

***Unproofed draft; AAA, INC. OR....***

## **FOUNDER/MANAGEMENT PRE-FORMATION AGREEMENT**

***PLEASE NOTE: THIS FORM IS DESIGNED TO SERVE AS AN EXAMPLE OF AN AGREEMENT BETWEEN 2 PEOPLE (OR MORE) PLANNING TO FORM A CLOSELY HELD CORPORATION. IT IS A "STARTING POINT" FOR DISCUSSION AND PLANNING PURPOSES. IT IS NOT INTENDED FOR THE SPECIFIC USE OF ANYONE IN PARTICULAR. THIS IS NOT THE ARTICLES OF INCORPORATION OR THE BYLAWS. THIS FORM SHOULD NOT BE USED WITHOUT THE ADVICE OF LEGAL COUNSEL.***

This agreement is dated this \_\_\_\_ day of \_\_\_\_\_, 201\_, by and between Ms. X ("X") and Mr. Y ("Y"). The provisions of this agreement will be incorporated into the company's Bylaws and/or Shareholders' Agreement (if one exists) to the extent applicable.

### **1. Purpose**

This corporation ("company") is being formed for the purpose of \_\_\_\_\_.  
The company may at times pursue this purpose in conjunction with others. The company is free to enter into agreements with its management or others regarding projects.

### **2. Key Personnel**

X will be a Director and COO and Y will be a Director and CEO. \_\_\_\_ will be Secretary/Treasurer.

Both of us represent that we have adequate time and energy to devote to this enterprise. We will continue to be involved in other pursuits of the wallet and the heart, even if some of those endeavors directly conflict with the business of the company. Where appropriate, we will offer this company the opportunity to participate in other things we are doing, but there is no requirement to do so.

### **3. Company Operation**

Corporate management will determine all policy for the company and carry out that policy. Meetings can be held in person or by phone or actions can be consented to in writing without a meeting.

Special duties, if any, of X and Y are as follows:

The corporation will be located, initially, at \_\_\_\_\_. The phone number is \_\_\_\_\_ and the FAX number is \_\_\_\_\_. Email: \_\_\_\_\_ Website: \_\_\_\_\_.

### **4. Ownership**

X and Y will each own 50% of the initial company stock and will be co-equally responsible for the payment of all debts and obligations of the company until sufficient company cash flow is available and each are entitled to 50% of the profits, losses and distributable cash flow, if any, of the company. X and Y are husband and wife and their respective interests herein are community property.

The company may also issue, at some later time, additional company stock upon the completion of its formation to other employees, agents and advisors as determined to be in the best interests of the company, in the discretion of the company's management.

### **5. Formation**

The company will be formed in California and will be named \_\_\_\_\_. Formation costs will be paid equally by X and Y.

### **6. Compensation**

Management compensation will be based on the responsibilities of the people involved, resources and plans of the company and industry standards. Except as provided in securities offerings of the company, if any, cash distributions (dividends) will be paid to shareholders only after active participants (management and employees, professionals) are fairly paid and it is determined that money is available beyond the operation, reserve and growth requirements of the company.

### **7. Succession**

A shareholder may not sell or otherwise transfer his/her/its ownership interest in the company, including by operation of law, without first allowing the company itself and then the remaining shareholders (on a pro rata percentage ownership basis) a reasonable period of time to match any bonafide offer for such interest. This agreement is binding on all successors of any kind or nature, and shall be included in the Bylaws. All company stock issued by the company, until such time as an IPO is accomplished, if any and if ever, will be restricted common stock and no such ownership interests can be transferred without compliance with all applicable securities laws.

## **8. Anti-Dilution**

Existing company shareholders will be given, in the company Bylaws, a right of first refusal to obtain, pro-rata, any privately offered, restricted company stock to be issued after the date of this agreement on the same terms and conditions of the offering at that time. This provision does not apply to any offering of unrestricted company stock by the company.

## **9. Restriction**

A majority of votes cast in any meeting of shareholders or management shall bind the company to the matter voted on. No shareholder may take any action binding the company to anything without the consent of the other shareholders. Voting of company stock shall be non-cumulative. In the event of a tie in a Board of Directors or shareholders' meeting, the parties will expeditiously, and in good faith, select a knowledgeable (in the business of the company) neutral, outside party to break the tie.

## **10. Dissolution**

The company shall not dissolve upon the death or disability of any shareholder. The company's term will be perpetual unless dissolved upon the agreement of at least 60 percent of the outstanding common shares of the company, by operation of law or by order of a Court of competent jurisdiction.

## **11. Miscellaneous**

a. This agreement is governed by California law and shall be interpreted as if the parties had participated equally in its drafting.

b. This agreement is amendable by consent of at least 60% of the signing below.

c. This agreement is not assignable, except by operation of law.

d. This is the full agreement of the parties. If the parties cannot settle a dispute within 10 days written notice of the problem, and if an attempt to

mediate the dispute fails, an arbitrator shall be selected, or appointed by a court of competent jurisdiction, and the matter shall be expeditiously submitted to Binding Arbitration in accordance with the rules of the American Arbitration Association in a mutually convenient location. The decision of the arbitrator will be final for all purposes.

e. Any notices necessary hereunder shall be mailed or delivered by verifiable personal service to the undersigned at the company's offices and to any other Interest holder at the address of such Interest holder as contained in the company's records.

**IN WITNESS WHEREOF, THE PARTIES SIGN BELOW:**

\_\_\_\_\_  
**Ms. X**

\_\_\_\_\_  
**Mr. Y**