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**KJC, INC.**

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**SERIES B PREFERRED  
STOCK PURCHASE AGREEMENT**

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**June 30, 2002**

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## SERIES B PREFERRED STOCK PURCHASE AGREEMENT

**THIS SERIES B PREFERRED STOCK PURCHASE AGREEMENT** (this “*Agreement*”) is made on the 30th day of June, 2002, by and among KJC, Inc., a Delaware corporation (the “*Company*”), and the investors listed on Schedule A hereto (each, an “*Investor*” and collectively, the “*Investors*”).

**WHEREAS**, the Company desires to sell to the Investors, and the Investors desire to purchase from the Company, shares of the Company’s Series B Preferred Stock, together with warrants (the “*Warrants*”) to purchase shares of the Company’s Common Stock, on the terms and conditions set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual promises hereinafter set forth, the parties hereto agree as follows:

### **1. PURCHASE AND SALE OF STOCK.**

**1.1 Sale and Issuance of Series B Preferred Stock, Warrants.** The Company shall adopt and file with the Secretary of State of Delaware on or before the Closing (as defined below), the Amended and Restated Certificate of Incorporation in the form attached hereto as Exhibit A (the “*Restated Certificate*”).

(a) Subject to the terms and conditions of this Agreement, each Investor agrees, severally and not jointly, to purchase at the Closing and the Company agrees to sell and issue to each Investor at the Closing that number of shares of the Company’s Series B Preferred Stock set forth opposite such Investor’s name on Schedule A hereto free and clear of any liens, claims, charges and encumbrances whatsoever, except as set forth in the Transaction Agreements (as defined below), together with a Warrant in the form attached hereto as Exhibit B to purchase that number of shares of the Company’s Common Stock set forth opposite such Investor’s name on Schedule A hereto, for the aggregate purchase price set forth thereon.

### **1.2 Closing; Additional Closings.**

(a) The purchase and sale of the Series B Preferred Stock and Warrants shall take place at the offices of [Law Firm], \_\_\_\_\_, Austin, Texas 78701, at 10:00 A.M., on June 30, 2002, or at such other time and place as the Company and Investors acquiring in the aggregate more than half the shares of Series B Preferred Stock sold pursuant hereto mutually agree upon orally or in writing (which time and place are designated as the “*Closing*”). At the Closing the Company shall deliver to each Investor a certificate representing the Series B Preferred Stock that such Investor is purchasing, together with a Warrant, in each case duly executed by the Company and registered in the name of the Investor, against payment of the purchase price therefor by check, wire transfer, cancellation of indebtedness or any combination thereof. In the event that payment by an Investor is made, in whole or in part, by cancellation of indebtedness, then such Investor shall surrender to the Company for cancellation at the Closing any evidence of such indebtedness or shall execute an instrument of cancellation in form and substance acceptable to the Company. In addition, at the Closing the Company shall deliver to any Investor choosing to pay any part of the purchase price of the Series B Preferred

Stock by cancellation of indebtedness, a check in the amount of any interest accrued on such indebtedness through the Closing.

(b) For a period not to exceed thirty (30) days from the date of the Closing, the Company may offer, issue, and sell up to five hundred thousand (500,000) additional shares of Series B Preferred Stock, together with a Warrant to purchase approximately \_\_\_\_\_ shares of Common Stock per \_\_\_\_ shares of Series B Preferred Stock, at subsequent closings (the “**Additional Closings**”) for an aggregate purchase price of \$\_\_\_\_\_ per share of Series B Preferred Stock. Each person purchasing such additional shares at any Additional Closing (each an “**Additional Investor**”) shall, as a condition to purchasing such shares, execute a counterpart to this Agreement, that certain Amended and Restated Investors’ Rights Agreement dated even date herewith, by and among the Company, the Investors, and certain holders of the Common Stock of the Company (the “**Founders**”), the form of which is attached hereto as Exhibit C (the “**Investors’ Rights Agreement**”), that certain Amended and Restated Co-Sale and First Refusal Agreement dated even date herewith, by and among the Company, the Investors, and the Founders, the form of which is attached hereto as Exhibit D (the “**Co-Sale Agreement**”), and that certain Amended and Restated Voting Agreement dated of even date herewith by and among the Company, the Investors, and certain other stockholders of the Company, the form of which is attached hereto as Exhibit E (the “**Voting Agreement**”), as of the date of such purchase for the purpose of becoming an “Investor” hereunder and thereunder. At each Additional Closing, Schedule A shall be automatically amended without further action on the part of any party to reflect the sale of such additional shares. No rights, covenants, agreements, representations, or warranties not previously given to the Investors will be granted or given to any Additional Investor unless and until such rights, covenants, agreements, representations, and warranties have been granted or given to the other Investors.

**2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.** The Company hereby represents and warrants to each Investor that, except as set forth on a Disclosure Schedule (the “**Disclosure Schedule**”) furnished to each Investor and to counsel for each Investor prior to execution hereof and attached hereto as Schedule B (which Disclosure Schedule shall be deemed to be representations and warranties to each Investor by the Company as if made hereunder and shall be arranged to correspond to the numbered paragraphs and subparagraphs contained in this Section 2, such specified paragraph or subparagraph shall constitute the sole paragraph or subparagraph as to which such exceptions apply), the statements in the following paragraphs of this Section 2 are all true and complete:

**2.1 Organization, Good Standing, Qualification and Corporate Power.** The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company is duly qualified to transact business as a foreign corporation and is in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on its business, financial condition or properties. The Company has all requisite corporate power and authority to execute, deliver, and perform this Agreement, the Investors’ Rights Agreement, the Co-Sale Agreement, the Voting Agreement and each Warrant (collectively, this Agreement, the Investors’ Rights Agreement, the Co-Sale Agreement, the Voting Agreement and each Warrant are referred to hereinafter as the “**Transaction Agreements**”), and any other agreements contemplated hereby and thereby, to own and hold its

property and assets and to carry on its business as now conducted and as presently proposed to be conducted.

**2.2 Capitalization and Voting Rights.** The authorized capital of the Company consists, or will consist immediately prior to the Closing, of:

(a) **Preferred Stock.** A total of \_\_\_\_\_ shares of preferred stock, par value \$0.001 per share (the “*Preferred Stock*”), consisting of \_\_\_\_\_ shares designated as Series A Preferred Stock (the “*Series A Preferred Stock*”), \_\_\_\_\_ of which are issued and outstanding, and \_\_\_\_\_ shares designated as Series B Preferred Stock (the “*Series B Preferred Stock*”), up to \_\_\_\_\_ of which will be sold pursuant to this Agreement. Upon the Closing, the respective rights, privileges and preferences of the Series A Preferred Stock and Series B Preferred Stock will be as stated in the Restated Certificate and as provided by law.

(b) **Common Stock.** 500,000,000 shares of common stock, par value \$0.001 (“*Common Stock*”, and together with the Preferred Stock, the “*Securities*”), of which \_\_\_\_\_ shares are issued and outstanding.

(c) The outstanding shares of Common Stock and Series A Preferred Stock are owned by the stockholders and in the numbers specified in Exhibit F hereto.

(d) The outstanding shares of Common Stock and Series A Preferred Stock are all duly and validly authorized and issued, fully paid and nonassessable, and were issued in compliance with all applicable state and federal laws concerning the issuance of securities or pursuant to valid exemptions therefrom.

(e) Except as otherwise provided in the Transaction Agreements or Section 2.2(e) of the Disclosure Schedule and except for (i) the conversion privileges of the Series B Preferred Stock and the exercise rights of the Warrants to be issued under this Agreement, (ii) the conversion privileges of the Company’s Series A Preferred Stock, (iii) the rights provided in Section 2.3 of the Investors’ Rights Agreement, (iv) options to purchase 10,000,000 shares of Common Stock that have been granted, or committed to being granted, to employees, consultants or advisors pursuant to the Company’s 2001 Stock Option/Stock Issuance Plan (the “*Option Plan*”), (v) warrants to purchase \_\_\_\_\_ shares of Series A Preferred Stock and \_\_\_\_\_ shares of Series B Preferred Stock issued to \_\_\_\_\_ Bank, (vi) warrants to purchase shares of the Company’s Common Stock that may be issued pursuant to the Co-Marketing Agreement between the Company and \_\_\_\_\_, as amended from time to time, there are not outstanding any options, warrants, rights (including conversion or preemptive rights) or agreements for the purchase or acquisition from the Company of any shares of its capital stock. In addition to the aforementioned options, the Company has reserved an additional \_\_\_\_\_ shares of its Common Stock for purchase upon exercise of options to be granted in the future under the Option Plan. Except as contemplated by the Transaction Agreements or set forth in Section 2.2(e) of the Disclosure Schedule, no shares of the Company’s outstanding capital stock or stock issuable upon exercise or exchange of any outstanding options, warrants or rights, as other stock issuable by the Company, are subject to any preemptive rights, rights of first refusal, or other rights to purchase such stock (whether in



favor of the Company or any other person) pursuant to any agreement to which the Company is a party or commitment of the Company, or to the Company's knowledge, pursuant to any other agreement or commitment.

(f) Except as contemplated by the Transaction Agreements or set forth in Section 2.2(f) of the Disclosure Schedule, the Company is not a party or subject to any agreement or understanding, and, to the Company's knowledge, there is no agreement or understanding between any persons and/or entities, which affects or relates to the voting or giving of written consents with respect to any security or by a director of the Company.

(g) Other than as set forth in Section 2.2(g) of the Disclosure Schedule, none of the Company's stock purchase agreements, stock option documents, or other agreements or understandings between the Company and any holder of any equity securities of the Company contains a provision providing for acceleration of vesting (or lapse of a repurchase right) upon the occurrence of any events. Other than as set forth in Section 2.2(g) of the Disclosure Schedule, the Company has not made any payments, is not obligated to make any payments, and is not a party to any agreement that under certain circumstances could obligate it to make any payments that will not be deductible under Section 280G of the Code (as defined in Section 2.17) (or any similar provision of state, local, or foreign law).

**2.3 Subsidiaries.** The Company does not presently own or control, directly or indirectly, any interest in any other corporation, association, or other business entity. The Company is not a participant in any joint venture, partnership, or similar arrangement.

**2.4 Authorization.** All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution, delivery and performance of all obligations of the Company under the Transaction Agreements, and the authorization (or reservation for issuance), sale and issuance of the Series B Preferred Stock being sold hereunder and the Common Stock issuable upon conversion of the Series B Preferred Stock and exercise of the Warrants, and the filing of the Restated Certificate, has been taken or will be taken prior to the Closing. The Transaction Agreements constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except (i) as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies, and (iii) to the extent the indemnification provisions contained in the Investors' Rights Agreement may be limited by applicable federal or state securities laws.

**2.5 Valid Issuance of Preferred and Common Stock.** The Series B Preferred Stock that is being purchased by the Investors hereunder when issued, sold and delivered in accordance with the terms of this Agreement for the consideration expressed herein, will be duly and validly issued, fully paid and nonassessable, will be free of any liens, claims, charges or encumbrances, and will be free of any restrictions on transfer, other than restrictions on transfer under this Agreement and the other Transaction Agreements and under applicable state and federal securities laws. The Common Stock issuable upon conversion of the Series B Preferred Stock and exercise of the Warrants purchased under this Agreement has been duly and validly reserved for issuance and, upon issuance in accordance with the terms of the Restated Certificate and each

Warrant, as applicable, will be duly and validly issued, fully paid and nonassessable, will be free of any liens, claims, charges or encumbrances, and will be free of any restrictions on transfer, other than restrictions on transfer under this Agreement and the Transaction Agreements and under applicable state and federal securities laws.

**2.6 Governmental Consents.** No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority on the part of the Company is required in order to enable the Company to execute, deliver and perform its obligations under the Transaction Agreements, except for such qualifications and filings as are required pursuant to applicable federal and state securities laws and blue sky laws, which qualifications and filings will, in the case of filings, be effected within the required statutory period and will, in the case of qualifications, be effective on the Closing.

**2.7 Offering.** Subject in part to the truth and accuracy of each Investor's representations set forth in Section 3 of this Agreement, the offer, sale and issuance of the Series B Preferred Stock and Warrants as contemplated by this Agreement are exempt from the registration and prospectus delivery requirements of the Securities Act of 1933, as amended (the "**Act**"). Neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemptions.

**2.8 Litigation.** There is no action, suit, proceeding, claim, arbitration or investigation pending, or to the Company's knowledge, currently threatened against the Company, its activities, properties or assets or, to the Company's knowledge, against any officer, director or employee of the Company in connection with such officer's, director's or employee's relationship with the Company or that questions the validity of the Transaction Agreements or the right of the Company to enter into such agreements or to consummate the transactions contemplated hereby and thereby, or that might result, either individually or in the aggregate, in any material adverse changes in the business, assets, condition or results of operations of the Company, financially or otherwise, or any change in the current equity ownership of the Company. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit, proceeding or investigation by the Company currently pending or that the Company intends to initiate.

**2.9 Proprietary Information Agreements.** Each employee and officer of the Company has executed a Proprietary Information and Inventions Agreement in substantially the form attached as an exhibit to the Investors' Rights Agreement. The Company, after reasonable investigation, is not aware that any of its employees or officers are in violation thereof, and the Company will use its best efforts to prevent any such violation.

**2.10 Proprietary Assets.** To its knowledge (but without having conducted any special investigation or patent search), the Company owns or has the right to use, all patents, patent rights, trademarks, trademark rights, service marks, service mark rights, trade names, trade name rights and copyrights (collectively, the "**Intellectual Property**") necessary for the conduct of its business and the lack of which could materially and adversely affect the business, assets, condition or results of operations of the Company, financially or otherwise. The Company's business and operations do not conflict with or infringe the valid intellectual property rights of

others, and the Company has not received any notice of infringement upon or conflict with the asserted rights of others. The Company has a valuable body of trade secrets and trade secret rights, including know-how, concepts, computer programs and other technical data (the “*Proprietary Information*”) for the development, manufacture and sale of its products. To its knowledge, the Company has the right to use its Intellectual Property and Proprietary Information free and clear of any rights, liens, encumbrances or claims of others, except that the possibility exists that other persons may have independently developed trade secrets or technical information similar or identical to those of the Company. The Company is not aware of any such independent development or of any infringement of its Intellectual Property or misappropriation of its Proprietary Information. The Company has taken all actions reasonably necessary to register, protect and enforce its Intellectual Property. The Company has used its best efforts to ensure that no employee is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her best efforts to promote the interests of the Company or that would conflict with the Company’s business. The Company does not believe it is or will be necessary to utilize any inventions of any of its employees (or people it currently intends to hire) made prior to their employment by the Company.

**2.11 Compliance with Other Instruments.** The Company is not in violation of any provision of its Restated Certificate or Bylaws or, to its knowledge, of any instrument, judgment, order, writ, decree or contract, statute, rule or regulation to which the Company is subject and a violation of which would have a material adverse effect on the business, assets, condition or results of operations of the Company, financial or otherwise. The execution, delivery and performance of the Transaction Agreements and the consummation of the transactions contemplated hereby and thereby will not result in any such violation, or be in conflict with or constitute, with or without the passage of time and giving of notice, either a default under any such provision or an event that results in the creation of any lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture or nonrenewal of any material permit, license, authorization or approval applicable to the Company, its business or operations or any of its assets or properties.

**2.12 Compliance with Laws.** The Company has conducted its business and dealt with its assets in all material respects in accordance with all applicable legal and administrative requirements of the United States of America or any state, foreign country or other governmental bodies or agencies having jurisdiction over the Company’s business or properties, except as the failure to so conduct its business and deal with its assets would not have a material adverse effect on the business, assets, condition or results of operations of the Company, financial or otherwise.

**2.13 Material Agreements.**

(a) Other than as set forth on Section 2.13 of the Disclosure Schedule, there are no agreements, understandings, instruments, contracts, proposed transactions, judgments, orders, writs or decrees to which the Company is a party or by which it is bound that may involve (i) obligations (contingent or otherwise) of, or payments to the Company, in excess of \$25,000, other than obligations of, or payments to, the Company arising from purchase or sale agreements entered into in the ordinary course of business or (ii) the license of any patent,

copyright, trade secret or other proprietary right to or from the Company, other than licenses arising from the purchase of “off the shelf” or other standard products.

(b) The Company has not (i) declared or paid any dividends or authorized or made any distribution upon or with respect to any class or series of its capital stock (and is not a party to or bound by any agreement to do so), (ii) incurred any indebtedness for money borrowed or any other liabilities individually in excess of \$25,000 or, in the case of indebtedness and/or liabilities individually less than \$25,000, in excess of \$150,000 in the aggregate, (iii) made any loans or advances to any person, other than ordinary advances for travel expenses, or (iv) sold, exchanged or otherwise disposed of any of its assets or rights, other than the sale of its inventory in the ordinary course of business.

(c) For the purposes of subsections (b) and (c) above, all indebtedness, liabilities, agreements, understandings, instruments, contracts and proposed transactions involving the same person or entity (including persons or entities the Company has reason to believe are affiliated therewith) shall be aggregated for the purpose of meeting the individual minimum dollar amounts of such subsections.

(d) The Company has not breached or defaulted under, nor does the Company have any knowledge of any claim or threat that the Company has breached or defaulted under, any term or condition of any agreements, individually or in the aggregate, material to the business, assets, condition or results of operations of the Company (the “*Material Agreements*”). Each Material Agreement is in full force and effect, and to the Company’s knowledge, no other party to such Material Agreement is in default thereunder.

**2.14 Related-Party Transactions.** No employee, officer or director of the Company or member of his or her immediate family is indebted to the Company, nor is the Company indebted (or committed to make loans or extend or guarantee credit) to any of them. To the best of the Company’s knowledge, none of such persons has any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated or with which the Company has a business relationship, or any firm or corporation that competes with the Company, except that employees, officers or directors of the Company and members of their immediate families may own stock in publicly traded companies that may compete with the Company in amounts not in excess of 5% of the outstanding stock of such companies. No member of the immediate family of any officer or director of the Company is directly or indirectly interested in any material contract with the Company.

**2.15 Financial Statements.** The Company has delivered to each Investor, its unaudited financial statements (balance sheet and statement of operations) as of December 31, 2001, and for the twelve-month period then ended and its unaudited financial statements (balance sheet and income statement) at April 30, 2002 and for the four month-period then ended (collectively, the “*Financial Statements*”). The Company has prepared the Financial Statements in accordance with generally accepted accounting principles (“*GAAP*”) applied on a consistent basis throughout the periods indicated and with each other, except that the unaudited Financial Statements do not contain all footnotes required by GAAP. The Financial Statements fairly present in any material respect the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein. Except as set forth in the Financial Statements,

the Company has no liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to April 30, 2002, and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under GAAP to be reflected in the Financial Statements, which in both cases, individually or in the aggregate, are not material to the financial condition or operating results of the Company. The Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with GAAP.

**2.16 Absence of Certain Actions.** Since April 30, 2002, there has not been any event or condition of any character which has materially adversely affected, or is likely to affect, the Company's business, affairs, operations, properties, assets, condition (financial or otherwise), liabilities or earnings. Without limiting the foregoing and except as set forth in the Disclosure Schedule, since April 30, 2002:

(a) the Company has not sold, leased, transferred, or assigned any of its assets, tangible or intangible, other than in the ordinary course of business;

(b) the Company has not entered into any agreement, contract, commitment, lease, or license (or series of related agreements, contracts, commitments, leases, and licenses) either involving more than \$25,000 or outside the ordinary course of business;

(c) no party (including the Company) has accelerated, terminated, modified, or canceled any agreement, contract, lease, or license (or series of related agreements, contracts, leases, and licenses) to which the Company is a party or by which the Company or its assets are bound;

(d) the Company has not made any capital expenditure (or series of related capital expenditures) involving more than \$25,000 or outside the ordinary course of business;

(e) the Company has not made any capital investment in, any loan to, or any acquisition of the securities or assets of any other person (or series of related capital investments, loans, and acquisitions) either involving more than \$25,000 or outside the ordinary course of business;

(f) the Company has not issued any note, bond, or other debt security or created, incurred, assumed, or guaranteed any indebtedness for borrowed money or capitalized lease obligation either involving more than \$25,000 alone or \$50,000 in the aggregate;

(g) the Company has not delayed or postponed the payment of accounts payable or any other liabilities outside the ordinary course of business and consistent with prudent business practice;

(h) there has not been any change in the assets, liabilities, financial condition or operating results of the Company from that reflected in the Financial Statements, except changes in the ordinary course of business that have not been, in the aggregate, materially adverse;

(i) the Company has not granted any license or sublicense of any rights under or with respect to any of its Intellectual Property except in the ordinary course of business;

(j) the Company has not declared, set aside, or paid any dividend or made any distribution with respect to its capital stock (whether in cash or in kind) or redeemed, purchased, or otherwise acquired any of its capital stock;

(k) the Company has not made any loan to, or entered into any other transaction with, any of its directors, officers, and employees outside the ordinary course of business;

(l) the Company has not entered into any employment contract or collective bargaining agreement, written or oral, or modified the terms of any such contract or agreement;

(m) the Company has not adopted, amended, modified, or terminated any bonus, profit-sharing, incentive, severance, or other plan, contract, or commitment for the benefit of any of its directors, officers, or employees (or taken any such action with respect to any other benefit plan);

(n) the Company has not made any other change in employment terms for any of its directors, officers, or employees;

(o) the Company has not made or pledged to make any charitable, political or other capital contribution outside the ordinary course of business or that would have a material adverse affect on the Company's business, affairs, operations, properties, assets or condition (financial or otherwise);

(p) the Company has not experienced any damage, destruction or loss, whether or not covered by insurance, to its property;

(q) the Company has not canceled, compromised, released or waived any right or claim or debt owed to it;

(r) there has not been any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company, except in the ordinary course of business and that is not material to the assets, properties, financial condition, operating results or business of the Company;

(s) the Company has not made any material change in any compensation arrangement or agreement with any employee or director; and

(t) the Company has not agreed or committed to do any of the things described in this Section 2.16.

**2.17 Tax Returns.** The Company has timely filed all tax returns (federal, state, local and foreign) required to be filed by it. All such returns were true and correct in all material respects at the time the returns were made. The Company has paid or established reserves (such reserves are adequate for taxes due or accrued as of the date hereof) for all income, franchise,

and other taxes, assessments, governmental charges, penalties, interest, and fines due and payable by it on or before the Closing. The Company has not elected pursuant to the Internal Revenue Code of 1986, as amended (the “*Code*”), to be treated as a Subchapter S corporation or a collapsible corporation pursuant to Section 1362(a) or Section 341(f) of the Code, nor has it made any other elections pursuant to the Code (other than elections that relate solely to methods of accounting, depreciation, or amortization) that would have a material effect on the Company, its financial condition, its business or any of its properties or material assets. The Company has never had any tax deficiency proposed or assessed against it and has not executed any waiver of any statute of limitations on the assessment or collection of any tax or governmental charge. The Company has withheld or collected from each payment made to each of its employees the amount of all taxes, including, but not limited to, federal income taxes, Federal Insurance Contribution Act taxes, and Federal Unemployment Tax Act taxes required to be withheld or collected therefrom and has paid the same to the proper tax receiving officers or authorized depositories. No federal or state income or sales tax return of the Company has been audited, no deficiency assessment or proposed adjustment of the Company’s United States income tax, state or municipal taxes or sales taxes is pending, and the Company has no knowledge of any proposed liability for any tax to be imposed on its property or assets.

**2.18 Permits.** The Company has all franchises, permits, licenses and any similar authority necessary for the conduct of its business, the lack of which could materially and adversely affect the business, properties or financial condition of the Company. The Company is not in default in any material respect under any of such franchises, permits, licenses or other similar authority.

**2.19 Environmental and Safety Laws.** To its knowledge, the Company is not in violation of any applicable statute, law or regulation relating to the environment or occupational health and safety, and, to its knowledge, no material expenditures are or will be required in order to comply with any such existing statute, law or regulation.

**2.20 Disclosure.** The Company has fully provided each Investor with all the information that such Investor has requested for deciding whether to purchase the Series B Preferred Stock and all information that the Company believes is reasonably necessary to enable such Investor to make such decision. The representations and warranties of the Company included in this Agreement, the Disclosure Schedule and the Transaction Agreements are true and correct and do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained in such representations and warranties not misleading. The Company shall not be deemed to have made to any Investors any representation or warranty other than as expressly made by the Company in Section 2 hereof.

**2.21 Registration Rights.** Except as provided in the Investors’ Rights Agreement, the Company is not under any obligation to register under the Securities Act any of its securities or any securities issuable upon exercise or conversion of its securities nor is the Company obligated to register or qualify any such securities under any applicable state securities or blue sky laws.

**2.22 Corporate Documents; Minute Books.** The Bylaws of the Company are in the form previously provided to counsel for each Investor. The minute books of the Company provided to the Investors contain a complete summary of all meetings of directors and

stockholders since the time of incorporation and reflect all transactions referred to in such minutes accurately in all material respects.

**2.23 Title to Property and Assets.** The Company has good and marketable title to its properties and assets, free and clear of all mortgages, deed of trust, security interests, liens, loans and encumbrances, except for statutory liens for the payment of current taxes that are not yet delinquent. With respect to the property and assets it leases, the Company is in material compliance with such leases and holds a valid leasehold interest free of any liens, claims or encumbrances, except for statutory liens for the payment of current taxes that are not yet delinquent.

**2.24 Insurance.** The Company has in full force and effect valid insurance with respect to its property and business with coverage in amounts (subject to reasonable deductibles) customary for companies similarly situated, including fire, casualty, liability and workers' compensation insurance.

**2.25 Employee Benefit Plans.** Except as provided in the Disclosure Schedule:

(a) The Company does not maintain or contribute to any (a) nonqualified deferred compensation, bonus, retirement or retiree health plans or arrangements, (b) qualified defined contribution or defined benefit plans or arrangements which are employee pension benefit plans (as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974 ("**ERISA**")), or (c) employee welfare benefit plans (as defined in Section 3(1) of ERISA), or material fringe benefit plans or programs. The Company has not within the past five years, contributed to any multiemployer pension plan (as defined in Section 3(37) of ERISA). The Company does not maintain or contribute to any employee welfare benefit plan which provides health, accident or life insurance benefits to former employees, their spouses or dependents, other than in accordance with Section 4980B of the Code.

(b) With respect to each employee pension benefit plan, all contributions which are due (including all employer contributions and employee salary reduction contributions) have been paid to such employee pension benefit plan, all contributions, if any, for prior plan years have been paid and all contributions for the current plan year will be paid prior to the filing of the federal income tax return for the Company for the current plan year. With respect to the employee welfare benefit plans, all premiums or other payments which are due have been paid.

(c) With respect to each of the employee pension benefit plans and each employee welfare benefit plan, the Company has furnished to the Purchasers true and complete copies of each plan or, if no copy of any such plan is available, a description of such plan.

**2.26 Labor Agreements and Actions; Employees.** The Company is not bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the Company's knowledge, has sought to represent any of the employees, representatives or agents of the Company. There is no strike or other labor dispute involving the Company pending, or to the Company's knowledge, threatened, nor is the



Company aware of any labor organization activity involving its employees. The Company is not aware that any officer or key employee, or that any group of key employees, intends to terminate their employment with the Company, nor does the Company have a present intention to terminate the employment of any of the foregoing. The employment of each officer and employee of the Company is terminable at the will of the Company. The Company is not a party to or bound by any currently effective employment contract, deferred compensation agreement, bonus plan, incentive plan, profit sharing plan, retirement agreement or other employee compensation agreement. The Company has complied in all material respects with all applicable state and federal equal employment opportunity and other laws related to employment.

**2.27 Real Property Holding Company.** The Company is not currently, and has not been during the prior five years, a real property holding company within the meaning of Section 897 of the Code.

**2.28 Offering of the Series B Preferred Stock.** Neither the Company nor any person authorized or employed by the Company as agent, broker, dealer or otherwise in connection with the offering or sale of the Series B Preferred Stock, Warrants or any security of the Company similar thereto has taken or intends to take any action (including, without limitation, any offer, issuance or sale of any security of the Company under circumstances which might require the integration of such security with the Series B Preferred Stock or Warrants under the Securities Act or the rules and regulations of the Securities and Exchange Commission (the “*SEC*”) thereunder) so as to subject the offering, issuance or sale of any of the Series B Preferred Stock or Warrants to the registration provisions of the Securities Act.

**2.29 Brokers.** The Company has no contract, arrangement, or understanding with any broker, finder, or similar agent with respect to the transactions contemplated by this Agreement.

**2.30 Investment Company.** Neither the Company nor any of its subsidiaries is an “investment company” or a company “controlled” by “an investment company” within the meaning of the Investment Company Act of 1940 and the rules and regulations thereunder and is not deemed to be an “investment company” for purposes of Section 12(d)(1) of the Investment Company Act of 1940.

**2.31 Qualified Small Business Stock.** As of the Closing: (i) the Company will be an eligible corporation as defined in Section 1202(e)(4) of the Code, (ii) the Company will not have made any purchases of its own stock during the one-year period preceding the Closing having an aggregate value exceeding 5% of the aggregate value of all its stock as of the beginning of such period, (iii) the Company has not made any purchase of its own stock from any Investor during the two-year period preceding the Closing, (iv) the Company’s aggregate gross assets, as defined by Code Section 1202(d)(2), at no time between December 31, 2001 through the Closing have exceeded or will exceed \$50 million, taking into account the assets of any corporations required to be aggregated with the Company in accordance with Code Section 1202(d)(3), and (v) the Company currently conducts and anticipates that it will conduct its business so as to meet the active trade or business requirements set forth in Section 1202(c)(2) and (e) of the Code.

**2.32 Section 83(b) Elections.** To the Company's knowledge, all individuals who have purchased unvested shares of the Company's Common Stock have timely filed elections under Section 83(b) of the Code and any analogous provisions of applicable state tax laws.

**2.33 No Special Family Relationships.** The Company does not have any employees, members of the Board of Directors or holders of its Securities (as defined below) who are "immediate family" (as defined below) members of each other. "*Immediate family*" shall include any spouse, father, mother, brother, sister, lineal descendant of spouse, or lineal descendant of a person.

**3. REPRESENTATIONS AND WARRANTIES OF THE INVESTORS.** Each Investor, severally and not jointly, hereby represents, warrants and covenants that:

**3.1 Authorization.** Such Investor has full power and authority to enter into the Transaction Agreements, and each such agreement constitutes its valid and legally binding obligation, enforceable against such Investor in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies, and (iii) to the extent the indemnification provisions contained in the Investors' Rights Agreement may be limited by applicable federal or state securities laws.

**3.2 Purchase Entirely for Own Account.** This Agreement is made with such Investor in reliance upon such Investor's representation to the Company, which by such Investor's execution of this Agreement such Investor hereby confirms, that the Series B Preferred Stock and Warrants to be received by such Investor and the Common Stock issuable upon conversion or exercise thereof (collectively, the "*Securities*") will be acquired for investment for such Investor's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that such Investor has no present intention of selling, granting any participation in or otherwise distributing the same. By executing this Agreement, such Investor further represents that such Investor does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Securities.

**3.3 Disclosure of Information.** Such Investor believes it has received all the information it considers necessary or appropriate for deciding whether to purchase the Series B Preferred Stock and Warrants. Such Investor further represents that it has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Series B Preferred Stock and Warrants and the business, properties, prospects and financial condition of the Company. The foregoing, however, does not in any way limit or modify the representations and warranties made by the Company in Section 2.

**3.4 Investment Experience.** Such Investor is an investor in securities of companies in the development stage and acknowledges that it is able to fend for itself, can bear the economic risk of its investment, and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Series B

Preferred Stock and Warrants. If other than an individual, such Investor also represents it has not been organized for the purpose of acquiring the Series B Preferred Stock and Warrants.

**3.5 Accredited Investor.** Such Investor is an “accredited investor” within the meaning of SEC Rule 501 of Regulation D, as presently in effect.

**3.6 Restricted Securities.** Such Investor understands that the Securities it is purchasing are characterized as “restricted securities” under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such Securities may be resold without registration under the Act only in certain limited circumstances. In the absence of an effective registration statement covering the Securities (or the Common Stock issued on conversion or exercise thereof) or an available exemption from registration under the Act, the Series B Preferred Stock and Warrants (and any Common Stock issued on conversion or exercise thereof) must be held indefinitely. In this connection, such Investor represents that it is familiar with SEC Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Act, including without limitation the Rule 144 condition that current information about the Company be available to the public. Such information is not now available and the Company has no present plans to make such information available.

**3.7 Further Limitations on Disposition.** Without in any way limiting the representations set forth above, such Investor further agrees not to make any disposition of all or any portion of the Securities unless and until the transferee has agreed in writing for the benefit of the Company to be bound by this Section 3 and the Transaction Agreements, and:

(a) There is then in effect a registration statement under the Act covering such proposed disposition and such disposition is made in accordance with such registration statement; or

(b) (i) Such Investor shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and (ii) if reasonably requested by the Company, such Investor shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company that such disposition will not require registration of such shares under the Act. It is agreed that the Company will not require opinions of counsel for transactions made pursuant to Rule 144 except in unusual circumstances.

(c) Notwithstanding the provisions of subsections (a) and (b) above, no such registration statement or opinion of counsel shall be necessary for a transfer either (i) by an Investor that is a partnership to a partner of such partnership or a retired partner of such partnership who retires after the date hereof, or to the estate of any such partner or retired partner or the transfer by gift, will or intestate succession of any partner to his or her spouse or to the siblings, lineal descendants or ancestors of such partner or his or her spouse, or (ii) by an Investor to any person who controls, is controlled by or is under common control with such Investor (within the meaning of the Securities Act of 1933, as amended), in each case if the transferee agrees in writing to be subject to the terms hereof to the same extent as if he or she were an original Investor hereunder.

**3.8 Legends.** It is understood that the certificates evidencing the Securities will bear one or all of the following legends:

(a) “These securities have not been registered under the Securities Act of 1933, as amended or any applicable state securities laws. They may not be sold, offered for sale, pledged or hypothecated in the absence of a registration statement in effect with respect to the securities under such Act or an opinion of counsel satisfactory to the Company that such registration is not required or unless sold pursuant to Rule 144 of such Act.”

(b) Any legend required by the laws of the State of Delaware or any other applicable jurisdiction.

(c) Any legend required by the Transaction Agreements.

**3.9 Further Representations by Foreign Investors.** If an Investor is not a United States person, such Investor hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for the Securities or any use of this Agreement, including (i) the legal requirements within its jurisdiction for the purchase of the Securities, (ii) any foreign exchange restrictions applicable to such purchase, (iii) any governmental or other consents that may need to be obtained, and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale or transfer of the Securities. Such Investor’s subscription and payment for, and its continued beneficial ownership of the Securities, will not violate any applicable securities or other laws of its jurisdiction.

**3.10 Tax Advisors.** Such Investor has reviewed with such Investor’s own tax advisors the federal, state and local tax consequences of this investment, where applicable, and the transactions contemplated by this Agreement. Except for the representations and warranties set forth herein, each such Investor is relying solely on such advisors and not on any statements or representations of the Company or any of its agents and understands that each such Investor (and not the Company) shall be responsible for such Investor’s own tax liability that may arise as a result of this investment or the transactions contemplated by this Agreement.

**3.11 Investor Counsel.** Such Investor acknowledges that such Investor has had the opportunity to review this Agreement, the Exhibits and the Schedules attached hereto and the transactions contemplated by this Agreement with such Investor’s own legal counsel. Except for the representations and warranties set forth herein, each such Investor is relying solely on such Investor’s legal counsel and not on any statements or representations of the Company or any of the Company’s agents, including [Law Firm], for legal advice with respect to this investment or the transactions contemplated by this Agreement.

**4. CONDITIONS OF INVESTORS' OBLIGATIONS AT CLOSING.** The obligations of each Investor under subsection 1.1(b) of this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions, and the obligations of each Investor purchasing shares at an Additional Closing are subject to the fulfillment on or before such Additional Closing of the conditions set forth in Sections 4.1, 4.2, 4.3 and 4.17, the waiver of which shall not be effective against any Investor who does not consent thereto:

**4.1 Representations and Warranties.** The representations and warranties of the Company contained in Section 2 shall be true on and as of the Closing or Additional Closing, as applicable, with the same effect as though such representations and warranties had been made on and as of the date of such Closing or Additional Closing, as applicable.

**4.2 Performance.** The Company shall have performed and complied with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing or Additional Closing, as applicable.

**4.3 Compliance Certificate.** The Chief Executive Officer of the Company shall deliver to each Investor at the Closing or Additional Closing, as applicable, a certificate stating that the conditions specified in Sections 4.1 and 4.2 have been fulfilled.

**4.4 Consents and Waivers.** The Company shall have obtained any and all consents (including all governmental or regulatory consents, approvals, or authorizations required in connection with the valid execution and delivery of the Transaction Agreements), permits, and waivers necessary or appropriate for consummation of the transactions contemplated by the Transaction Agreements, and the same shall be effective as of the date of the Closing.

**4.5 Securities Exemptions.** The offer and sale of the Securities to each Investor pursuant to this Agreement shall be exempt from the registration requirements of the Securities Act and the registration and/or qualification requirements of all other applicable state securities laws.

**4.6 Qualifications.** All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be duly obtained and effective as of the Closing.

**4.7 Proceedings and Documents.** All corporate and other proceedings in connection with the transactions contemplated at the Closing and all documents incident thereto shall be reasonably satisfactory in form and substance to counsel for each Investor, and they shall have received all such counterpart original and certified or other copies of such documents as they may reasonably request.

**4.8 Proprietary Information Agreements.** Each employee and officer of the Company shall have entered into a Proprietary Information and Inventions Agreement in the form previously provided to counsel for each Investor.

**4.9 Board of Directors.** The Company shall have taken all necessary corporate action such that immediately following the Closing, the directors of the Company shall be \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_.

**4.10 Investors' Rights Agreement.** The Company, each Investor and each Founder (as defined in the Investors' Rights Agreement) shall have entered into the Investors' Rights Agreement in the form attached as Exhibit C.

**4.11 Co-Sale and First Refusal Agreement.** The Company, the Founders and the Investors shall each have entered into the Co-Sale and First Refusal Agreement in the form attached hereto as Exhibit D.

**4.12 Voting Agreement.** The Company, the Founders and the Investors shall have entered into the Voting Agreement in the Form attached as Exhibit E.

**4.13 Board and Stockholder Resolutions.** The Board of Directors and stockholders of the Company shall have adopted resolutions authorizing and approving the Restated Certificate and all matters in connection with the Transaction Agreements and the transactions contemplated therein, including the election of a Board of Directors, effective as of the Closing, consisting of the persons designated pursuant to Section 2 of the Voting Agreement, certified by the Secretary of the Company as of the date of the Closing.

**4.14 Amendment of Stock Option Plan.** The Company shall have amended its Stock Option Plan to reserve for issuance up to 35,000,000 shares of Common Stock and the stockholders of the Company shall have approved such amendment.

**4.15 Consent of Stockholders.** A majority in interest of the stockholders of the Company that do not have an interest in the transactions contemplated by the Transaction Agreements shall have consented to the issuance of the Series B Preferred Stock hereunder and the other transactions contemplated by the Transaction Agreements.

**4.16 Opinion of Company Counsel.** Each Investor shall have received from [Law Firm] counsel for the Company, an opinion, dated as of the Closing, in the form attached hereto as Exhibit G.

**4.17 Secretary's Certificate.** The Company shall have delivered to the Investors a certificate of the Company executed by the Company's secretary, dated as of the Closing or the Additional Closing, as applicable, certifying to the truth and correctness of the Restated Certificate, the Bylaws and the Board of Director and stockholder resolutions adopted in connection with the transactions contemplated by this Agreement.

**5. CONDITIONS OF THE COMPANY'S OBLIGATIONS AT CLOSING.** The obligations of the Company to each Investor under this Agreement are subject to the fulfillment on or before the Closing of each of the following conditions by that Investor:

**5.1 Representations and Warranties.** The representations and warranties of the Investor contained in Section 3 shall be true on and as of the Closing with the same effect as though such representations and warranties had been made on and as of the Closing.

**5.2 Payment of Purchase Price.** The Investor shall have delivered the purchase price specified in Section 1.2.

**5.3 Qualifications.** All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be duly obtained and effective as of the Closing.

**5.4 Investors' Rights Agreement.** The Company and each Investor shall have entered into the Investors' Rights Agreement in the form attached as Exhibit C.

**5.5 Co-Sale and First Refusal Agreement.** The Company, the Founders and the Investors shall each have entered into the Co-Sale and First Refusal Agreement in the form attached hereto as Exhibit D.

**5.6 Voting Agreement.** The Company, the Founders and the Investors shall have entered into the Voting Agreement in the Form attached as Exhibit E.

## **6. MISCELLANEOUS**

### **6.1 Indemnification**

(a) In addition to all rights and remedies available to the Investors at law or in equity, the Company shall indemnify each Investor and its respective affiliates, stockholders, officers, directors, partners, employees, agents, representatives, heirs, successors, and permitted assigns (each an "**Indemnified Party**," and collectively, the "**Indemnified Parties**") and shall save and hold each of them harmless against, and pay on behalf of or reimburse such party as and when incurred for, any loss, liability, demand, claim, action, cause of action, cost, damage, deficiency, tax, penalty, fine, or expense, whether or not arising out of any claims by or on behalf of any third party, including interest, penalties, reasonable attorneys' fees and expenses, and all reasonable amounts paid in investigation, defense, or settlement of any of the foregoing (collectively, "**Losses**") which any such party may suffer, sustain, or become subject to, as a result of, in connection with, relating or incidental to, or by virtue of:

(i) Any misrepresentation or breach of a representation or warranty on the part of the Company under Section 2; and/or

(ii) Any nonfulfillment or breach of any covenant or agreement on the part of the Company under this Agreement or under the Transaction Agreements.

(b) Notwithstanding the foregoing, upon judicial determination, which is final and no longer appealable, that the act or omission giving rise to the indemnification herein above provided resulted primarily out of or was based primarily upon the Indemnified Party's gross negligence, fraud, or willful misconduct (unless such action was based upon the Indemnified Party's reliance in good faith upon any of the representations, warranties, covenants, or promises made by the Company herein) by the Indemnified Party, the Company shall not be responsible for any Losses sought to be indemnified in connection therewith, and the Company shall be entitled to recover from the Indemnified Party all amounts previously paid in full or partial

satisfaction of such indemnity, together with all costs and expenses of the Company reasonably incurred in effecting such recovery, if any.

**6.2 Survival.** The warranties, representations and covenants of the Company and Investors contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement and the Closing and shall in no way be affected by any investigation of the subject matter thereof made by or on behalf of the Investors or the Company.

**6.3 Successors and Assigns.** Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties (including transferees of any Securities). Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto or their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

**6.4 Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Delaware, without regard to conflicts of law principles.

**6.5 Titles and Subtitles.** The titles and subtitles used in this Agreement are used for convenience only and do not constitute a part of this Agreement.

**6.6 Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via facsimile (with confirmation of receipt) to the parties at the address for such party set forth beneath such party's name on Schedule A hereto (or at such other address for a party as shall be specified by like notice) and, in the case of the Company:

KJC, Inc.

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Austin, Texas 78746

Fax:

Attn: Chief Executive Officer

with a copy to

[Law Firm]

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Austin, Texas 78701

Fax:

Attn:

Notices provided in accordance with this Section 6.6 shall be deemed delivered upon personal delivery, on three (3) business days after deposit in the mail or upon actual receipt by facsimile if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if the facsimile is not received during the recipient's normal business hours. All notices by facsimile shall be confirmed promptly after transmission in writing by



certified mail or personal delivery. Any party may change any address to which notice is to be given to it by giving notice as provided above of such change of address.

**6.7 Finder's Fee.** Each party represents that it neither is nor will be obligated for any finders' fee or commission in connection with this transaction. Each Investor agrees to indemnify and to hold harmless the Company from any liability for any commission or compensation in the nature of a finders' fee (and the costs and expenses of defending against such liability or asserted liability) for which such Investor or any of its officers, partners, employees or representatives is responsible. The Company agrees to indemnify and hold harmless each Investor from any liability for any commission or compensation in the nature of a finders' fee (and the costs and expenses of defending against such liability or asserted liability) for which the Company or any of its officers, employees or representatives is responsible.

**6.8 Expenses.** Irrespective of whether the Closing is effected, the Company shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement. If the Closing is effected, the Company shall, at the Closing, reimburse the reasonable fees and expenses of [LAW FIRM], special counsel to Edens Ventures, L.P. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, any other Transaction Agreement or the Restated Certificate, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

**6.9 Amendments and Waivers.** Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Requisite Holders (as defined in the Restated Certificate), *provided* that no amendment or modification shall be effective if it would adversely affect the rights of any Investor or group of Investors in a manner different than the other Investors without the written consent of such Investor or the holders of at least two-thirds of the Series B Preferred Stock held by such group. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding (including securities into which such securities are convertible), each future holder of all such securities, and the Company.

**6.10 Severability.** In the event one or more provisions of this Agreement should, for any reason be held to be invalid, illegal or unenforceable, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

**6.11 Aggregation of Stock.** All shares of the Series B Preferred Stock or Common Stock issued upon conversion thereof or upon exercise of a Warrant held or acquired by affiliated entities or persons shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

**6.12 Entire Agreement.** This Agreement (including the Exhibits and Schedules hereto and the documents referred to herein) constitute the full and entire understanding and agreement among the parties with regard to the subject matter hereof. No party shall be liable or

bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein or therein.

**6.13 Waiver of Conflicts.** Each party to this Agreement acknowledges that [Law Firm], counsel for the Company, has in the past and may continue to perform legal services for certain of the Investors in matters unrelated to the transactions described in this Agreement, including the representation of such Investors in venture capital financings and other matters. Accordingly, each party to this Agreement hereby (i) acknowledges that they have had an opportunity to ask for information relevant to this disclosure; (ii) acknowledges that [Law Firm] represented the Company in its issuance of the Series B Preferred Stock; and (iii) gives its informed consent to the representation by [Law Firm] of certain of the Investors in such unrelated matters and the representation by [Law Firm] of the Company in connection with this Agreement and the transactions contemplated hereby.

**6.14 Exculpation Among Investors.** Each Investor acknowledges that it is not relying upon any other Investor, or any officer, director, employee, agent, partner, or affiliate of any such other Investor, in making its investment or decision to invest in the Company or in monitoring such investment. Each Investor agrees that no Investor nor any controlling person, officer, director, stockholder, partner, agent, or employee of any Investor shall be liable for any action heretofore or hereafter taken or omitted to be taken by any of them relating to or in connection with the Company or the Securities, or both. Without limiting the foregoing, no Investor (nor any of its affiliates, officers, directors, stockholders, partners, agents, or employees) or other holder of any Securities shall have any obligation, liability, or responsibility whatsoever for the accuracy, completeness, or fairness of any or all information about the Company or its respective properties, business or financial and other affairs, acquired by such Investor or holder from the Company or the officers, directors, employees, agents, representatives, counsel, or auditors of the Company, and in turn provided to another Investor or holder, nor shall any such Investor (or such other person) have any obligation or responsibility whatsoever to provide any such information to any other Investor (or such other person) or holder or to continue to provide any such information if any information is provided.

**6.15 Rights of Investors.** Each Investor shall have the absolute right to exercise or refrain from exercising any right or rights that such Investor may have by reason of the Transaction Agreements, the Restated Certificate, the Bylaws, or at law or in equity, including without limitation the right to consent to the waiver of any obligation of the Company and to enter into an agreement with the Company for the purpose of modifying the Transaction Agreements, and such Investor shall not incur any liability to any other Investor or holder of Securities with respect to exercising or refraining from exercising any such right or rights.

**6.16 Exchange of Certificates.** Upon surrender by any holder to the Company of any certificate or certificates evidencing any securities, the Company at its expense will issue in exchange therefor, and deliver to such holder new certificates in such denomination or denominations as may be requested by such holder. Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of any security issued by it and in case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to the Company of any such mutilation, upon surrender and cancellation

of such security, the Company at its expense will issue and deliver to any such holder a new security of like tenor, in lieu of such lost, stolen, destroyed or mutilated certificate.

**6.17 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which, when taken together, shall constitute one and the same instrument.

[Signature Pages to Series B Preferred Stock Purchase Agreement Follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**COMPANY:**

**KJC, INC.**

By: \_\_\_\_\_  
Clarence J. Gabriel, Jr.  
Chief Executive Officer

**INVESTORS:**

**EDENS VENTURES, L.P.**

By: \_\_\_\_\_,  
its General Partner

**S. WHITWORTH VENTURES, L.P.>**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**K. ARCHER VENTURES, L.P.**

By: \_\_\_\_\_  
President

**SCHEDULE A**

**SCHEDULE OF INVESTORS**

<b><u>Investors:</u></b>	<b><u>Number of Shares</u></b>	<b><u>Warrant Shares</u></b>	<b><u>Total Amount Paid</u></b>
Edens Ventures, L.P.			
S. Whitworth Ventures, L.P.			
K. Archer Ventures, L.P.			
Total			\$25,000,000

**SCHEDULE B**

**DISCLOSURE SCHEDULE**

**EXHIBIT A**

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

**FORM OF WARRANT**



**EXHIBIT C**

**AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT**

**EXHIBIT D**

**AMENDED AND RESTATED CO-SALE AND FIRST REFUSAL AGREEMENT**

**EXHIBIT E**

**AMENDED AND RESTATED VOTING AGREEMENT**

**LIST OF STOCKHOLDERS**

**EXHIBIT G**

**OPINION OF COUNSEL FOR THE COMPANY**