



Founder Stock Purchase Agreement

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FOUNDER STOCK PURCHASE AGREEMENT

THIS FOUNDER STOCK PURCHASE AGREEMENT (this “**Agreement**”) is entered into by and between [NAME OF COMPANY], a [____] corporation (the “**Company**”), and [____] (the “**Founder**”) as of [____], 20[____].

WHEREAS, Company wishes to sell to the Founder, and the Founder wishes to purchase from the Company, an aggregate of [____] shares (the “**Purchased Shares**”) of common stock, \$[____] par value per share, of the Company (the “**Common Stock**”);

NOW THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, the parties agree as follows:

1. Definitions.

As used in this Agreement, the following terms shall have the following meanings:

“**Shares**” shall mean and include all shares of Stock now owned or hereafter acquired by the Founder.

“**Stock**” shall mean and include all shares of Common Stock, and all other securities of the Company which may be issued in exchange for or in respect of shares of Common Stock (whether by way of stock split, stock dividend, combination, reclassification, reorganization, or any other means).

2. Founder Representations.

In connection with the issuance and acquisition of the Purchased Shares, the Founder hereby represents and warrants to the Company as follows:

(a) The Founder is acquiring and will hold the Purchased Shares for investment for her account only and not with a view to, or for resale in connection with, any “distribution” thereof within the meaning of the Securities Act of 1933 (the “**Securities Act**”).

(b) The Founder understands that the Purchased Shares have not been registered under the Securities Act by reason of a specific exemption therefrom and that the Purchased Shares must be held indefinitely, unless they are subsequently registered under the Securities Act or the Founder obtains an opinion of counsel, in form and substance satisfactory to the Company and its counsel, that such registration is not required. The Founder further acknowledges and understands that the Company is under no obligation to register the Purchased Shares.

(c) The Founder is aware of the adoption of Rule 144 by the Securities and Exchange Commission under the Securities Act, which permits limited public resales of securities acquired in a non-public offering, subject to the satisfaction of certain conditions. The Founder acknowledges and understands that the conditions for resale set forth in Rule 144 have not been satisfied and that the Company has no plans to satisfy these conditions in the foreseeable future.

(d) The Founder has been furnished with, and has had access to, such information as she considers necessary or appropriate for deciding whether to invest in the Purchased Shares, and has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the issuance of the Purchased Shares.

(e) The Founder is aware that her investment in the Company is a speculative investment that has limited liquidity and is subject to the risk of complete loss. The Founder is able, without impairing her financial condition, to hold the Purchased Shares for an indefinite period and to suffer a complete loss of her investment in the Purchased Shares.

3. Limitation on Transfer of Founder Stock.

3.1 General Restriction. The Founder shall not sell, assign, transfer, pledge, hypothecate, mortgage, encumber or otherwise dispose of all or any of her Shares except as expressly provided in this Agreement.

3.2 Exceptions. Notwithstanding Section 3.1, the Founder may transfer all or any of her Shares:

(a) by way of gift to any member of her family or to any trust for the benefit of any such family member or the Founder; provided, however that any such transferee shall agree in writing with the Company, as a condition to such transfer, to be bound by all of the provisions of this Agreement to the same extent as if such transferee were the Founder, or

(b) by will or the laws of descent and distribution, in which event each transferee shall be bound by all of the provisions of this Agreement to the same extent as if such transferee were the Founder. As used herein, the word “family” shall include any spouse, lineal ancestor or descendant, brother or sister.

4. Right of First Refusal on Disposition of Founder Stock.

(a) If at any time the Founder desires to sell for cash any of her Shares pursuant to a bona fide offer from a third party (the “**Proposed Transferee**”), the Founder shall submit a written offer (the “**Offer**”) to sell such Shares (the “**Offered Shares**”) to the Company on terms and conditions, including price, not less favorable to the Company than those on which the Founder proposes to sell such Offered Shares to the Proposed Transferee. The Offer shall disclose the identity of the Proposed Transferee, the number of Offered Shares proposed to be sold and the price thereof, the total number of Shares owned by the Founder, and the terms and conditions of, and any other material facts relating to, the proposed sale.

(b) The Company shall have an option for a period of [] days (the “**Company Option Period**”) following its receipt of the Offer to purchase some or all of the Offered Shares in place of the Proposed Transferee. If the Company desires to purchase any of the Offered Shares, it shall notify the Founder of such election during the Company Option Period, stating the number of Offered Shares it desires to purchase. Such notice shall, when taken in conjunction with the Offer, be deemed to constitute a valid, legally binding and enforceable agreement for the sale and purchase of such Offered Shares.

(c) If the Company does not purchase all of the Offered Shares, the Offered Shares not so purchased may be sold by the Founder at any time within [] days after the date the Offer was made, subject to the provisions of Section 5 and Section 6 of this Agreement. Any such sale shall be to the Proposed Transferee at not less than the price and upon other terms and conditions, if any, not more favorable to the Proposed Transferee than those specified in the Offer. Any Offered Shares not sold within such []-day period shall continue to be subject to the requirements of a prior offer pursuant to this Section 4. Offered Shares that are sold pursuant to this Section 4 to any person who is not a party hereto shall no longer be subject to this Agreement.

5. Additional Restrictions on Resale.

5.1 Securities Law Restrictions. Regardless of whether the offering and sale of Shares under this Agreement have been registered under the Securities Act or have been registered or qualified under the securities laws of any state, the Company at its discretion may impose restrictions upon the sale, pledge or other transfer of the Purchased Shares (including the placement of appropriate legends on stock certificates or the imposition of stop-transfer instructions) if, in the judgment of the Company, such restrictions are necessary or desirable in order to achieve compliance with the Securities Act, the securities laws of any state or any other law.

5.2 Market Stand-Off. In connection with any underwritten public offering by the Company of its equity securities pursuant to an effective registration statement filed under the Securities Act, including the Company's initial public offering, the Founder shall not directly or indirectly sell, make any short sale of, loan, hypothecate, pledge, offer, grant or sell any option or other contract for the purchase of, purchase any option or other contract for the sale of, or otherwise dispose of or transfer, or agree to engage in any of the foregoing transactions with respect to, any Purchased Shares without the prior written consent of the Company or its underwriters. Such restriction (the "**Market Stand-Off**") shall be in effect for such period of time following the date of the final prospectus for the offering as may be requested by the Company or such underwriters. In no event, however, shall such period exceed 180 days. In the event of the declaration of a stock dividend, a spin-off, a stock split, an adjustment in conversion ratio, a recapitalization or a similar transaction affecting the Company's outstanding securities without receipt of consideration, any new, substituted or additional securities which are by reason of such transaction distributed with respect to any Shares subject to the Market Stand-Off, or into which such Shares thereby become convertible, shall immediately be subject to the Market Stand-Off. In order to enforce the Market Stand-Off, the Company may impose stop-transfer instructions with respect to the Purchased Shares until the end of the applicable stand-off period. The Company's underwriters shall be beneficiaries of the agreement set forth in this Section 5.2. This Section 5.2 shall not apply to Shares registered in the public offering under the Securities Act, and the Founder shall be subject to this Section 5.2 only if all directors, officers, holders of at least [1]% of the outstanding stock of the Company are subject to similar arrangements. This Section 5.2 shall expressly survive a termination of this Agreement pursuant to Section 8.

5.3 Numerical Limitation. In addition to the other restrictions provided in this Agreement, the Founder agrees that until the earlier to occur of the [] anniversary of the date

of this Agreement or the date on which the Founder is no longer employed in any capacity by the Company or any of its subsidiaries, the aggregate number of Shares which the Founder may transfer pursuant to Section 4 of this Agreement shall not exceed [] (subject to equitable adjustment for any stock split, stock dividend, combination of shares or the like and based upon Common Stock or Common Stock equivalents).

5.4 Rights of the Company. The Company shall not be required to (a) transfer on its books any Purchased Shares that have been sold or transferred in contravention of this Agreement or (b) treat as the owner of Purchased Shares, or otherwise to accord voting, dividend or liquidation rights to, any transferee to whom Purchased Shares have been transferred in contravention of this Agreement.

6. **Company Repurchase Option Upon Termination of Employment.**

6.1 Repurchase Option. If the Founder shall for any reason, including death, disability or involuntary removal with or without cause, cease to be employed in any capacity by the Company or any of its subsidiaries, the Company shall have the option, exercisable for [] days (the “**Repurchase Period**”) from the date upon which the Founder shall so cease to be employed (the “**Termination Date**”), to purchase from the Founder up to [] of the Purchased Shares at a price (the “**Option Price**”) of [] per share (such number of Shares and such price being subject to equitable adjustment for any stock split, stock dividend, combination of shares or the like and based upon Common Stock or Common Stock equivalents), other than any of such Shares which become vested as described in Section 6.2.

6.2 Vesting Schedule. On each anniversary of the date of this Agreement, []% of the previously unvested Purchased Shares shall become vested, provided, however, that no additional Shares shall become vested after the Termination Date.

6.3 Procedure. If the Company desires to exercise its option to purchase, it shall notify the Founder (the “**Repurchase Notice**”), stating the number of Shares the Company is electing to purchase and the Option Price, prior to the expiration of the Repurchase Period. The sale shall be effected at the offices of the Company on the []th day following the date of the Repurchase Notice (or if such day is not a business day, then on the next succeeding business day) by the Founder’s delivery to the Company of a certificate or certificates evidencing the Shares to be purchased by it, duly endorsed for transfer to the Company, against payment to the Founder by the Company of the Option Price for each such Share.

6.4 Conflict with Permitted Sales. The Founder may not transfer any unvested shares except pursuant to Section 3.2, this Section 6 or Section 7.

7. **Drag-Along Rights.**

In the event that the Company or a majority in interest of its shareholders determines to effect a merger or sale of all or substantially all of the assets or the equity interests of the Company to a third party in a bona fide negotiated transaction (a “**Sale Transaction**”), the Founder shall be obligated to and shall promptly upon notice from the Company (a) transfer or sell all Shares owned by it to such third party on the same terms and conditions, including price and type, applicable to the Company or the other shareholders, as the case may be, and

(b) execute and deliver such instruments of conveyance and transfer and take such other action, including voting the Founder's Shares in favor of the Sale Transaction and executing any purchase agreements, merger agreements, indemnity agreements, escrow agreements or related documents, as the Company or the third party may require in order to carry out the terms and provisions of this Section 7. Not less than 30 days prior to the date proposed for the closing of any Sale Transaction, the Company shall give notice to the Founder, setting forth in reasonable detail the name or names of the third party, the terms and conditions of the Sale Transaction, including the purchase price, and the proposed closing date. In furtherance of the provisions of this Section 7, the Founder hereby (x) irrevocably appoints the Company as its agent and attorney-in-fact (with full power of substitution) to execute all agreements, instruments and certificates and take all actions necessary or desirable to effectuate any Sale Transaction, and (y) grants to the Company a proxy to vote the Shares held by the Founder in favor of any Sale Transaction.

8. Term.

This Agreement shall terminate (a) immediately prior to the consummation of the first firm commitment underwritten public offering pursuant to an effective registration statement on Form S-1 (or its then equivalent) under the Securities Act, pursuant to which the aggregate price paid by the public for the purchase of Stock is at least \$[____] or (b) on the [____] anniversary of the date of this Agreement, whichever occurs first.

9. Enforcement of Agreement.

The Founder expressly agrees that the Company will be irreparably damaged if this Agreement is not specifically enforced. Upon a breach or threatened breach of the terms, covenants or conditions of this Agreement by the Founder, the Company shall, in addition to all other remedies, be entitled to a temporary or permanent injunction, without showing any actual damage, or a decree for specific performance, in accordance with the provisions hereof. If the Founder fails to fulfill any obligation to sell Shares to the Company under this Agreement, the Company may, at its option, in addition to all other remedies it may have, send to the Founder the purchase price for such Shares as specified in this Agreement. Thereupon the Company, upon written notice to the Founder, (a) shall cancel on its books the certificate or certificates representing the Shares to be sold and (b) shall issue, in lieu thereof, in the name of the Company as treasury shares, a new certificate or certificates representing such Shares, and all of the Founder's rights in and to such Shares shall terminate.

10. Tax Election.

The acquisition of the Purchased Shares may result in adverse tax consequences that may be avoided or mitigated by filing an election under Section 83(b) of the Internal Revenue Code of 1986 (the "**Section 83(b) Election**") within 30 days after the date of purchase. The Founder acknowledges that she has consulted with her tax advisor to determine the tax consequences of acquiring the Purchased Shares and the advantages and disadvantages of filing the Section 83(b) Election and that it is her sole responsibility, and not the Company's, to file the Section 83(b) Election in a timely manner, even if the Founder requests the Company or its representatives to make such filing on her behalf.

11. Legend.

Each certificate evidencing any of the Shares shall bear a legend substantially as follows:

The shares represented by this certificate are subject to restrictions on transfer and may not be sold, exchanged, transferred, pledged, hypothecated or otherwise disposed of except in accordance with and subject to all the terms and conditions of a certain Founder Stock Purchase Agreement dated as of [____], a copy of which the Company will furnish to the holder of this certificate upon request and without charge.

12. No Obligation to Continue Employment.

Nothing in this Agreement shall create an obligation on the Company to continue the Founder's employment with the Company.

13. General.

13.1 Governing Law. This Agreement will be construed in accordance with and governed by the laws of the [____], without giving effect to the conflict of law principles of the [____].

13.2 Successors and Assigns. Except as otherwise expressly provided in this Agreement, this Agreement will be binding on, and will inure to the benefit of, the successors and permitted assigns of the parties to this Agreement. Nothing in this Agreement is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights or obligations under or by reason of this Agreement, except as expressly provided in this Agreement.

13.3 Notices. All notices and other communications required or permitted hereunder will be in writing and will be delivered by hand or sent by overnight courier, fax or e-mail to:

if to the Company:

fax: _____

e-mail: _____

Attention: _____

with a copy to:

fax: _____

e-mail: _____

Attention: _____

if to the Founder:

fax: _____

e-mail: _____

Attention: _____

[with a copy to:

fax: _____

e-mail: _____

Attention: _____]

Each party may furnish an address substituting for the address given above by giving notice to the other party in the manner prescribed by this Section 13.3. All notices and other communications will be deemed to have been given upon actual receipt by (or tender to and rejection by) the intended recipient or any other person at the specified address of the intended recipient.

13.4 Severability. In the event that any provision of this Agreement is held to be unenforceable under applicable law, this Agreement will continue in full force and effect without such provision and will be enforceable in accordance with its terms.

13.5 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. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole, (b) references to one gender include all genders, (c) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (d) “including” has the inclusive meaning frequently identified with the phrase “including but not limited to” or “including without limitation,” and (e) references to “hereunder,” “herein” or “hereof” relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time.

13.6 Entire Agreement. This Agreement embodies the entire agreement and understanding among the parties hereto with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements and understandings other than this Agreement relating to the subject matter hereof.

13.7 Amendment and Waiver. This Agreement may be amended only by a written agreement executed by the parties hereto. No provision of this Agreement may be waived except by a written document executed by the party entitled to the benefits of the provision. No waiver of a provision will be deemed to be or will constitute a waiver of any other provision of this Agreement. A waiver will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver.

13.8 Counterparts. This Agreement may be in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, this Founder Stock Purchase Agreement has been executed as of the date first written above.

COMPANY

[NAME OF COMPANY]

By: _____

Name: _____

Title: _____

FOUNDER

[Founder]