Build Your Dream Business

Raising Capital Module | **SAMPLE Shareholder's Agreement for Venture Capital Investment**

Following is a sample agreement between the shareholders of a small corporation and venture capitalists that defines the rights, roles, and responsibilities of the Parties. In return for a capital investment, VCs will receive a certain amount of preferred stock in the company. In addition, this agreement provides whether the venture capital partner can serve on the board of directors and whether there are any share transfer restrictions. This agreement should be used by small businesses or other entities that want to define the rights and responsibilities of the Parties.

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SHAREHOLDERS' AGREEMENT

by and among

_____ [*Small Corporation*],

_____ [*Venture Capital Fund*]

and

THE OTHER SHAREHOLDERS

THAT ARE SIGNATORIES HERETO

Dated as of _____

SHAREHOLDERS' AGREEMENT

SHAREHOLDERS' AGREEMENT, dated as of _____("Agreement"), by and among _____ [*Small Corporation*],_____ (the "Company"), _____ [*Venture Capital Fund*] ("VC"), and any VC Affiliate to which any rights of VC are assigned hereunder or under the Purchase Agreement (as defined below) (collectively with VC, the "VC Parties") and the Shareholders of the Company listed on Exhibit A hereto (the "Management Shareholders").

W I T N E S S E T H:

WHEREAS, as of the date hereof, the Company, the VC Parties and the Management Shareholders are entering into a Securities Purchase Agreement (the "Purchase Agreement"), pursuant to which, among other things, the Company is issuing to the VC Parties Series A Preferred Stock, no par value per share (the "Series A Preferred");

WHEREAS, all of the Shareholders and the Company desire to set forth in this Shareholders' Agreement certain rights, obligations and restrictions with respect to the ownership of capital stock of the Company and certain arrangements relating to the management of the Company;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and obligations hereinafter set forth, the parties hereto hereby agree as follows:

Section 1.

Definitions. As used herein, the following terms shall have the following meanings (capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Purchase Agreement):

"Affiliate" means (i) with respect to any Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person, or (ii) with respect to any individual, shall also mean such individual's spouse, parent,

parent-in-law, sibling, child, step-child, grandchild, niece or nephew and their issue and spouses of any of the foregoing persons and any trust for such Person or for the benefit of any of the foregoing.

"Beneficially Own" or "Beneficial Ownership" shall have the meaning set forth in Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "Securities Exchange Act").

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

"Common Stock" means the Common Stock, par value $ ___per share, of the Company and any equity securities issued or issuable with respect to the Common Stock in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization.

"Common Stock Equivalents" means securities convertible into, or exchangeable or exercisable for, shares of Common Stock; provided, however, that neither the Series A Preferred nor the Notes shall be treated as Common Stock Equivalents for purposes hereof.

"Equity Securities" means Stock and any other share of capital stock or other equity security of the Company including, without limitation, any options, warrants or other rights to subscribe for, purchase or otherwise acquire any equity security of the Company.

"Excluded Securities" means (a) options or restricted Stock issued by the Company pursuant to any stock option or similar plan (and any shares of Common Stock issuable thereunder) approved by the Board, (b) any shares of Common Stock or any Common Stock Equivalent (and any shares of Common Stock issuable thereunder) issued by the Company as consideration for the acquisition by the Company of the assets of any _____which acquisition is approved by the Board, (c) shares of Common Stock issuable upon conversion, exchange or exercise of any Common Stock Equivalent outstanding as of the date hereof, including, without limitation, any Warrants (as defined in the Purchase Agreement), (d) any shares of Common Stock or Series A Preferred issued pursuant to Sections 1 or 2 of the Purchase Agreement and (e) any shares of Common Stock issuable upon conversion of the Series A Preferred or the Notes.

"GAAP" means United States generally accepted accounting principles, as in effect from time to time.

"Group" means two or more Persons who agree to act together for the purpose of acquiring, holding, voting or disposing of Stock.

"IPO" means the initial underwritten offering pursuant to which the Common Stock becomes registered under Section 12 of the Securities Exchange Act of 1934, as amended.

"Notes" means the _____ **[*Instruction:* Enter the type of Notes – *e.g.* "Class A"]** Notes of the Company which may be issued pursuant to the Purchase Agreement.

"Other Shareholders" means with respect to any selling Shareholder, for purposes of Sections 7 and 8, all Shareholders other than such or any other selling Shareholder.

"Person" means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivisions thereof.

"Proportionate Percentage" means, as to each VC Party, the quotient obtained (expressed as a percentage) by dividing (A) the aggregate number of shares of Common Stock and Series A Preferred owned by such VC Party on the first day of the Section 6(b) Acceptance Period (as defined in Section 6(b) below) by (B) the aggregate number of shares of Common Stock and Series A Preferred owned on the first day of the Section 6(b) Acceptance Period by all VC Parties who exercise their option to purchase Refused Stock (as defined in Section 6(b) below).

"Public Sale" means a Sale pursuant to a bona fide underwritten public offering pursuant to an effective registration statement filed under the Securities Act or pursuant to Rule 144 under the Securities Act (other than, for purposes of Section 4(b), in a privately negotiated Sale).

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of the date hereof, between the Company and the VC Parties.

"Sell" as to any Stock, means to sell, or in any other way directly or indirectly transfer, assign, distribute, pledge, encumber or otherwise dispose of, either voluntarily or involuntarily; and the terms Sale and Sold shall have meanings correlative to the foregoing. Notwithstanding the foregoing, no Sale of stock pursuant to Section 10 of the Purchase Agreement shall be deemed a "Sale."

"Shareholders" means the parties to this Agreement (other than the Company) and any other subsequent holder of Stock who agrees to be bound by the terms of this Agreement.

"Stock" means (i) any shares of Common Stock, (ii) any Common Stock Equivalents and (iii) any Series A Preferred Stock, in each case, whether owned on the date hereof or acquired hereafter.

"Subsidiary" means with respect to any Person, any corporation, partnership or other entity (i) of which shares of capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other similar managing body of such corporation, partnership or other entity are at the time owned by such Person, or (ii) the management of which is otherwise controlled, directly or indirectly, through one or more intermediaries by such Person.

"VC Affiliate" has the meaning set forth in Section __.

"Voting Shares" means any securities of the Company the holders of which are generally entitled to vote for members of the Board (including, without limitation, all outstanding shares of Common Stock and Series A Preferred).

Section 2.

Methodology for Calculations. For purposes of this Agreement, the Sale of a Common Stock Equivalent shall be treated as the Sale of the shares of Common Stock into which such Common

Stock Equivalent can be converted, exchanged or exercised. All holdings of Common Stock by Persons who are Affiliates of each other shall be aggregated for purposes of meeting any threshold tests under this Agreement and the Registration Rights Agreement.

Section 3.

Board of Directors.

3.1. Pre-IPO.

(a) The number of directors of the Company shall initially be _____ (the "Initial Directors"). Prior to an IPO, (i) VC shall have the right to designate persons to serve as members of the Board (such members being referred to herein as the "VC Directors"), in such number as shall constitute ____% (rounded up to the next whole number) of the members of the Board and (ii) the holders of a majority of the Voting Shares not held by the VC Parties (the "Non-VC Shareholders") shall have the right to designate the remaining members of the Board (such members being referred to herein as the "Management Directors"). Initially, the Management Directors shall be _____ and _____ and the VC Directors shall include _____ and _____, provided that nothing herein shall prevent the Non-VC Shareholders from replacing, at any time, either or both of Messrs. _____ or _____ as Management Directors or VC from replacing, at any time, Messrs. _____ or _____ as VC Directors in accordance with the provisions of this Section 3. In no case shall the Board consist of less than __ members. If, at any time, VC has designated fewer than the full number of directors to which it is entitled, no action may be taken by the Board without the consent of at least a majority of the VC Directors then serving as directors of the Company.

(b) At any regular or special meeting of shareholders called for the purpose of electing members to serve on the Board, or, to the extent permitted by the Articles of Incorporation, in any written consent electing members to serve on the Board executed in lieu of such a meeting, each of the parties hereto agrees to vote all Voting Shares held by it, and to take all other necessary action, to cause the Board to be comprised of the VC Directors and the Management Directors.

3.2. Post-IPO. From and after an IPO and for so long as VC holds in excess of ___% of the outstanding Common Stock, in connection with any election for members of the Board, the Company shall, at the request of VC, include representatives designated by VC in the slate of directors recommended by the Board to shareholders for election as directors (each such representative designated by VC being referred to herein as a "VC Designee"). The number of VC Designees shall equal the product, rounded up to the nearest whole number, of (a) the number of directors of the Company, multiplied by (b) a fraction, the numerator of which is the number of shares of Common Stock held by the VC Parties and the denominator of which is the number of shares of Common Stock outstanding as of such date. The Company shall use its best efforts to cause such VC Designee(s) to be elected to, and to be maintained as member(s) of, the Board (including recommending to the shareholders of the Company the election of any VC Designee(s) to the Board and opposing any proposal to remove any VC Designee at each

meeting of the shareholders of the Company at which the election or removal of members of the Board is on the agenda), and shall take no action which would diminish the prospects of such VC Designee being elected to the Board or increase the prospects of such VC Designee being removed from the Board. The provisions contained in this Section 3.2 shall be binding solely on the Company and shall not be binding in any respect on any of the shareholders of the Company, in their capacity as shareholders.

3.3. Committees: Subsidiaries.

(a) The Company shall, at the request of VC, take all actions necessary to cause at least one VC Director (and, from and after an IPO, at least one VC Designee) to be appointed to each committee of the Board and to each of the boards of directors or other similar managing bodies (and any committee thereof) of each of the Subsidiaries of the Company.

(b) Prior to an IPO, the Company shall, at the request of the Non-VC Shareholders holding a majority of the Voting Shares held by the Non-VC Shareholders, take all actions necessary to cause at least one Management Director to be appointed to each committee of the Board, other than the compensation committee, and to each of the boards of directors or other similar managing bodies (and any committee thereof, other than the compensation committee) of each of the Subsidiaries of the Company. Notwithstanding the foregoing, upon the consent of a majority of the VC Directors, the Company may appoint any Management Director to the compensation committee of the Board or any board of directors or similar managing body of any Subsidiary of the Company.

(c) If any VC Director, VC Designee or Management Director serving on any committee of the Board or on any board of directors or other similar managing body (and any committee thereof) of any Subsidiary of the Company shall cease for any reason to serve as a member of, or shall otherwise be unable to fulfill his duties on, any such committee, board of directors, or other similar managing body, as the case may be, he shall be succeeded by another Person designated by VC, in the case of a VC Director or VC Designee, and by Non-VC Shareholders holding a majority of the Voting Shares held by Non-VC Shareholders, in the case of a Management Director.

3.4. Vacancies: Removal.

(a) Subject to Section 3.4(b), each VC Director, VC Designee and Management Director shall hold his office until his death or until his successor shall have been duly elected and qualified. If any VC Director, VC Designee or Management Director shall cease to serve as a director of the Company for any reason, the vacancy resulting thereby shall be filled by another Person designated by VC, in the case of a VC Director or VC Designee, and by Non-VC Shareholders holding a majority of the Voting Shares held by Non-VC Shareholders, in the case of a Management Director.

(b) None of the VC Directors, any VC Designee nor any Management Director shall be removed from office without the consent of VC, in the case of a VC Director or VC Designee, and by Non-VC Shareholders holding a majority of the Voting Shares held by

Non-VC Shareholders, in the case of a Management Director. Any VC Director, VC Designee or Management Director may be removed from office at any time, with or without cause, at the request of VC, in the case of a VC Director or VC Designee, and by Non-VC Shareholders holding a majority of the Voting Shares held by Non-VC Shareholders, in the case of a Management Director.

3.5. Non-Voting Observer. If at any time, neither a VC Designee nor any VC Director is a member of the Board, VC, so long as VC holds more than 5% or more of the outstanding Common Stock, will be entitled to have one observer (a "Non-Voting Observer") selected by VC present at all meetings of the Board and such observer shall be notified of any meeting of the Board, including such meeting's time and place, in the same manner as directors of the Company and shall have the same access to information concerning the business and operations of the Company and at the same time as directors of the Company and shall be entitled to participate in discussions and consult with, and make proposals and furnish advice to, the Board, without voting; provided, however, that the Board shall be under no obligation to take any action with respect to any proposals made or advice furnished by any Non-Voting Observer, other than to give due consideration thereto. At the request of the Company or the request of the majority of the Management Directors, each Non-Voting Observer shall enter into an agreement providing that such Non-Voting Observer shall keep confidential any information about the Company which is confidential, proprietary or otherwise not generally available to the public.

3.6. Representative. In the event that, after receiving proper notice of a meeting of the Board or a meeting of any board of directors or similar managing body of any of the Company's Subsidiaries in accordance with such entity's by-laws, any VC Director, VC Designee or Non-Voting Observer determines that he or she is unable to attend such meeting, VC shall have the right to designate a representative to attend and observe such meeting on behalf of such VC Director, VC Designee or Non-Voting Observer, as the case may be, who shall be entitled to fully participate (other than the right to vote) in such meeting as if he were a member of the Board, or a member of the board of directors or similar managing body of the relevant Subsidiary of the Company or a Non-Voting Observer, as the case may be. At the request of the Company or the request of the majority of Management Directors, each representative shall enter into an agreement providing that such representative shall keep confidential any information about the Company which is confidential, proprietary or otherwise not generally available to the public.

3.7. Telephonic Meetings. The Company shall take all necessary actions, including, without limitation, causing its By-Laws to make due provision, to allow any director to telephonically attend (x) any meeting of the Board (and any committee thereof) of which he or she is a member or (y) any meeting of any board of directors or any similar managing body (and any committee thereof) of any Subsidiary of the Company of which he or she is a member.

3.8. Expenses. The Company shall pay the reasonable out-of-pocket expenses incurred by each director of the Company in connection with performing his or her duties as a member of the Board, including without limitation the reasonable out-of-pocket expenses incurred by such person attending meetings of the Board or any committee thereof or meetings of any board of directors or other similar managing body (and any committee thereof) of any Subsidiary of the Company.

3.9. Directors' Indemnification.

(a) Unless otherwise consented to in writing by VC, the Company shall obtain and cause to be maintained in effect a policy of directors' and officers' liability insurance covering each director of the Company in an amount and upon such terms as are reasonably acceptable to VC.

(b) Unless otherwise consented to in writing by VC, (i) the Articles of Incorporation, By-Laws and other organizational documents of the Company and each of its Subsidiaries shall at all times, to the fullest extent permitted by law, provide for indemnification of, advancement of expenses to, and limitation of the personal liability of, the members of the Board and the members of the boards of directors or other similar managing bodies of each of the Company's Subsidiaries and such other persons, if any, who, pursuant to a provision of such Articles of Incorporation, By-laws or other organizational documents, exercise or perform any of the powers or duties otherwise conferred or imposed upon members of the Board or the boards of directors or other similar managing bodies of each of the Company's Subsidiaries; and (ii) such provisions may not be amended, repealed or otherwise modified in any manner adverse to any member of the Board or any member of the boards of directors or other similar managing bodies of any of the Company's Subsidiaries, until at least six years following the date that VC is no longer entitled to designate or nominate any VC Director or VC Designee. Any Non-Voting Observer or representative, as contemplated by Section 3.6, shall be entitled to indemnification from the Company to the maximum extent permitted by law as though he or she was a VC Director or VC Designee.

3.10. Cooperation. Each Shareholder shall vote all of its Voting Shares and shall take all other necessary or desirable actions within its control (including, without limitation, attending all meetings in person or by proxy for purposes of obtaining a quorum, executing all written consents in lieu of meetings and voting to remove members of the Board, as applicable), and the Company shall take all necessary and desirable actions within its control (including, without limitation, calling special Board and Shareholder meetings and voting to remove members of the Board, as applicable), to effectuate the provisions of this Section 3.

3.11. Irrevocable Proxy. In order to secure each Shareholder's obligation to vote his Voting Shares in accordance with the provisions of this Section 3 pursuant to which the VC Parties have rights hereunder, each Shareholder hereby appoints VC as his, her or its true and lawful proxy and attorney-in-fact, with full power of substitution, to vote all of his Voting Shares of the Company for the election of each VC Director as a member of the Board but for no other purpose and to take all such other actions as are necessary to enforce the rights of the VC Parties under this Section 3. VC may exercise the irrevocable proxy granted to it hereunder at any time any Shareholder fails to comply with any provision of this Agreement granting the VC Parties rights under this Section 3. The proxies and powers granted by each Shareholder pursuant to this Section 3.1 1 are coupled with an interest and are given to secure the performance of the Shareholders' obligations to the VC Parties under this Section 3. Such proxies and powers shall survive the death, incompetency and disability of each Shareholder. Such proxies and powers will be effective until an IPO, at which time such proxies and powers shall terminate.

3.12. Contractual Management Rights. The Company and each of the Shareholders acknowledge that the provisions of this Agreement, including this Section 3, are intended, among other things, to provide the VC Parties with "contractual management rights" within the meaning of the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

3.13. Dividends on Series A Preferred Stock. No dividends shall be declared or paid on any shares of Series A Preferred Stock without the approval of a majority of the Management Directors.

Section 4.

4. 1. Management Shareholder Transfer Restrictions

(a) Prior to the fourth anniversary of the date of the Initial Closing (as defined in the Purchase Agreement), no Management Shareholder may Sell, in any single transaction or series of transactions, (i) more than __%, in the aggregate, of the Common Stock held by such Management Shareholder as of the date of the Initial Closing, (ii) more than __%, in the aggregate, of the Common Stock issued to such Management Shareholder upon the conversion of shares of Series A Preferred held by such Management Shareholder or (iii) any shares of Series A Preferred Stock or Common Stock Equivalents held by such Management Shareholder.

(b) The requirements of this Section 4 shall not apply to (i) any transfer or Sale of Stock by a Management Shareholder to an Affiliate of such Management Shareholder, (ii) any Sale of Stock pursuant to Section 6 or 7 , (iii) any other Sale as to which VC waives compliance with this Section 4 or (iv) transfer of Stock upon the death of a Management Shareholder pursuant to the terms of the trust or will of the deceased Management Shareholder or by the laws of intestate succession.

Section 5.

5.1. Rights of First Offer. Subject to Section 5(f), in addition to and not in limitation of any other restrictions on Sales of Stock contained in this Agreement, prior to an IPO, any Sale of Stock by a Management Shareholder shall be consummated only in accordance with the following procedures:

(a) The selling Management Shareholder shall first deliver to the Company and VC Parties a written notice (a "Section 5 Offer Notice"), which shall (i) state the selling Management Shareholder's intention to sell Stock to one or more Persons, the amount and type of Stock to be sold (the "Subject Stock"), the purchase price therefore and a summary of the other material terms of the proposed Sale and (ii) offer the Company and the VC Parties the option to acquire all or a portion of such Subject Stock upon the terms and subject to the conditions of the proposed Sale as set forth in the Section 5 Offer Notice (the "Section 5 Offer"), provided that such Section 6 Offer may provide that it must be accepted by the Company and the VC Parties (in the aggregate) on an all or nothing basis (an "All or Nothing Sale"). The Section 6 Offer shall remain open and irrevocable for the periods set forth below (and, to the extent the Section 6 Offer is accepted during such

periods, until the consummation of the Sale contemplated by the Section 5 Offer). The Company shall have the right and option, for a period of 30 days after delivery of the Section 5 Offer Notice (the "Section 5(a) Acceptance Period"), to accept all or any part of the Subject Stock at the purchase price and on the terms stated in the Section 5 Offer Notice, provided that the Company may accept less than all of the Subject Stock, in an All or Nothing Sale, only if all of the remaining Subject Stock is accepted by the VC Parties as set forth below. Such acceptance shall be made by delivering a written notice to the selling Management Shareholder and to each of the VC Parties within the Section 5(a) Acceptance Period.

(b) If the Company shall fail to accept all of the Subject Stock offered for Sale pursuant to, or shall reject in writing, the Section 5 Offer (the Company being required to notify in writing the selling Management Shareholder and each of the VC Parties of its rejection or failure to accept in the event of the same), then, upon the earlier of the expiration of the Section 5(a) Acceptance Period or the giving of such written notice of rejection or failure to accept such offer by the Company, each VC Party shall have the right and option, for a period of 30 days thereafter (the "Section 5(b) Acceptance Period"), to accept all or any part of the Subject Stock so offered and not accepted by the Company (the "Refused Stock") at the purchase price and on the terms stated in the Section 5 Notice; provided, however, that, if the Section 6 Offer contemplated an All or Nothing Sale, the VC Parties, in the aggregate, may accept, during the Section 5(b) Acceptance Period, all, but not less than all, of the Refused Stock, at the purchase price and on the terms stated in the Section 6 Offer Notice. Such acceptance shall be made by delivering a written notice to the Company and the selling Management Shareholder within the Section 5(b) Acceptance Period specifying the maximum number of shares such VC Party will purchase (the "First Offer Shares"). If, upon the expiration of the Section 5(b) Acceptance Period, the aggregate amount of First Offer Shares exceeds the amount of Refused Stock, the Refused Stock shall be allocated among the VC Parties as follows: (i) First, each VC Party shall be entitled to purchase no more than its Proportionate Percentage of Refused Stock; (ii) Second, if any shares of Refused Stock have not been allocated for purchase pursuant to (i) above (the "Remaining Shares"), each VC Party (an "Oversubscribed Shareholder") which had offered to purchase a number of shares of Refused Stock in excess of the amount of stock allocated for purchase to it in accordance with previous allocations of such shares of Refused Stock, shall be entitled to purchase an amount of Remaining Shares equal to no more than its Proportionate Percentage (treating only Oversubscribed Shareholders as VC Parties for these purposes) of the Remaining Shares; and (iii) Third, the process set forth in (ii) above shall be repeated with respect to any shares of Refused Stock not allocated for purchase until all shares of Refused Stock are allocated for purchase.

(c) If effective acceptance shall not be received pursuant to Sections 5(a) and/or 5(b) above, within the periods specified above, with respect to all of the Subject Stock offered for Sale pursuant to the Section 5 Offer Notice, then the selling Management Shareholder may Sell all or any portion of the Stock so offered for Sale and not so accepted (or, in the case of an All or Nothing Sale, all of the Subject Stock offered for sale pursuant to the Section 5 Offer Notice), at a price not less than the price, and on terms not more favorable to the purchaser thereof than the terms, stated in the Section 5 Offer Notice at

any time within 90 days after the expiration of the Section 5(b) Acceptance Period (the "Sale Period"). To the extent the selling Management Shareholder Sells all or any portion of the Stock so offered for Sale during the Sale Period, the selling Management Shareholder shall promptly notify the Company, and the Company shall promptly notify the VC Parties, as to (i) the number of shares of Stock, if any, that the selling Management Shareholder then owns, (ii) the number of shares of Stock that the selling Management Shareholder has sold, (iii) the terms of such Sale and (iv) the name of the owner(s) of any shares of Stock sold. In the event that all of the Stock is not sold by the selling Management Shareholder during the Sale Period, the right of the selling Management Shareholder to Sell such unsold Stock shall expire and the obligations of this Section 5 shall be reinstated; provided, however, that, in the event that the selling Management Shareholder determines, at any time during the Sale Period, that the sale of all of the Stock on the terms set forth in the Section 5 Offer Notice is impractical, the selling Management Shareholder may terminate the offer and reinstate the procedure provided in this Section 5 without waiting for the expiration of the Sale Period.

(d) All Sales of Subject Stock to the Company and/or the VC Parties subject to any one Section 5 Offer Notice shall be consummated contemporaneously at the offices of the Company on the later of (i) a mutually satisfactory business day within 30 days after the expiration of the Section 5(a) Acceptance Period or the Section 5(b) Acceptance Period, as applicable, and (ii) the fifth business day following the expiration or termination of all waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR"), applicable to such Sales, or at such other time and/or place as the parties to such Sales may agree. The delivery of certificates or other instruments evidencing such Subject Stock duly endorsed for transfer shall be made on such date against payment of the purchase price for such Subject Stock.

(e) Anything contained herein to the contrary notwithstanding, prior to any Sale of Stock by a selling Management Shareholder pursuant to this Section 5, the selling Management Shareholder shall, after complying with the provisions of this Section 5, comply with the provisions of Sections 6 and 7 hereof, in each case as applicable.

(f) The requirements of this Section 5 shall not apply to (i) any Sale of Stock by a Shareholder to an Affiliate of such Shareholder; (ii) any Sale of Stock as an Other Shareholder pursuant to Section 6 or a Tag-Along Offeree pursuant to Section 7; (iii) any other Sale as to which the Company and the VC Parties waive compliance with this Section 5, or (iv) transfer of Stock upon the death of a Management Shareholder pursuant to the terms of the trust or will of the deceased Management Shareholder or by the laws of intestate succession.

Section 6.

6.1. Bring-Along Rights.

(a) Subject to Section 6(d), from and after the second anniversary of the date of the Initial Closing and prior to an IPO, if one or more Shareholders owning, individually or in the aggregate, an amount of Stock equal to __% in the aggregate or more of the then

outstanding Voting Shares, whether alone or in concert with any other Shareholder, propose to Sell to any Person or Group who are not affiliated with any of such Shareholder(s) (collectively, a "Section 6 Offeror"), in a bona fide arm's-length transaction or series of transactions (including by way of a purchase agreement, tender offer, merger or other business combination transaction or otherwise), all of the shares of Stock held by such Shareholder(s) (any such transaction being referred to herein as an "Exit Sale"), then the selling Shareholders may elect to require all Other Shareholders to Sell all the Stock owned by each of them concurrently with such Exit Sale to such Section 6 Offeror at the purchase price and upon the other terms and subject to the conditions of the Exit Sale as set forth in the Section 6 Notice (as defined below).

(b) The rights set forth in Section 6(a) shall be exercised by giving written notice (the "Section 6 Notice") to each Shareholder setting forth in detail the terms of the proposed Exit Sale and the proposed closing date of the Exit Sale, which proposed date shall not be earlier than the expiration of the Section 5(b) Acceptance Period in respect of such Sale, if applicable.

(c) All Sales of Stock to the Section 6 Offeror pursuant to this Section 6 shall be consummated contemporaneously at the offices of the Company on the later of (i) a business day not less than 15 or more than 90 days after the Section 6 Notice is delivered to the Shareholders, as designated to the Other Shareholders by the Section 6 Offeror or (ii) the fifth business day following the expiration or termination of all waiting periods under HSR applicable to such Sales, or at such other time and/or place as the parties to such Sales may agree. The delivery of certificates or other instruments evidencing such Stock duly endorsed for transfer shall be made on such date against payment of the purchase price for such Stock.

(d) Anything contained herein to the contrary notwithstanding, no selling Management Shareholder may exercise its rights under this Section 6 unless it has first complied with the provisions of Section 5 hereof.

Section 7.

7.1. Tag-Along Rights.

(a) Prior to an IPO, any Shareholder, whether alone or in concert with any other Shareholder (each a "Tag-Along Initiator") desiring to Sell shares of Stock to any Person other than an Affiliate of such Person, in one transaction or a series of related transactions which in the aggregate represent at least __% of the Common Stock and __% of the voting power related to the then outstanding Voting Shares shall, after expiration of all required notice periods under Section 5, give not less than 20 days' prior written notice of such intended Sale to each other Shareholder ("Tag-Along Offeree") and to the Company. Such notice (the "Tag-Along Notice") shall set forth the terms and conditions of such proposed Sale, including the name of the proposed transferee (the "Section 7 Offeror"), the number of shares of each class of Stock proposed to be transferred by the Tag-Along Initiator (the "Tag-Along Shares"), the purchase price per share proposed to be paid therefor and the payment terms and type of transfer to be effectuated. Within 10 days after delivery of the

Tag-Along Notice by the Tag-Along Initiator to each Tag-Along Offeree and to the Company (the "Section 7 Period"), each Tag-Along Offeree shall, by written notice to the Tag-Along Initiator and the Company, have the opportunity and right to sell shares of Stock to the transferee in such proposed Sale (upon the same terms and conditions as the Tag-Along Initiator) up to that number of shares of each such class of Stock as is proposed to be sold by the Tag-Along Initiator which is owned by the Tag-Along Offeree as shall equal the product of (x) a fraction, the numerator of which is the number of Tag-Along Shares of each class of Stock and the denominator of which is the aggregate number of shares of such class of Stock owned as of the date of the Tag-Along Notice by the Tag-Along Initiator, times (y) the number of shares of such class of Stock owned by the Tag-Along Offeree as of the date of the proposed sale. No Person may Sell shares in any transaction that is subject to this Section 7 unless the transferee agrees to be bound by and complies with the terms of this Agreement.

(b) All Sales of Stock to the Section 7 Offeror shall be consummated contemporaneously at the offices of the Company on the later of (i) a mutually satisfactory business day as soon as practicable, but in no event more than 30 days, after the expiration of the Section 7 Period, as designated to the Tag-Along Offerees by the Section 7 Offeror or (ii) the fifth business day following the expiration or termination of all waiting periods under HSR applicable to such sales, or at such other time and/or place as the parties to such Sales may agree. The delivery of certificates or other instruments evidencing such Stock duly endorsed for transfer shall be made on such date against payment of the purchase price for such Stock.

(c) Anything contained herein to the contrary notwithstanding, each Tag Along Initiator shall, prior to any Sale of Stock pursuant to this Section 7, in addition to complying with the provisions of this Section 7, comply with the provisions of Sections 5 and 6 hereof, in each case as applicable.

(d) The requirements of this Section 7 shall not apply to (a) any Sale of Stock required to be made by a Tag Along Initiator pursuant to Section 6 hereof or (b) any Sale of Stock by a Tag Along Initiator to any Affiliate of such Shareholder.

Section 8.

8.1. Holdback Agreement; Adjustments.

(a) Each Shareholder agrees that, (i) unless otherwise agreed by VC, to the extent requested in writing by a managing underwriter of the IPO or any underwritten public offering effected pursuant to a demand registration request under the Registration Rights Agreement, it will not Sell any Equity Security (other than as part of such underwritten public offering) during the time period reasonably requested by the managing underwriter, not to exceed 180 days, and (ii) to the extent requested in writing by a managing underwriter of any underwritten public offering effected by the Company for its own account (other than the IPO) it will not Sell any Equity Security (other than as part of such underwritten public offering) during the time period reasonably requested by the managing underwriter, which period shall not exceed 90 days.

(b) The Company agrees that it will take all reasonable steps necessary to effect a subdivision of shares if, with respect to any Demand Registration, in the reasonable judgment of the managing underwriter for the offering in respect of such Demand Registration, such subdivision would enhance the marketability of the securities proposed to be registered thereunder. Each Shareholder agrees to vote all of its shares of capital stock in a manner, and to take all other actions necessary, to permit the Company to carry out the intent of the preceding sentence including, without limitation, voting in favor of an amendment to the Company's Articles of Incorporation in order to increase the number of authorized shares of capital stock of the Company.

Section 9.

9.1. Major Corporate Transactions.

(a) Prior to an IPO, the Company shall not, and shall cause each Subsidiary not to, take any of the following actions (each a "Significant Transaction") without the prior written consent of VC:

i. consolidate or merge with or into any Person or enter into any similar business combination transaction (including a sale of substantially all of its assets) or effect any transaction or series of transactions in which more than fifty percent (50%) of its voting securities are transferred to another Person, except any such transaction or series of transactions, as the case may be, involving only wholly owned Subsidiaries of the Company;

ii. voluntarily liquidate, dissolve or windup;

iii. purchase, acquire or obtain any capital stock or other proprietary interest, directly or indirectly, in any other entity or all or substantially all of the business or assets of another Person;

iv. enter into any management service agreement;

v. enter into or commit to enter any joint ventures (other than in the ordinary course of business) or any partnerships or establish any non-wholly owned subsidiaries;

vi. enter into the ownership, active management, development, construction or operation of any business other than the ownership, management, financing or operation of

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vii. sell, lease or otherwise dispose of more than __% of the consolidated assets of the Company (computed on the basis of book value, determined in accordance with GAAP, consistently applied) in any transaction or in any series of related transactions;

viii. create, incur, or assume any indebtedness (which shall include for purposes hereof capitalized lease obligations, guarantees and other contingent obligations) in

excess of $_____in any individual instance or in excess of $_____in any year;

ix. mortgage, encumber, or create, incur or suffer to exist liens on, any of its assets in excess of $_____in any individual instance or in excess of $_____in any year;

x. create, designate, authorize, issue or enter into any agreement providing for the issuance (contingent or otherwise) of (a) any notes or debt securities containing equity features (including, without limitation, any notes or debt securities convertible into or exchangeable for any Equity Security) or (b) any capital stock or other Equity Security other than Excluded Securities;

xi. authorize, issue or enter into any agreement providing for the issuance (contingent or otherwise) of (a) any notes or debt securities of any Subsidiary of the Company containing equity features (including, without limitation, any notes or debt securities convertible into or exercisable or exchangeable for capital stock or other equity securities of any Subsidiary of the Company) or (b) any capital stock or other equity securities (or any securities, directly or indirectly, convertible into or exercisable or exchangeable for any capital stock or other equity securities) of any Subsidiary of the Company;

xii. pay, declare or set aside any sums for the payment of, any dividends, or make any distributions on, any shares of its capital stock or other equity securities;

xiii. redeem, purchase or otherwise acquire, any of its capital stock or other equity securities (including, without limitation, warrants, options and other rights to acquire any of its capital stock or other equity securities directly or indirectly) or redeem, purchase or make any payments with respect to any stock appreciation rights, phantom stock plans or similar rights or plans relating to the Company or its Subsidiaries, except for redemptions or repurchases of Series A Preferred permitted or required under the Company's Articles of Incorporation or this Agreement;

xiv. redeem, purchase or otherwise acquire, in any transaction or series of related transactions, any indebtedness of the Company, except to the extent that such indebtedness is due in accordance with its terms;

xv. make or commit to make any single capital expenditure or any series of related capital expenditures in excess of $_____in any year;

xvi. register any securities under the Securities Act, including, without limitation, pursuant to an initial public offering;

xvii. grant any registration rights;

xviii. enter into any transactions (except as expressly permitted by this Agreement, the Purchase Agreement and the Registration Rights Agreement) with any "affiliate"

or "associate" (as such terms are defined under Rule 12b-2 under the Securities Exchange Act);

xix. amend or repeal any provision of its Articles of Incorporation or By-Laws, including, without limitation, any change in the number of directors comprising its Board of Directors;

xx. change its independent certified public accountants;

xxi. adopt or amend the annual budget;

xxii. adopt, amend, or grant any waiver under any employee benefit plan, stock option plan or similar plan or issue any Common Stock, Common Stock Equivalents or other equity securities under any such plan;

xxiii. amend the Purchase Agreement, this Agreement or the Registration Rights Agreement or become a party to any agreement which by its terms restricts the Company's performance of the terms of these agreements;

xxiv. amend, modify or grant any waiver under, or enter into any employment agreement;

xxv. appoint or remove, as the case may be, any Chief Executive Officer, President, Chief Operating Officer or Chief Financial Officer;

xxvi. alter or change through any means the preferences, rights, powers or privileges of the Series A Preferred;

xxvii. increase the number of authorized directors of the Company's Board of Directors above seven;

xxviii. agree or otherwise commit to take any actions set forth in the foregoing subparagraphs (i) through (xxvii).

Section 10.

10.1. Company Equity Issuances. Prior to an IPO, the Company shall not Sell any Equity Securities (other than Excluded Securities), except in accordance with the following procedures:

(a) The Company shall deliver to each of the VC Parties a written notice (a "Section 10 Offer Notice"), which shall (i) state the Company's intention to Sell Equity Securities to one or more Persons, the amount and type of Equity Securities to be Sold (the "Issuance Stock"), the purchase price therefore and a summary of the other material terms of the proposed Sale and (ii) offer each of the VC Parties the option to acquire all or any part of the Issuance Stock (the "Section 10 Offer"). The Section 10 Offer shall remain open and irrevocable for the periods set forth below (and, to the extent the Section 10 Offer is accepted during such periods, until the consummation of the Issuance contemplated by the Section 10 Offer). Each VC Party shall have the right and option, for a period of 30

days after delivery of the Section 10 Offer Notice (the "Section 10 Acceptance Period"), to accept all or any part of the Issuance Stock at the purchase price and on the terms stated in the Section 10 Offer Notice. Such acceptance shall be made by the delivery by VC of a written notice (the "Acceptance Notice") to the Company within the Section 10 Acceptance Period specifying the number of shares of the Issuance Stock each VC Party will purchase.

(b) If effective acceptance shall not be received pursuant to Section 10(a) above with respect to all of the Issuance Stock offered for sale pursuant to the Section 10 Offer Notice, then the Company may Sell all or any portion of such Issuance Stock so offered for sale and not so accepted, at a price not less than the price, and on terms not more favorable to the purchaser thereof than the terms, stated in the Section 10 Offer Notice at any time within 90 days after the expiration of the Section 10 Acceptance Period (the "Issuance Period"). To the extent the Company Sells all or any portion of the Issuance Stock so offered for sale during the Issuance Period, the Company shall promptly notify the Shareholders, as to (i) the number of shares of Issuance Stock, if any, that the Company has Sold, (ii) the terms of such Sale and (iii) the name of the owner(s) of any shares of Issuance Stock so Sold. In the event that all of the Issuance Stock is not so Sold by the Company during the Issuance Period, the right of the Company to Sell such unsold Issuance Stock shall expire and the obligations of this Section 10 shall be reinstated and such securities shall not be offered unless first reoffered to the Section 10 Shareholders in accordance with this Section 10.

(c) All Sales of Issuance Stock to the VC Party subject to any Section 10 Offer Notice shall be consummated contemporaneously at the offices of the Company on the later of (i) a mutually satisfactory business day within 30 days after the expiration of the Section 10 Acceptance Period or (ii) the fifth business day following the expiration or termination of all waiting periods under HSR, applicable to such issuance, or at such other time and/or place as the Company and the VC Party may agree. The delivery of certificates or other instruments evidencing such Issuance Stock shall be made by the Company on such date against payment of the purchase price for such Issuance Stock.

(d) Each VC Party shall have the right to assign its right to purchase all or any of the Issuance Stock hereunder to any VC Affiliate.

Section 11.

11.1. No Other Proxies: Conflicting Agreements. Each Shareholder represents and warrants that such Shareholder has not granted and is not a party to any proxy, voting trust or other agreement which is inconsistent with or conflicts with any provision of this Agreement, and no holder of Stock shall grant any proxy or become party to any voting trust or other agreement which is inconsistent with or conflicts with any provision of this Agreement.

Section 12.

12.1. Legend. Each Shareholder and the Company shall take all such action necessary (including exchanging with the Company certificates representing shares of Stock issued prior to the date

hereof) to cause each certificate representing outstanding shares of Stock to bear a legend containing the following words:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE OFFERED, SOLD, PLEDGED, EXCHANGED, TRANSFERRED OR OTHERWISE DISPOSED OF (i) UNLESS (A) REGISTERED UNDER SUCH ACT AND ANY APPLICABLE STATE SECURITIES AND "BLUE SKY" LAWS OR (B) AN OPINION OF COUNSEL SATISFACTORY TO SMALL CORPORATION (THE "COMPANY") THAT SUCH REGISTRATION IS NOT NECESSARY HAS BEEN DELIVERED TO THE COMPANY OR (ii) UNLESS SOLD PURSUANT TO AND IN COMPLIANCE WITH RULE 144 OF SUCH ACT AND APPLICABLE SECURITIES OR "BLUE SKY" LAWS.

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE PERSON OR ENTITY CREATING THE SECURITIES AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

IN ADDITION, THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE PROVISIONS SET FORTH IN THE SHAREHOLDERS' AGREEMENT DATED AS OF _____ BY THE COMPANY AND THE PARTIES THERETO, A COPY OF WHICH IS ON FILE IN THE OFFICE OF THE COMPANY."

12.2. After all restrictions on transfer contained herein have lapsed in accordance with their terms, the requirement that the above securities legend be placed upon certificates evidencing shares of Stock shall cease and terminate upon the earliest of the following events: (i) when such shares are transferred in an underwritten public offering, (ii) when such shares are transferred pursuant to Rule 144 under the Securities Act or (iii) when such shares are transferred in any other transaction if the seller delivers to the Company an opinion of its counsel, which counsel and opinion shall be reasonably satisfactory to the Company, or a "no-action" letter from the staff of the SEC, in either case to the effect that such legend is no longer necessary in order to protect the Company against a violation by it of the Securities Act upon any sale or other disposition of such shares without registration thereunder. The requirement that the above legend regarding this Agreement be placed upon certificates evidencing shares of Stock shall cease and terminate upon the Sale of such shares of Stock pursuant to a Public Sale. Upon the consummation of any event requiring the removal of a legend hereunder, the Company, upon the surrender of certificates containing such legend, shall, at its own expense, deliver to the holder of any such shares as to which the requirement for such legend shall have terminated, one or more new certificates evidencing such shares not bearing such legend.

Section 13.

13.1. Representations and Warranties

(a) Each party hereto represents and warrants to the other parties hereto as follows:

i. It has full power and authority to execute, deliver and perform its obligations under this Agreement.

ii. This Agreement has been duly and validly authorized, executed and delivered by it, and constitutes a valid and binding obligation of it, enforceable against it in accordance with its terms except to the extent that enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally.

iii. The execution, delivery and performance of this Agreement by it does not (x) violate, conflict with, or constitute a breach of or default under its organizational documents, if any, or any material agreement to which it is a party or by which it is bound or (y) violate any law, regulation, order, writ, judgment, injunction or decree applicable to it.

iv. No consent or approval of, or filing with, any governmental or regulatory body is required to be obtained or made by it in connection with the transactions contemplated hereby.

v. It is not a party to any agreement which is inconsistent with the rights of any party hereunder or otherwise conflicts with the provisions hereof.

(b) Each Management Shareholder represents and warrants to the VC Parties as follows:

i. Schedule 13(b) hereto sets forth a list of all securities of the Company (including, without limitation, shares of capital stock, convertible securities, debentures, etc.) held of record or beneficially owned by it immediately after the date hereof.

ii. Except as set forth on Schedule 13(b) hereto and other than this Agreement and the Registration Rights Agreement, it is not a party to any contract or agreement, written or oral, with respect to the securities of the Company (including, without limitation, any voting agreement, voting trust, shareholder's agreement, registration rights agreement, etc.).

(c) Each of the Shareholders hereby represents that, (i) at such time at which it acquired the Stock held by it on the date hereof, it acquired such Stock for its own account with the intention of holding such securities for purposes of investment, (ii) at such time at which it acquired the Stock held by it as the date hereof, it had no intention, and as of the date hereof it has no intention, of selling such securities in a public distribution in violation of the federal securities laws or any applicable state securities laws, and (iii) in connection with such acquisition, it had an opportunity to ask questions and receive answers concerning the terms and conditions of the offering of such Stock and had access to such other information concerning the Company as it requested.

Section 14.

14.1. Duration of Agreement. The rights and obligations of a Shareholder under this Agreement shall terminate at such time as such Shareholder no longer is the beneficial owner of any shares of Stock. This Agreement shall terminate upon the consummation of an IPO, except that the terms of Sections 3, 4, 5 and 14 through 27 shall survive until, by their respective terms, they are no longer operative.

Section 15.

15.1. Further Assurances. At any time or from time to time after the date hereof, the parties agree to cooperate with each other, and at the request of any other party, to execute and deliver any further instruments or documents and to take all such further action as the other party may reasonably request in order to evidence or effectuate the consummation of the transactions contemplated hereby and to otherwise carry out the intent of the parties hereunder.

Section 16.

16.1. Amendment and Waiver. Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Agreement shall be effective against the Company or any Shareholder unless such modification, amendment or waiver is approved in writing by the Company, VC and Shareholders holding a majority of the Voting Shares not held by the VC Parties. The failure of any party to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of such party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

Section 17.

17.1. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 18.

18.1. Entire Agreement. Except as otherwise expressly set forth herein, this document and the other documents dated the date hereof embody the complete agreement and understanding among the parties hereto with respect to the subject matter hereof and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

Section 19.

19.1. Successors and Assigns. Except as otherwise provided herein, this Agreement shall bind and inure to the benefit of and be enforceable by the Company and its successors and assigns and each Shareholder and their respective successors, assigns, heirs and personal representatives, so long as they hold Stock. Except pursuant to a transfer or Sale of Stock in compliance with

Section 4, no Shareholder shall have the right to assign its rights and obligations under this Agreement, without the consent of each of the other Shareholders provided, however, that VC may transfer and assign, all or part of, its rights and obligations under this Agreement to one or more other partnerships, corporations, trusts or other organizations which are controlled by, control or are under common control with VC or one or more of the then current, former or future partners of VC (each, a "VC Affiliate"), without the consent of the Company or any Shareholder. Upon any such assignment or in any assignment in connection with any transfer or Sale of Stock in compliance with Section 4, such assignee shall have and be able to exercise all rights of the assigning party hereunder.

Section 20.

20.1. Counterparts. This Agreement may be executed in separate counterparts each of which shall be an original and all of which taken together shall constitute one and the same agreement.

Section 21.

21.1. Remedies. Each Shareholder shall be entitled to enforce its rights under this Agreement specifically to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights existing in their favor. The parties hereto agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that each party may in its sole discretion apply to any court of law or equity of competent jurisdiction for specific performance and/or injunctive relief (without posting a bond or other security) in order to enforce or prevent any violation of the provisions of this Agreement.

Section 22.

22.1. Notices. Any notice provided for in this Agreement shall be in writing and shall be either personally delivered, or mailed first class mail (postage prepaid) or sent by reputable overnight courier service (charges prepaid) to the Company at the U.S. address set forth below and to any other recipient at the address indicated on Schedule 23 hereto and to any subsequent holder of Stock subject to this Agreement at such address as indicated by the Company's records, or at such address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party. Notices will be deemed to have been given hereunder when delivered personally or on receipt. The Company's address is:

_____

_____

_____

Section 23.

23.1. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of _____ without giving effect to the principles of conflicts of law. Each of the parties hereto hereby irrevocably and unconditionally consents to submit to the

jurisdiction of the courts of the State of _____ and of the United States of America, in each case located in the County of Fulton, for any action, proceeding or investigation in any court or before any governmental authority ("Litigation") arising out of or relating to this Agreement and the transactions contemplated hereby, and further agrees that service of any process, summons, notice or document by U.S. registered mail to its respective address set forth in this Agreement shall be effective service of process for any Litigation brought against it in any such court. Each of the parties hereto hereby irrevocably and unconditionally waives any objection to the laying of venue of any Litigation arising out of this Agreement or the transactions contemplated hereby in the courts of the State of _____ or the United States of America, in each case located in the County of _____ and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Litigation brought in any such court has been brought in an inconvenient forum. Each of the parties irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any and all rights to trial by jury in connection with any Litigation arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 24.

24.1. Descriptive Headings. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

Section 25.

25.1. Construction. Where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party.

Section 26.

26.1. Survival of Representations and Warranties. All representations and warranties contained in this Agreement or made in writing by any party in connection herewith shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby regardless of any investigation made by, or on behalf of, any Shareholder or the Company.

Section 27.

27.1. No Inconsistent Agreements. Neither the Company nor any Shareholder shall take any action or enter into any agreement which is inconsistent with the rights of any party hereunder or otherwise conflicts with the provisions hereof.

- CONTINUED FOR SIGNATURES -

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