former Spouse's retained interest in the Shares at the purchase price per Share determined pursuant to Section 8.1, payable in accordance with Section 8.2(b). The Shareholder's 60-day option is exercised by giving the former Spouse and the Company a written notice specifying the number of Shares as to which the option is being exercised.

(b) If the Shareholder does not purchase all of the former Spouse's Shares, then for a period of 60 days after the lapse of the Shareholder's 60-day option period, the Company has an exclusive option exercisable by written notice to the former Spouse to purchase all or any portion of the former Spouse's remaining Shares at the purchase price per Share determined pursuant to Section 8.1, payable in accordance with Section 8.2(b). To the extent that the Company elects not to purchase all of the former Spouse's remaining Shares, the Other Shareholders have the right to purchase all or any portion of the remaining

Shares not purchased by the Company on a Pro Rata basis or as the Other Shareholders may otherwise agree among themselves.

(c) If any option is exercised pursuant to this Section 7.3, then the former Spouse is obligated to sell the Shares retained incident to divorce or annulment with respect to which the option or options are exercised. If a Shareholder should exercise the option to purchase any number of Shares owned by the former Spouse pursuant to the provisions of this Section 7.3, then the provisions of Sections 8.2, 8.3, 10.1 and 10.2 apply with respect to the purchase of the Shares by the Shareholder in the same manner as if the Company was redeeming the Shares from the former Spouse.

(d) Shareholder and Spouse each agree that the Company may intervene in their divorce or annulment proceeding without their objection for the purpose of enforcing the Company's and the Other Shareholders' rights under this Section 7.3.

7.4 Disability of Shareholder.

(a) For purposes of this Section 7.4, a Shareholder will be deemed "Disabled" if the Shareholder is unable to perform substantially all of Shareholder's duties as an employee or consultant of the Company due to injury, illness or disability (physical or mental) and the disability either (i) remains in effect for any 90 consecutive days or (ii) remains in effect for any combination of 180 days (whether consecutive or not) out of any 360-day period. The determination of disability is to be made in good faith by a majority of the Board. The Board's determination is binding on Shareholder and may only be set aside by a court or arbitrator based upon a showing of bad faith of the Board by clear and convincing evidence.

(b) If a Shareholder becomes Disabled as determined under Section 7.4(a), then the Company and the Other Shareholders have the exclusive right and option to purchase all or any portion of the Shares owned by the Disabled Shareholder, and the Disabled Shareholder (or Personal Representative) has the right and option to require the Company to purchase all or any portion of the Shares in each case at the purchase price per Share determined pursuant to Section 8.1, payable in accordance with Section 8.2(a). On the exercise of the option, the Disabled Shareholder (or Personal Representative) is obligated and bound to sell the Shares to the Company and the Other Shareholders on those terms, and the Company is obligated to purchase all the Shares, to the extent it may lawfully do so. Notice of the exercise of the option granted pursuant to this Section 7.4 is to be given to or by the Disabled Shareholder (or Personal Representative) within 180 days of the date on which the Shareholder is determined Disabled by the Board.

(c) As between the Company and the Other Shareholders, the Company has the first and prior right to purchase all or any portion of the Shares and the Other Shareholders have the right to purchase all or any portion of the remaining Shares not purchased by the Company on a Pro Rata basis or as the Other Shareholders may otherwise agree among themselves.

7.5 Termination of Employment or Competition.

(a) If (i) an Employee Shareholder's employment or consulting agreement with the Company terminates or ceases (by action of the Company or the Employee Shareholder) or (ii) a Shareholder becomes interested (directly or indirectly), as an employee, officer, director, shareholder, partner, consultant or advisor, with a competitor of the Company (as determined by the Board), then the Company and the Other Shareholders have the exclusive right and option to purchase all or any portion of the Shares owned by the Shareholder at the purchase price per Share determined pursuant to Section 8.1, payable in accordance with Section 8.2(b). For purposes of this Section 7.5(a), the "Shares" owned by the Shareholder includes any Shares held by any Person who received them pursuant to a Transfer by Gift under Article 4. Notice of the exercise of the option granted pursuant to this Section 7.5(a) is to be given to (i) the Employee Shareholder within 90 days of the date on which the Employee Shareholder terminates employment or consulting with the Company or Employee Shareholder's employment or consulting is terminated by the Company or (ii) the Shareholder within 90 days of the date on which the Company receives notice of the Shareholder's interest in a competitor.

(b) As between the Company and the Other Shareholders, the Company has the first and prior right to purchase all or any portion of the Shares and the Other Shareholders have the right to purchase all or

any portion of the remaining Shares not purchased by the Company on a Pro Rata basis or as the Other Shareholders may otherwise agree among themselves.

7.6 Life and Disability Insurance. At all times during the term of this Agreement, the Company will maintain life and disability insurance policies on the lives of each Founder Shareholder in amounts the Company reasonably believes would be sufficient to purchase all of that Founder Shareholder's Shares based on the purchase price per share pursuant to Section 8.1. Any insurance proceeds in excess of, or not needed to pay, the amount required belong to the Company. If and when a Founder Shareholder for whom an insurance policy has been issued ceases to own Shares, the Company may surrender to the insurance company for its cash surrender value, if any, each policy relating to that Founder Shareholder, or may hold, dispose of or discontinue the policies in any lawful manner it deems advisable; *provided, however*, that the Founder Shareholder has the option for 90 days after ceasing to own Shares to purchase the policies owned by the Company, at their cash surrender value, if any, plus any unearned premium.

ARTICLE 8.

PURCHASE PRICE AND TERMS

8.1 Purchase Price. The parties to this Agreement recognize and understand that the Common Stock is closely held, that no public market exists for the Common Stock and that, consequently, a fair market value for the Shares is not readily determinable. Therefore, as used throughout this Agreement, the phrase "the purchase price per Share determined pursuant to Section 8.1" is the greater of (i) the Value of the Company *divided by* the total number of Shares then issued and outstanding (determined in accordance with the Company's stock records) or (ii) the average of the purchase prices per Share at which Shares were repurchased by the Company within the six consecutive months preceding the date of the event or circumstance triggering, or first notice initiating, the time period for the purchase right or option of any party to this Agreement under this Agreement. The "Value of the Company" means 90% of the greatest of the following amounts:

(a) The excess of the total amount of the assets of the Company over the total amount of the liabilities of the Company as shown on or reflected by the Company's most recent quarterly financial statements (prepared in accordance with GAAP).

(b) The Company's gross revenue from operations for the last four consecutive quarters, as shown on or reflected by, or determined from, the Company's most recent quarterly financial statements (prepared in accordance with GAAP).

(c) An amount equal to ten times the Company's net income for the last four consecutive quarters, as shown on or reflected by, or determined from, the Company's most recent quarterly financial statements (prepared in accordance with GAAP).

8.2 Payment of Purchase Price. Payment of the purchase price for Shares purchased by the Company and the Shareholders (as the case may be) pursuant to this Agreement (the "Purchasers") is to be made as follows (though all or any of the Purchasers may always elect to pay the purchase price in full in cash instead of on the following terms):

(a) If the payment of the purchase price is specified herein to be paid in accordance with this Section 8.2(a), then payment of the purchase price is to be made as follows:

(i) On the closing date of the purchase, the Purchasers deliver to the selling Shareholder a cash down payment equal to 80% of the total purchase price.

(ii) The balance of the total purchase price will be paid in accordance with the terms of a two year recourse promissory note in substantially the same form as is attached as Exhibit 8.2 hereto with the following payment terms:

(1) Interest only is payable on each of the first four quarterly installments following the closing date.

(2) The next four quarterly installments consist of a principal payment equal to one-fourth of the original principal balance of the promissory note and all accrued and unpaid interest under the promissory note.

(b) If the payment of the purchase price is specified herein to be paid in accordance with this Section (b), then payment of the purchase price is to be made as follows:

(i) On the closing date of the purchase, the Purchasers deliver to the selling Shareholder a cash down payment equal to 20% of the total purchase price.

(ii) The balance of the total purchase price will be paid in accordance with the terms of a four-year recourse promissory note in substantially the same form as is attached as Exhibit 8.2 hereto with the following payment terms:

(1) Interest only is payable on each of the first eight quarterly installments following the closing date.

(2) The next eight quarterly installments consist of a principal payment equal to one-eighth of the original principal balance of the promissory note and all accrued and unpaid interest under the promissory note.

8.3 Deliveries at Closing. At the closing of the purchase of any Shares to be made by the Purchasers under any provision of this Agreement, the selling Shareholder and the Purchasers are obligated to sign and deliver the following instruments, certificates and agreements:

(a) The Purchasers deliver to the selling Shareholder the following:

(i) The amount of cash and the promissory note required to be delivered pursuant to Section 8.2(a) or Section 8.2(b), whichever is applicable.

(ii) An originally signed Stock Pledge and Purchase Money Security Agreement in substantially the form attached as Exhibit 8.3 hereto, together with certificates evidencing all of the Shares being purchased and signed blank stock powers to be held as collateral security by the selling Shareholder for payment of the promissory note delivered by the Purchasers to the selling Shareholder.

(b) The selling Shareholder delivers to the Purchasers the following:

(i) Certificates representing the Shares being purchased by the Purchasers endorsed for transfer to the Purchasers, free of all liens, claims and encumbrances.

(ii) Other instruments of assignment, certificates of authority, tax releases, consents to transfer and instruments in evidence of title in compliance with this Agreement as may be reasonably required by the Purchasers.

ARTICLE 9.

VOTING AGREEMENT

9.1 Proxies. Any proxy granted by any of the Shareholders to vote or give a consent regarding Shares is subject to the provisions of this Article 9.

9.2 Nomination and Election of Directors. At each annual meeting of the Shareholders or any special meeting called for the purpose of electing directors of the Company or at any other time or times as they may agree, (i) the Founder Shareholders (as a group) and (ii) the Venture Capital Shareholders (as a group) each have the right to nominate three members of the Board (but only so long as at least one member of the nominated group is a holder of Common Stock), and the Employee Shareholders (as a group) (for purposes of this Article 9, collectively with the Founder Shareholders and the Venture Capital Shareholders, the "Designating Shareholders") have the right to designate or nominate one member of the Board (but only so long as at least one Employee Shareholder is a holder of

Common Stock), and each Shareholder will, and agrees to, vote or give a consent regarding all Shares in favor of the election of all the individuals so nominated by the Designating Shareholders.

9.3 Removal of Directors. No Shareholder may vote or give a consent regarding any Shares in favor of the removal of a director nominated by any Designating Shareholder; *provided, however*, that on the request of a Designating Shareholder to remove a director nominated by the requesting Designating Shareholder, each Shareholder will, and agrees to, vote or give a consent regarding all Shares in favor of the removal of that director.

9.4 Vacancies in the Board. If any vacancy occurs on the Board because of the death, disability, resignation, retirement or removal of a director nominated and elected in accordance with this Article 9, the Designating Shareholder who nominated the individual creating the vacancy or, if the vacancy occurs because the Designating Shareholder having the right to nominate a director failed to do so, the Designating Shareholder who has the right to make the nomination will nominate a successor, and each Shareholder will, and agrees to, vote or give a consent regarding all Shares in favor of the election of the nominated successor to the Board. Any vacancy that occurs is required to be filled as promptly as possible on the request of the Designating Shareholder having the right to nominate an individual to fill the vacancy.

9.5 Actions as Designating Shareholders. Each of the Founder Shareholders, the Venture Capital Shareholders and the Employee Shareholders may take any actions as a group under this Article 9 as Designating Shareholders only by the affirmative vote or consent of the holders of a majority of the Shares of that group.

9.6 Size of Board. The Board will consist of [number] members and up to two additional "outside" directors who are not affiliated with the Company or any of the Shareholders and who are nominated by the Board.. If the Board or the Company (without the involvement of any of the Shareholders) amends the Company's Bylaws or Certificate of Formation or repeals the Company's Bylaws or Certificate of Formation and adopts new Bylaws or a new Certificate of Formation and the amendment or new Bylaws or Certificate of Formation affects the size or composition of the Board in violation of this Agreement, each Shareholder will use reasonable best efforts to cause the amendment or new Bylaws or Certificate of Formation to be further amended so as to be consistent with this Agreement, and each Shareholder agrees to vote or give a consent regarding all Shares accordingly.

9.7 Amendment of Bylaws or Certificate of Formation. No Shareholder will vote or give a consent regarding all Shares in favor of an amendment or repeal of the Company's Bylaws or Certificate of Formation or for the adoption of new Bylaws or Certificate of Formation by the Company, without the consent of all the Other Shareholders, if the amendment or repeal of the Bylaws or Certificate of Formation or the new Bylaws or Certificate of Formation would affect the size or composition of the Board in violation of this Agreement.

9.8 Employee Shareholders. The Employee Shareholders' right as a group to be a Designating Shareholder pursuant to the provisions of this Article 9 terminates if all of the Employee Shareholders cease to be employed by the Company.

9.9 Voting Agreement. The voting agreement set forth in this Article 9 is intended as a voting agreement under Section 6.252 of the Texas Business Organizations Code. Accordingly, a copy of this Agreement will be deposited with the Company at its principal executive office or registered office, and each certificate representing the Shares will contain a conspicuous notation regarding the existence of this Agreement.

9.10 Director and Officer Liability Insurance. The Company will consider and may purchase and maintain insurance, on behalf of any director or officer of the Company, against any liability asserted against, and incurred by, a director or officer in his capacity as a director or officer of the Company, in amounts as the Board may deem appropriate.

ARTICLE 10.

CLOSING DATE AND NOTICES

10.1 Closing Date. Whenever the Purchasers agree or become obligated to purchase Shares under the terms of this Agreement, the closing date of the transaction will be a Business Day and time specified by the Company (or if the Company is not one of the Purchasers, then by the Purchasers) at a designated location. Unless

the parties agree to the contrary, the closing date may not be more than 90 days after the event or notice that fixed the obligation of the Purchasers to purchase the Shares. Notice of the details of closing will be furnished by the Company (or if the Company is not one of the Purchasers, then by the Purchasers) no later than ten days before the closing date.

10.2 Notices; Offers; Acceptances. All notices, communications and deliveries must be in writing, must be signed by or on behalf of the party, must specify the section of this Agreement under which it is given or made and must be delivered by personal delivery, by facsimile, by certified or registered mail (return receipt requested), or by courier service, with postage or other fees prepaid and addressed to the parties hereto at the address or number indicated beneath their respective signatures on the execution pages of this Agreement or in an adoption agreement under Section 3.2, as applicable, or at such other address and number as a party has previously designated by written notice given to the other parties in the manner set forth above. Any notice, communication or delivery will be deemed given or made (a) on the date of delivery if delivered in person or by courier service (or upon the date of attempted delivery where delivery is refused), (b) on transmission by facsimile if receipt is confirmed by telephone or (c) on the fifth business day after it is mailed by registered or certified mail.

ARTICLE 11.

ENFORCEMENT

11.1 Creation of Sufficient Surplus. If the surplus of the Company is determined to be legally insufficient (under then existing law) to enable the Company to purchase any Shares the Board has determined to purchase under the terms of this Agreement, the Board, to the extent legally possible, will take actions, adopt resolutions and cause certificates and other documents to be filed as may be necessary to create sufficient surplus to permit the purchase, and the Shareholders agree to perform required acts, execute instruments and vote the Shares in a manner as may be reasonably necessary to authorize or ratify any action taken to create sufficient surplus.

11.2 Endorsements on Stock Certificates. Each certificate representing Shares now owned or hereafter owned by the Shareholders or any transferee must conspicuously state substantially as follows, in addition to any other legends required by law:

> THESE SHARES ARE SUBJECT TO (I) CERTAIN RESTRICTIONS AGAINST TRANSFER AND WITH RESPECT TO VOTING AND (II) CERTAIN OPTIONS TO PURCHASE PURSUANT TO THE TERMS OF A SHAREHOLDER AGREEMENT AMONG THE CORPORATION AND ITS SHAREHOLDERS. THE CORPORATION WILL FURNISH WITHOUT CHARGE A COPY OF THE AGREEMENT TO THE RECORD HOLDER OF THIS CERTIFICATE ON WRITTEN REQUEST TO THE SECRETARY OF THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS OR REGISTERED OFFICE.
>
> THESE SHARES ARE SUBJECT TO THE PROVISIONS OF A SHAREHOLDER AGREEMENT THAT MAY PROVIDE FOR MANAGEMENT OF THE CORPORATION IN A MANNER DIFFERENT THAN IN OTHER CORPORATIONS AND MAY SUBJECT A SHAREHOLDER TO CERTAIN OBLIGATIONS OR LIABILITIES NOT OTHERWISE IMPOSED ON SHAREHOLDERS IN OTHER CORPORATIONS.
>
> THESE SHARES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER ANY APPLICABLE STATE SECURITIES LAWS, AND THEY CANNOT BE OFFERED FOR SALE, SOLD, TRANSFERRED, PLEDGED OR OTHERWISE HYPOTHECATED EXCEPT IN ACCORDANCE WITH THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND STATE SECURITIES LAWS OR UPON DELIVERY TO THIS CORPORATION OF AN OPINION OF LEGAL COUNSEL SATISFACTORY TO THE CORPORATION THAT AN EXEMPTION FROM REGISTRATION IS AVAILABLE.
>
> THIS CORPORATION HAS ELECTED TO BE TAXED AS AN "S" CORPORATION FOR FEDERAL INCOME TAX PURPOSES UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"). ANY SALE, TRANSFER OR OTHER FORM OF DISPOSITION OF THESE SHARES THAT WOULD CAUSE THIS CORPORATION TO LOSE ITS STATUS AS AN "S" CORPORATION UNDER THE CODE IS VOID.

11.3 Breach and Equitable Relief. Any purported Transfer in breach of any provision of this Agreement is void; will not operate to Transfer any interest or title in the purported transferee; and will constitute an offer by the breaching Shareholder to sell Shareholder's Shares to the Company and the Other Shareholders at the purchase price

per Share determined pursuant to Section 8.1, payable in accordance with Section 8.2(b). In connection with any attempted Transfer in breach of this Agreement, the Company may refuse to Transfer any Shares or any stock certificate tendered to it for Transfer, in addition to and without prejudice to any other rights or remedies available to the Company. Each party to this Agreement acknowledges that each other party will suffer immediate and irreparable harm if a party hereto breaches, attempts to breach or threatens to breach this Agreement, and that monetary damages will be inadequate to compensate the non-breaching parties for any actual, attempted or threatened breach. Accordingly, each party agrees that each of the other parties will, in addition to any other remedies available to them at law or in equity, be entitled to specific performance or temporary, preliminary and permanent injunctive relief to enforce the terms and conditions of this Agreement without the necessity of proving inadequacy of legal remedies or irreparable harm, or posting bond, any requirements to equitable and injunctive relief being specifically waived.

11.4 Governing Law and Severability. All questions concerning the construction, validity and interpretation of this Agreement, including the relative rights of the Company and the Shareholders, are governed by and construed in accordance with the laws of the State of Texas. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions will remain in full force and effect and will in no way be affected, impaired or invalidated. It is stipulated and declared to be the intention of the parties that they would have signed this Agreement had any terms, provisions, covenants and restrictions that may be hereafter declared invalid, void or unenforceable not initially been included herein.

ARTICLE 12.

EFFECT

12.1 Binding Effect. Nothing in this Agreement, express or implied, is intended to confer on any party, other than the parties hereto and their respective permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, and no Person who is not a party to this Agreement may rely on the terms except as otherwise set out. This Agreement (a) constitutes the entire agreement among the parties relating to the subject matter hereof and (b) supersedes all previous understandings and agreements among the parties relating to the subject matter hereof, both written or oral. This Agreement is binding on, inures to the benefit of and is enforceable by the parties hereto, including the Company and its successors and assigns, as well as the Shareholders and Spouses and their respective heirs, legatees, devisees, legal representatives, successors and permitted assigns.

12.2 Spouses. The Spouses are fully aware of, understand and agree to the provisions of this Agreement and its binding effect on any interest that Spouse may have by reason of marriage to a Shareholder in any Shares subject to the terms of this Agreement held in the Shareholder's name on the stock records of the Company at or after execution of this Agreement. Any obligation of a Shareholder or legal representative to sell or offer to sell Shares under the terms of this Agreement includes an obligation on the part of that Shareholder’s Spouse to sell or offer to sell any interest that Spouse may have in the Shares in the same manner.

12.3 Representations and Warranties. No party to this Agreement is making any representations or warranties concerning the business operations or financial condition of the Company since all parties are equally familiar with the business operations and financial condition of the Company. All parties hereto represent, warrant and covenant that they have full power, legal capacity and authority to enter into and perform this Agreement in accordance with its terms, and that they will perform all agreements made by them hereunder in accordance with this Agreement.

ARTICLE 13.

ASSIGNMENT, AMENDMENT, WAIVER AND TERMINATION

13.1 Assignment. No party to this Agreement may assign its rights or delegate its obligations hereunder without the prior written consent of each party. Any attempted assignment without prior written consent will be void *ab initio*. Subject to the preceding two sentences, this Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

13.2 Amendment. This Agreement may be amended at any time by a written instrument signed by the Company (which will require Board approval) and Shareholders holding at least two-thirds of the Shares then subject to this Agreement; provided, that no amendment may adversely affect any rights of any party under this Agreement that have vested prior to amendment and that none of the Designating Shareholders' respective rights under Article 9 may be amended without the approval of each of the Designating Shareholders. The Company promptly will send a conformed copy of each signed amendment to this Agreement to all parties hereto.

13.3 Waiver. Waiver of any of the terms or conditions of this Agreement may be made only by a written instrument signed by the Company (which will require Board approval) and Shareholders holding at least two-thirds of the Shares then subject to this Agreement; provided, that no waiver of any provision of Article 9 may be effected without the approval of each of the Designating Shareholders. The failure of any party at any time to require performance of any provision hereof in no manner affects the right to enforce the provision. No waiver by any party of any term or condition, or the breach of any term or condition contained herein is deemed to be (a) a further or continuing waiver of the term, condition or breach or (b) a waiver of any other term, condition or breach of any other term or condition.

13.4 Termination. This Agreement terminates upon the occurrence of any of the following events:

(a) The written agreement of the Company (which will require Board approval) and Shareholders holding at least two-thirds of the Shares then subject to this Agreement, provided that no termination may affect adversely any rights that have vested prior to termination;

(b) The naming of the Company as debtor in bankruptcy proceedings for a period of 60 days without dismissal, the execution by the Company of an assignment for the benefit of its creditors, the appointment of a receiver for the Company, or the voluntary or involuntary liquidation or dissolution of the Company; or

(c) The consummation of an Initial Public Offering.

The Company promptly will give written notice of any termination of this Agreement to all other parties hereto.

ARTICLE 14.

MISCELLANEOUS

14.1 Confidentiality. Each Shareholder acknowledges and agrees that:

(a) the Shareholder's ownership interest in the Company affords Shareholder access to Confidential Information regarding the Company and its business;

(b) the dissemination or use of Confidential Information in any manner inconsistent with protecting and furthering the Company, its business and its prospects would cause the Company great loss and irreparable harm; and

(c) one of the duties of ownership in the Company is to prevent the dissemination or use of Confidential Information in any manner inconsistent with protecting and furthering the Company, its business and its prospects.

Therefore, each Shareholder agrees not to for himself or on behalf of any other Person (whether as an individual, agent, servant, employee, employer, officer, director, shareholder, investor, principal, consultant or in any other capacity), directly or indirectly use or disclose to any Person any Confidential Information; *provided, however*, that (after reasonable measures have been taken to maintain confidentiality and after giving reasonable notice to the Company specifying the information involved and the manner and extent of the proposed disclosure thereof) disclosure of information may be made to the extent required by applicable laws or judicial or regulatory process. "Confidential Information" means information considered confidential by the Company and includes the following information relating to the Company: customer lists; trade secrets; proprietary information; "know-how;" marketing and advertising plans and techniques; the existence or terms of contracts or potential contracts with, or other

information identifying or relating to past, existing or potential customers or vendors; and cost data, pricing policies, and financial and accounting information. "Confidential Information" also includes any information described in the preceding sentence that the Company obtains from another Person and that the Company treats or has agreed to treat as confidential. "Confidential Information" does not include information that was or becomes generally available to the public unless resulting from the breach of this Section 14.1.

14.2 Further Assurances. All parties to this Agreement agree to take further actions and sign and deliver other documents, certificates, agreements and other instruments as may be reasonably necessary or desirable to implement the transactions contemplated by this Agreement.

14.3 Construction and Certain References. When the context requires, the gender of all words used herein includes the masculine, feminine and neuter, and the number of all words includes the singular and plural. Unless expressly stated otherwise, references to "include" or "including" means "including, without limitation." The terms "hereto," "herein" or "hereunder" refer to this Agreement as a whole and not to any particular Article or Section hereof. All titles and headings to Articles and Sections in this Agreement are included for convenience and ease of reference only and do not affect in any way the meaning or interpretation of Articles or Sections of this Agreement. Unless otherwise specified, all references to specific Articles, Sections or Exhibits are deemed references to the corresponding Articles, Sections and Exhibits in, to and of this Agreement.

14.4 Time of Essence. Time is of the essence in the performance of obligations hereunder.

14.5 Mediation and Arbitration. If a claim, demand, disagreement, controversy or dispute arises regarding, from or in connection with this Agreement or the breach or termination thereof (collectively, "Dispute") and is not or cannot be settled through direct discussions, the parties agree to endeavor first to settle the Dispute in an amicable manner by mediation to be held in [Houston, Texas], administered by the American Arbitration Association under its Commercial Mediation Rules, before resorting to arbitration. The mediation is to be completed within 30 days of receipt or written demand for mediation. Thereafter, any unresolved Dispute will be settled by arbitration initiated by written notice by any party to the other(s) of the intent to arbitrate and the disputes to be arbitrated. The arbitration will be held in [Houston, Texas], administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award may be entered in any court having jurisdiction. Notwithstanding any other provision of this Section 14.5 to the contrary, no party will be precluded from seeking injunctive relief or a temporary restraining order from any court having jurisdiction before implementing procedures for mediation or arbitration hereunder if the party determines, in the exercise of its reasonable best judgment, that it will suffer irreparable harm or injury by any delay caused by mediation or arbitration proceedings.

14.6 Counterparts. This Agreement may be signed in multiple counterparts, each of which will be considered an original but all of which together constitute one and the same instrument, and in making proof of this Agreement it is not be necessary to produce or account for more than one counterpart.

IN WITNESS WHEREOF, (i) the Company has signed this Agreement in the space provided below and (ii) the Shareholders have signed this Agreement on separate attached joinder pages.

COMPANY:

THE CORPORATION OF TEXAS

By:_____

Name:_____

Title:_____

Address: 14440 Mt. Elbert
Houston, Texas 77000
Facsimile No. 713.234.0000
Attention: Secretary

Joinder by Shareholder and Spouse

Printed Name: _____ _____
Shareholder Spouse

Address for Notice: _____
_____
_____

Number of Shares: _____

SSN or Federal Tax ID No.: _____

By signing below, the above named Shareholder and Spouse, if applicable, (i) agree to become parties to and bound by the terms and provisions contained in the Shareholder Agreement of The Corporation of Texas dated as of April 29, 2010, and (ii) acknowledge that they have received a copy of the Shareholder Agreement as signed by the Company.

_____
Shareholder

_____
Spouse

EXHIBIT "A"
List of Shareholders

Name	Number of Shares	Percentage Ownership

EXHIBIT 3.2

ADOPTION OF SHAREHOLDER AGREEMENT

THIS ADOPTION OF SHAREHOLDER AGREEMENT (this "Adoption Agreement") is entered into on this ___ day of _____, 20__, by and between The Corporation of Texas, a Texas corporation (the "Company"), the New Shareholder and New Spouse (as defined below).

W I T N E S S E T H:

WHEREAS, the Company, Shareholders and Spouses entered into a Shareholder Agreement dated as of April 29, 2010 (the "Shareholder Agreement");

WHEREAS, Section 3.2 of the Shareholder Agreement provides that as a condition precedent to the acquisition of Shares by a Recipient of Shares from the Company, each Shareholder and Spouse authorizes and directs the Company to sign, on the Company's behalf and as agent for each Shareholder and Spouse, an agreement with the Recipient of Shares and Recipient's spouse, if applicable, pursuant to which the Recipient and Recipient's Spouse, for themselves and for their respective successors, successors in interest, heirs, legatees, devisees and legal representatives, agree to be bound by the Shareholder Agreement, as if an original party to the Shareholder Agreement; and

WHEREAS, the undersigned _____ (the "New Shareholder"), and his or her spouse (if applicable), _____ (the "New Spouse"), desire to acquire Shares of the Company.

NOW, THEREFORE, for and in consideration of the premises and mutual promises contained in this Adoption Agreement, the Company, on its own behalf and as agent for each Shareholder and Spouse, and the New Shareholder and the New Spouse (if applicable), agree as follows:

1. A true and correct copy of the Shareholder Agreement, as amended and together with all adoption agreements entered into pursuant to Section 3.2, is attached and incorporated by reference. All undefined capitalized terms used in this Adoption Agreement have the respective meanings ascribed to them in the Shareholder Agreement.

2. The New Shareholder and the New Spouse (if applicable), having acquired or intending to acquire _____ Shares take or agree to take the Shares subject to all of the terms, covenants, conditions, limitations, restrictions and provisions contained in the Shareholder Agreement. By signing this Adoption Agreement, the New Shareholder and New Spouse (if applicable) agree to be bound by the Shareholder Agreement and agree that the Shareholder Agreement is binding upon and inures to the benefit of their respective heirs, legatees, devisees, legal representatives, successors and permitted assigns.

3. The New Shareholder and the New Spouse (if applicable) acknowledge receipt of a true and correct copy of the Shareholder Agreement and further acknowledge that they have read the Shareholder Agreement and understand and agree to abide by all terms, covenants, conditions, limitations, restrictions and provisions contained in the Shareholder Agreement.

4. The New Shareholder and the New Spouse (if applicable) are a "Shareholder" and a "Spouse" (if applicable) for all purposes of the Shareholder Agreement as if original parties to the Shareholder Agreement.

IN WITNESS WHEREOF, the undersigned have signed this Adoption Agreement on the date first above written.

THE CORPORATION OF TEXAS

By:_____
President, on behalf of the
Company and as agent for each
Shareholder and Spouse

_____
(Signature of New Shareholder)

_____
(Printed Name of New Shareholder)

Address:_____

Facsimile No.:_____

Attention:_____

_____
(Signature of New Spouse)

_____
(Printed Name of Spouse)

Address of New Spouse if different:
_____
_____

EXHIBIT 8.2

PROMISSORY NOTE

$_____ _____

FOR VALUE RECEIVED, _____(the "Maker"), promises to pay to the order of _____or his assigns (the "Payee"), at or at such other address as Payee may from time to time designate in writing to Maker, at the time and in the manner hereinafter described in lawful money of the United States of America (i) the principal sum of $_____ and (ii) interest from the date hereof until maturity upon the balance of the principal sum from time to time remaining unpaid at the rate per annum equal to 1% below the Prime Rate as published in the "Money Rates" table of the Wall Street Journal for the date of determination, provided that if more than one prime rate is published, the rate will be the average of such rates (the "Base Rate"). The Base Rate will be determined and adjusted on the first business day of each month for application during such month.

The Maker further promises to pay, in like money, interest upon all past-due principal and past-due accrued and unpaid interest from maturity until paid at the maximum rate of interest, if any, permitted to be charged of the Maker under either applicable state or federal law (the "Maximum Rate"), or, for any period after such maturity, when no such Maximum Rate exists, Maker will pay interest at the rate of four percentage points above the Base Rate. To the extent that Chapter 303 of the Texas Finance Code (the "Code") is relevant to any holder of this Note for the purposes of determining the Maximum Rate, each such holder elects to determine such applicable legal rate pursuant to the "weekly ceiling", from time to time in effect, as referred to and defined in Chapter 303 of the Code; subject, however, to the limitations on such applicable ceiling referred to and defined in the Code, and further subject to any right such holder may have subsequently, under applicable law, to change the method of determining the Maximum Rate.

Interest on the unpaid principal balance will be due and payable on the last day of each calendar quarter commencing _____. This note will mature and the principal of and all accrued and unpaid interest on this note will be due and payable in full on _____.

The Maker reserves the right to prepay this note in whole or in part at any time without the payment of a premium or penalty. Prior to any default hereunder, all payments made under this note will be applied first to accrued interest and the balance, if any, to principal. Prepayments of principal will be applied against the next accruing principal payments due hereunder (i.e., in the regular order of maturity).

Upon any default hereunder, all payments hereunder, whether designated as payments of principal, interest or other sums owed hereunder, will be applied to the principal or interest of this note or to any other sums provided for herein, or any combination of the foregoing, as determined by the owner and holder of this note in its sole and complete discretion.

It is the intention of the parties hereto to conform strictly to the applicable laws of the State of Texas and the United States of America and judicial and/or administrative interpretations or determinations thereof ("Law") regarding the contracting for, charging and receiving of interest for the use, forbearance and detention of money. The owner and holder hereof have no right to claim, charge or receive any interest in excess of the Maximum Rate on that portion of the face amount representing principal that is outstanding and unpaid from time to time. Determination of the rate of interest for the purpose of determining whether this note is usurious under the Law will be made by amortizing, prorating, allocating and spreading in equal parts during the period of the actual time of this note, all interest or other sums deemed to be interest (hereinafter referred to as "Interest") at any time contracted for, charged or received from the Maker in connection with this note. Any Interest contracted for, charged or received in excess of the Maximum Rate allowed by Law will be deemed a result of a mathematical error and a mistake; if this note is paid in part by the Maker prior to the end of the full stated term of this note and the Interest received for the actual period of existence of this note exceeds the Maximum Rate, the owner and holder will credit the amount of the excess against any amount owing under this note or, if this note has been paid in full, or in the event that it has been accelerated prior to maturity, the owner will refund the Maker the amount of such excess, and will not be subject to

any of the penalties provided by Law for contracting for, charging or receiving Interest in excess of the Maximum Rate allowed by Law. Any such excess that is unpaid will be canceled.

In the event of a failure to pay any amount due hereunder and such failure continuing uncured for five business days following notice to the Maker, then the owner and holder hereof, at its option, may declare the entire principal balance and accrued interest owing hereon at once due and payable without notice. Failure to exercise this option does not constitute a waiver of the right to exercise the same in the event of any subsequent default.

The payment of this Note is secured by a Stock Pledge and Purchase Money Security Agreement of even date herewith from Maker to the benefit of Payee.

THIS NOTE HAS BEEN SIGNED AND DELIVERED AND BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF TEXAS AND OF THE UNITED STATES OF AMERICA (EXCEPT THAT CHAPTER 346 OF THE CODE, WHICH REGULATES CERTAIN REVOLVING CREDIT LOAN ACCOUNTS AND REVOLVING TRI-PARTY ACCOUNTS, DOES NOT APPLY TO THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY).

If any provision or portion of any provision in this Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion or provision of this Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion or provision be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Note be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interests of Maker and Payee hereof under the remainder of this Note continue in full force and effect.

The makers, signers, sureties, guarantors and endorsers of this note severally waive demand, presentment, notice of dishonor, diligence in collecting, grace, notice and protest, notice of the failure to pay any installments of principal or interest or both prior to acceleration of maturity, notice of intent to accelerate, notice of acceleration of maturity, and agree to one or more extensions for any period or periods of time and partial payments, before or after maturity, without prejudice to the holder; and if this note is collected by legal proceedings through a probate or bankruptcy court or is placed in the hands of an attorney for collection, the undersigned agrees to pay no less than ten percent of all unpaid principal and interest as reasonable attorneys' or collection fees.

By: _____
Name: _____
Title: _____

Address of Maker:
_____
_____

EXHIBIT 8.3

STOCK PLEDGE AND PURCHASE MONEY SECURITY AGREEMENT

Date:_____

I. PARTIES, COLLATERAL AND OBLIGATIONS

FOR VALUE RECEIVED, and for the purpose of enabling _____ (hereinafter called "Debtor"), whose address is _____, to obtain credit accommodations from _____, (hereinafter called "Secured Party"), whose address is _____, Debtor hereby grants to Secured Party a security interest in the following property:

> All of Debtor's present and after acquired interests in and to _____shares of common stock, [$ ___ / no] par value per share (the "Shares"), of The Corporation of Texas, a Texas corporation (the "Corporation"), as evidenced by share certificate No. _____ of Debtor, and any and all additions, accessions and substitutions therefor, together with all proceeds, monies, income and benefits attributable or accruing to said property, which Debtor is or may hereafter become entitled to receive on account of said property, including, but not by way of limitation, all interest, premium, redemption proceeds and all dividends and other distributions on or with respect to such Shares, whether payable in cash, stock or other property and all subscription and other rights (all of such foregoing property collectively called the "Collateral").

Immediately upon the execution of this Stock Pledge and Purchase Money Security Agreement (hereinafter referred to as this "Security Agreement") by or on behalf of Debtor, Debtor will deliver or cause to be delivered to Secured Party the instruments, securities and documents (if any) subject to this Security Agreement with stock powers endorsed in blank; furthermore, if any money or monies, certificates of deposit, savings or passbook accounts, bank balances, instruments, securities, documents, chattel paper, letters of credit or advices of credit are, at any time or times, included in the Collateral, whether as proceeds or otherwise, upon demand therefor by Secured Party made after default, Debtor will promptly deliver the same to Secured Party. The pledge and security interest granted herein secures the prompt and full payment and performance of all of the following indebtedness, liabilities and obligations of Debtor to Secured Party (hereinafter collectively called the "Obligations"), whether joint or several, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and all renewals, extensions, increases, modifications, rearrangements, amendments and/or supplements of the Obligations, and any of the same. Such Obligations consist of the indebtedness evidenced by that certain Promissory Note of even date herewith by Debtor to Secured Party in the original principal amount of ($_____) (the "Note"), and including all costs and expenses and attorneys' fees and legal expenses payable by Secured Party in connection herewith or therewith, all in accordance with the terms of the Note and this Security Agreement. Unless otherwise agreed, all of the Obligations are payable at the address of Secured Party set forth above.

II. WARRANTIES AND COVENANTS OF OWNER

Debtor warrants, covenants and agrees that:

1. Except for the security interest granted hereby, Debtor is the owner and holder of all the Shares free from any adverse claim, security interest, encumbrance, lien, charge or any other right, title or interest of any Person other than Secured Party; Debtor has full power and lawful authority to sell, transfer and assign the Collateral to Secured Party and to grant to Secured Party a first, prior and valid security interest therein as herein provided; the execution and delivery and the performance hereof are not in contravention of any indenture, agreement or undertaking to which Debtor is a party or by which Debtor (or Debtor's property) is bound; and Debtor will defend the Collateral against all claims and demands of all Persons at any time claiming the same or any interest therein. All agents or representatives acting for or on behalf of Debtor in connection with this Security Agreement or any aspect hereof, or entering into or executing this Security Agreement on behalf of Debtor, having duly authorized thereto and therefor, and are fully empowered to act for and represent Debtor in connection with this Security Agreement and all matters related hereto or in connection herewith. Except for that certain Shareholder Agreement by and among the

Corporation and its shareholders, dated April 29, 2010, and except as either evidenced on the certificates representing the Shares or otherwise previously disclosed in writing by Debtor to Secured Party, Debtor represents and warrants to Secured Party that the Shares are not subject to any buy-sell agreements, irrevocable proxies or other restrictions.

2. (a) Debtor has not heretofore signed any financing statement or security agreement that covers any of the Collateral, and in which Debtor is named as or has signed as "debtor," and no such financing statement or security agreement is now on file in any public office.

(b) As long as any amount remains unpaid on any of the Obligations, with respect to the Collateral: (i) Debtor will not enter into or execute any security agreement or any financing statement other than those security agreements and financing statements in favor of Secured Party hereunder, and further (ii) there will not be on file in any public office any financing statement or statements (or any documents or papers filed as such) other than financing statements in favor of Secured Party hereunder unless, in any case subject to this paragraph (b), the specific prior written consent and approval of Secured Party will have been obtained.

(c) Debtor authorizes Secured Party to file, in jurisdictions where this authorization will be given effect, a financing statement covering the Collateral. At the request of Secured Party, Debtor will execute such documents as Secured Party may determine, from time to time, to be necessary or desirable under provisions of the Uniform Commercial Code, as adopted and amended, in the State of Texas (the "UCC"); without limiting the generality of the foregoing Debtor agrees to execute, at Secured Party's request, one or more financing statements in form satisfactory to Secured Party, and Debtor will pay the cost of filing or recording the same, or of filing or recording this Security Agreement in all public offices at any time and from time to time, whenever filing or recording of any such financing statement or of this Security Agreement is deemed by Secured Party to be necessary or desirable. In connection with the foregoing, it is agreed and understood between the parties hereto (and Secured Party is authorized to carry out and implement the following agreements and understandings and Debtor agrees to pay the cost thereof) that Secured Party may, at any time or time, file as a financing statement any counterpart, copy or reproduction of this Security Agreement signed by Debtor if Secured Party elects so to file, and it is also agreed and understood that Secured Party may, if deemed necessary or desirable, file (or sign and file) as a financing statement any carbon copy of, or photographic or other reproduction of, this Security Agreement or of any financing statement signed in connection with this Security Agreement.

(d) [Debtor is a [corporation/partnership/limited liability company] organized and existing under the laws of the State of _____.] [Debtor is a natural person whose domicile is in the State of _____.]

3. Debtor will not sell or offer to sell or otherwise transfer or encumber the Collateral or any interest therein without the express prior written consent of Secured Party; and Debtor will keep the Collateral free from any lien, security interest, encumbrance, charge or claim adverse to the interest of Secured Party; provided, however, prior to the happening of a default hereunder, nothing contained in this Security Agreement prohibits Debtor from using "cash collateral" (as defined in Section 9.306 of the UCC).

4. Except as specifically otherwise permitted or provided herein, if, at any time, Debtor holds or has possession of any Collateral consisting of "non-cash collateral" (as defined in Section 9.306 of the UCC), then the same will remain in Debtor's possession and control at all times at Debtor's risk of loss, and, if in Debtor's possession, is now kept, and at all times will be kept, at the address first shown for Debtor at the beginning of this Security Agreement; and Debtor will promptly notify Secured Party of any change in such address and of any new addresses where such Collateral may be kept and of any other change in the above-identified location of all or any part of such Collateral, and Debtor will not move or remove such Collateral, or any part thereof, from the addresses and places described and specified above without the prior written consent of Secured Party.

5. Secured Party will exercise reasonable care in the custody of any of the Collateral in its possession or control hereunder at any time or times. Secured Party will be deemed to have exercised reasonable care if such Collateral is accorded treatment substantially equal to that which Secured Party accords its own property or if Secured Party takes such action with respect to the Collateral as Debtor reasonably requests in writing, but neither failure to comply with any such request nor any omission to do any act requested by Debtor will be deemed to be a failure to exercise reasonable care. Debtor agrees to take necessary steps to preserve rights against any parties with respect to any Collateral in Secured Party's possession or control, it being understood, however, that Secured Party

has no responsibility for ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders, renewals, collections or other matters relative to any Collateral, whether or not Secured Party has or is deemed to have knowledge of such matters.

6. Debtor represents and warrants to Secured Party that the value of the consideration received and to be received, directly or indirectly, by Debtor as a result of the credit accommodations granted and extended by Secured Party to Debtor is fair consideration to Debtor and reasonably worth at least as much as the Obligations, and that the credit accommodations granted and extended by Secured Party have benefited and may reasonably be expected to benefit Debtor, directly or indirectly.

7. Prior to the happening of an event of default hereunder, as between Debtor and Secured Party, Debtor will have all rights of a shareholder of the Corporation with respect to the pledged Shares, including, without limitation, voting rights and the right to receive distributions.

III. EVENTS OF DEFAULT

Debtor will be in default under this Security Agreement upon the happening of any of the following events or conditions provided that Debtor fails to cure same within 20 days after written notice by Secured Party to Debtor setting forth the event or condition that occurred, except that in the event of a default arising out of failure to make payments due Secured Party, Debtor has only five days for curative action after written notice by Secured Party.

1. Default in the performance of any agreement or obligation of Debtor arising under this Security Agreement or the Promissory Note signed in favor of Secured Party by Debtor, including any default in the timely payment of principal or interest on the Promissory Note.

2. Any warranty, representation or statement made in this Security Agreement or made or furnished to Secured Party in connection with this Security Agreement proves to have been false in any material respect when made or furnished.

3. Levy or any attachment, execution or other process that creates an encumbrance against all or substantially all of the assets of Debtor or against the Collateral.

4. A. The dissolution of the Corporation.

B. The filing by Debtor or the Corporation of a voluntary petition under any chapter of the Federal Bankruptcy Code or any other Federal or State Debtor's Relief Act.

C. Debtor or the Corporation is granted a discharge in bankruptcy, makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a receiver or trustee with respect to any of its assets.

D. A receiver or trustee is appointed or an attachment or execution levied with respect to any substantial part of the assets of Debtor or the Corporation and the appointment is not vacated or the attachment or execution is not released within 60 days thereafter.

5. Transfer of all or substantially all of the assets of the Corporation in a single transaction or series of transactions.

6. Issue of any securities by the Corporation for consideration other than cash or property equal to the fair market value of the securities except for the issuance of shares of the Corporation's common stock and options exercisable for such shares to officers, directors, employees or consultants of the Corporation, as part of their compensation, incentive or otherwise.

IV. REMEDIES

1. In the event of any default in the payment or performance of any of the Obligations or any principal, interest or other amount payable thereunder, when due, or upon the happening of any of the defaults specified in this Security Agreement, and at any time thereafter, Secured Party has and may exercise, with reference to the Collateral and the Obligations, any or all of the rights and remedies of a secured party under the UCC or any other applicable law, and as otherwise granted herein or under any other law or under any other agreement signed by Debtor, including, without limitation, the right and power to sell, at public or private sale or sales, or otherwise dispose of or utilize the Collateral and any part or parts thereof in any manner permitted by the UCC after default by a debtor, and to apply the proceeds thereof toward payment of any costs and expenses, attorneys' fees and legal expenses incurred by Secured Party and toward payment of the Obligations in such order or manner as Secured Party may elect. To the extent any notice of sale or other disposition of the Collateral is required, Debtor agrees that if such notice is sent as provided in Section V of this Security Agreement, at least five days before the time of the sale or disposition, such notice will be deemed reasonable and will fully satisfy any requirement for giving of notice.

2. Secured Party is expressly granted the right, at its option, to transfer at any time after a default, to itself or to its nominee the Collateral, or any part thereof, and to receive the monies, income, proceeds or benefits attributable or accruing thereto (including voting rights) and to hold the same as security for the Obligations or to apply the same on the principal and interest or other amounts owing on any of the Obligations, whether or not then due, in such order or manner as Secured Party may elect, including, without limitation, the right to transfer by way of stock power any and all of the shares granted as Collateral hereunder to itself or its nominee. Debtor agrees that it will instruct the Secretary of Debtor to record such transfer in the share transfer ledger or similar records of the Debtor. Secured Party is expressly granted the rights, exercisable at its option at any time after default, to take control of any proceeds and to notify account debtors, lessees or obligors on any instrument to make all payments directly to Secured Party on any and all accounts, leases or instruments constituting, at any time or from time to time, a part of the Collateral; and Debtor will, upon request of Secured Party, so notify all such account debtors, lessees or obligors.

3. As to any Person (other than Debtor), all recitals in any instrument of assignment or any other instrument signed by Secured Party incident to the sale, transfer, assignment or other disposition or utilization of the Collateral or any part thereof hereunder will be full proof of the matters stated therein and no other proof will be requisite to establish full legal propriety of the sale or other action taken by Secured Party or of any fact, condition or thing incident thereto and all prerequisites of such sale or other action or of any fact, condition or other incident thereto will be presumed conclusively to have been performed or to have occurred.

4. All rights to marshalling of assets of Debtor, including any such right with respect to the Collateral, are waived by Debtor.

V. GENERAL

1. Upon the occurrence of a default hereunder, Secured Party may, at its option, whether or not the Obligations are due, demand, sue for, collect or make any compromise or settlement it deems desirable with reference to the Collateral. Except as otherwise expressly provided herein, Secured Party is not obligated to take any steps necessary to preserve any rights in the Collateral against other parties, which Debtor assumes to do.

2. This Security Agreement is not be construed as relieving Debtor from full liability on the Obligations and any and all future and other indebtedness secured hereby and for any deficiency thereon.

3. No delay or omission on the part of Secured Party in exercising any right hereunder will operate as a waiver of any such right or any other right. A waiver on any one or more occasions will not be construed as a bar to or waiver of any right or remedy on any future occasion.

4. The execution and delivery of this Security Agreement in no manner will impair or affect any other security (by endorsement or otherwise) for the payment of the Obligations and no security taken hereafter as security for payment of any part or all of the Obligations will impair in any manner or affect this Security Agreement, all such present and future additional security to be considered as cumulative security. Any of the Collateral may be released

from this Security Agreement without altering, varying or diminishing in any way the force, effect, lien, security interest or charge of this Security Agreement as to the Collateral not expressly released, and this Security Agreement will continue as a first lien security interest and charge on all of the Collateral not expressly released until all sums and indebtedness secured hereby have been paid in full. Any future assignment or attempted assignment or transfer of the interest of Debtor in and to any of the Collateral will not deprive Secured Party of the right to sell or otherwise dispose of or utilize all of the Collateral as above provided or necessitate the sale or disposition thereof in parcels or in severalty.

5. All notices and demands required or made hereunder will be deemed to have been given three Business Days after being deposited in the United States mails (certified, return receipt requested) addressed to Debtor or Secured Party (as appropriate) at the address for such Person given in the first paragraph of this Security Agreement, or at any other address of which it has notified the other signatories hereto in writing; *provided, however*, actual notice to any signatory hereto, however given or received, will always be effective.

6. All rights of Secured Party hereunder inure to the benefit of its [insert either "successors and assigns" if Secured Party an entity, or "heirs, administrators, personal and legal representatives and assigns" is Secured Party an individual]; and all obligations of Debtor will bind its [either "successors and assigns" or "heirs, administrators, personal and legal representatives and assigns"].

7. Each term used in this Security Agreement, unless the context otherwise requires, and in all events subject to any express definitions set forth in this Security Agreement, will be deemed to have the same meaning herein as that given each such term under the UCC. As used in this Security Agreement and when required by the context, each number (singular and plural) includes all numbers, and each gender includes all genders.

8. This secured transaction is governed by, and construed in accordance with, the laws of the State of Texas.

9. No amendment, modification or waiver of any provision of this Security Agreement is effective in any event unless the same is in writing and signed by both the Debtor and Secured Party.

10. This Security Agreement may be signed in multiple counterparts, and each counterpart, when so signed and delivered, will constitute but one and the same instrument.

Signed as of the day and year first above written.

DEBTOR:

By:_____

Printed Name and Title [if applicable]

SECURED PARTY:

By:_____

Printed Name and Title [if applicable]

EXHIBIT B

VOTING TRUST AGREEMENT

This Voting Trust Agreement (this "Agreement") made as of _____, 20___ between the several owners of_____, a _____ formed and existing under the laws of the State of Texas (the "Organization"), whose names are subscribed below and all other owners of the Organization who become parties to this Agreement as provided below, all of whom are hereinafter collectively called Owners, and _____ and _____, who are hereinafter collectively called the "Trustees".

WHEREAS, the Owners are owners of ownership interests in the Organization ("Ownership Interests"), as set forth opposite their respective signatures hereto;

WHEREAS, with a view to the safe and competent management of the Organization in the interests of all the owners thereof, the Owners desire to create a Trust as set forth in this Agreement:

NOW THEREFORE, for and in consideration of the premises and the mutual promises contained in this Agreement, the Owners agree as follows:

1. TRANSFER OF OWNERSHIP INTERESTS TO TRUSTEES. Each of the Owners hereby assigns and delivers to the Trustees his, her or its Ownership Interests [and all certificates representing those Ownership Interests, with corresponding instruments of transfer] and agrees to do all things necessary for the transfer of Ownership Interests to the Trustees on the books of the Organization.

2. OTHER OWNERS MAY JOIN. Every owner or holder of Ownership Interests may become a party to this Agreement by executing this Agreement and assigning and delivering [the certificate or certificates representing] Ownership Interests to the Trustees.

3. TRUSTEES TO HOLD SUBJECT TO AGREEMENT. The Trustees will hold the Ownership Interests transferred to them under and subject to this Agreement.

4. ISSUANCE OF CERTIFICATES TO TRUSTEES. The Trustees will surrender to the proper [managerial official] of the Organization for cancellation, all [certificates representing] Ownership Interests that have been assigned and delivered to the Trustees and, in their stead, obtain [new certificates representing] the Ownership Interests issued to them as Trustees under this Agreement.

5. VOTING TRUST CERTIFICATES. The Trustees will issue to each of the Owners a Voting Trust Certificate for the Ownership Interests [represented by the certificates] transferred by that Owner to the Trustees. Each Voting Trust Certificate will set forth the nature and proportional amount of the beneficial interest of the Owner to whom it is issued, and will be assignable in the manner of certificates of ownership on books to be kept by the Trustees. The Trustees will keep a list of the Ownership Interests transferred to them, and will also keep a record of all Voting Trust Certificates issued or transferred on their books. Those records will contain the names and addresses of the holders of Voting Trust Certificates and the Ownership Interests represented by each Voting Trust Certificate. The list and records will be open at all reasonable times for inspection by any holder of a Voting Trust Certificate and any authorized representative of that holder. On any transfer on the books of the Trustees of any Voting Trust Certificate, the transferee will succeed to all the rights of the transferor under this Agreement.

[Each Voting Trust Certificate will be substantially in the form of Exhibit A to this Agreement.

OR

Each Voting Trust Certificate will be substantially in the following form:

TRUSTEES' CERTIFICATE

This is to certify that the undersigned Trustees have received a certificate or certificates issued in the name of *[name]*, representing the ownership interests of *[organization]*, a Texas *[entity]* (the "Organization"), and that these ownership interests are held subject to all the terms and conditions of the Voting Trust Agreement, dated as of *[date]*, between *[names]*, as Trustees, and certain owners of the Organization (the "Agreement"). During the term of the Agreement, the Trustees, or their successors, possess and are entitled to exercise the vote and otherwise represent all of those ownership interests in the Organization for all purposes, it being agreed that no voting right will pass to the holder of this certificate by virtue of the ownership of this certificate.

On the termination of the voting trust in the Agreement, this certificate is to be surrendered to the Trustees by the holder hereof on delivery to the holder of a certificate representing ownership interests in the Organization.

IN WITNESS WHEREOF, the undersigned Trustees have executed this certificate as of _____, 20__.

_____

_____

TRUSTEES]

6. RESTRICTION ON TRANSFER OF VOTING TRUST CERTIFICATE. Each of the Owners agrees that during the term of this Agreement, the Voting Trust Certificate will not be sold or transferred. The Voting Trust Certificates will be regarded as Ownership Interests within the meaning of any provision of the governing documents of the Organization that imposes conditions and restrictions on the sale or transfer of Ownership Interests.

7. TRUSTEES TO VOTE OWNERSHIP INTERESTS. The Trustees have full power and authority, and the obligation, to represent the holders of the Voting Trust Certificates and to vote and give consent for the Ownership Interests transferred to the Trustees, as in the judgment of the Trustees (or a majority of them) may be for the best interest of the Owners, at all meetings or in connections with actions taken by consent of the owners of the Organization, in the election of persons authorized to manage the affairs of the Organization and on any matters in question that may be brought before those meetings or may be taken by consent, as fully as any Owner might do if personally present.

8. TRUSTEES' LIABILITY. The Trustees will use their best judgment in voting the Ownership Interests transferred to them, but will not be liable for any vote cast, or consent given by them, in good faith, and in the absence of gross negligence or willful misconduct.

9. DISTRIBUTIONS. The Trustees will collect and receive all distributions that accrue on the Ownership Interests subject to this Trust and, subject to deduction as provided in the following paragraph, will divide and distribute cash distributions among the Voting Trust Certificate holders in proportion to the Ownership Interests represented by their Voting Trust Certificates. If the distribution consists of additional Ownership Interests, the Trustees will retain those Ownership Interests, which will be deemed to have been deposited hereunder, for the benefit of the Owners under, and subject to, this Agreement.

10. TRUSTEES' COMPENSATION AND INDEMNITY. The Trustees agree to serve hereunder [without compensation/for compensation consisting of _____]. The Trustees will be entitled to be indemnified fully out of the distributions coming into their hands against all costs, expenses and other liabilities properly incurred by them in the exercise of any power or authority conferred on them by this Agreement. The Owners, and each of them, hereby covenant with the Trustees that if the monies and securities in their hands are insufficient for that purpose, the Owners, and each of them, will, in proportion to the amount of their respective Ownership Interests held by the Trustees, hold harmless and indemnify the Trustees from and against all costs, expenses and other liabilities that they may sustain or be responsible for by reason of anything they may lawfully do in the execution of this Trust.

11. APPOINTMENT OF TRUSTEES TO FILL VACANCIES. In the event of the death, resignation or refusal or inability to act by any Trustee, the surviving or other Trustee or Trustees will appoint a person or persons to fill the

vacancy or vacancies, and any person so appointed will thereupon be vested with all the power, authority, rights and obligations of a Trustee hereunder as if originally named herein.

12. CONTINUANCE AND TERMINATION OF TRUST. The Trust created hereby will continue until 11:59 p.m. (Central time) on _____, 20___, when it will terminate; *provided*, *however*, that it will terminate sooner on the consummation of a registered public offering of Ownership Interests for the account of the Organization under the Securities Act of 1933, as amended, and the rules and regulations thereunder. On termination of the Trust, the Trustees will, on the surrender of the Voting Trust Certificates by the respective holders thereof, assign and transfer to them the Ownership Interests represented by their certificates.

13. VOTING TRUST AGREEMENT. This Agreement is a voting trust agreement under Section 6.251 of the Texas Business Organizations Code. Accordingly, a copy of this Agreement shall be deposited with the Organization at its principal executive or registered office.

14. BINDING EFFECT OF AGREEMENT. Nothing in this Agreement, express or implied, is intended to confer on any party, other than the parties hereto and their respective permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, and no person who is not a party to this Agreement may rely on its terms except as otherwise set out. This Agreement (a) constitutes the entire agreement between the parties relating to the subject matter hereof and (b) supersedes all previous understandings and agreements between the parties relating to the subject matter hereof, both oral and written. The terms and conditions of this Agreement will be binding on and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

15. ASSIGNMENT. No party to this Agreement may assign its rights or delegate its obligations hereunder without the prior written consent of each other party. Any attempted assignment without prior written consent will be void *ab initio*. Subject to the two preceding sentences, this Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

16. AMENDMENT OF AGREEMENT. This Agreement may be amended or modified only by written instrument duly executed by each of the parties hereto.

17. APPLICABLE LAW. This Agreement is to be governed by, and construed in accordance with, the laws of the State of Texas.

18. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which together will constitute one instrument.

19. SEVERABILITY. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected thereby, and in lieu of the illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be legal, valid and enforceable.

20. NOTICES. All notices, communications and deliveries made under this Agreement will be made in writing signed by or on behalf of the party, will specify the section of this Agreement under which it is given or made, and will be delivered personally, by facsimile transmission, by registered or certified mail (return receipt requested), or by any courier service, with postage or other fees prepaid, as follows:

If to [name]: [Address]
[Fax No.]
Attention: [name]

Any such notice, communication or delivery may also be made to any other address or person designated in writing by the party. Addresses may be changed from time to time by written notice to the other parties. Any notice, communication or delivery will be deemed given or made (a) on the date of delivery if delivered in person or by courier service, (b) on transmission by facsimile if receipt is confirmed by telephone or (c) on the fifth business day after it is mailed by registered or certified mail.

21. WAIVER. No term or provision of this Agreement may be waived or modified unless the waiver or modification is in writing and executed by all of the parties hereto. Any waiver by any party hereto of a breach or failure to perform will not constitute a waiver of any subsequent breach or failure.

22. FURTHER ASSURANCES. The parties agree to take further actions and execute and deliver other documents, certificates, agreements and other instruments as may be reasonably necessary or desirable to implement the transactions contemplated by this Agreement.

23. SECTION HEADINGS. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

24. GENDER AND NUMBER OF WORDS. When the context requires, the gender of all words used in this Agreement includes the masculine, feminine and neuter, and the number of all words includes the singular and the plural.

IN WITNESS WHEREOF, the Owners and Trustees have signed this Agreement as of the date first above written.

_____
TRUSTEE

_____
TRUSTEE

Ownership Interests

_____ _____
OWNER

_____ _____
OWNER

VOTING TRUST CERTIFICATE

No._____ _____ Ownership Interests

VOTING TRUST CERTIFICATE FOR OWNERSHIP INTERESTS

THIS IS TO CERTIFY that *[Owner]*, (hereinafter called the "Holder") or his assignee has deposited [a certificate or certificates representing] *[number/percentage]* Ownership Interests of *[organization]*, a Texas _____ (the "Organization"), and until _____, 20__, is entitled to receive payments equal to the amount of [cash distributions], if any, received by the Trustees on the Ownership Interests represented by this Voting Trust Certificate, less any taxes the Trustees may be required to pay or to withhold on the Ownership Interests and also less a proportionate share of the expenses of the Trustees. The Ownership Interests deposited hereunder are the only class of ownership interests of the Organization issued and outstanding at the date hereof, and this Voting Trust Certificate represents any and all ownership interests that, on any increase or reclassification of the Ownership Interests, will be issued in lieu of, or in respect of, the Ownership Interests originally deposited, which will have been received by the Trustees by virtue of ownership as Trustees of the Ownership Interests.

On the termination of this Voting Trust Certificate, the Holder or assigns will be entitled to receive [a certificate or certificates representing] the Ownership Interests deposited under this Voting Trust Certificate. Until the actual delivery to the Holder of the [certificate or certificates representing] Ownership Interests, the Trustees will possess, and will be entitled to exercise, all rights and powers of absolute owners and holders of record of the Ownership Interests deposited hereunder, including (without limitation) the right to vote for every purpose and to consent to or waive any corporate act of the Organization. No voting right, or right to give consents or waivers in respect of the Ownership Interests, passes to the Holder or assigns by or under this Voting Trust Certificate or by or under any agreement, express or implied.

On termination of this Voting Trust Certificate, [a certificate or certificates representing] Ownership Interests will be delivered by the Trustees at the office of the Organization, in exchange for Voting Trust Certificates in accordance with its provisions or in accordance with the law.

In the event of the dissolution or the total or partial liquidation of the Organization, the money and other property received by the Trustees in respect to the Ownership Interests represented by this Voting Trust Certificate will be paid or delivered to the Holder, but only on (a) surrender of this Voting Trust Certificate in case of dissolution or complete liquidation or (b) the presentation of this Voting Trust Certificate for the notation thereon of the distribution in case of a partial liquidation.

This Voting Trust Certificate and the right, title and interest in and to the Ownership Interests in respect of which this Voting Trust Certificate is issued, are transferable on the books of the Trustees by the registered Holder in person or by attorney duly authorized, according to the rules established for that purpose by the Trustees and on surrender hereof; and until so transferred, the Trustees may treat the registered Holder as the owner for all purposes except that no delivery of [any certificate representing] Ownership Interests hereunder will be made without the surrender hereof.

As a condition of making or permitting any transfer or delivery of [any certificate representing] Ownership Interests or any Voting Trust Certificate, the Trustees may require the payment of a sum sufficient to pay or reimburse the Trustees for any tax or other governmental charge in connection therewith and for [a proportionate part of] expenses as Trustees.

IN WITNESS WHEREOF, the Trustees have signed this Voting Trust Certificate this _____ day of _____, 20___.

_____
TRUSTEE

_____
TRUSTEE

EXHIBIT C

RELEVANT STATUTES

The Texas Business Organizations Code ("TBOC") became effective January 1, 2006, and is applicable to all entities as of January 1, 2010.

A. Shareholders' Agreements – Texas Business Organizations Code

Subchapter C (§§ 21.101 et seq.), "Shareholders' Agreements," and Subchapter E (§§ 21.201 et seq.), "Shareholder Rights & Restrictions," are directly applicable and should be reviewed in the context of preparing shareholder agreements.

§ 21.209. Transfer of Shares and Other Securities.

Except as otherwise provided by this code, the shares and other securities of a corporation are transferable in accordance with Chapter 8, Business & Commerce Code.

§ 21.210. Restriction On Transfer of Shares and Other Securities.

(a) A restriction on the transfer or registration of transfer of a security may be imposed by:

(1) the corporation's certificate of formation;
(2) the corporation's bylaws;
(3) a written agreement among two or more holders of the securities; or
(4) a written agreement among one or more holders of the securities and the corporation if:

A) the corporation files a copy of the agreement at the principal place of business or registered office of the corporation; and
B) the copy of the agreement is subject to the same right of examination by a shareholder of the corporation, in person or by agent, attorney, or accountant, as the books and records of the corporation.

(b) A restriction imposed under Subsection (a) is not valid with respect to a security issued before the restriction has been adopted, unless the holder of the security voted in favor of the restriction or is a party to the agreement imposing the restriction.

§ 21.211. Valid Restrictions On Transfer.

(a) Without limiting the general powers granted by Sections 21.210 and 21.213 to impose and enforce reasonable restrictions, a restriction placed on the transfer or registration of transfer of a security of a corporation is valid if the restriction reasonably:

(1) obligates the holder of the restricted security to offer a person, including the corporation or other holders of securities of the corporation, an opportunity to acquire the restricted security within a reasonable time before the transfer;
(2) obligates the corporation, to the extent provided by this code, or another person to purchase securities that are the subject of an agreement relating to the purchase and sale of the restricted security;
(3) requires the corporation or the holders of a class of the corporation's securities to consent to a proposed transfer of the restricted security or to approve the proposed transferee of the restricted security for the purpose of preventing a violation of law;
(4) prohibits the transfer of the restricted security to a designated person or group of persons and the designation is not manifestly unreasonable;
(5) maintains the status of the corporation as an electing small business corporation under Subchapter S of the Internal Revenue Code;
(6) maintains a tax advantage to the corporation;

(7) maintains the status of the corporation as a close corporation under Subchapter O;
(8) obligates the holder of the restricted securities to sell or transfer an amount of restricted securities to a person or group of persons, including the corporation or other holders of securities of the corporation; or
(9) causes or results in the automatic sale or transfer of an amount of restricted securities to a person or group of persons, including the corporation or other holders of securities of the corporation.

(b) A restriction placed on the transfer or registration of transfer of a security of a corporation, on the amount of the corporation's securities, or on the amount of the corporation's securities that may be owned by a person or group of persons is conclusively presumed to be for a reasonable purpose if the restriction:

(1) maintains a local, state, federal, or foreign tax advantage to the corporation or its shareholders, including:
(A) maintaining the corporation's status as an electing small business corporation under Subchapter S of the Internal Revenue Code;
(B) maintaining or preserving any tax attribute, including net operating losses; or
(C) qualifying or maintaining the qualification of the corporation as a real estate investment trust under the Internal Revenue Code or regulations adopted under the Internal Revenue Code; or
(2) maintains a statutory or regulatory advantage or complies with a statutory or regulatory requirement under applicable local, state, federal, or foreign law.

§ 21.212. Bylaw or Agreement Restricting Transfer of Shares or Other Securities.

(a) A corporation that has adopted a bylaw or is a party to an agreement that restricts the transfer of the shares or other securities of the corporation may file with the secretary of state, in accordance with Chapter 4, a copy of the bylaw or agreement and a statement attached to the copy that:

(1) contains the name of the corporation;
(2) states that the attached copy of the bylaw or agreement is a true and correct copy of the bylaw or agreement; and
(3) states that the filing has been authorized by the board of directors or, in the case of a corporation that is managed in some other manner under a shareholders' agreement, by the person empowered by the agreement to manage the corporation's business and affairs.

(b) After a statement described by Subsection (a) is filed with the secretary of state, the bylaws or agreement restricting the transfer of shares or other securities is a public record, and the fact that the statement has been filed may be stated on a certificate representing the restricted shares or securities if required by Section 3.202.

(c) A corporation that is a party to an agreement restricting the transfer of the shares or other securities of the corporation may make the agreement part of the corporation's certificate of formation without restating the provisions of the agreement in the certificate of formation by amending the certificate of formation. If the agreement alters any provision of the certificate of formation, the certificate of amendment shall identify the altered provision by reference or description. If the agreement is an addition to the certificate of formation, the certificate of amendment must state that fact.

(d) The certificate of amendment must:

(1) include a copy of the agreement restricting the transfer of shares or other securities;
(2) state that the attached copy of the agreement is a true and correct copy of the agreement; and
(3) state that inclusion of the certificate of amendment as part of the certificate of formation has been authorized in the manner required by this code to amend the certificate of formation.

§ 21.213. Enforceability of Restriction On Transfer of Certain Securities.

(a) A restriction placed on the transfer or registration of the transfer of a security of a corporation is specifically enforceable against the holder, or a successor or transferee of the holder, if:

(1) the restriction is reasonable and noted conspicuously on the certificate or other instrument representing the security; or
(2) with respect to an uncertificated security, the restriction is reasonable and a notation of the restriction is contained in the notice sent with respect to the security under Section 3.205.

(b) Unless noted in the manner specified by Subsection (a) with respect to a certificate or other instrument or an uncertificated security, an otherwise enforceable restriction is ineffective against a transferee for value without actual knowledge of the restriction at the time of the transfer or against a subsequent transferee, regardless of whether the transfer is for value. A restriction is specifically enforceable against a person other than a transferee for value from the time the person acquires actual knowledge of the restriction's existence.

§ 21.101. Shareholders' Agreement

(a) The shareholders of a corporation may enter into an agreement that:

(1) restricts the discretion or powers of the board of directors;
(2) eliminates the board of directors and authorizes the business and affairs of the corporation to be managed, wholly or partly, by one or more of its shareholders or other persons;
(3) establishes the individuals who shall serve as directors or officers of the corporation;
(4) determines the term of office, manner of selection or removal, or terms or conditions of employment of a director, officer, or other employee of the corporation, regardless of the length of employment;
(5) governs the authorization or making of distributions whether in proportion to ownership of shares, subject to Section 21.303;
(6) determines the manner in which profits and losses will be apportioned;
(7) governs, in general or with regard to specific matters, the exercise or division of voting power by and between the shareholders, directors, or other persons, including use of disproportionate voting rights or director proxies;
(8) establishes the terms of an agreement for the transfer or use of property or for the provision of services between the corporation and another person, including a shareholder, director, officer, or employee of the corporation;
(9) authorizes arbitration or grants authority to a shareholder or other person to resolve any issue about which there is a deadlock among the directors, shareholders, or other persons authorized to manage the corporation;
(10) requires winding up and termination of the corporation at the request of one or more shareholders or on the occurrence of a specified event or contingency, in which case the winding up and termination of the corporation will proceed as if all of the shareholders had consented in writing to the winding up and termination as provided by Subchapter K; or
(11) otherwise governs the exercise of corporate powers, the management of the business and affairs of the corporation, or the relationship among the shareholders, the directors, and the corporation as if the corporation were a partnership or in a manner that would otherwise be appropriate only among partners and not contrary to public policy.

(b) A shareholders' agreement authorized by this section must be:

(1) contained in: (A) the certificate of formation or bylaws if approved by all of the shareholders at the time of the agreement; or (B) a written agreement that is: (i) signed by all of the shareholders at the time of the agreement; and (ii) made known to the corporation; and
(2) (2) amended only by all of the shareholders at the time of the amendment, unless the agreement provides otherwise.

§ 21.102. Term of Agreement

A shareholders' agreement under this subchapter is valid for 10 years, unless the agreement provides otherwise.

§ 21.103. Disclosure of Agreement; Recall of Certain Certificates

(a) The existence of an agreement authorized by this subchapter shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required for uncertificated shares by Section 3.205.

(b) The disclosure required by this section must include the sentence, "These shares are subject to the provisions of a shareholders' agreement that may provide for management of the corporation in a manner different than in other corporations and may subject a shareholder to certain obligations or liabilities not otherwise imposed on shareholders in other corporations."

(c) A corporation that has outstanding shares represented by certificates at the time the shareholders of the corporation enter into an agreement under this subchapter shall recall the outstanding certificates and issue substitute certificates that comply with this subchapter.

(d) The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or an action taken pursuant to the agreement.

§ 21.104. Effect of Shareholders' Agreement

A shareholders' agreement that complies with this subchapter is effective among the shareholders and between the shareholders and the corporation even if the terms of the agreement are inconsistent with this code.

§ 21.105. Right of Rescission; Knowledge of Purchaser of Shares

(a) A purchaser of shares who does not have knowledge at the time of purchase of the existence of a shareholders' agreement authorized by this subchapter is entitled to rescind the purchase.

(b) A purchaser is considered to have knowledge of the existence of the shareholders' agreement for purposes of this section if:

(1) the existence of the agreement is noted on the certificate or information statement for the shares as required by Section 21.103; and
(2) with respect to shares that are not represented by a certificate, the information statement noting existence of the agreement is delivered to the purchaser not later than the time the shares are purchased.

(c) An action to enforce the right of rescission authorized by this section must be commenced not later than the earlier of:

(1) the 90th day after the date the existence of the shareholder agreement is discovered; or
(2) the second anniversary of the purchase date of the shares.

§ 21.106. Agreement Limiting Authority of and Supplanting Board of Directors; Liability

(a) A shareholders' agreement authorized by this subchapter that limits the discretion or powers of the board of directors or supplants the board of directors relieves the directors of, and imposes on a person in whom the discretion or powers of the board of directors or the management of the business and affairs of the corporation is vested, liability for an act or omission of the person in accordance with Subsection (b).

(b) A person on whom liability for an act or omission is imposed under this section is liable in the same manner and to the same extent as a director on whom liability for an act or omission is imposed by this code or other law.

§ 21.107. Liability of Shareholder

The existence of or a performance under a shareholders' agreement authorized by this subchapter is not a ground for imposing personal liability on a shareholder for an act or obligation of the corporation by disregarding the separate existence of the corporation or otherwise, even if the agreement or a performance under the agreement:

(1) treats the corporation as if the corporation were a partnership or in a manner that otherwise is appropriate only among partners;
(2) results in the corporation being considered a partnership for purposes of taxation; or
(3) results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

§ 21.108. Persons Acting in Place of Shareholders

An organizer or a subscriber for shares may act as a shareholder with respect to a shareholders' agreement authorized by this subchapter if no shares have been issued when the agreement is signed.

§ 21.109. Agreement Not Effective

(a) A shareholders' agreement authorized by this subchapter ceases to be effective when shares of the corporation are:

(1) listed on a national securities exchange or similar system;
(2) quoted on an interdealer quotation system of a national securities association or successor system; or
(3) regularly traded in a market maintained by one or more members of a national or affiliated securities association.

(b) If a corporation does not have a board of directors and an agreement of the shareholders of the corporation entered into under this subchapter ceases to be effective, a board of directors shall be instituted or reinstated to govern the corporation in the manner provided by Section 21.710(c).

(c) If a shareholders' agreement that ceases to be effective is contained in or referred to by the certificate of formation or bylaws of a corporation, the board of directors of the corporation may adopt an amendment to the certificate of formation or bylaws, without shareholder action, to delete the agreement and any references to the agreement.

B. Voting Trusts and Agreements – Texas Business Organizations Code

§ 6.251. Voting Trusts

(a) Except as provided by this code or the governing documents, any number of owners of an entity may enter into a written voting trust agreement to confer on a trustee the right to vote or otherwise represent ownership or membership interests of the entity.

(b) An ownership or membership interest that is the subject of a voting trust agreement described by Subsection (a) shall be transferred to the trustee named in the agreement for purposes of the agreement.

(c) A copy of a voting trust agreement described by Subsection (a) shall be deposited with the entity at the entity's principal executive office or registered office and is subject to examination by:

(1) an owner, whether in person or by the owner's agent or attorney, in the same manner as the owner is entitled to examine the books and records of the entity; and
(2) a holder of a beneficial interest in the voting trust, whether in person or by the holder's agent or attorney, at any reasonable time for any proper purpose.

§ 6.252. Voting Agreements

(a) Except as provided by this code or the governing documents, any number of owners of an entity, or any number of owners of the entity and the entity itself, may enter into a written voting agreement to provide the manner of voting of the ownership interests of the entity. A voting agreement entered into under this subsection is not part of the governing documents of the entity.

(b) A copy of a voting agreement entered into under Subsection (a):

(1) shall be deposited with the entity at the entity's principal executive office or registered office; and
(2) is subject to examination by an owner, whether in person or by the owner's agent or attorney, in the same manner as the owner is entitled to examine the books and records of the entity.

(c) A voting agreement entered into under Subsection (a) is specifically enforceable against the holder of an ownership interest that is the subject of the agreement, and any successor or transferee of the holder, if:

(1) the voting agreement is noted conspicuously on the certificate representing the ownership interests; or
(2) a notation of the voting agreement is contained in a notice sent by or on behalf of the entity, if the ownership interest is not represented by a certificate.

(d) Except as provided by Subsection (e), a voting agreement entered into under Subsection (a) is specifically enforceable against any person, other than a transferee for value, after the time the person acquires actual knowledge of the existence of the agreement.

(e) An otherwise enforceable voting agreement entered into under Subsection (a) is not enforceable against a transferee for value without actual knowledge of the existence of the agreement at the time of the transfer, or any subsequent transferee, without regard to value, if the voting agreement is not noted as required by Subsection (c).

(f) Section 6.251 does not apply to a voting agreement entered into under Subsection (a).

C. Certificate Requirements – Texas Business Organization Code

§ 3.202. Form & Validity of Certificates; Enforcement of Entity's Rights

(d) A certificate representing ownership interests that is subject to a restriction, placed by or agreed to by the domestic entity under this code, or otherwise contained in its governing documents, on the transfer or registration of the transfer of the ownership interests must:

(1) conspicuously state or provide a summary of the restriction on the front of the certificate;
(2) state the restriction on the back of the certificate and conspicuously refer to that statement on the front of the certificate; or
(3) conspicuously state on the front or back of the certificate that a restriction exists pursuant to a specified document and:
(A) that the domestic entity, on written request to the entity's principal place of business, will provide a free copy of the document to the certificate record holder; or
(B) if the document has been filed in accordance with this code, that the document:

(i) is on file with the secretary of state or, in the case of a real estate investment trust, with the county clerk of the county in which the real estate investment trust's principal place of business is located; and
(ii) contains a complete statement of the restriction.

D. Shareholder Agreements - Delaware

§ 202. Restrictions on Transfer and Ownership of Securities

(a) A written restriction or restrictions on the transfer or registration of transfer of a security of a corporation, or on the amount of the corporation's securities that may be owned by any person or group of persons, if permitted by this section and noted conspicuously on the certificate or certificates representing the security or securities so restricted or, in the case of uncertificated shares, contained in the notice or notices sent pursuant to subSection (f) of § l51 (of this title, may be enforced against the holder of the restricted security or securities or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate or certificates representing the security or securities so restricted or, in the case of uncertificated shares, contained in the notice or notices sent pursuant to subSection (f) § 151 (of this title, a restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

(b) A restriction on the transfer or registration of transfer of securities of a corporation, or on the amount of a corporation's securities that may be owned by any person or group of persons, may be imposed by the certificate of incorporation or by the bylaws or by an agreement among any number of security holders or among such holders and the corporation. No restrictions so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

(c) A restriction on the transfer or registration of transfer of securities of a corporation or on the amount of such securities that may be owned by any person or group of persons is permitted by this section if it:

(1) Obligates the holder of the restricted securities to offer to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities; or
(2) Obligates the corporation or any holder of securities of the corporation or any other person or any combination of the foregoing, to purchase the securities which are the subject of an agreement respecting the purchase and sale of the restricted securities; or
(3) Requires the corporation or the holders of any class or series of securities of the corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted securities, or to approve the amount of securities of the corporation that may be owned by any person or group of persons; or
(4) Obligates the holder of the restricted securities to sell or transfer an amount of restricted securities to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, or causes or results in the automatic sale or transfer of an amount of restricted securities to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing; or
(5) Prohibits or restricts the transfer of the restricted securities, or the ownership of restricted securities by, designated persons or classes of persons or groups of persons, and such designation is not manifestly unreasonable.

(d) Any restriction on the transfer or the registration of transfer of the securities of a corporation, or on the amount of securities of a corporation that may be owned by a person or group of persons, for any of the following purposes shall be conclusively presumed to be for a reasonable purpose:

(1) Maintaining any local, state, federal or foreign tax advantage to the corporation or its stockholders, including without limitation: (a) maintaining the corporation's status as an electing small business corporation under subchapter S of the United States Internal Revenue Code [26 U.S.C.A. § 1371 et seq.], or (b) maintaining or preserving any tax attribute (including without limitation net operating losses), or (c) qualifying or maintaining the qualification of the corporation as a real estate investment trust pursuant to the United States Internal Revenue Code or regulations adopted pursuant to the United States Internal Revenue Code, or

(2) Maintaining any statutory or regulatory advantage or complying with any statutory or regulatory requirements under applicable local, state, federal or foreign law.

(e) Any other lawful restriction on transfer or registration of transfer of securities, or on the amount of securities that may be owned by any person or group of persons, is permitted by this section. (8 Del. C. 1953, § 202; 56 Del. Laws, c. 50; 56 Del. Laws, c. 186, § 11; 64 Del. Laws, c. 112, §§ 19, 20; 72 Del. Laws, c. 123, § 4.)

The Delaware statute cited above is akin to the TBOC § 21.211, although the Texas counterpart is more detailed as to the requirements of legending and providing opportunity for notice of the existence of the restrictive agreement to potential transferees.

E. Voting Trusts and Agreements - Delaware

§ 218. Voting Trusts and Other Voting Agreements

(a) One stockholder or 2 or more stockholders may by agreement in writing deposit capital stock of an original issue with or transfer capital stock to any person or persons, or entity or entities authorized to act as trustee, for the purpose of vesting in such person or persons, entity or entities, who may be designated voting trustee, or voting trustees, the right to vote thereon for any period of time determined by such agreement, upon the terms and conditions stated in such agreement. The agreement may contain any other lawful provisions not inconsistent with such purpose. After the filing of a copy of the agreement in the registered office of the corporation in this State, which copy shall be open to the inspection of any stockholder of the corporation or any beneficiary of the trust under the agreement daily during business hours, certificates of stock or uncertificated stock shall be issued to the voting trustee or trustees to represent any stock of an original issue so deposited with such voting trustee or trustees, and any certificates of stock or uncertificated stock so transferred to the voting trustee or trustees shall be surrendered and cancelled and new certificates or uncertificated stock shall be issued therefore to the voting trustee or trustees. In the certificate so issued, if any, it shall be stated that it is issued pursuant to such agreement, and that fact shall also be stated in the stock ledger of the corporation. The voting trustee or trustees may vote the stock so issued or transferred during the period specified in the agreement. Stock standing in the name of the voting trustee or trustees may be voted either in person or by proxy, and in voting the stock, the voting trustee or trustees shall incur no responsibility as stockholder, trustee or otherwise, except for their own individual malfeasance. In any case where 2 or more persons or entities are designated as voting trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote the stock and the manner of voting it at the meeting shall be determined by a majority of the trustees, or if they be equally divided as to the right and manner of voting the stock in any particular case, the vote of the stock in such case shall be divided equally among the trustees.

(b) Any amendment to a voting trust agreement shall be made by a written agreement, a copy of which shall be filed in the registered office of the corporation in this State.

(c) An agreement between 2 or more stockholders, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the shares held by them shall be voted as provided by the agreement, or as the parties may agree, or as determined in accordance with a procedure agreed upon by them.

(d) This section shall not be deemed to invalidate any voting or other agreement among stockholders or any irrevocable proxy which is not otherwise illegal. (8 Del. C. 1953, § 218; 56 Del. Laws, c. 50; 56 Del. Laws,

c. 186, § 13; 57 Del. Laws, c. 148, § 14; 63 Del. Laws, c. 25, § 8; 64 Del. Laws, c. 112, § 22; 69 Del. Laws, c. 263, §§ 1-6; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 339, § 38; 73 Del. Laws, c. 82, § 10.)

EXHIBIT D

SAMPLE NON-REPRESENTATION LETTER

29 April 2010

Via Certified Mail
Return Receipt Requested

Name
Address

Re: Representation of New Entity

Dear _____:

You have asked that [Name of Law Firm] represent a new entity (the "Company") to be formed by you, _____, _____ and _____ (collectively, the "Investors"). It is not uncommon for a group of individuals to hire a sole attorney for purposes of drafting papers necessary to organize a business entity and provide advice as to the documentation that may be used to govern the relationship among the individual owners of the entity. The attorney, however, is restricted by the Canons of Ethics from representing more than one party to the transaction. Most commonly, the attorney represents the entity itself and not any of the individuals, and we think that situation applies in this matter. While you have not requested that we represent you, we want to make clear that we do not represent you or any other Investor in this matter, and you should not look to us for protection of your interests in the Company. We recommend that you obtain other counsel to represent you in connection with your interests in the Company.

If you have any questions, please do not hesitate to contact me.

Sincerely,

[NAME OF LAW FIRM]

By:_____