



Voting Trust Agreement

Document 1407A

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[NAME OF COMPANY]

VOTING TRUST AGREEMENT

THIS VOTING TRUST AGREEMENT is entered into by and among [NAMES OF STOCKHOLDERS] (collectively, the “**Stockholders**”, and each individually, a “**Stockholder**”), each a holder of shares of common stock, \$[] par value per share (“**Common Stock**”) of [NAME OF COMPANY], a [] corporation (the “**Company**”), and [NAME OF TRUSTEE] (collectively with any and all successors, the “**Voting Trustee**”) as of [], 20[].

WHEREAS, the Stockholders and the Voting Trustee desire to create a voting trust upon the terms and subject to the conditions in this Agreement (the “**Voting Trust**”);

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

- 1. Deposit.** Each Stockholder hereby agrees that he will forthwith assign to and deposit with the Voting Trustee the certificate for the number of shares of Common Stock set forth beneath his signature hereto, together with proper assignment or assignments thereof, substantially in the form of Exhibit A attached hereto. Each Stockholder further agrees to immediately deposit with the Voting Trustee in a like manner any and all shares of Common Stock acquired by him after the date of this Agreement.
- 2. Becoming a Party.** Any holder of Common Stock may become a Stockholder (and, accordingly, a party to this Agreement) by executing this Agreement and depositing his certificate or certificates for his shares of Common Stock with the Voting Trustee, either properly endorsed in blank or endorsed to the Voting Trustee.
- 3. Voting Trust Certificates.** Upon the receipt from a Stockholder of a certificate or certificates for Common Stock together with proper assignment or assignments thereof, the Voting Trustee will deliver or cause to be delivered to such Stockholder a voting trust certificate or certificates (“**Voting Trust Certificates**”) substantially in the form of Exhibit B attached hereto, representing the number of Shares of Common Stock received from such Stockholder.
- 4. Transferability of Voting Trust Certificates.** Voting Trust Certificates shall be transferable only upon the same terms and conditions and subject to the same restrictions as are applicable to the underlying shares of Common Stock, whether or not such terms, conditions and restrictions are set forth in the bylaws of the Company, in a separate agreement or otherwise. Any transfer of a Voting Trust Certificate shall vest in the transferee all rights and interests of the transferor in and under such Voting Trust Certificate and under this Agreement, and upon such transfer, the Voting Trustee will deliver or cause to be delivered to the transferee a Voting Trust Certificate for the same number of shares of Common Stock as are represented by the Voting Trust Certificate so transferred. Until such transfer, the Voting Trustee and the Company may treat the registered holder of a Voting Trust Certificate as the owner thereof for all purposes whatsoever. If any Voting Trust Certificate shall be claimed to be lost or destroyed, a new Voting Trust Certificate may be issued in lieu thereof upon such proof of loss and such security as may be required by the Voting Trustee.

5. Title. Title to all shares of Common Stock deposited hereunder (“**Trust Shares**”) shall be vested in the Voting Trustee and shall be transferred to the Voting Trustee or to its nominee or nominees on the books of the Company, and the Voting Trustee shall possess and be entitled to exercise with respect to the Trust Shares all voting rights of holders of Common Stock of any and every kind and character, including the right to vote such shares and to take part in or consent in writing or otherwise to any corporate or stockholders’ action, whether ordinary or extraordinary, including:

- (a) any amendment of the [NAME OF CHARTER] or the bylaws of the Company,
 - (b) the issuance of bonds or other obligations,
 - (c) consolidation with or merger into any other corporation,
 - (d) the mortgage, pledge, sale, exchange or other disposition of all or any part of the Company’s properties and assets,
 - (e) changes in the number of directors,
 - (f) increases in the number of, or reclassification of, shares of the Company’s stock,
- and
- (g) the dissolution of the Company,

all upon such terms and conditions and under such circumstances as the Voting Trustee may from time to time determine in its sole discretion. It is expressly understood and agreed none of the holders of Voting Trust Certificates shall have any right, either under such Voting Trust Certificates or under this Agreement, or under any agreement express or implied, or otherwise, to vote any of the Trust Shares or to take part in or consent to any corporate or stockholders’ action requiring such vote.

[Reference is hereby made to the fact that the Company has a current election in effect to be treated as an S Corporation under the provisions of the Internal Revenue Code of 1986. Notwithstanding any provision herein to the contrary, the Voting Trustee shall in no way be construed to have any power that would cause a termination of such election and all provisions of this Agreement shall be so construed.]

6. Restriction on Encumbrances. The Voting Trustee shall not sell, pledge, hypothecate, mortgage or place any security interest upon any of the Trust Shares.

7. Dividends; Other Distributions. The registered holder of each Voting Trust Certificate shall be entitled, until distribution of the shares of Common Stock represented thereby as hereinafter provided for, to receive from time to time payments equal to the dividends and the other distributions, if any, received by the Voting Trustee in respect of such shares of Common Stock.

The Voting Trustee may, in its discretion, from time to time, instead of receiving and distributing any dividend or other distribution declared on Trust Shares, authorize the Company

to make payment thereof directly to the registered holders of the applicable outstanding Voting Trust Certificates.

8. Stock Dividends. In case the Voting Trustee shall receive any share certificates of the Company issued by way of dividends upon Trust Shares, the Voting Trustee shall hold such shares likewise subject to the terms of this Agreement, and shall issue Voting Trust Certificates representing such share certificates to those entitled thereto.

9. Term; Termination; Extension.

(a) The Voting Trust and this Agreement shall continue to be in full force and effect for a period of [] years from the date hereof unless extended pursuant to Section 9(b) of this Agreement. This Agreement may be terminated at any time by the unanimous vote of all Stockholders and the Voting Trustee.

(b) Except as it would constitute a violation of the laws of the [STATE], the term of this Agreement may be extended at any time for an additional period by the unanimous vote of all Stockholders, either by a writing signed by such Stockholders or at a meeting called for such purpose by any Stockholder upon the same notice as is required for a special meeting of the stockholders of the Company, to which end any Stockholder shall have access to the books of the Voting Trustee containing a record of the Stockholders.

(c) Upon termination of the Voting Trust, the Trustee shall promptly send a notice to each Stockholder of such termination substantially in the form of Exhibit C attached hereto, and deliver to each Stockholder the Trust Shares owned by such Stockholder upon presentation and surrender of the applicable Voting Trust Certificate, accompanied, if required by the Voting Trustee, by properly executed transfers thereof to the Voting Trustee, within [] days of such termination.

10. Rules of Procedure. If there is more than one Voting Trustee, each Voting Trustee may adopt its own rules of procedure, and, in all matters by its decision, may act by proxy to any other person. The Voting Trustee, if an individual, may act as a director or officer of the Company and may vote for himself as such, and may own Common Stock or other securities of the Company, including Voting Trust Certificates.

11. Multiple Voting Trustees; Successor Voting Trustee. The number of Voting Trustees hereunder shall initially be one (1). Upon the unanimous vote of all Voting Trustees then serving, the number of Voting Trustees may be increased or decreased.

Any Voting Trustee hereunder may at any time resign by delivering a resignation in writing to the remaining Voting Trustee(s), to any designated successor thereto, or to one or more Stockholders. Each person appointed as a Voting Trustee hereunder shall make a written designation as to his successor as Voting Trustee in the event of his resignation, incapacity or death. Such designation may be changed at any time while the designating Voting Trustee remains in office. Upon the resignation, incapacity or death of a Voting Trustee, the most recently designated successor thereto shall be notified of his appointment and shall assume office as successor Voting Trustee upon written acceptance of such appointment. In the event that any Voting Trustee fails to designate a successor, the successor shall be chosen by the remaining

Voting Trustee(s), or, if there are no remaining Voting Trustees, by the affirmative vote of holders of more than 50% percent of the Trust Shares.

Each successor Voting Trustee shall, from the time of acceptance of such appointment, be deemed a Voting Trustee hereunder, and shall have all the title, rights and powers of a Voting Trustee hereunder, and all acts shall be done and all instruments shall be executed which shall be necessary or reasonably requested for the purposes of effecting such succession and of constituting any and all successor Voting Trustees at the time of such appointment as the owner of record of all of the Trust Shares.

12. Voting by Voting Trustee. In voting the Trust Shares or in otherwise acting hereunder, the Voting Trustee shall exercise his best judgment in the interests of the Company to the end that its affairs shall be properly managed, and its interests shall be properly promoted, but the Voting Trustee shall assume no responsibility in respect thereto or of any action taken by it or taken with its consent thereto, or pursuant to any vote so cast.

The Voting Trustee may vote the Trust Shares or take part in or consent to any corporate or stockholders' action in person, in writing or by such person or persons as it shall at any time and from time to time select as its proxy or proxies; provided, however, that this power to act in person by writing or by proxy, shall not be construed to enable the Voting Trustee or its proxy to act otherwise than as provided in this Agreement.

Notwithstanding anything to the contrary in this Agreement, it is expressly provided that the Voting Trustee hereunder must vote all Trust Shares as a block on each and every issue and at all times. All Trust Shares shall be voted on each issue as determined by a majority in number of the Voting Trustees in office, and if no such majority has been achieved, then no Trust Shares shall be voted on such issue.

13. Exoneration. No Voting Trustee, in his capacity as a stockholder of the Company, as a Voting Trustee or otherwise, shall be liable under this Agreement for any error of judgment or mistake of law or other mistake, or for any act or omission of any agent or attorney, or for any misconstruction of this Agreement or for any act or omission save only his own individual willful misconduct.

14. Compensation and Expenses. The Voting Trustee shall be paid an annual fee of \$[] and shall be reimbursed for all documented expenses. The compensation and expenses of the Voting Trustee shall be paid by the Stockholders [on a pro rata basis according to the number of Trust Shares owned by each Stockholder].

15. Injunction. The parties agree that any violation of this Agreement will cause irreparable harm and that in addition to any other remedy, injunctive and other equitable relief may be awarded. In addition, the parties agree that interim injunctive relief, in the form of a preliminary injunction or otherwise, may be issued to prevent actions or threatened actions on the part of a party hereto which may constitute a violation hereunder. The parties hereby consent to the jurisdiction of the courts of the [STATE] for all purposes relating to this paragraph and to this Agreement, including the granting of a preliminary injunction or other preliminary equitable relief.

16. Further Assurances. The parties hereto and their respective successors and assigns shall do all such things, execute all such documents, and provide all such reasonable assurances as may be required to carry out the terms and purposes of this Agreement.

17. Cumulative Remedies. Except as otherwise specifically provided in this Agreement, the rights and remedies available to any of the parties to this Agreement shall be deemed to be in addition to, and not in lieu of, any other rights and remedies available in law or equity.

18. Transferees' Agreement to be Bound. No transfer of a Voting Trust Certificate shall be made upon the books of the Voting Trust (even though otherwise permitted) unless and until the transferee or transferees agree(s) to become a party to, and be bound by, this Agreement. Such agreement shall be in such form as may be acceptable to counsel for the Voting Trustee.

19. Miscellaneous.

19.1 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 [____].

19.2 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.

19.3 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 initial Voting Trustee:

fax: _____

e-mail: _____

Attention: _____

with a copy to:

fax: _____

e-mail: _____

Attention: _____

if to any Stockholder, to the address of such Stockholder as set forth beneath such Stockholder's signature to this Agreement.

Each party may furnish an address substituting for the address given above by giving notice to the other parties in the manner prescribed by this Section 19.3. 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.

19.4 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.

19.5 Disputes. Any controversy, claim or dispute arising out of or relating to this Agreement, shall be settled by binding arbitration in [CITY/STATE]. Such arbitration shall be conducted in accordance with the then prevailing commercial arbitration rules of [NAME OF ARBITRATOR], with the following exceptions if in conflict: (a) one arbitrator shall be chosen by [ARBITRATOR]; (b) each party to the arbitration will pay its pro rata share of the expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator; and (c) arbitration may proceed in the absence of any party if written notice (pursuant to the Arbitrator's rules and regulations) of the proceeding has been given to such party. The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive and may be entered in any court having jurisdiction thereof as a basis of judgment and of the issuance of execution for its collection. All such controversies, claims or disputes shall be settled in this manner in lieu of any action at law or equity, provided however, that nothing in this subsection shall be construed as precluding bringing an action for injunctive relief or other equitable relief. The arbitrator shall not have the right to award punitive damages or speculative damages to either party and shall not have the power to amend this Agreement. IF FOR ANY REASON THIS ARBITRATION CLAUSE BECOMES NOT APPLICABLE, THEN EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO

19.6 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.

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

19.8 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.

19.9 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, the undersigned have executed this Voting Trust Agreement as of the date first written above.

VOTING TRUSTEE

[Voting Trustee]

STOCKHOLDERS

[Stockholder]
[Address]
Number of Shares Held: [_____]

[Stockholder]
[Address]
Number of Shares Held: [_____]

Acknowledged:

[NAME OF COMPANY]

By: _____

Name:

Title:

[Form of Irrevocable Stock Transfer Power]

IRREVOCABLE STOCK TRANSFER POWER

I, _____, do hereby irrevocably sell, assign and transfer unto _____, as Voting Trustee of the [NAME OF COMPANY] Voting Trust dated [DATE], [_____] shares (the “**Shares**”) of the common stock, \$[] par value per share, of [NAME OF COMPANY] (the “**Company**”) standing in my name on the books of the Company, represented by Certificate No. _____, and do hereby irrevocably constitute and appoint [_____] as attorney to transfer the Shares on the books of the Company with full power of substitution in the premises.

Date:

[Stockholder]

WITNESS:

[Witness]

[Form of Voting Trust Certificate]

[NAME OF COMPANY]

VOTING TRUST CERTIFICATE

[____, 20__]

No. []

[____] Shares

THIS VOTING TRUST CERTIFICATE (this “**Certificate**”) is issued under and pursuant to, its transfer restricted by, and the rights of the holder hereof are subject to and limited by, the terms and conditions of the [NAME OF COMPANY] Voting Trust Agreement (the “**Agreement**”), dated [____, 20__], by and among certain holders of shares of the common stock, \$[___] par value per share (“**Common Stock**”), of [NAME OF COMPANY] (the “**Company**”), and [NAME OF VOTING TRUSTEE], as Voting Trustee (hereinafter referred to collectively with any and all successors as the “**Voting Trustee**”).

Upon the termination of the voting trust as provided in the Agreement, and upon the presentation and surrender of this Certificate, accompanied, if required by the Voting Trustee, by a properly executed transfer thereof to the Voting Trustee, the holder hereof will be entitled to receive a certificate or certificates for [___] shares of Common Stock (the “**Shares**”), and in the meantime to receive payments equal to the dividends and the other distributions, if any, received by the Voting Trustee with respect to the Shares. The Voting Trustee shall, with respect to the Shares, possess and be entitled to exercise all rights of the holders of Common Stock of any and every kind and character, including the right to vote such Shares and to take part in or consent in writing or otherwise to any corporate or stockholders’ action, whether ordinary or extraordinary, including, but without limiting the generality thereof, each and every matter set forth in the Agreement, all upon such terms and conditions and under such circumstances as the Voting Trustee may from time to time determine in its sole discretion, and to do and perform any other act or thing which the stockholders of the Company are now or may hereafter be entitled to do or perform, it being expressly stipulated that the holder hereof shall have no right, either under this certificate or under the Agreement, or under any agreement express or implied, or otherwise, to vote the Shares or to take part in or consent to any corporate or stockholders’ action requiring such vote.

This Certificate is transferable only as provided in the Agreement, a copy of which may be obtained free of charge from the Voting Trustee upon written request, and then only upon the books of the Voting Trustee by the registered holder hereof in person or by attorney, upon surrender hereof properly endorsed. Until so transferred, the Voting Trustee and the Company may treat the registered holder as the owner hereof for all purposes whatsoever.

This certificate is not valid until signed by the Voting Trustee.

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

IN WITNESS WHEREOF, the Voting Trustee has executed this Voting Trust Certificate as of the date first written above.

[Voting Trustee]

[Form of Termination Notice]

[NAME AND ADDRESS OF COMPANY]

[____, 20__]

By Certified Mail

[NAME OF STOCKHOLDER]

[ADDRESS OF STOCKHOLDER]

Dear [NAME]:

Notice is hereby given pursuant to Section [9(c)] of the [NAME OF COMPANY] Voting Trust Agreement, dated [DATE OF AGREEMENT] (the “**Voting Trust Agreement**”), that the Voting Trust Agreement shall be terminated effective [DATE OF TERMINATION].

In connection with the above termination, and in accordance with the terms as set forth in Section [__] of the Voting Trust Agreement, as of the date set forth above, the Voting Trust Agreement shall cease to have any effect. Upon termination, the holders of any outstanding Voting Trust Certificates shall have no further rights under the Voting Trust Agreement, other than to receive certificates for their outstanding shares of common stock, upon surrender of the corresponding Voting Trust Certificate(s) within [__] days after the termination of the Voting Trust Agreement.

Sincerely,

[Trustee]