



## SAMPLE SHAREHOLDER AGREEMENT

### I. PURPOSE

The purpose of this agreement shall be to define the procedures by which the [insert company or family name] family, here-in-after, “The Shareholders,” shall be governed as they conduct their business as it relates to [insert company or family name] and all related and/or subsequent businesses, here-in-after, “The Company,” that they do or shall jointly own. It is the intent that the family of shareholders will “speak with one voice,” as they set the policy and direction of The Company.

### II. GUIDING PREMISES

- A. The desired objective sought by the Shareholders is to keep The Company as a working asset. Further, it is the intent not to liquidate The Company in the near term future.
- B. “Near term” is defined as during the \_\_\_\_\_ years following signing of this agreement.

### III. SHAREHOLDER PREROGATIVES AND RESPONSIBILITIES

#### A. Information

All Shareholders, without regard to their percentage ownership or their employment status relative to The Company, shall be entitled to receive:

1. The annual consolidated financial statement of The Company.
2. The adopted budget for each fiscal year.
3. The quarterly financial reports and appropriate supporting documentation on the actual progress in achieving said budget.
4. The report of the semi-Annual Audit, which will have been conducted and completed by an accredited, international accounting firm.

Further, all Shareholders shall sign an agreement not to disclose any of the information they receive regarding The Company, except in discussion

with legal or financial advisors wherein the relationship with that advisor is governed by the concept of “Client Confidentiality.”

B. Prohibition of Insider Transactions

Shareholders and their immediate family or their relatives are specifically prohibited from using any information they receive as shareholders or as managers for the purpose of trading in shares of any and all companies controlled by The Company or in companies owned by shareholders in the same or related industries. **(The intent is to prohibit any and all “insider” transactions.)**

C. Annual Shareholder Meeting

All Shareholders shall be entitled to attend the Annual and Quarterly meetings of The Company. Further, the dates for these meetings shall be permanently set and fixed at the first Annual meeting following the signing of this agreement. The dates shall be set according to a fixed day in a pre-determined month. Shareholders shall receive, and the Chairman shall cause to be sent, notice of these meetings on an annual basis and then again, fifteen business days prior to the meeting. No changes in the meeting date and place shall be made after the fifteenth calendar day prior to the meeting. Further, Shareholders shall receive relevant documentation and information for this meeting not less than five business days prior to each said meeting.

Non-employed Shareholders are defined as any [insert company or family name] family member owning shares but not a full time employee of the company or one of its subsidiaries. They are expected to come to these meetings fully prepared through independent study and analysis of information supplied to them as provided in the first paragraph of Section III-A of this agreement.

D. Dividend Policy

(For Sub-S companies, this section is moot.)

Shareholders shall have the express right to receive, and the Chairman shall have the express obligation to distribute, dividends based on the profitability of The Company. Profits shall be defined by, and determined in keeping with GAAP (Generally Accepted Accounting Principles). The total dividend distribution shall be not less than 25% nor more than 75% of the after-tax profits in any one fiscal year, with the exact amount to be determined by the Board of Directors, based on the recommendation of the Chairman. Should the net after-tax profit fall below a specified level, there will be no distributions as Shareholders recognize and agree that under such conditions The Company will require the liquidity to address the reasons for profits being below the specified level. The level will be

determined by the Board of Directors. The decision not to distribute dividends shall be made by a simple majority of the Shareholders without regard to their percentage ownership of The Company.

Any decision to depart from this policy must be approved by a super majority of 75% of the Shareholders.

It is the intent that all shareholders shall receive dividends based on their ownership and without regard to gender or employment status in The Company.

E. Transfer of shares by Shareholders

If a shareholder has issue, (children), then said shareholder has the right to gift shares in The Company to that issue, either through his/her estate or during his/her lifetime. The family value is such that said gifting is intended to be on a per stirpes, gender blind basis. Only lineal descendants may hold shares in The Company. Legally adopted children shall be treated the same as if they were natural or biological children of lineal descendants. Recipients of shares gifted shall be subject to all the terms of this agreement.

If a shareholder is married, they may place their shares in some legal entity, such as a Trust or organize their estate in such a manner, so that if or when they pre-decease their spouse, the surviving, non-lineal descendant spouse shall have and receive during their lifetime, all benefits and prerogatives as if the surviving spouse owned said shares directly. The surviving spouse does not have "power of appointment" as to the disposition of the shares after their death. At the death of said surviving spouse, the shares shall revert to the Treasury of The Company.

*(Bork Note: It will be necessary to consult on how to do this so the Company does not pay out any funds at the time of this transaction. This may be an insurable transaction. In the case where there are issue, there could be a step in the estate planning whereby the shares then go to the children of the shareholder after the death of their last parent and any insurance held by the Company on the last spouse to die, will go to pay any death duties or transfer taxes. It is the specific intent of this provision that the shares are "folded back" into the Company. This keeps the ownership from being diluted.)*

F. It is agreed that a shareholder of the Company may not independently own shares in a subsidiary company where the ownership of shares in that company is closed. Shareholders of shares in The Company may own shares of subsidiary companies that are publicly traded.

If, at the time of signing this agreement, a shareholder owns shares in a closed company that is owned by The Company, then those shares will be purchased directly from the family member owning them, not before 180 days and not later than 365 days after signing of this agreement. The price to be paid in this transaction will be in accordance with the Valuing section of this agreement.

G. Non-compete Agreement

All Shareholders, whether employed in key positions or not employed at all, shall be required to sign a “Non-compete” agreement that governs proprietary information of [insert company or family name].

H. Family Employment Policy

The Chairman of the Board of [insert company or family name] shall cause to be developed a family employment policy that shall apply to the Shareholders, their spouses, their lineal descendants and relatives of spouses. This policy shall be adopted by the Shareholders at the first Family Business Forum meeting, after the adoption of this agreement, but no later than December 31, [current year], and be operable and in force from that date thereafter. Once adopted by a simple majority, it will require a super majority of 75% of the share holdings to change the policy. *(See example of such policy in “Working With Family Business, a guide for professionals.”)*

I. Executive Compensation

It is specifically agreed that all compensation paid to Shareholders who are also employees of the Company, shall be “fair market” compensation for an equivalent position in a publicly traded company. This is to include the fringe benefit package as well as the compensation for the specific position. There shall be no allowance for “entitlement.”

J. Family Values and The Company

The Shareholders wish to give recognition to the fact that the foundation and roots of this Company are grounded in the values of the [insert company or family name] Family. They encompass but are not limited to the following:

Fundamental respect for one another; honesty in all dealings; to be supportive of each other; open, sincere and genuine in their interaction; governed by rational processes; loving and caring; pursue high levels of education and full understanding of matters; be realistic in expectations; fun loving and family centered.

In view of this, the Shareholders agree to endeavor to uphold these principles in all of their dealings with each other. Further, they agree to participate in an annual “event” that will be connected with their annual meeting. They also agree to participate each year in a “Family Holiday” that will be planned by a sub-committee of the family. The family recognizes that without the commitment to interact with one another on this basis, their fundamental value base is at risk of becoming less sound,

undermined or fractured. For the “Family Holiday,” each shareholder is responsible for their own expenses.

#### IV. DECISION MAKING AT THE SHAREHOLDER LEVEL AND WITHIN THE COMPANY

- A. It is the intent of the [insert company or family name] family to maintain control of The Company. Currently there are non-family owners of small percentages of shares of the Company’s subsidiaries. This section on decision making specifically refers to voting the family share holdings. It is the intent of the family to “speak with one voice.”

The following are exceptions to the procedure of speaking with one voice:

1. Decision to sell the entire Company to a non-related party shall require a super majority representing 75% of the shares. Decisions to sell a segment of the company that constitutes less than 10% of the entire value of the company shall require a simple majority of 50+% of the shares.
2. Decision to modify this agreement shall require a super majority representing 75% of the shares.
3. Decision to merge with another company or sell to another wherein the percentage ownership of the merged entity held by the [insert company or family name] Shareholders is in aggregate , less than a controlling percentage, shall require a super majority representing 75% of the shares.
4. Decisions to substantively alter the capital base and/or create new shares shall require a super majority representing 75% of the Company shares. The intent is to be within the range of the ratios of those found in comparable international companies.

- B. Creation and Implementation of [insert company or family name] Policy

The Shareholders, at the Board of Director level, shall determine the general direction and overall policy of the Company. The head of each business unit owned by [family name] shall be responsible for creation and implementation of strategies that reflect the decisions of the President of [insert company or family name], who is accountable to the Board of Directors. Clearly stated, the Board of Directors sets the policy and overall strategy, the President sees that the individual business units functions within that policy and strategy. The head of each unit or subsidiary is charged with the responsibility for the day-to-day decisions related to operation of that business unit. Further, evaluation of that head

of the unit's performance will be based on the degree to which he/she has achieved the budget and strategic objectives that have been approved for that business unit.

V. SALE OR TRANSFER OF SHARES WITHIN THE ORIGINAL SHARE HOLDING GROUP OR BETWEEN SHAREHOLDERS AND THE COMPANY.

A. Valuing Shares

For purposes of transactions under this section of the agreement, the following principles shall apply”

1. Valuation Method

In each even numbered year, as part of the yearend financial statement, the Chief Financial Officer of [insert company or family name] shall direct the outside accounting firm to prepare a valuation of each of the companies owned and the company in aggregate. The valuation established shall apply to all stock transfer transactions.

This valuation shall be made on the following basis: Said accounting firm shall use three different methods of determining the share value, with these methods being appropriate for this type of company. The final value to be used in all transactions outlined in this section shall be the arithmetic average of the highest value and the middle value determined in the three methods.

*(Bork recommendation: You must work with your accountant to come up with the specific methods. The operable criteria are that the method is fair, reasoned, consisted and universal. By establishing this procedure and placing it in an agreement that binds all Shareholders, one removes one of the most common areas of dispute in these transactions.)*

2. Discounting of share holdings

The Shareholders acknowledge the generally accepted principle of discounting share holdings in family and closely held companies due to their lack of marketability. For purposes of transactions under this section, shares transferred between Shareholders will be discounted by \_\_\_\_% of the value determined in Section V-A,1 above.

3. Sale of shares by shareholder

If a shareholder wishes to sell all or a portion of their shares, he/she must first offer them to other Shareholders, at a pro-rata basis according to their existing holdings. This offer must be done in a formal, written manner with the price based on the valuation in force at that time. The recipient(s) of the offer are obliged to give a written

response to the offer to sell within twenty (20) business days. If the offer is accepted, then the transaction shall proceed in a manner mutually acceptable to the buyer(s) and the seller.

If the offer is rejected by the other individual Shareholders, then the person wishing to sell shall give written notice to the [insert company or family name] Chairman that he/she is desirous of having the Company purchase the shares. The Chairman shall place this proposed sale/purchase on the agenda of the next regularly scheduled meeting of the Board of Directors. The Board of Directors is obliged to make a decision on this matter within six months of the request to sell/purchase. No share purchase by the Company can be executed if the transaction would cause the Company to be in violation of the bank lending covenants.

It is specifically agreed that during the five years following the signing of this agreement, no shareholder will offer their [insert company or family name] shares for sale.

## VI. IMPASSE RESOLUTION

- A. This procedure applies to the process of the family “speaking with one voice” in various transactions. The Shareholders recognize that it is possible that at some point in the future they could be at impasse on a decision to be taken at the shareholder level. Further, it is the intent of the Shareholders to avoid shareholder litigation if at all possible.

For purposes of this section, impasse shall be defined as that situation wherein shareholder(s) representing 40% of all the shares, declare that they are “At Impasse” on a particular matter. Such declaration shall be communicated by that/those shareholder(s) within 72 hours of when the disputed decision is taken or when a proposed decision is in dispute. The declaration shall be communicated in writing and be delivered to the other Shareholders in an official, documented manner. Registered mail is the preferred method.

- B. Mediation

Within two business days of receipt of such notice, the Chairman of the Board of Directors shall engage an impartial third party or a professional mediator to examine the details in the matter. The examination shall take place within 10 business days of the selection of the impartial third party or professional mediator, with that person rendering their opinion within 15 business days of their selection. The mediator’s opinion will be delivered to all Shareholders in a meeting that has been arranged expressly for that purpose. If the shareholder(s) who declared the impasse are satisfied

with the opinion, then the matter is finished. The mediator shall prepare a document reflecting the final decision and resolution of the matter. Initiating Shareholders must declare in writing, their acceptance of the mediator's decision. Further, the mediator shall cause such a document noting their acceptance, be prepared and be available for signing at this meeting. All Shareholders shall be obliged to sign this document.

Should the initiating shareholder(s) not be satisfied with the decision, he/she/they have 24 hours to give written notice to the Chairman and all other shareholders that they are invoking the arbitration procedure.

#### C. Arbitration

On receipt of the above notice requesting arbitration, the Chairman of the Board shall give notice to all Shareholders that the specific matter has been referred to arbitration. All matters relating to arbitration shall be in accordance with the procedures set down by the American Arbitration Association. This includes selection of the arbitrator.

The decision of the arbitrator shall be binding on all signatories to this agreement, their heirs and assigns. No exception shall be made in the aforementioned binding commitment to the decision of the arbitrator.

### VII. ADOPTION OF THIS AGREEMENT

This agreement is officially in effect on the date when the last of the signatories listed below has affixed their signature to the original agreement. Further, all signatories shall receive a copy of the document for their records.