EXECUTION VERSION

BALLY TOTAL FITNESS HOLDING CORPORATION

SHAREHOLDERS' AGREEMENT

Dated as of the Effective Date

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SHAREHOLDERS' AGREEMENT

This SHAREHOLDERS' AGREEMENT (this "Agreement"), dated as of the Effective Date, is made by and among BALLY TOTAL FITNESS HOLDING CORPORATION, a Delaware corporation (the "Company"), and the Shareholders of the Company, including the Persons listed on Exhibit A attached hereto, as the same may be updated from time to time.

W I T N E S S E T H

WHEREAS, the Company filed the Amended Joint Plan of Reorganization of the Debtors under Chapter 11 of the Bankruptcy Code on July 7, 2009 (as amended, the "Plan");

WHEREAS, the Plan has become effective in accordance with its terms;

WHEREAS, the Company has distributed the Shares to the Shareholders as of the Effective Date pursuant to the Plan;

WHEREAS, in accordance with the Plan, such Shareholders are deemed to have executed, and shall be bound by, this Agreement; and

WHEREAS, this Agreement sets forth certain rights, duties and obligations of the Shareholders and the Company.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE 1.

DEFINITIONS

Section 1.1. Definitions.

(a) The following terms, as used herein, have the following meanings:

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person; provided that no Shareholder shall be deemed an Affiliate of any other Shareholder solely by reason of any investment in the Company. For the purpose of this definition, the term "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Anchorage" means Anchorage Capital Master Offshore, Ltd.

"Board" means the board of directors of the Company.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized by law to close.

"Certificate" means the Second Amended and Restated Certificate of Incorporation of the Company, as amended.

"Change of Control" shall mean (a) the sale, exclusive license or other disposition of all or substantially all of the assets of the Company in any single transaction or series of related transactions, other than to an Affiliate, (b) the sale of all of the Shares held by the Drag-Along Initiator(s) pursuant to a Drag-Along Sale (as such term is defined in the Certificate), or (c) any merger, reorganization, consolidation or other transaction or series of transactions (other than with an Affiliate) involving the Company which results in the holders of Common Stock outstanding immediately prior to such transaction(s) failing to continue to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than fifty percent (50%) of the combined voting power of the voting securities of the Company or the surviving entity outstanding immediately after such transaction(s).

"Common Stock" means the common stock, par value $0.01 per share, of the Company, and any shares into which such common shares may thereafter be converted or changed.

"Company Securities" means (i) the Common Stock, (ii) securities convertible into or exchangeable for Common Stock and (iii) options (including the Management Options and RSUs), warrants (including the Warrants) or other rights to acquire Common Stock.

"Effective Date" shall mean the date on which the Plan becomes effective in accordance with its terms.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Excluded Registration" means (i) a registration on Form S-8 or S-4, or any successor forms, relating to Shares issuable upon exercise of employee share options or in connection with any employee benefit, incentive or similar plan of the Company; or (ii) a registration relating to an SEC Rule 145 transaction.

"FINRA" means the Financial Industry Regulatory Authority and/or, as applicable, the National Association of Securities Dealers, Inc., its predecessor organization, or any successor thereof.

"First Public Offering" means the first Public Offering after the date hereof.

"JPMorgan" means, collectively, JPMorgan Chase Bank, N.A. and J.P. Morgan Securities, Inc.

"Major Investor" means each of (i) Anchorage and/or any Affiliate thereof and (ii) JPMorgan and/or any Affiliate thereof.

"Management Incentive Plan" shall have the meaning given to such term in the Plan.

"Management Options" shall have the meaning given to such term in the Plan.

"Participating Shareholders" means the Shareholders that participate in any registration of Registrable Securities pursuant to Section 3.1 or Section 3.2 hereto, including any Requesting Shareholder.

"Permitted Transferee" means, with respect to any Shareholder, (i) such Shareholder's parent, spouse, brother or sister, natural or adopted lineal descendant or spouse of such descendant including pursuant to a will or under the laws of intestacy, descent and distribution; (ii) the trustee of a trust, whether *inter vivos* or testamentary, a corporation, a limited liability company or a partnership, of which only such Shareholder and/or any person or persons named in clause (i) is the beneficiary, shareholder, member or partner, respectively; or (iii) any Affiliate of such Shareholder.

"Person" means an individual, corporation, limited liability company, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof, and shall include any successor of such entity.

"Public Offering" means a public offering of Common Stock pursuant to an effective registration statement under the Securities Act, other than pursuant to a registration statement on Form S-4 or Form S-8 or any similar or successor form.

"Qualified Shareholder" means any Shareholder that, together with its Affiliates, holds five percent (5%) or more of the issued and outstanding Common Stock.

"Registrable Securities" means, at any time, any Shares, including, for the avoidance of doubt, any securities issued or issuable in respect of such Shares, or by way of conversion, exchange, exercise (including Shares issued upon exercise of the Management Options or Warrants), distribution (including Shares issued with respect to the RSUs), stock dividend, split or combination, recapitalization, merger, consolidation, other reorganization or otherwise until (i) a registration statement covering such Shares has been declared effective by the SEC and such Shares have been disposed of pursuant to such effective registration statement, (ii) such Shares are sold under circumstances in which all of the applicable conditions of Rule 144 are met, or (iii) such Shares as were previously represented by certificates bearing a legend with respect to transfer restrictions under the Securities Act and state securities laws are otherwise Transferred, the Company has delivered a new certificate or other evidence of ownership for such Shares not bearing such legend and such Shares may be resold without subsequent registration under the Securities Act.

"Registration Expenses" means any and all expenses incident to the performance of or compliance with any registration or marketing of securities, including all (i) registration and filing fees, and all other fees and expenses payable in connection with the listing of securities on any securities exchange or automated interdealer quotation system, (ii) fees and expenses of compliance with any securities or "blue sky" laws (including fees and disbursements of counsel in connection with "blue sky" qualifications of the securities registered), (iii) expenses in connection with the preparation, printing, mailing and delivery of any registration statements, prospectuses and other documents in connection therewith and any amendments or supplements

thereto, (iv) security engraving and printing expenses, (v) internal expenses of the Company (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), (vi) fees and disbursements of counsel for the Company and customary fees and expenses for independent certified public accountants retained by the Company (including the expenses relating to any required audits of the financial statements of the Company or any comfort letters or costs associated with the delivery by independent certified public accountants of any comfort letters requested pursuant to Section 3.4(h) hereto), (vii) fees and expenses of any special experts retained by the Company in connection with such registration, (viii) reasonable fees and expenses of one (1) counsel for all of the Shareholders participating in the offering which counsel shall be selected by the Requesting Shareholder if such registration is pursuant to a Demand Registration and otherwise shall be selected by the Shareholders holding the majority of the Registrable Securities to be sold for the account of all Shareholders in the offering, (ix) fees and expenses in connection with any review by FINRA of the underwriting arrangements or other terms of the offering, and all fees and expenses of any "qualified independent underwriter," including the fees and expenses of any counsel thereto, (x) fees and disbursements of underwriters customarily paid by issuers or sellers of securities, but excluding any underwriting fees, discounts and commissions attributable to the sale of Registrable Securities, (xi) costs of printing and producing any agreements among underwriters, underwriting agreements, any "blue sky" or legal investment memoranda and any selling agreements and other documents in connection with the offering, sale or delivery of the Registrable Securities, (xii) transfer agents' and registrars' fees and expenses and the fees and expenses of any other agent or trustee appointed in connection with such offering, (xiii) expenses relating to any analyst or investor presentations or any "road shows" undertaken in connection with the registration, marketing or selling of the Registrable Securities, (xiv) fees and expenses payable in connection with any ratings of the Registrable Securities, including expenses relating to any presentations to rating agencies and (xv) all out-of-pocket costs and expenses incurred by the Company or its appropriate officers in connection with their compliance with Section 3.4(m) hereto. For the avoidance of doubt, "Registration Expenses" shall include expenses of the type described in clauses (i) – (xv) to the extent incurred in connection with the "take down" of Shares by a Shareholder pursuant to a registration statement previously declared effective. Except as set forth in clause (viii) above, Registration Expenses shall not include any out-of-pocket expenses of the Shareholders (or the agents who manage their accounts).

"RSUs" means the restricted stock units to be granted under the Management Incentive Plan.

"Rule 144" means Rule 144 and Rule 144A (or any successor provisions) under the Securities Act.

"Rule 415" means Rule 415 (or any successor provisions) under the Securities Act.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Shareholder" means each Person (other than the Company) who shall be a party to or bound by this Agreement, whether in connection with the execution and delivery hereof as of the date hereof, pursuant to Section 6.1 hereto or otherwise, so long as such Person shall "beneficially own" (as such term is defined in Rule 13d-3 of the Exchange Act) any Shares.

"Shares" means shares of Common Stock.

"Subsidiary" means, with respect to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions are, at the time, directly or indirectly owned by such Person.

"Transfer" means, with respect to any Company Securities, (i) when used as a verb, to sell, assign, dispose of, exchange, pledge, encumber, hypothecate or otherwise transfer such Company Securities or any participation or interest therein, whether directly or indirectly, or agree or commit to do any of the foregoing and (ii) when used as a noun, a direct or indirect sale, assignment, disposition, exchange, pledge, encumbrance, hypothecation or other transfer of such Company Securities or any participation or interest therein or any agreement or commitment to do any of the foregoing.

"Transferee" means the recipient of a Transfer.

"Venor" means Venor Capital Master Fund Ltd.

"Warrants" means the New Bally Warrants (as such term is defined in the Plan).

(b) In addition, each of the following terms is defined in the Section set forth opposite such term:

Term	Section
Agreement	Preamble
Company	Preamble
Confidential Information	5.1(b)
Damages	3.5
Demand Registration	3.1(a)
Drag-Along Initiator	2.3(a)
Drag-Along Notice	2.3(b)
Drag-Along Right	2.3(a)
Drag-Along Sale	2.3(a)
Drag-Along Terms	2.3(b)
Dragged Person	2.3(a)
Form S-3 Registration Statement	3.1(a)
Indemnified Party	3.7
Indemnifying Party	3.7
Inspectors	3.4(g)
Issue Notice	2.5(a)
Maximum Offering Size	3.1(e)
Non-Title Representations	2.2(c)

Term	Section
Piggyback Registration	3.2(a)
Plan	Recitals
Put Notice	2.1(a)
Put Notice Period	2.1(c)
Put Offer	2.1(b)
Put Participant	2.1(a)
Put Response Notice	2.1(c)
Put Right	2.1(c)
Put Sale	2.1(a)
Put Seller	2.1(a)
Records	3.4(g)
Representatives	5.1(b)
Requesting Shareholder	3.1(a)
Shelf Offering Request	3.1(a)
Termination Event	6.1(a)

ARTICLE 2.

PUT RIGHTS; DRAG-ALONG RIGHTS; PREEMPTIVE RIGHTS; RESTRICTIONS ON TRANSFER

Section 2.1. Put Rights.

(a) Subject to Section 2.1(k) and Section 2.2 hereto, if any Person (or group of Persons) proposes to directly or indirectly acquire, and a Shareholder(s) proposes to directly or indirectly Transfer, a number of Shares that, together with any Shares then held by such Person or group of Persons (or Affiliates thereof), exceed 49.9% of the issued and outstanding Common Stock in one or more transactions (a "Put Sale" and the Shareholder(s) proposing such Transfer, a "Put Seller"), as a condition to the Put Seller effecting such Transfer:

(i) the Put Seller shall provide each other Shareholder notice of the terms and conditions of such proposed Transfer ("Put Notice") and offer each other Shareholder the opportunity to participate in such Transfer in accordance with this Section 2.1, and

(ii) each other Shareholder may elect, at its option, to participate in the proposed Transfer in accordance with this Section 2.1 (each such electing other Shareholder, a "Put Participant");

provided, that the Put Rights contained in this Section 2.1 shall not apply to (1) any Transfer to a Permitted Transferee, (2) any Transfer pursuant to an effective registration statement (including, without limitation, a registration statement on Form S-3 (or any successor thereto)) under the Securities Act, (3) a Drag-Along Sale, (4) increases in holdings by JPMorgan or its Affiliates in connection with Transfers coordinated or effected by them, solely in their capacities as market makers for the Shares, solely for the accounts of third parties, or (5) increases in the ownership

percentages of any Shareholder and any of its Affiliates as a result of any non- *pro rata* repurchase or redemption of Shares by the Company in one or more transactions.

(b) The Put Notice shall identify the number of Shares proposed to be Transferred in such Put Sale including the number of Shares proposed to be sold by the Put Seller ("Put Offer"), the consideration for which the Transfer is proposed to be made, and all other material terms and conditions of the Put Offer, including the form of the proposed agreement, if any, and a firm offer by the proposed Transferee to purchase Shares from the Shareholders in accordance with this Section 2.1.

(c) From the date of its receipt of the Put Notice, each Put Participant shall have the right (a "Put Right"), but not the obligation, exercisable by written notice ("Put Response Notice") given to the Put Seller and the Company within ten (10) Business Days after its receipt of the Put Notice (the "Put Notice Period"), to require, as a condition to the proposed Transfer by the Put Seller, that the Put Seller include in the proposed Transfer the number of Shares held by such Put Participant as is specified in the Put Response Notice.

(d) Each Put Response Notice shall include wire transfer instructions for payment of the purchase price for the Shares to be sold in such Put Sale. Each Put Participant that exercises its Put Rights hereunder shall deliver to the Company (or its designated agent), no later than five (5) Business Days prior to the proposed closing date for the Put Sale, the certificate or certificates, if any, representing the Shares of such Put Participant to be included in the Put Sale, together with a limited power-of-attorney authorizing the Put Seller to Transfer such Shares on the terms set forth in the Put Notice or, in the case of Shares held in book-entry form or through direct registration, shall make other delivery arrangements reasonably satisfactory to the Company. Delivery of the Put Response Notice shall constitute an irrevocable acceptance of the Put Offer by such Put Participants; provided that in the event that there is a material change of the Put Offer, the Put Seller shall give written notice of such change to each Put Participant, and each Put Participant shall have the right to revoke its election to participate in the Put Sale by providing written notice to the Company within five (5) Business Days of receiving the notice of the change in terms.

(e) If, at the termination of the Put Notice Period, a Shareholder shall not have elected to participate in the Put Sale, such Shareholder shall be deemed to have waived its rights under this Section 2.1 with respect to the Transfer of its Shares pursuant to such Put Sale; provided that in the event that there is a material change to the terms of the Put Offer, the Put Seller shall give written notice of such change to each such Shareholder and each such Shareholder shall have the right to participate in the Put Sale by providing written notice to the Put Seller within ten (10) Business Days after its receipt of the notice of change of terms.

(f) The Put Seller shall Transfer, on behalf of itself and any Put Participant, the Shares subject to the Put Offer and elected to be Transferred at the same time and on the same terms and conditions as set forth in the Put Notice within 90 calendar days after the last day of the Put Notice Period (which 90 calendar day period shall be extended if any of the transactions contemplated by the Put Offer are subject to regulatory approval until the expiration of five (5) Business Days after all such approvals have been received, but in no event later than 180 calendar days after the last day of the Put Notice Period).

(g) Concurrently with the consummation of the Put Sale, (i) the Put Seller shall notify the Put Participants thereof (including identifying the manner of delivery for any non-cash consideration) and (ii) the total consideration due to each Put Participant shall be remitted to such party, with the cash portion of the purchase price paid by wire transfer of immediately available funds in accordance with the wire transfer instructions in the applicable Put Response Notices. Promptly after the consummation of such Put Sale, the Put Seller shall furnish such other evidence of the completion and the date of completion of such Transfer and the terms thereof as may be reasonably requested by the Company for the benefit of the Put Participants.

(h) If, at the end of the 90 calendar day period immediately following the last day of the Put Notice Period (or such longer period as extended under Section 2.1(f) hereto), the Put Seller has not completed the Transfer of all such Shares at the same time and on the same terms and conditions as set forth in the Put Notice, or such earlier time as the Put Seller has determined not to consummate the Put Sale, (i) the Company (or its designated agent) shall return to each Put Participant, to the extent previously provided, the limited power-of-attorney (and all copies thereof) together with all Shares, including the certificates representing the Shares, if any, that such Put Participant delivered for Transfer pursuant to this Section 2.1 and any other documents executed by the Put Participants in connection with the proposed Put Sale and (ii) the Put Seller shall not conduct any such Transfer of Shares prior to the return to each Put Participant of all documents referred to in clause (i) and without again complying with this Section 2.1.

(i) Notwithstanding anything contained in this Section 2.1, there shall be no liability on the part of the Put Seller to the Put Participants if the Transfer of Shares pursuant to this Section 2.1 is not consummated for any reason. Whether to effect a Transfer of Shares pursuant to this Section 2.1 by the Put Seller, or to terminate any such transaction prior to consummation, is in the sole and absolute discretion of the Put Seller.

(j) For purposes of this Article 2, (i) any increase to the price payable in connection with any Put Offer shall be deemed to be a material change only if such increase is more than five percent (5%) and (ii) any decrease to the price payable in connection with any Put Offer shall be deemed to be a material change.

(k) The rights and obligations of the parties hereto under this Section 2.1 and Section 2.2 below (i) shall not be applicable if a Drag-Along Right is exercised and consummated in accordance with Section 2.3 and Section 2.4 below and (ii) shall terminate upon the First Public Offering. For the avoidance of doubt, the rights and obligations of the parties hereto under this Section 2.1 and Section 2.2 below shall apply if a Drag-Along Right is exercisable but is not exercised or is withdrawn, or a Drag-Along Sale is otherwise not consummated for any reason.

Section 2.2. Additional Conditions to Put Sales. Notwithstanding anything contained in Section 2.1 hereto, the rights and obligations of Shareholders to participate in a Put Sale are subject to the following conditions:

(a) upon the consummation of such Put Sale, all of the Shareholders participating therein will receive the same form and amount of consideration per share, or, if any Shareholders are given an option as to the form and amount of consideration to be received, all Shareholders participating therein will be given the same option; provided that the value of the consideration per Share to be received by the Put Participants shall not be less than the greater of (i) the per Share amount to be received by the Put Seller in connection with such Put Sale and (ii) an amount equal to the weighted average price per Share paid by the proposed Transferee and its Affiliates with respect to all Shares purchased by the proposed Transferee and its Affiliates during the ninety (90) calendar day period immediately preceding the date of the Put Notice (including, for purposes of calculating such weighted average price, the Shares to be purchased in connection with the proposed Put Sale); provided, further, the value of the consideration per Share to be received by the Put Participants shall be increased to any higher amount that the proposed transferee or any of its Affiliates has agreed to pay per Share to any Shareholder at any time following the Put Notice and prior to the closing of the Put Sale; provided, further, that for purposes of the foregoing calculation the value of any non-cash consideration paid (or to be paid) by the proposed Transferee or its Affiliates shall be equal to the fair market value of such consideration when paid (or to be paid) as reasonably determined in good faith by the Board, whose determination shall be conclusive;

(b) no Person shall be obligated pursuant to this Agreement to pay any expenses incurred in connection with any unconsummated Put Sale and each Put Participant shall be obligated to pay only its *pro rata* share (based on the number of Shares Transferred) of expenses incurred in connection with a consummated Put Sale; and

(c) each Put Participant (i) shall make such representations, warranties and covenants and enter into such definitive agreements as are customary for transactions of the nature of the proposed Transfer and as are the same as those applicable to Put Seller; provided that, if the Put Participants are required to provide any representations or indemnities in connection with such Transfer (other than representations and indemnities concerning each such Shareholder's title to the Shares and authority, power and right to enter into and consummate the Transfer without contravention of any law or agreement), liability for misrepresentation or indemnity shall (as to the Put Participants) be expressly stated to be several but not joint, and each such Put Participant shall not be liable for more than the net proceeds received by such Shareholder in connection with such Transfer; provided, further that, no Put Participant shall be required to provide any representations or warranties other than with respect to each such Shareholder's title to the Shares and authority, power and right to enter into and consummate the Transfer without contravention of any law or agreement (the "Non-Title Representations"), but each Put Participant may be required to bear its proportionate share of any indemnity, escrow, holdback or adjustment in purchase price in connection with any Non-Title Representations; provided, further that, no Put Participant shall be required or deemed to have agreed to any noncompete, nonsolicitation or any other nonfinancial terms without its express written consent; (ii) shall be subject to and benefit from all of the same provisions of the definitive agreements as the Put Seller and (iii) shall be required to bear their proportionate share of any indemnities, escrows, holdbacks or adjustments in purchase price.

Section 2.3. Drag-Along Rights.

(a) Subject to Section 2.3(g) and Section 2.4 hereto, if any Person (or group of Persons) that is not a Shareholder or an Affiliate thereof makes a *bona fide* offer to engage in any transaction or series of transactions that would result in a Change of Control, and such transaction or transactions are approved by Shareholders holding a majority of the issued and outstanding Common Stock, (such transaction or transactions, a "Drag-Along Sale" and the Shareholder(s) approving such Drag-Along Sale, a "Drag-Along Initiator"), the Drag-Along Initiator shall have the right (a "Drag-Along Right"), but not the obligation, to require each other Shareholder (a "Dragged Person") to tender for purchase to the proposed Transferee, on the same terms and conditions as apply to the Drag-Along Initiator, the same proportionate share of Company Securities held by such Dragged Person being sold by the Drag-Along Initiator; provided, each Dragged Person, in its capacity as a Shareholder, shall also vote in favor of any Drag-Along Sale to the extent such transaction(s) requires the approval of the Shareholders, provided the terms of the Drag-Along Sale are consistent with this Section 2.3 and Section 2.4 below.

(b) If a Drag-Along Initiator elects to exercise its Drag-Along Right under this Section 2.3, such Drag-Along Initiator shall give each Dragged Person, at least ten (10) Business Days prior to the proposed Drag-Along Sale, a written notice (a "Drag-Along Notice") containing (i) the number of Company Securities proposed to be Transferred in such Drag-Along Sale (with warrants, options, convertible securities and other common equivalents counted on an as-converted or as-exercised basis) (the "Drag-Along Terms"), (ii) the name and address of the proposed Transferee and (iii) the consideration for which the Transfer is proposed to be made, and all other material terms and conditions of the Drag-Along Terms, including the form of the proposed agreement, if any. Upon the receipt of a Drag-Along Notice, the Dragged Person shall be obligated to sell the Company Securities held by such Dragged Person.

(c) No later than five (5) Business Days prior to the proposed closing for the Drag-Along Sale, each Dragged Person shall deliver to the Company (or its designated agent) (i) the certificate or certificates, if any, representing the Company Securities of such Dragged Person to be included in the Drag-Along Sale, together with a limited power-of-attorney authorizing the Drag-Along Initiator to Transfer such Company Securities on the terms set forth in the Drag-Along Notice or, in the case of Company Securities held in book-entry form or through direct registration, shall make other delivery arrangements reasonably satisfactory to the Company and (ii) wire transfer instructions for payment of the purchase price for the Company Securities to be sold in such Drag-Along Sale. If any Dragged Person fails to make the deliveries described in this paragraph within the prescribed time, the Company shall have the right, but not the obligation, to redeem, immediately prior to the consummation of the Drag-Along Sale, the Company Securities of such Dragged Person at a redemption price equal to the consideration set forth in the Drag-Along Notice, payable upon the terms and subject to the conditions contained in the Drag-Along Notice, all in accordance with Certificate.

(d) The Drag-Along Initiator shall Transfer, on behalf of itself and all Dragged Persons, the Company Securities subject to the Drag-Along Sale at the same time and on the same terms and conditions as set forth in the Drag-Along Notice. Concurrently with the consummation of the Drag-Along Sale, (i) the Drag-Along Initiator shall notify the Dragged

Persons thereof (including identifying the manner of delivery for any non-cash consideration) and (ii) the total consideration due to each Dragged Person shall be remitted to such party, with the cash portion of the purchase price paid by wire transfer of immediately available funds in accordance with the wire transfer instructions of such Dragged Person. Promptly after the consummation of such Drag-Along Sale, the Drag-Along Initiator shall furnish such other evidence of the completion and the date of completion of such Transfer as may be reasonably requested by such Dragged Person.

(e) If the Drag-Along Initiator has not completed the Transfer of all such Company Securities on the same terms and conditions as set forth in the Drag-Along Notice within 90 calendar days of the date of the Drag-Along Notice (which 90 calendar day period shall be extended if any of the transactions contemplated by the Drag-Along Sale are subject to regulatory approval until the expiration of five (5) Business Days after all such approvals have been received, but in no event later than 180 calendar days from the date of the Drag-Along Notice), (i) the Company (or its designated agent) shall return to each Dragged Person, to the extent previously provided, the limited power-of-attorney (and all copies thereof) together with all Company Securities, including the certificates representing the Company Securities, if any, that such Dragged Person delivered for Transfer pursuant to this Section 2.3 and any other documents executed by the Dragged Persons in connection with the proposed Drag-Along Sale and (ii) the Drag-Along Initiator shall not conduct any Transfer of Company Securities prior to the return to each Dragged Person of all documents referred to in clause (i) and without again complying with this Section 2.3.

(f) The Company shall, and shall cause its employees, accountants and other advisors, representatives and agents to, use its and their commercially reasonable efforts to take all reasonable and necessary action to assist a Drag-Along Initiator in its efforts to effect a Drag-Along Sale, including permitting *bona fide* prospective purchasers to conduct customary due diligence of the Company in a reasonable manner, during regular business hours and upon reasonable advance notice, subject to (a) the execution and delivery of a customary confidentiality agreement with the Company and (b) the Company's and the Board's compliance with applicable laws, rules, regulations and orders and any restrictions or commitments in any contracts or agreements to which the Company or any of its subsidiaries is a party or by which it or any of them is bound.

(g) The rights and obligations of the parties hereto under this Section 2.3 and Section 2.4 below shall terminate upon the First Public Offering.

(h) For the avoidance of doubt, in the event a Drag-Along Initiator does not elect to exercise its Drag-Along Right under this Section 2.3, the provisions of Section 2.1 and Section 2.2 hereto shall apply.

Section 2.4. Additional Conditions to Drag-Along Sales. Notwithstanding anything contained in Section 2.3 hereto, the obligations of Shareholders to participate in a Drag-Along Sale are subject to the following conditions:

(a) upon the consummation of such Drag-Along Sale, all of the Shareholders participating therein will receive the same form and amount of consideration per share as the

Drag-Along Initiator, or, if any Shareholder is given an option as to the form and amount of consideration to be received, all Shareholders participating therein will be given the same option;

(b) no Person shall be obligated pursuant to this Agreement to pay any expenses incurred in connection with any unconsummated Drag-Along Sale and each Shareholder shall be obligated to pay only its *pro rata* share (based on the number of Company Securities Transferred) of expenses incurred in connection with a consummated Drag-Along Sale; and

(c) each Dragged Person shall (i) make such representations, warranties and covenants and enter into such definitive agreements as are customary for transactions of the nature of the proposed Transfer and as are the same as those applicable to the Drag-Along Initiator; provided that, if such Dragged Persons are required to provide any representations or indemnities in connection with such Transfer (other than representations and indemnities concerning each such Dragged Person's title to the Company Securities and authority, power and right to enter into and consummate the Transfer without contravention of any law or agreement), liability for misrepresentation or indemnity shall (as to such Dragged Persons) be expressly stated to be several but not joint and each such Dragged Person shall not be liable for more than the net proceeds received by such Shareholder in connection with such Transfer; provided, further that, no Dragged Person shall be required to provide any Non-Title Representations, but each Shareholder may be required to bear its proportionate share of any indemnity, escrow, holdback or adjustment in purchase price in connection with any Non-Title Representations; provided, further that, no Shareholder will be required or deemed to have agreed to any noncompete, nonsolicitation or any other nonfinancial terms without its express written consent, (ii) be subject to and benefit from all of the same provisions of the definitive agreements as the Drag-Along Initiator, and (iii) be required to bear their proportionate share of any escrows, holdbacks or adjustments in purchase price.

Section 2.5. Preemptive Rights.

(a) Subject to Section 2.5(e) hereto, the Company shall give each Shareholder that, together with its Affiliates, holds one-half of one percent (0.5%) or more of the issued and outstanding Common Stock notice (an "Issue Notice") of any proposed issue by the Company or any of its Subsidiaries (other than issues by a Subsidiary to another Subsidiary or its parent company) of any equity securities or any securities convertible or exchangeable for equity securities at least ten (10) Business Days prior to the proposed issue date. The Issue Notice shall specify the price at which such securities are to be issued and the other material terms of the issue. Subject to Section 2.5(d) hereto, each Shareholder (other than any Shareholder that, together with its Affiliates, holds five percent (5%) or more of the issued and outstanding Common Stock, with respect to issuances pursuant to Section 2.5(e) below) shall be entitled to purchase such Shareholder's *pro rata* share of such securities proposed to be issued based on the relative number of Shares owned by such Shareholder, at the price and on the other terms specified in the Issue Notice.

(b) A Shareholder may exercise its rights under this Section 2.5 by delivering notice of its election to purchase such securities to the Company within five (5) Business Days of receipt of the Issue Notice. A delivery of such notice (which notice shall specify the number (or

amount) of such securities to be purchased by the Shareholder submitting such notice) by such Shareholder shall constitute a binding agreement of such Shareholder to purchase, at the price and on the terms specified in the Issue Notice, the number of shares (or amount) of such securities specified in such Shareholder's notice. If, at the termination of such five (5) Business Day period, any Shareholder shall not have exercised its rights to purchase any of such Shareholder's *pro rata* share of such securities, such Shareholder shall be deemed to have waived all of its rights under this Section 2.5 with respect to the purchase of such securities.

(c) The Company shall have 120 calendar days from the date of the Issue Notice to consummate the proposed issue of any or all of such securities that the Shareholders have elected not to purchase at the price and upon terms that are not materially less favorable to the Company than those specified in the Issue Notice; provided that, if such issue is subject to regulatory approval, such 120 calendar day period shall be extended until the expiration of five (5) Business Days after all such approvals have been received, but in no event later than 180 calendar days from the date of the Issue Notice. At the consummation of such issue, the Company shall issue certificates representing such securities to be purchased by each Shareholder exercising preemptive rights pursuant to this Section 2.5 registered in the name of such Shareholder, against payment by such Shareholder of the purchase price for such securities or shall make arrangements for such securities to be issued in book-entry form or through direct registration. If the Company proposes to issue any class of such securities after such 120 calendar day period (or such longer period as extended under this Section 2.5(c)) or proposes to issue any class of such securities on materially different terms during such 120 calendar day period (or such longer period as extended under this Section 2.5(c)), it shall again comply with the procedures set forth in this Section 2.5.

(d) Notwithstanding the foregoing, no Shareholder shall be entitled to purchase equity or securities convertible or exchangeable for equity securities as contemplated by this Section 2.5 (x) unless such Shareholder is an "accredited investor" as such term is defined in Regulation D of the Securities Act or (y) in connection with issues of such securities (i) to directors, employees or consultants of the Company or any Subsidiary pursuant to any plan, arrangement or agreement approved by the Board or the Management Incentive Plan (including upon the exercise of stock options), (ii) in connection with a Change of Control transaction, (iii) by reason of a dividend, stock split, split-up, reclassification, reorganization or similar event, (iv) to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board, (v) to suppliers or third party service providers in connection with the provision of goods or services pursuant to a transaction(s) approved by the Board, (vi) pursuant to the acquisition of any business by the Company (whether through the purchase of assets or capital stock or by merger, consolidation, reorganization or otherwise) or to a joint venture, strategic alliance, partnership or similar arrangement, provided, that such issuance(s) is approved by the Board, (vii) pursuant to a Public Offering, (viii) pursuant to the exercise of any Management Option or Warrant, or pursuant to a distribution with respect to any RSU, or (ix) in a settlement of litigation. The Company shall not be under any obligation to consummate any proposed issue of such securities, nor shall there be any liability on the part of the Company to any Shareholder if the Company has not consummated any proposed issue of such securities pursuant to this Section 2.5 for whatever reason, regardless of whether it shall have delivered an Issue Notice in respect of such proposed issue.

(e) Notwithstanding any provision hereof to the contrary, in lieu of complying with the provisions of Section 2.5(a), the Company may elect to give the Issue Notice to each Shareholder that, together with its Affiliates, holds less than 5% of the issued and outstanding Common Stock within thirty (30) days after the issuance of securities; provided, that the Company shall:

(i) provide the same information contained in the Issue Notice to each such Shareholder who would have been eligible to participate in such issuance of securities pursuant to Section 2.5(a) hereto;

(ii) offer to issue to each such Shareholder such number of securities of the type specified in the Issue Notice as may be requested by such Shareholder (not in any event to exceed the *pro rata* percentage of securities such Shareholder would have been entitled to pursuant to Section 2.5(a) multiplied by the sum of (x) the aggregate number of securities issued pursuant to Section 2.5(a) with respect to such issuance and (y) the aggregate number of securities issued or to be issued pursuant to this Section 2.5(e) with respect to such issuance of securities);

(iii) keep such offer open for a period of fifteen (15) Business Days, during which period, each such Shareholder may accept such offer by sending a written acceptance to the Company committing to purchase an amount of such securities (not in any event to exceed the *pro rata* percentage of securities such Shareholder would have been entitled to pursuant to Section 2.5(a) multiplied by the sum of (x) the aggregate number of securities issued pursuant to Section 2.5(a) with respect to such issuance and (y) the aggregate number of securities issued or to be issued pursuant to this Section 2.5(e) with respect to such issuance of securities); and

(iv) close such sale within sixty (60) days of the date notice is given to such Shareholders pursuant to Section 2.5(e)(i) hereto.

(f) The rights and obligations of the parties hereto under this Section 2.5 shall terminate upon the First Public Offering.

Section 2.6. Restrictions on Transfer of Shares. No Shareholder may Transfer any Company Securities or any right, title or interest therein or thereto to any Person unless and until (i) such Shareholder has complied with this Article 2, as applicable, and (ii) if such Shareholder is listed in Exhibit A or otherwise, together with its Affiliates, owns 10% or more of the issued and outstanding Shares, either (A) a registration statement with respect to such Transfer is effective under the Securities Act and any applicable state securities or “blue sky” laws and such Transfer is made in accordance with such registration statement, or (B) the Company receives an opinion of counsel to such Shareholder, which counsel and opinion shall be reasonably satisfactory to counsel to the Company, that such securities may be Transferred in the manner contemplated without an effective registration statement under the Securities Act and applicable state securities or “blue sky” laws; provided that no such registration statement or opinion of counsel shall be necessary for a Transfer by a Shareholder to (i) the Company, (ii) such Shareholder’s Permitted Transferees, or (iii) a Person in compliance with Rule 144; provided further, that in each case the proposed Transferee, if such Transferee, together with its

Affiliates, owns as a result of such Transfer in excess of 5% of the issued and outstanding Shares, executes and delivers to the Company a counterpart to this Agreement in the form of Exhibit B attached hereto, pursuant to which such Transferee shall become bound by all of the terms and conditions of this Agreement.

Section 2.7. Restricted Transfers. No Transfer, even if otherwise permitted or required by this Agreement, shall be permitted or deemed effective if the Company determines, reasonably and in good faith, that: (i) the proposed Transfer is not permitted pursuant to the Certificate; (ii) the proposed Transfer will result in a material violation of applicable federal or state securities laws; or (iii) the proposed Transfer would subject the Company to additional reporting requirements under Sections 12 or 15(d) of the Exchange Act to which the Company would not otherwise be subject at the time such proposed Transfer is to be consummated.

Section 2.8. Transfers in Violation of this Agreement. Any Transfer of Company Securities shall be made in strict compliance with all applicable terms of this Agreement, and any purported Transfer of Company Securities that does not so comply with all applicable provisions of this Agreement shall be void and ineffective, and the Company shall not recognize or be bound by any such purported Transfer and shall not effect any such purported Transfer on the stock transfer books of the Company.

ARTICLE 3.

REGISTRATION RIGHTS

Section 3.1. Demand Registration.

(a) If, at any time following the earlier of 180 calendar days after the effective date of the registration statement for the First Public Offering and the expiration of the period during which the managing underwriters for the First Public Offering shall prohibit the Company from effecting any other public sale or distribution of Company Securities, the Company shall receive a request from a Major Investor (the "Requesting Shareholder") that the Company effect the registration under the Securities Act of all or any portion of such Requesting Shareholder's Registrable Securities, and specifying the intended method of disposition thereof, then the Company shall promptly give notice of such requested registration (each such request, a "Demand Registration") prior to the effective date of the registration statement relating to such Demand Registration to the other Shareholders holding Registrable Securities and thereupon shall use all commercially reasonable efforts to effect, as expeditiously as possible but in any event within sixty (60) calendar days, subject to Section 3.1(e) hereto, the registration under the Securities Act of:

(i) all Registrable Securities for which the Requesting Shareholder has requested registration under this Section 3.1; and

(ii) all other Registrable Securities that any Shareholder has requested the Company to register by written request received by the Company within ten (10) Business Days after such Shareholder receives the Company's notice of the Demand Registration,

all to the extent necessary to permit the disposition (in accordance with the intended methods thereof as aforesaid) of the Registrable Securities so to be registered; provided that, other than any Demand Registration to be effected pursuant to a Registration Statement on Form S-3 (or any successor thereto), for which an unlimited number of Demand Registrations shall be permitted, and subject to Section 3.1(d) hereto, the Company shall not be obligated to effect more than two (2) Demand Registrations for each Major Investor and its Affiliates in the aggregate.

In no event shall the Company be required to effect more than one (1) Demand Registration hereunder within any four (4) month period.

At such time as the Company is eligible to register the resale of Registrable Securities on Form S-3, a Requesting Shareholder may request in its Demand Registration that the Company prepare and file with the SEC a registration statement covering the resale of all, but not less than all, of its Registrable Securities for an offering to be made on a continuous basis pursuant to Rule 415 (a "Shelf Offering Request"). If a Requesting Shareholder makes a Shelf Offering Request, the Company shall prepare and file with the SEC a registration statement on Form S-3 (the "Form S-3 Registration Statement") for an offering to be made on a continuous basis pursuant to Rule 415. The Company shall use commercially reasonable efforts to cause the Form S-3 Registration Statement to become effective and remain effective; provided that the Company shall not be obligated to effect any such Form S-3 Registration Statement if the Company furnishes to the Shareholders a certificate signed by the Chairman of the Board of Directors of the Company stating that, in the good faith judgment of the Board of Directors of the Company, it would be detrimental to the Company and its stockholders for such Form S-3 Registration Statement to be effected at such time, in which event the Company shall have the right to defer the filing of the Form S-3 Registration Statement for a period of not more than thirty (30) calendar days after receipt the Requesting Shareholder's Shelf Offering Request. The Company shall use all commercially reasonable efforts to cause the Form S-3 Registration Statement to be declared effective under the Securities Act as promptly as possible after the filing thereof and shall use all commercially reasonable efforts to keep the Form S-3 Registration Statement continuously effective under the Securities Act until the earlier of (x) the date when all Registrable Securities covered by the Form S-3 Registration Statement have been sold and (y) the date on which all of the Registrable Securities covered by such Form S-3 Registration Statement have been eligible for sale by the Shareholders holding such Registrable Securities pursuant to the last sentence of Rule 144(b)(1)(i).

If the Company receives from a Requesting Shareholder a Demand Registration containing a Shelf Offering Request, then the Company shall promptly, and in any event at least eleven (11) Business Days prior to the effective date of the Form S-3 Registration Statement relating to such Shelf Offering Request, give notice of such Demand Registration containing a Shelf Offering Request to other Shareholders holding Registrable Securities and thereupon shall use all commercially reasonable efforts to effect, as expeditiously as possible but in any event within forty-five (45) calendar days, the registration pursuant to the Form S-3 Registration Statement of: (x) all Registrable Securities for which the Requesting Shareholder has requested registration pursuant to the Form S-3 Registration Statement and (y) all other Registrable Securities that any Shareholder has requested the Company to register by written request received by the Company

within ten (10) Business Days after such Shareholder receives the Company's notice of the Shelf Offering Request.

(b) Promptly after the expiration of the ten (10) Business Day period referred to in Section 3.1(a) hereto, the Company will notify all Participating Shareholders of the identities of the other Participating Shareholders and the number of shares of Registrable Securities requested to be included therein. At any time prior to the effective date of the registration statement relating to such registration, the Requesting Shareholder may revoke such request, without liability to any of the other Participating Shareholders, by providing a notice to the Company revoking such request. A request, so revoked, shall be considered to be a Demand Registration unless (i) such revocation arose out of the fault of the Company (in which case the Company shall be obligated to pay all Registration Expenses in connection with such revoked request) or (ii) the Requesting Shareholder reimburses the Company for all Registration Expenses of such revoked request. The Company agrees to use commercially reasonable efforts to notify the Participating Shareholders if the price for any Company Securities to be registered for sale for the account of the Company is expected to occur outside of any expected pricing range previously disclosed to the Participating Shareholders; provided that the Company shall not have any such obligation with respect to any registration involving the registration of Company Securities only for the account of parties other than the Company.

(c) The Company shall be liable for and pay all Registration Expenses in connection with any Demand Registration, regardless of whether such Registration is effected, except as set forth in Section 3.1(b)(ii) hereto.

(d) A Demand Registration shall not be deemed to have occurred:

(i) unless the registration statement relating thereto (i) has become effective under the Securities Act and (ii) has remained effective for a period of at least 180 calendar days (or such shorter period in which all Registrable Securities of the Participating Shareholders included in such registration have actually been sold thereunder); provided that such registration statement shall not be considered a Demand Registration if, after such registration statement becomes effective, such registration statement is interfered with by any stop order, injunction or other order or requirement of the SEC or other governmental agency or court; or

(ii) if the Maximum Offering Size is reduced in accordance with Section 3.1(e) hereto such that less than all of the Registrable Securities of the Requesting Shareholder sought to be included in such registration are included.

(e) If a Demand Registration involves an underwritten Public Offering and the managing underwriter advises the Company and the Requesting Shareholder that, in its view, the number of shares of Registrable Securities requested to be included in such registration (including any securities that the Company proposes to be included that are not Registrable Securities) exceeds the largest number of shares that can be sold without having an adverse effect on such offering, including the price at which such shares can be sold (the "Maximum Offering Size"), the Company shall include in such registration, in the priority listed below, up to the Maximum Offering Size:

(i) first, all Registrable Securities requested to be registered by the Participating Shareholders (allocated, if necessary for the offering not to exceed the Maximum Offering Size, *pro rata* among such entities on the basis of the relative number of Registrable Securities owned by the Participating Shareholders); and

(ii) second, any securities proposed to be registered by the Company or any securities proposed to be registered for the account of any other Persons (including the Company), with such priorities among them as the Company shall determine.

(f) Upon notice to the Requesting Shareholder, the Company may postpone effecting a registration pursuant to this Section 3.1 on one (1) occasion during any period of twelve (12) consecutive months for a reasonable time specified in the notice but not exceeding sixty (60) calendar days (which period may not be extended or renewed), if it would be materially detrimental to the Company and its Shareholders for such registration statement to either become effective or remain effective for as long as such registration statement otherwise would be required to remain effective, because such action would (i) interfere with a significant acquisition, merger, corporate reorganization, recapitalization or other similar transaction involving the Company; (ii) require premature disclosure of material information that the Company has a *bona fide* business purpose for preserving as confidential; or (iii) render the Company unable to comply with requirements under the Securities Act or Exchange Act; provided, however, that the Company shall not register any securities for its own account or that of any other stockholder during such sixty (60) calendar day period other than an Excluded Registration.

(g) At any time following the date of this Agreement if a First Public Offering has not then occurred, Shareholders who then hold a majority of the issued and outstanding Shares may request in writing that the Company register Registrable Securities in a First Public Offering under the Securities Act.

(h) Notwithstanding anything herein to the contrary, the Company shall not be required to effect more than four (4) underwritten offerings for each Major Investor and its Affiliates and Transferees in the aggregate, whether pursuant to a Demand Registration or a Form S-3 Registration Statement; provided that no Transferee(s) of a Major Investor shall be entitled to request an underwritten offering unless such offering includes at least ten percent (10%) of the issued and outstanding Shares. For purposes of this Section 3.1(h), any offering that includes a "road show" shall be deemed to be an underwritten offering. For the avoidance of doubt, only (i) Major Investors and their Affiliates and (ii) the Transferee(s) of a Major Investor shall be entitled to request an underwritten offering.

Section 3.2. Piggyback Registration.

(a) Except in connection with any Demand Registration pursuant to Section 3.1 hereto or in connection with a First Public Offering; provided that the Company may in its sole discretion decide to make available the rights contemplated in this Section 3.2 in connection with a First Public Offering, if the Company proposes to register any Company Securities under the Securities Act (other than a registration on Form S-8 or S-4, or any successor forms, relating to Shares issuable upon exercise of employee share options or in

connection with any employee benefit or similar plan of the Company or any Subsidiary or in connection with a direct or indirect acquisition by the Company of another Person) or the Company proposes to conduct an underwritten offering of Shares registered pursuant to a shelf registration statement, whether or not for sale for its own account, the Company shall each such time give prompt notice prior to the effective date of the registration statement relating to such registration to each Shareholder, which notice shall set forth such Shareholder's rights under this Section 3.2 and shall offer such Shareholder the opportunity to include in such registration statement the number of Registrable Securities of the same class or series as those proposed to be registered as each such Shareholder may request (a "Piggyback Registration"), subject to the provisions of Section 3.2(b) hereto. Upon the request of any such Shareholder made within ten (10) Business Days after the receipt of notice from the Company (which request shall specify the number of Registrable Securities intended to be registered by such Shareholder), the Company shall use all commercially reasonable efforts to effect the registration under the Securities Act of all Registrable Securities that the Company has been so requested to register by all such Shareholders, to the extent required to permit the disposition of the Registrable Securities so to be registered;

provided that (i) if such registration involves an underwritten Public Offering, all such Shareholders requesting to be included in the Company's registration must sell their Registrable Securities to the underwriters selected as provided in Section 3.4(f) hereto on the same terms and conditions as apply to the Company or the Shareholder requesting such registration, as applicable, and (ii) if, at any time after giving notice of its intention to register any Company Securities pursuant to this Section 3.2(a) and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register such securities, the Company shall give notice to all such Shareholders and, thereupon, shall be relieved of its obligation to register any Registrable Securities in connection with such registration. The Company agrees to use commercially reasonable efforts to notify the Participating Shareholders if the price for any Company Securities to be registered for sale for the account of the Company is expected to occur outside of any previously publicly announced range; provided that the Company shall not have any such obligation with respect to any registration involving the registration of Company Securities only for the account of parties other than the Company.

If, and only if, a Shareholder whose Shares are registered pursuant to a Form S-3 Registration Statement sells its Shares pursuant to an underwritten public offering marketed via a "road show," then all other Shareholders having Shares registered pursuant to such Form S-3 Registration Statement shall have the right to sell their respective Shares registered pursuant to such Form S-3 Registration Statement; provided, that only (i) a Major Investor, and (ii) a Transferee(s) of a Major Investor selling at least twenty percent (20%) of the issued and outstanding Common Stock in connection with an underwritten offering, may require a "road show" in connection with the marketing of such Shares.

No registration effected under this Section 3.2 shall relieve the Company of its obligations to effect a Demand Registration to the extent required by Section 3.1 hereto. The Company shall pay all Registration Expenses in connection with each Piggyback Registration.

(b) If a Piggyback Registration involves an underwritten Public Offering (other than any Demand Registration, in which case the provisions with respect to priority of inclusion in such offering set forth in Section 3.1(e) hereto shall apply) and the managing underwriter advises the Company that, in its view, the number of Shares that the Company and such Shareholders intend to include in such registration exceeds the Maximum Offering Size, the Company shall include in such registration, in the following priority, up to the Maximum Offering Size:

(i) first, so much of the Company Securities proposed to be registered for the account of the Company or the holder of Company Securities for whose account such registration or offering is made (to the extent so provided pursuant to any agreement entered into pursuant to Section 5.2 below), as the case may be, as would not cause the offering to exceed the Maximum Offering Size,

(ii) second, all Registrable Securities requested to be included in such registration by any Shareholders pursuant to this Section 3.2 (allocated, if necessary for the offering not to exceed the Maximum Offering Size, *pro rata* among such Shareholders on the basis of the relative number of shares of Registrable Securities owned by such Shareholders), and

(iii) third, any securities proposed to be registered for the account of any other Persons with such priorities among them as the Company shall determine.

Section 3.3. Lock-Up Agreements.

(a) In connection with the First Public Offering, no Shareholder shall effect any public sale or distribution of any Company Securities or other security of the Company (except as part of such Public Offering) during the period beginning on the date that is estimated by the Company, in good faith and in writing to such Shareholder, to be the fourteenth (14th) calendar day prior to the effective date of the applicable registration statement until the earlier to occur of (i) such time as the Company and the lead managing underwriter shall agree in writing and (ii) the 180th calendar day after the effective date of the applicable registration statement; provided, that such period may be extended upon the request of the managing underwriter, to the extent required by any FINRA rules, for an additional period of up to fifteen (15) calendar days if the Company issues or proposes to issue an earnings or other public release within fifteen (15) calendar days of the expiration of the 180 calendar day lock-up period.

(b) In connection with each other Public Offering, neither the Company nor any Shareholder shall effect any public sale or distribution of any Company Securities or other security of the Company (except as part of such Public Offering) during the period beginning on the date that is estimated by the Company, in good faith and in writing to such Shareholder, to be the fourteenth (14th) calendar day prior to the effective date of the applicable registration statement until the earlier of (i) such time as the Company and the lead managing underwriter shall agree in writing and (ii) ninety (90) calendar days after the effective date of the applicable registration statement; provided, that such period may be extended upon the request of the managing underwriter, to the extent required by any FINRA rules, for an additional period of up to fifteen (15) calendar days if the Company issues or proposes to issue an earnings or other

public release within fifteen (15) calendar days of the expiration of the ninety (90) calendar day lock-up period.

(c) Notwithstanding anything herein to the contrary, Shareholders that, together with their Affiliates, hold less than one percent (1%) of the issued and outstanding Shares shall not be subject to the lock-up periods set forth in this Section 3.3; provided, that the executive officers and directors of the Company shall be subject to such lock-up periods, regardless of their percentage ownership of issued and outstanding Shares.

Section 3.4. Registration Procedures. Whenever Shareholders request that any Registrable Securities be registered pursuant to Section 3.1 or Section 3.2 hereto, subject to the provisions of such Sections, the Company shall use all commercially reasonable efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof as quickly as practicable, and, in connection with any such request:

(a) The Company shall as expeditiously as possible prepare and file with the SEC a registration statement on any form for which the Company then qualifies or that counsel for the Company shall deem appropriate and which form shall be available for the sale of the Registrable Securities to be registered thereunder in accordance with the intended method of distribution thereof, and use all commercially reasonable efforts to cause such filed registration statement to become and remain effective for a period of not less than 180 calendar days, or in the case of a shelf registration statement, one year (or such shorter period as set forth in Section 3.1(a) hereto).

(b) Prior to filing a registration statement or prospectus or any amendment or supplement thereto, the Company shall, if requested, furnish to each Participating Shareholder and each underwriter, if any, of the Registrable Securities covered by such registration statement copies of such registration statement as proposed to be filed, and thereafter the Company shall furnish to such Shareholder and underwriter, if any, such number of copies of such registration statement, each amendment and supplement thereto (in each case including all exhibits thereto and documents incorporated by reference therein), the prospectus included in such registration statement (including each preliminary prospectus and any summary prospectus) and any other prospectus filed under Rule 424 or Rule 430A under the Securities Act and such other documents as such Shareholder or underwriter may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Shareholder. Each Participating Shareholder shall have the right to request that the Company modify any information contained in such registration statement, amendment and supplement thereto pertaining to such Shareholder and the Company shall use all commercially reasonable efforts to comply with such request; provided that the Company shall not have any obligation to so modify any information if the Company reasonably expects that so doing would cause the prospectus to contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

(c) After the filing of the registration statement, the Company shall (i) cause the related prospectus to be supplemented by any required prospectus supplement, and, as so supplemented, to be filed pursuant to Rule 424 under the Securities Act, (ii) comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities

covered by such registration statement during the applicable period in accordance with the intended methods of disposition by the Participating Shareholders set forth in such registration statement or supplement to such prospectus, and (iii) promptly notify each Participating Shareholder holding Registrable Securities covered by such registration statement of any stop order issued or threatened by the SEC or any state securities commission and use all commercially reasonable efforts to prevent the entry of such stop order or to remove it if entered.

(d) The Company shall use all commercially reasonable efforts to (i) register or qualify the Registrable Securities covered by such registration statement under such other securities or "blue sky" laws of such jurisdictions in the United States as any Participating Shareholder holding such Registrable Securities reasonably (in light of such Shareholder's intended plan of distribution) requests and (ii) cause such Registrable Securities to be registered with or approved by such other governmental agencies or authorities as may be necessary by virtue of the business and operations of the Company and do any and all other acts and things that may be reasonably necessary or advisable to enable such Shareholder to consummate the disposition of the Registrable Securities owned by such Shareholder; provided that the Company shall not be required to (A) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3.4(d), (B) subject itself to taxation in any such jurisdiction, or (C) consent to general service of process in any such jurisdiction.

(e) The Company shall immediately notify each Participating Shareholder holding such Registrable Securities covered by such registration statement, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the occurrence of an event requiring the preparation of a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and promptly prepare and make available to each such Shareholder and file with the SEC any such supplement or amendment.

(f) In connection with any Demand Registration or an underwritten offering of Shares registered pursuant to a Shelf Offering Request, the Major Investor requesting such Demand Registration or underwritten offering in connection with a Shelf Offering Request shall have the right to select an underwriter or underwriters, including the lead underwriter, reasonably acceptable to the Company; provided, that the Company shall have the right to select a co-manager reasonably acceptable to the Major Investor. The Company shall have the right to select an underwriter or underwriters in connection with any other underwritten Public Offering. In connection with any Public Offering, the Company shall enter into customary agreements (including an underwriting agreement in customary form) and take all other actions as are reasonably required in order to expedite or facilitate the disposition of such Registrable Securities in any such Public Offering, including the engagement of a "qualified independent underwriter" in connection with the qualification of the underwriting arrangements with FINRA.

(g) Upon execution of confidentiality agreements in form and substance reasonably satisfactory to the Company, the Company shall make available for inspection by any Participating Shareholder and any underwriter participating in any disposition pursuant to a registration statement being filed by the Company pursuant to this Section 3.4 and any attorney,

accountant or other professional retained by any such Shareholder or underwriter (collectively, the "Inspectors"), all financial and other records, pertinent corporate documents and properties of the Company (collectively, the "Records") as shall be reasonably necessary or desirable to enable them to exercise their due diligence responsibility, and cause the Company's officers, directors and employees to supply all information reasonably requested by any Inspectors in connection with such registration statement. Records that the Company determines, in good faith, to be confidential and that it notifies the Inspectors are confidential shall not be disclosed by the Inspectors unless (i) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in such registration statement or (ii) the release of such Records is required pursuant to applicable law or regulation or judicial process. Each Participating Shareholder agrees that information obtained by it as a result of such inspections shall be deemed confidential and shall not be used by it or its Affiliates as the basis for any market transactions in the Company Securities unless and until such information is made generally available to the public. Each Participating Shareholder further agrees that, upon learning that disclosure of such Records is sought in a court of competent jurisdiction, it shall give notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of the Records deemed confidential.

(h) In connection with an underwritten offering, and if required in writing by a Participating Shareholder, the Company shall furnish to such Participating Shareholder and to each such underwriter, if any, a signed counterpart, addressed to such Shareholder or underwriter, of (i) an opinion or opinions of counsel to the Company and (ii) a comfort letter or comfort letters from the Company's independent public accountants, each in customary form and covering such matters of the kind customarily covered by opinions or comfort letters, as the case may be, as a majority-in-interest of such Shareholders or the managing underwriter therefor reasonably requests.

(i) The Company shall otherwise use all commercially reasonable efforts to comply with all applicable rules and regulations of the SEC, and make available to the Shareholders, as soon as reasonably practicable, an earnings statement or such other document that shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder.

(j) The Company may require each such Participating Shareholder promptly to furnish in writing to the Company such information regarding the distribution of the Registrable Securities as the Company may from time to time reasonably request and such other information as may be legally required in connection with such registration.

(k) Each such Participating Shareholder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3.4(e) hereto, such Shareholder shall forthwith discontinue disposition of Registrable Securities pursuant to the registration statement covering such Registrable Securities until such Shareholder's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3.4(e) hereto, and, if so directed by the Company, such Shareholder shall deliver to the Company all copies, other than any permanent file copies then in such Shareholder's possession, of the most recent prospectus covering such Registrable Securities at the time of receipt of such notice. If the Company shall give such notice, the Company shall extend the period during which such registration statement shall be maintained effective (including the period referred to

in Section 3.4(a) hereto) by the number of days during the period from and including the date of the giving of notice pursuant to Section 3.4(e) hereto to the date when the Company shall make available to such Shareholder a prospectus supplemented or amended to conform with the requirements of Section 3.4(e) hereto.

(l) The Company shall use all commercially reasonable efforts to list all Registrable Securities covered by such registration statement on any securities exchange or quotation system on which any of the Registrable Securities are then listed or traded.

(m) The Company shall have appropriate officers of the Company (i) prepare and make presentations at any "road shows" and before analysts and rating agencies, as the case may be provided, that only (i) a Major Investor, and (ii) a Transferee(s) of a Major Investor selling at least twenty percent (20%) of the issued and outstanding Common Stock in connection with an underwritten offering, may require a "road show," (ii) take other actions to obtain ratings for any Registrable Securities, (iii) otherwise use all commercially reasonable efforts to cooperate as reasonably requested by the underwriters in the offering, marketing or selling of the Registrable Securities, including, without limitation, by executing customary underwriting agreements, and (iv) otherwise use all commercially reasonable efforts to cooperate as reasonably requested by the Shareholders in the marketing of the Registrable Securities.

(n) The Company shall notify each Participating Shareholder, promptly after the Company receives notice thereof, of the time when such registration statement has been declared effective or a supplement to any prospectus forming a part of such registration statement has been filed.

(o) After such registration statement becomes effective, the Company shall notify each Participating Shareholder of any request by the SEC that the Company amend or supplement such registration statement or prospectus.

Section 3.5. Indemnification by the Company. The Company agrees to indemnify and hold harmless each Participating Shareholder holding Registrable Securities covered by a registration statement, its officers, directors, employees, partners, legal counsel, accountants and agents, and each Person, if any, who controls such Shareholder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages, liabilities and expenses (including reasonable expenses of investigation and reasonable attorneys' fees and expenses) ("Damages") that are (i) caused by or relating to any untrue statement or alleged untrue statement of a material fact contained in any registration statement or prospectus relating to the Registrable Securities (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), any preliminary prospectus or any "issuer free writing prospectus" (as defined in Rule 433 of the Securities Act); (ii) caused by or relating to any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; or (iii) caused by any violation or alleged violation by the Company (or any of its agents or Affiliates) of the Securities Act, Exchange Act, any state securities law, or any rule or regulation promulgated under the Securities Act, the Exchange Act, or any state securities law; except insofar as such Damages are caused by or related to any such untrue statement or omission or alleged untrue statement or omission so made based upon information furnished in

writing to the Company by such Shareholder or on such Shareholder's behalf expressly for use therein.

The Company also agrees to indemnify any underwriters of the Registrable Securities, their officers and directors and each Person who controls such underwriters within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act on substantially the same basis as that of the indemnification of the Shareholders provided in this Section 3.5 or otherwise on commercially reasonable terms negotiated on an arm's length basis with such underwriters.

Section 3.6. Indemnification by Participating Shareholders. Each Participating Shareholder holding Registrable Securities included in any registration statement agrees, severally but not jointly, to indemnify and hold harmless the Company, its officers who have signed the registration statement, directors and agents and each Person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the foregoing indemnity from the Company to such Shareholder, but only with respect to information furnished in writing by such Shareholder or on such Shareholder's behalf expressly for use in any registration statement or prospectus relating to the Registrable Securities, or any amendment or supplement thereto, any preliminary prospectus or any "issuer free writing prospectus." Each such Shareholder also agrees to indemnify and hold harmless underwriters of the Registrable Securities, their officers and directors and each Person who controls such underwriters within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act on substantially the same basis as that of the indemnification of the Company provided in this Section 3.6. In no event shall the aggregate liability of any Participating Shareholder under this Section 3.6 or Section 3.8 below for any Damages exceed the net proceeds received by such Shareholder in the sale of Registrable Securities of such Shareholder to which such Damages relate, except in the case of fraud or willful misconduct by such Participating Shareholder.

Section 3.7. Conduct of Indemnification Proceedings. If any proceeding (including any governmental investigation) shall be instituted involving any Person in respect of which indemnity may be sought pursuant to this Article 3, such Person (an "Indemnified Party") shall promptly notify the Person against whom such indemnity may be sought (the "Indemnifying Party") in writing and the Indemnifying Party shall have the right to participate in such proceeding and, to the extent the Indemnifying Party so desires, participate jointly with any other Indemnifying Party to which notice has been given, and to assume the defense thereof, including with counsel mutually reasonably satisfactory to such Indemnified Party, and the Indemnifying Party shall assume the payment of all fees and expenses; provided that the failure of any Indemnified Party so to notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder except to the extent and only to the extent that the Indemnifying Party is materially prejudiced by such failure to notify. In any such proceeding, any Indemnified Party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (i) the Indemnifying Party and the Indemnified Party shall have mutually agreed to the retention of such counsel or (ii) in the reasonable judgment of such Indemnified Party representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them.

It is understood that, in connection with any proceeding or related proceedings in the same jurisdiction, the Indemnifying Party shall not be liable for the reasonable fees and expenses of more than one separate firm of attorneys (in addition to one local counsel in each relevant jurisdiction) at any time for all such Indemnified Parties, and that all such fees and expenses shall be reimbursed as they are incurred. In the case of any such separate firm for the Indemnified Parties, such firm shall be designated in writing by the Indemnified Parties. The Indemnifying Party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent, or if there be a final judgment for the plaintiff, the Indemnifying Party shall indemnify and hold harmless such Indemnified Parties from and against any loss or liability (to the extent stated above) by reason of such settlement or judgment. Without the prior written consent of the Indemnified Party, no Indemnifying Party shall effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such settlement includes an unconditional release of such Indemnified Party from all liability arising out of such proceeding.

Section 3.8. Contribution. If the indemnification provided for in this Article 3 is unavailable to the Indemnified Parties in respect of any Damages, then each such Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Damages (a) as between the Company and the Participating Shareholders holding Registrable Securities covered by a registration statement on the one hand and the underwriters on the other, in such proportion as is appropriate to reflect the relative benefits received by the Company and such Shareholders on the one hand and the underwriters on the other, from the offering of the Registrable Securities, or if such allocation is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits but also the relative fault of the Company and such Shareholders on the one hand and of such underwriters on the other in connection with the statements or omissions that resulted in such Damages, as well as any other relevant equitable considerations and (b) as between the Company on the one hand and each such Shareholder on the other, in such proportion as is appropriate to reflect the relative fault of the Company and of each such Shareholder in connection with such statements or omissions, as well as any other relevant equitable considerations. The relative benefits received by the Company and such Shareholders on the one hand and such underwriters on the other shall be deemed to be in the same proportion as the total proceeds from the offering (net of underwriting discounts and commissions but before deducting expenses) received by the Company and such Shareholders bear to the total underwriting discounts and commissions received by such underwriters, in each case as set forth in the table on the cover page of the prospectus. The relative fault of the Company and such Shareholders on the one hand and of such underwriters on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company and such Shareholders or by such underwriters. The relative fault of the Company on the one hand and of each such Shareholder on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by such party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Participating Shareholders agree that it would not be just and equitable if contribution pursuant to this Section 3.8 were determined by *pro rata* allocation (even if the underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an Indemnified Party as a result of the Damages referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim. In no event shall the aggregate liability of any Participating Shareholder under Section 3.6 hereto or this Section 3.8 for any Damages exceed the net proceeds realized by such Shareholder in the sale of Registrable Securities of such Shareholder to which such Damages relate, except in the case of fraud or willful misconduct by such Participating Shareholder. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. Each Participating Shareholder's obligation to contribute pursuant to this Section 3.8 is several in the proportion that the net proceeds of the offering received by such Shareholder bears to the total net proceeds of the offering received by all such Participating Shareholders and not joint.

The obligations of the Company and Shareholders under this Section 3.8 shall survive the completion of any offering of Registrable Securities in a registration under this Article 3, and otherwise shall survive the termination of this Agreement.

Section 3.9. Participation in Public Offering. No Person may participate in any Public Offering hereunder unless such Person (a) agrees to sell such Person's securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements and (b) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements and the provisions of this Agreement in respect of registration rights.

Section 3.10. Other Indemnification. Indemnification similar to that specified herein (with appropriate modifications) shall be given by the Company and each Participating Shareholder with respect to any required registration or other qualification of securities under any federal or state law or regulation or governmental authority other than the Securities Act.

Section 3.11. Reports Under Exchange Act. With a view to making available to the Shareholders the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit a Shareholder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company shall:

(a) make and keep available adequate current public information, as those terms are understood and defined in Rule 144, at all times after the effective date of the registration statement filed by the Company for the First Public Offering;

(b) use commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act

and the Exchange Act (at any time after the Company has become subject to such reporting requirements); and

(c) furnish to any Shareholder, so long as the Shareholder owns any Registrable Securities, forthwith upon request (i) to the extent accurate, a written statement by the Company that it has complied with the reporting requirements of Rule 144 (at any time after ninety (90) calendar days after the effective date of the registration statement filed by the Company for the First Public Offering), the Securities Act, and the Exchange Act (at any time after the Company has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after the Company so qualifies); (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company; and (iii) such other information as may be reasonably requested in availing any Shareholder of any rule or regulation of the SEC that permits the selling of any such securities without registration (at any time after the Company has become subject to the reporting requirements under the Exchange Act) or pursuant to Form S-3 (at any time after the Company so qualifies to use such form).

ARTICLE 4.

BOARD OF DIRECTORS

Section 4.1. Board of Directors.

(a) The Company will be governed by its Board, which will initially consist of eight (8) members. The members of the Board will be elected by Shareholders holding a majority of the issued and outstanding Common Stock. Subject to any requirements of law, any member of the Board or the entire Board may be removed, with or without cause, by Shareholders holding a majority of the issued and outstanding Common Stock. Each Shareholder agrees to promptly take all actions necessary including, but not limited to, the voting of their Company Securities, the execution of written consents, the calling of special meetings, the removal of directors and the filling of vacancies on the Board, (i) to elect as a member of the Board the person then serving as the Chief Executive Officer of the Company, who initially shall be Michael Sheehan, (ii) to elect as a member of the Board any designee or designees selected by Shareholders holding a majority of the issued and outstanding Common Stock, (iii) subject to the foregoing clause (ii), to elect as a member of the Board Gene Davis as an initial member and as its initial Chairman, and (iv) if the removal of any director(s) is requested by Shareholders holding a majority of the issued and outstanding Common Stock, to remove such director(s), with such vote to occur before the transaction of any other business by the Shareholders or the Board.

(b) If any Shareholder fails or refuses to vote that Shareholder's Common Stock in accordance with this Agreement, then, without further action by such Shareholder, the Shareholders holding a majority of the issued and outstanding Common Stock shall have an irrevocable proxy coupled with an interest to vote such Shareholder's Common Stock in accordance with this Agreement, and each Shareholder hereby agrees to such irrevocable proxy coupled with an interest.

(c) The provisions of this Section 4.1 shall terminate upon consummation of the First Public Offering.

ARTICLE 5.

CERTAIN COVENANTS AND AGREEMENTS

Section 5.1. Confidentiality.

(a) Each Shareholder acknowledges that Confidential Information to be furnished to it shall be made available in connection with such Shareholder's investment in the Company. Each Shareholder agrees that it shall use, and that it shall cause any Person to whom Confidential Information is disclosed pursuant to clause (i) below to use, the Confidential Information only in connection with its investment in the Company and not for any other purpose (including to disadvantage competitively the Company or any other Shareholder). Each Shareholder further acknowledges and agrees that it shall not disclose any Confidential Information to any Person, except that Confidential Information may be disclosed:

(i) to such Shareholder's Representatives in the normal course of the performance of their duties for such Shareholder or to any financial institution providing credit to such Shareholder (it being understood that such Representatives shall be informed by the Shareholder of the confidential nature of such information and shall be directed to treat such information in accordance with this Agreement);

(ii) to the extent required by applicable law, rule or regulation (including complying with any oral or written questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process to which a Shareholder is subject; provided, that such Shareholder shall give the Company prompt written notice of such request(s), to the extent practicable, so that the Company may seek an appropriate protective order or similar relief (and the Shareholder shall cooperate with such efforts by the Company, and shall in any event make only the minimum disclosure required by such law, rule or regulation and shall use best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such information));

(iii) to any Person to whom such Shareholder is contemplating a Transfer of its Company Securities; provided, that such Transfer would not be completed in violation of the provisions of this Agreement and prior to such disclosure such potential Transferee is advised of the confidential nature of such information and agrees in a writing to be bound by the confidentiality provisions hereof and which agreement is independently enforceable by the Company; provided further, that such Transferee is entitled to receive such information pursuant to Section 5.3(d);

(iv) to any regulatory authority or rating agency to which the Shareholder or any of its Affiliates is subject or with which it has regular dealings, as long as such authority or agency is advised of the confidential nature of such information;

(v) in connection with such Shareholder's or such Shareholder's Affiliates' normal fund raising, marketing, informational or reporting activities or to any *bona fide* prospective purchaser of the equity or assets of such Shareholder or such Shareholder's Affiliates, or prospective merger partner of such Shareholder or such Shareholder's Affiliates; provided, that prior to such disclosure the Persons to whom such information is disclosed are advised of the confidential nature of such information and agree in a writing to be bound by the confidentiality provisions hereof and which agreement is independently enforceable by the Company; or

(vi) if the prior written consent of the Company shall have been obtained.

Nothing contained herein shall prevent the use (subject, to the extent possible, to a protective order) of Confidential Information in connection with the assertion or defense of any claim by or against the Company or any Shareholder. The restrictions contained in this Section 5.1(a) shall terminate as to any Shareholder one (1) year following the date on which such Shareholder ceases to own any Company Securities.

(b) "Confidential Information" means any confidential information concerning the Company or any Persons that are or become its Subsidiaries or the financial condition, business, operations or prospects of the Company or any such Persons in the possession of or furnished to any Shareholder; provided that the term "Confidential Information" does not include information that (i) is or becomes generally available to the public other than as a result of a disclosure by a Shareholder or its partners, shareholders, members, directors, officers, employees, agents, counsel, accountants, consultants, investment advisers or other professionals or representatives, or by its Affiliates or wholly owned subsidiaries (all such persons being collectively referred to as "Representatives") in violation of this Agreement or any other applicable agreement, (ii) is or was available to such Shareholder on a non-confidential basis prior to its disclosure to such Shareholder or its Representatives by the Company, or (iii) was or becomes available to such Shareholder on a non-confidential basis from a source other than the Company, which source is or was (at the time of receipt of the relevant information) not, to the best of such Shareholder's knowledge, bound by a confidentiality agreement with (or other confidentiality obligation to) the Company or another Person.

Section 5.2. Limitations on Subsequent Registration Rights. The Company agrees that it shall not, without the prior written consent of Shareholders holding a majority of the issued and outstanding Common Stock, enter into any registration agreement with any holder or prospective holder of any securities of the Company (i) that would allow such holder or prospective holder to include such securities in any Demand Registration or Piggyback Registration unless, under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that their inclusion would not reduce the amount of the Registrable Securities of the Shareholders included therein or (ii) on terms more favorable than the registration rights set forth in this Agreement.

Section 5.3. Certain Information.

(a) Prior to the consummation of the First Public Offering, the Company agrees to furnish or make available to the Shareholders: (i) on a quarterly basis within forty-five (45) calendar days of each quarter-end, consolidated unaudited financial statements of the Company, including the balance sheet, income statement, and statement of cash flow detailing the quarter-to-date and year-to-date results, together with the footnotes thereto; and (ii) on an annual basis within 120 calendar days of each year-end, audited consolidated financial statements of the Company, including the balance sheet, income statement, and cash flow detailing year-to-date results, together with the footnotes thereto, in each case in reasonable detail and prepared in accordance with GAAP, except as otherwise noted therein.

(b) Prior to the consummation of the First Public Offering, the Company agrees to furnish or make available to each Qualified Shareholder copies of all financial reports and other information relating to the Company and its Subsidiaries that is delivered to the Exit Term Loan Lenders under the Company's Exit Term Loan Facility (as such terms are defined in the Plan), or any modification, extension or refinancing thereof, promptly following delivery thereof to such lenders.

(c) Prior to the consummation of the First Public Offering, for so long as Venor and its Affiliates hold, in the aggregate, eight and one-half percent (8.5%) or more of the issued and outstanding Common Stock, the Company shall permit Venor and its Affiliates, at their expense, to visit and inspect the Company's properties; examine its books of account and records; and discuss the Company's affairs, finances, and accounts with its officers, in a reasonable manner, during regular business hours of the Company and upon reasonable advance notice by Venor and its Affiliates; provided, however, that the Company shall not be obligated pursuant to this Section 5.3(c) to provide access to any information that it reasonably and in good faith considers to be a trade secret or otherwise to be competitively sensitive information (unless covered by an enforceable confidentiality agreement, in form acceptable to the Company) or the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel. For purposes of calculating the percentage ownership thresholds set forth in this Section 5.3(c), such calculations shall (i) exclude any issuance of Company Securities unless each Shareholder was entitled to exercise preemptive rights under Section 2.5 hereto and (ii) exclude any Shares issued in connection with the exercise of the Warrants.

(d) Notwithstanding anything herein to the contrary, any Transferee (or proposed Transferee) who is a direct or indirect competitor of the Company shall not be entitled to receive any of the information described in Section 5.1 hereto or this Section 5.3.

Section 5.4. Restrictive Legends. The certificates representing the Shares, other than any global certificate representing Shares deposited with a depository for transfer in book-entry form, shall include an endorsement typed conspicuously thereon of the following restrictive legends:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY APPLICABLE STATE SECURITIES LAWS. THESE

SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND CANNOT BE OFFERED, PLEDGED, HYPOTHECATED, TRANSFERRED OR SOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO CERTAIN ADDITIONAL RESTRICTIONS ON TRANSFER, VOTING AND OTHER MATTERS AS SET FORTH IN THAT CERTAIN SHAREHOLDERS' AGREEMENT, DATED AS OF THE EFFECTIVE DATE, AS THE SAME MAY BE AMENDED FROM TIME TO TIME, COPIES OF WHICH ARE ON FILE AT THE PRINCIPAL EXECUTIVE OFFICES OF THE COMPANY, AND MAY NOT BE TRANSFERRED EXCEPT IN ACCORDANCE THEREWITH."

In the event that any Shares shall cease (as reasonably determined by the Company) to be subject to any or all of the restrictions described in the restrictive legends required by this Section 5.4, the Company shall, upon the written request of the Shareholder thereof, issue to such Shareholder a new certificate representing such Shares without the inapplicable restrictive legend or legends.

Section 5.5. Insurance. The Company hereby agrees to maintain directors' and officers' liability insurance for directors and officers of the Company or of any other enterprise that such person serves at the request of the Company, provided and to the extent that such insurance is available on a commercially reasonable basis. If, at the time of the receipt of a notice of a claim, the Company has directors' and officers' liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary and/or desirable action to cause such insurers to pay, on behalf of the indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies. The policy shall not be cancelable by the Company without prior approval by the Board.

Section 5.6. Squeeze-Out Merger. Other than in connection with a Drag-Along Sale, in the event that (i) Anchorage and JPMorgan (individually or collectively), or any of their respective Affiliates, hold ten percent (10%) or more of the issued and outstanding Common Stock and agree to effect any "squeeze-out" merger (or similar transaction) of the Company, and (ii) Venor and its Affiliates hold, in the aggregate, eight and one-half percent (8.5%) or more of the issued and outstanding Common Stock, then prior to engaging in such a transaction, the Company shall require the prior written consent of Venor. For purposes of calculating the percentage ownership thresholds set forth in this Section 5.6, such calculations shall exclude (i) any issuance of Company Securities unless each Shareholder was entitled to exercise preemptive rights under Section 2.5 hereto and (ii) any Shares issued in connection with the exercise of the Warrants.

ARTICLE 6.

MISCELLANEOUS

Section 6.1. Binding Effect; Assignability; Benefit.

(a) This Agreement shall become effective as of the Effective Date and shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, legal representatives and permitted assigns; provided, that this Agreement shall not inure to the benefit of or be binding on any Person acquiring Company Securities in the open market following the First Public Offering; provided, further, that this Agreement may not be assigned by the Company. Any Shareholder that ceases to own beneficially any Company Securities shall cease to be bound by the terms hereof (a "Termination Event") (other than (i) the provisions of Section 3.5 (*Indemnification by the Company*), Section 3.6 (*Indemnification by Participating Shareholders*), Section 3.7 (*Conduct of Indemnification Proceedings*) and Section 3.8 (*Contribution*) hereto applicable to such Shareholder with respect to any offering of Registrable Securities completed before the date such Shareholder ceased to own any Company Securities and such Shareholder participates in the registration, and (ii) Section 5.1 (*Confidentiality*) and this Article 6); provided, that such Shareholder shall remain liable for any breaches of this Agreement, including without limitation breaches occurring in connection with the Transfer of Shares, occurring prior to a Termination Event. Notwithstanding the foregoing sentence, this Agreement shall inure to the benefit of and be binding upon any Shareholder in the event such Shareholder or any of its Affiliates re-acquires any Company Securities after a Termination Event.

(b) Except as set forth in Section 3.5 and Section 6.15 hereto, nothing in this Agreement, expressed or implied, is intended to confer on any Person other than the parties hereto, and their respective heirs, successors, legal representatives and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 6.2. Notices. All notices, requests and other communications to any party shall be in writing and shall be delivered in person, mailed by certified or registered mail, return receipt requested, or sent by facsimile transmission (with confirmation of receipt),

(a) If to the Company, to:

Bally Total Fitness Corporation
8700 W. Bryn Mawr Ave., Third Floor
Chicago, IL 60631-3507
Attention: General Counsel
Facsimile: (773) 399-0126

with a copy to:

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036

Attention: Shari K. Krouner, Esq.
Facsimile: (212) 715-8000

(b) If to a Shareholder, at such Shareholder's address as set forth in the books and records of the Company.

Any Person that becomes a Shareholder shall promptly provide its address and facsimile number to the Company. All notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt. Any notice, request or other written communication sent by facsimile transmission shall be confirmed by certified or registered mail, return receipt requested, posted within one (1) Business Day, or by personal delivery, whether courier or otherwise, made within two (2) Business Days after the date of such facsimile transmission.

Section 6.3. Waiver; Amendment. Except as provided below, no provision of this Agreement may be waived except by an instrument in writing executed by the party against whom the waiver is to be effective. No provision of this Agreement may be amended or otherwise modified except by an instrument in writing executed by Shareholders holding two-thirds (2/3) or more of the issued and outstanding Common Stock; provided that (i) any amendment, waiver or other modification imposing Transfer restrictions in addition to those set forth herein or limiting or waiving, or otherwise modifying in any material and adverse respect, the rights of Shareholders set forth in Articles 2, 3 and 4 or Section 5.3 or Section 5.6 hereto will require the prior written consent of Shareholders holding ninety percent (90%) or more of the issued and outstanding Common Stock, and (ii) any amendment or modification that would subject any Shareholder to materially adverse differential treatment relative to all of the other Shareholders will require the prior written consent of such Shareholder; provided further, that, in the event that Venor and its Affiliates hold, in the aggregate, eight and one-half percent (8.5%) or more of the issued and outstanding Common Stock, and Anchorage and JPMorgan (and/or their respective Affiliates) hold all of the remaining issued and outstanding Common Stock, then any amendment, waiver or other modification imposing Transfer restrictions in addition to those set forth herein or limiting or waiving, or otherwise modifying in any material and adverse respect, the rights of such Shareholders set forth in Articles 2, 3 and 4 or Section 5.3 or Section 5.6 hereto will require the prior written consent of Venor. Any amendment, waiver or other modification effected in accordance with this Section 6.3 shall be binding on all parties hereto, regardless of whether any such party has consented thereto. For purposes of calculating the percentage ownership thresholds set forth in this Section 6.3, such calculations shall exclude (i) any issuance of Company Securities unless each Shareholder was entitled to exercise preemptive rights under Section 2.5 hereto and (ii) any Shares issued in connection with the exercise of the Warrants.

Notwithstanding the foregoing, subject to any limitations set forth in its amended and restated certificate of incorporation or bylaws or this Agreement, the Company shall have the right, in the sole discretion of the Board, to issue shares of common stock or preferred stock, or options or warrants to purchase, or securities convertible or exchangeable for such shares, to any Person (whether or not such Person is already party to this Agreement) and to cause such

securities and such Persons (to the extent not already subject to this Agreement) to become subject to the rights and obligations of this Agreement.

Section 6.4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of New York applicable to contracts made and to be performed therein.

Section 6.5. Jurisdiction. The parties hereto hereby agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the United States District Court for the Southern District of New York or any New York State court sitting in New York City, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of New York, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 6.2 hereto shall be deemed effective service of process on such party; provided that, in lieu of being subject to service of process by the methods provided in Section 6.2 hereto, each Shareholder, by providing written notice to the Company, may designate an agent with an office in New York City (or other location approved by the Company) to receive service of process on behalf of such Shareholder.

Section 6.6. Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 6.7. Specific Enforcement. Each party hereto acknowledges that the remedies at law of the other parties hereto for a breach or threatened breach of this Agreement would be inadequate and, in recognition of this fact, any party to this Agreement, without posting any bond, and in addition to all other remedies that may be available, shall be entitled to obtain equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy that may then be available.

Section 6.8. Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective as of the date first set forth above.

Section 6.9. Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all

prior and contemporaneous agreements and understandings, both oral and written, among the parties hereto with respect to the subject matter hereof.

Section 6.10. Captions. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

Section 6.11. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. Upon such a determination, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties hereto as closely as possible in an acceptable manner so that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 6.12. Public Announcements. None of the Shareholders nor the Company shall (and none of them shall permit any of their respective Subsidiaries or Affiliates to) disclose any Shareholder's name or identity as an investor in or Shareholder of the Company in any press release or other public announcement or in any document or material filed with any governmental or regulatory authority or otherwise, without the prior written consent of such Shareholder, unless such disclosure is required by applicable law, rule, regulation or order, a governmental or regulatory authority or a court or administrative order, in which case prior to making such disclosure the disclosing party shall, to the extent permitted by applicable law, rule, regulation or order, a governmental, administrative or regulatory body or a court or administrative order, give written notice to each non-disclosing party describing in reasonable detail the proposed content of such disclosure and shall permit each non-disclosing party to review and comment upon the form and substance of such disclosure.

Section 6.13. Further Assurances; No Circumvention of Agreement. Each of the Shareholders agrees to use its commercially reasonable efforts to take or cause to be taken, all actions and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to give effect to the transactions contemplated by this Agreement, and not to take, or cause to be taken, any actions to circumvent its obligations under this Agreement (including, without limitation, the rights of Shareholders set forth in Articles 2, 3 and 4, Section 5.3, and Section 5.6 hereto).

Section 6.14. Delays or Omissions. No delay or omission to exercise any right, power, or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power, or remedy of such nonbreaching or nondefaulting party, nor shall it be construed to be a waiver of or acquiescence to any such breach or default, or to any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies, whether under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

Section 6.15. Third Party Beneficiaries. Persons who "beneficially own" (as such term is defined in Rule 13d-3 of the Exchange Act) any Shares and who (i) acquired such Shares prior to the consummation of the First Public Offering, (ii) who acquire, by Transfer, Shares that were issued prior to the consummation of the First Public Offering, regardless of whether such Transfer occurs before or after the First Public Offering (other than, and with respect to, any Shares that are acquired in the open market following the First Public Offering) or (iii) acquire Shares pursuant to the exercise of any Management Options or Warrants or pursuant to a distribution with respect to any RSU, regardless of whether such exercise or distribution occurs before or after the First Public Offering, are express third party beneficiaries of this Agreement and shall be entitled to enforce, and shall be subject to, the provisions of this Agreement as if each such person was a Shareholder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

BALLY TOTAL FITNESS HOLDING CORPORATION

By: ______________________________

Name:

Title:

ANCHORAGE CAPITAL MASTER OFFSHORE, LTD.

By: ______________________________

Name:

Title:

Address for Notices:

JPMORGAN CHASE BANK, N.A.

By: ______________________________

Name:

Title:

Address for Notices:

J.P. MORGAN SECURITIES INC.

By: ______________________________

Name:

Title:

Address for Notices:

VENOR CAPITAL MASTER FUND LTD.

By: ________________________________

Name:

Title:

Address for Notices:

[OTHER SHAREHOLDERS]

By: ________________________________

Name:

Title:

Address for Notices:

EXHIBIT A

List of Certain Shareholders Subject to Shareholders' Agreement

EXHIBIT B

JOINDER TO SHAREHOLDERS' AGREEMENT

This JOINDER AGREEMENT (this "Joinder Agreement") is made as of the date written below by the undersigned (the "Joining Party") in accordance with the Shareholders' Agreement, dated as of the Effective Date (the "Shareholders' Agreement") by and among Bally Total Fitness Holding Corporation and the Shareholders thereof, as the same may be amended from time to time. Capitalized terms used but not defined herein shall have the meanings respectively ascribed to such terms in the Shareholders' Agreement.

The Joining Party hereby acknowledges, agrees and confirms that, by its execution of this Joinder Agreement, the Joining Party shall be deemed to be a party to the Shareholders' Agreement as of the date hereof and shall have all of the rights and obligations of a "Shareholder" thereunder as if it had executed the Shareholders' Agreement. The Joining Party hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Shareholders' Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement as of the date written below.

Date: ___________ ___, _____

[NAME OF JOINING PARTY]

By: ______________________________________
Name:
Title:

Address for Notices: