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ISSUES CONCERNING SHAREHOLDER'S AGREEMENTS

Prior to entering into a Shareholder's Agreement, shareholders should consider many issues. The purpose of this document is to highlight some of those issues.

1. Term of this Agreement

What is the intended term of the agreement (perpetual, 10 years, etc.)? How is the agreement to be terminated - upon the death of a shareholder, by written agreement of the holders of 51% of the outstanding shares?

2. Provisions for Control

How many members will the Board of Directors be comprised of? Will each shareholder be entitled to a nominee on the Board of Directors?

Who will be the officers of the Corporation? Will the directors and officers be paid by the Corporation? If so, how is their remuneration to be determined?

Which officers will be authorized to sign cheques and other banking documents on behalf of the Corporation? Will two signatures be required for cheques over a certain limit? Who can bind the Corporation in regard to other matters?

Will certain actions of the directors be restricted without the special approval of the shareholders? (i.e. change in the articles or by-laws of the Corporation, changes in the business of the Corporation, borrowing by the Corporation, etc) If so, will special approval require unanimous consent of the shareholder's or the consent of the two thirds of the shareholders present at a shareholder's meeting?

3. Operation and Finance of the Corporation

Who will be the accountant for the Corporation? Which bank will the Corporation use? What will the Corporation's year end be?

If funds are required by the Corporation, how are those funds to be obtained? Will these funds be obtained by the Corporation borrowing from a financial institution? If the Corporation is unable to otherwise obtain these funds, will the shareholders or Principals of the shareholders ("Principal(s)") be required to provide guarantees? If guarantees are provided, will they be limited guarantees and will the guarantor's liability be joint and several (i.e. are all the guarantors liable for the full amount of the debt separately)?

If the Corporation is unable to obtain the required funds with the assistance of the

shareholder's guarantees, will the shareholders be required to provide loans to the Corporation? If a shareholder is unable or unwilling to advance the funds required by the Corporation, should the other shareholders be entitled to advance funds on behalf of the withholding shareholder? If so, should the shareholder who has not provided funds have its shareholder's rights limited, i.e. voting rights, dividends?

4. **Restriction on the Transfer of Shares held by Shareholders**

Will there be a restriction on the transfer of shares? If so, will this restrict the ability of a shareholder to pledge shares to a bank or transfer shares to a family member or related Corporation?

If the shareholders are Corporations, should the Principals of the shareholder be restricted from transferring shares of the shareholder? If so, will this restrict the ability of a Principal to pledge shares to a bank or transfer shares to a family member or related Corporation?

5. **Death of a Shareholder/Principal**

In the event that a shareholder or Principal dies, should the estate be bound to sell the deceased's shares to the other shareholders, to the Corporation for cancellation, or should the estate be allowed to keep the shares? If an estate is required to sell and the Corporation or the remaining shareholders or Principals are required to purchase the shares, should there be insurance policies on the lives of the shareholders/Principals to ensure that the other shareholders/Principals or the Corporation can afford to purchase the shares in the event of death? If insurance policies are required, should the Corporation pay the insurance premiums?

Upon death, how should the purchase price for the shares be paid - i.e. a percentage at the time of the sale and the balance paid in equal consecutive monthly installments over a period of years?

6. **Events requiring a mandatory sale by the Shareholder/Principal**

Which events should result in a shareholder/Principal being required to sell all of its shares:

- (a) The death of the shareholder or Principal?
- (b) The disability of a shareholder or Principal which results in the shareholder or Principal not being able to devote the time and attention required by the Corporation?
- (c) The shareholder or Principal reaching a certain age (i.e. 65 years)?
- (d) A default by a shareholder or Principal under the Shareholder's Agreement or any related agreement?
- (e) The insolvency of a shareholder or Principal?
- (f) Dismissal or resignation of the shareholder or Principal if they are employed by the Corporation?
- (g) Due to the application of the *Family Law Act*, a spouse becomes entitled to the shares of the Corporation or the shareholder?

Should the purchase price for the shares be the same in all situations? i.e. if a shareholder or Principal is required to sell shares as a result of a disability, should the purchase price be the same as if they were required to sell due to insolvency?

7. **Disability of a Shareholder or Principal**

If a shareholder or a Principal is employed by the Corporation, should the shareholder or Principal be entitled to continue receiving compensation in the event of a disability? If so, for how long? How should disability be defined, for example, how severe must an illness be before it is a disability and what length of time must a shareholder or Principal be unable to devote to the Corporation prior to this provision becoming applicable. Should a shareholder or Principal be required to sell its shares if their disability continues for an extended period of time?

8. **Right of First Refusal**

If a shareholder or Principal receives a bona fide third party offer for the purchase of its shares, should that shareholder or Principal be required to offer its shares to the other shareholders on the same terms and conditions as the bona fide third party offer? If the other shareholders or Principals do not wish to purchase additional shares, should they be entitled to require the third party purchaser to purchase their shares as well (piggy back rights)? If the other shareholders or Principals do not wish to purchase additional shares, should they be forced to sell their shares to the third party if the third party wishes to purchase all of the Corporation's outstanding shares (drag along)?

If a shareholder or Principal provides the other shareholders and Principals with a Right of First Refusal, are the other shareholders and/or Principals required to purchase all of the shares offered or are they able to purchase only a portion of the shares offered? Are the shareholders or Principals only allowed to purchase shares in proportion to their existing holdings or are they allowed to purchase an additional amount of shares which would result in a disproportionate holding by that shareholder or Principal (this could effect control)?

9. **Buy/Sell**

Is a buy/sell provision required? This provision allows a shareholder to provide notice to all other shareholders advising them of a set price at which they are willing to buy all of the other shareholder's shares or sell all of their own shares. If a buy/sell provision is included, is the aggregate purchase price to be paid in full at closing? What is the time period in which the other shareholders must reply to the buy/sell notice?

10. **Call**

Should a shareholder be entitled to require one or more other shareholders to sell their shares in the Corporation upon notice? If so, should this right be exercisable immediately?

11. **Put**

Should a clause be included which requires a shareholder to purchase another shareholder's shares upon notice? If so, how should the purchase price be determined? Should the purchase price be paid in full at the time of closing? If this clause is included; should it be exercisable immediately?

12. **Drag-Along**

If a third-party offeror offers to purchase one shareholder's interest, should that one shareholder have the right to force the other shareholders to sell to the third-party offeror on identical terms?

13. **Tag-Along**

If a third-party offeror offers to purchase one shareholder's interest, should the other shareholder(s) have the right to force the third-party offeror to extend the offer to purchase to all the shareholders on identical terms?

14. **Pre-Emptive Rights**

If the Corporation wishes to raise additional funds by issuing and selling new shares from treasury, should the existing shareholders have the first opportunity to purchase the new shares? If one or more shareholders does not wish to purchase these new shares, should the remaining shareholders be entitled to purchase additional shares which may result in their holding a disproportionate number of shares (this could affect control)?

15. **Roles and Responsibilities of the Parties**

How much time and attention must each party contribute to the operation and management of the Corporation? Are there specific responsibilities for certain parties that should be noted? Are certain shareholders to be employees of the Corporation, and if so should the terms of employment be in writing?

16. **Dispute Resolution**

Shareholder's Agreements often contain a clause which provides for arbitration in the event that a controversy or claim arises which cannot be settled. The agreement can also be drafted so that the parties must attend mediation prior to starting an action if a claim which cannot otherwise be settled arises.

17. **Non Competition/Confidentiality/Non solicitation**

Will the shareholders and Principals be required to pledge that while they are shareholders or Principals they will not (i) compete with the Corporation in any manner, (ii) solicit any of the Corporation's clients, and (iii) promise to keep all confidential information they receive confidential? Should the terms of this clause be extended so that it applies even when the individual is no longer a shareholder or Principal? If so, how long should the non competition/non solicitation clause apply for?

18. **Valuation of Shares**

How will the shares of the Corporation be valued for sale purposes? By a predetermined formula or by a third party valuator/auditor? Will the shares be valued annually?

19. **Family Law Act Considerations**

The *Family Law Act* (the "FLA") gives one spouse certain rights in the value of the property of the other on the breakdown of marriage. In certain circumstances, the FLA may also provide a spouse of a shareholder with rights in the value of the property of the

shareholder upon the death of that shareholder.

Should the spouses of the shareholders give up all of their FLA rights to the shares of the Corporation?

If the spouses will not be required to give up their FLA rights to the shares, should there be a provision in the agreement to prevent transfer of the shares by giving the other shareholders the option to purchase the shares, or if the shares are already transferred should the transferee spouse enjoy reduced rights? Should the spouses agree to a method of valuing the shares?

20. **Guarantee**

Will each Principal be required to guarantee that the shareholder of which he or she is Principal will observe and perform all of the obligations provided for in the Shareholder's Agreement?

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