

**Form:** Right of First Refusal Agreement

**Description:** The form is intended to give the company, a Delaware corporation, a right of first refusal on the transfer of sale of stock held by a shareholder in the company.

**Signatures:** All shareholders and spouses should sign the Agreement.

## RIGHT OF FIRST REFUSAL AGREEMENT

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This Right of First Refusal Agreement (this Agreement) is made on the date written below, by and among [Name of Company], a Delaware corporation (the Company), and the parties listed as signatories hereto (the Holders).

In consideration of the mutual promises, covenants and conditions herein contained and for other good and valuable consideration, the parties hereto agree as follows:

1. Definitions. Certain terms used herein are defined as follows:

(a) “Board of Directors” means the Board of Directors of the Company and any committee thereof.

(b) “Immediate Family” means any spouse, child, grandchild, parent, brother, or sister of a Holder.

(c) “Shares” means any shares of capital stock of the Company or any securities convertible into or exchangeable for any class of capital stock of the Company and all securities into which such Shares may be converted or reclassified as a result of any merger, consolidation, stock split, stock dividend, or other recapitalization of the Company, whether now owned or hereafter acquired.

2. Restrictions on Transfer. No Holder may sell or engage in any transaction which has resulted in or will result in a change in the beneficial or record ownership of any Shares held by the Holder, including without limitation a voluntary or involuntary sale, assignment, transfer, pledge, hypothecation, encumbrance, disposal, loan, gift, attachment or levy (a Transfer), except as provided in this Agreement, and any such Transfer of Shares or attempted Transfer of Shares in contravention of this Agreement shall be void and ineffective for any purpose or confer on any transferee or purported transferee any rights whatsoever.

3. Right of First Refusal.

(a) Each time a Holder proposes to Transfer (or is required by operation of law or other involuntary transfer) any or all of the Shares standing in such Holder’s name or owned by him or her during the term of this Agreement, such Holder shall first offer such Shares to the Company in accordance with the following provisions:

(i) Such Holder shall deliver a written notice (a Notice) to the Company stating -(A) such Holder’s bona fide intention to Transfer such Shares, (B) the name and the address of the proposed transferee, (C) the number of Shares to be transferred, and (D) the purchase price per Share and terms of payment for which the Holder proposes to Transfer such Shares.

(ii) Within 90 days after receipt of the Notice, the Company or its designee shall have the first right to purchase or obtain such Shares, upon the price and terms

of payment designated in the Notice. If the Notice provides for the payment of non-cash consideration, the Company at its option may pay the consideration in cash equal to the Company's good faith estimate of the present fair market value of the non-cash consideration offered.

(iii) If the Company or its designee elects not to purchase or obtain all of the Shares designated in the selling Holder's Notice, then the Holder may Transfer the Shares referred to in the Notice to the proposed transferee, providing such Transfer (A) is completed within 30 days after the expiration of the Company's right to purchase or obtain such Shares, (B) is made at the price and terms designated in the Notice, and (C) the proposed Transferee agrees to be bound by the terms and provisions of this Agreement and to become a party to this Agreement immediately upon receipt of such Shares. If such Shares are not so transferred, the selling Holder must give notice in accordance with this paragraph prior to any other or subsequent Transfer of such Shares.

(b) Notwithstanding Section 3(a), a Holder may Transfer Shares: (i) to a member of the Holder's Immediate Family or to a trust established for the benefit of a member or members of the Holder's Immediate Family, (ii) to an affiliate or equity holder of the Holder, (iii) to a person who is a constituent partner of the Holder on the date hereof, or (iv) to the estate of any of the foregoing by gift, will or intestate succession; provided that the Holder or his representative notifies the Company of such Transfer not less than 10 nor more than 90 days prior to the Transfer and that the proposed transferee agrees to be bound by the terms and provisions of this Agreement and to become a party to this Agreement immediately upon the receipt of such Shares.

4. Legal Limitations. Notwithstanding any provisions to the contrary contained in this Agreement, the Company's obligations to pay or complete payment for any Shares to be purchased by it under this Agreement is subject to its being legally permitted to do so under applicable law.

5. Legend on Stock Certificates. Each certificate representing shares owned of record-or beneficially by a party to this Agreement shall be endorsed with the following legend:

THE SHARES EVIDENCED BY THIS CERTIFICATE ARE SUBJECT TO A RIGHT OF FIRST REFUSAL AGREEMENT BETWEEN [NAME OF COMPANY] (THE COMPANY) AND THE HOLDERS THAT ARE SIGNATORIES THERETO, PROVIDING FOR, AMONG OTHER MATTERS, THE COMPANY'S RIGHT OF FIRST REFUSAL TO PURCHASE THE SECURITIES REPRESENTED BY THIS CERTIFICATE. A COPY OF SUCH AGREEMENT IS ON FILE AT THE PRINCIPAL BUSINESS OFFICE OF THE COMPANY.

Under no circumstances shall any Transfer of any Shares subject hereto be valid until the proposed transferee thereof shall have executed and become a party to this Agreement and thereby shall have become subject to all of the provisions hereof; and notwithstanding any

other provisions of this Agreement, no such Transfer of any kind shall in any event result in the non-applicability of the provisions hereof at any time to any of the Shares subject hereto.

6. Term of Agreement. The restrictions on Transfer of Shares set forth in this Agreement shall terminate upon any of the following:

(a) The determination of the Board of Directors that this Agreement shall be terminated.

(b) The dissolution or bankruptcy of the Company.

(c) The consummation of a public offering for any of the common stock of the Company registered under the Securities Act of 1933, as amended, on SEC Form S-1 or any successor form.

(d) The following date: \_\_\_\_\_.

7. Acknowledgments. Each Holder acknowledges that other shareholders of the Company may have restrictions on their shareholdings different than the terms contained herein.

8. Further Assurances. Each party hereto agrees to perform any and all further acts and to execute and deliver any documents which may reasonably be necessary to carry out the provisions of this Agreement.

9. Modification. This Agreement as applied to any Holder may be amended at any time by the written agreement of the Company and a Holder affected thereby.

10. Will Provisions. Each Holder agrees to insert in his or her will, or to execute a codicil thereto, directing and authorizing his or her executor to fulfill and comply with the provisions hereof.

11. Notice. Any notice required or permitted hereunder shall be delivered in person or sent by telecopier, air courier or certified mail, return receipt requested, postage and fees prepaid in all cases; in the case of the Company, to the then current address of its then principal business office, to the attention of the Chairman of its Board of Directors, and, in the case of a Holder, to the address of such Holder shown on the signature page hereto, or to such other address as will have been specified by prior written notice to the sending party. Notice shall be effective upon delivery if it is hand-delivered; upon receipt if it is transmitted by telecopier, air courier or registered, certified or express mail; upon expiration of the third business day after deposit in the United States mail if mailed from and to an address in the United States; and upon expiration of the tenth business day after deposit in the United States mail if mailed from or to an address outside the United States.

12. Succession. This Agreement shall be binding upon and inure to the benefit of the parties hereto and upon their permitted successors in interest of any kind whatsoever, their heirs, executors, administrators, and personal representatives.

13. Governing Law. This Agreement will be governed in all respects by the laws of the State of \_\_\_\_\_ as such laws are applied to agreements between \_\_\_\_\_ residents entered into and to be performed entirely within \_\_\_\_\_, without regard to conflicts of law [principles]. The parties hereby consent to the exclusive jurisdiction of the state or federal courts located in the State of \_\_\_\_\_, County of \_\_\_\_\_, for the resolution of any disputes arising out of this Agreement.

14. Counterparts. This Agreement may be signed in any number of counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.

15. Sole Agreement. This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous agreements and understandings pertaining thereto whether oral or written.

16. Construction. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. The language of this Agreement shall be construed as to its fair meaning and not strictly for or against any party.

17. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of this Agreement shall be enforceable in accordance with its terms and interpreted as if such provisions were as excluded.

18. Attorney Fees. In the event that any dispute among the parties hereto should result in litigation or arbitration, the prevailing party in such dispute shall be entitled to recover from the other party all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written below.

Date: \_\_\_\_\_

[NAME OF COMPANY]

By: \_\_\_\_\_

Title: \_\_\_\_\_

HOLDERS:

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Add signature lines as appropriate.]

Consent of Spouse

The undersigned spouse(s) of the party (parties) to the foregoing Agreement acknowledge(s) on his or her own behalf that: I have read the foregoing Agreement and I know its contents. I am aware that by its provisions my spouse grants the Company an option to purchase all of his or her shares of the Company, including my community interest in them. I hereby consent to the sale, approve of the provisions of the Agreement, and agree that those shares and my interest in them are subject to the provisions of the Agreement and that I will take no action at any time to hinder operation of the Agreement on those shares or my interest in them.

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