

ALIPHCOM
COMMON STOCK PURCHASE AGREEMENT
June __, 2012

ALIPHCOM

COMMON STOCK PURCHASE AGREEMENT

THIS COMMON STOCK PURCHASE AGREEMENT (the "*Agreement*") is made and entered into as of June __, 2012 by and among ALIPHCOM, a California corporation (the "*Company*"), and ~~each of those persons and entities, severally and not jointly~~ the entity, whose names ~~are~~ is set forth on the Schedule of Purchasers attached hereto as **Exhibit A** (which ~~persons and entities are~~ entity is hereinafter ~~collectively~~ referred to as "*Purchasers*" and each individually as a "*Purchaser*").

RECITALS

WHEREAS, the Company has authorized the sale and issuance of an aggregate of 1,260,233 shares of its Common Stock (the "*Shares*") pursuant to this Agreement; and

WHEREAS, Purchasers desires to purchase, and the Company desires to issue and sell, the Shares on the terms and conditions set forth herein (the "*Financing*").

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, representations, warranties, and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. AGREEMENT TO SELL AND PURCHASE.

1.1 Authorization of Shares. The Company has authorized the sale and issuance to Purchasers of the Shares. The Shares have the rights, preferences, privileges and restrictions set forth in the Amended and Restated Articles of Incorporation of the Company, dated December 5, 2011, as the same were amended on May 25, 2012, copies of which, including the amendment thereof, are in the form attached hereto as **Exhibit B** (the "*Restated Articles*").

1.2 Sale and Purchase of the Shares. Subject to the terms and conditions hereof, at the Closing (as hereinafter defined), the Company shall issue and sell to ~~each~~ Purchaser, ~~severally and not jointly, and each~~ and Purchaser agrees to purchase from the Company, ~~severally and not jointly,~~ the number of Shares set forth opposite ~~such~~ Purchaser's name on **Exhibit A**, at a purchase price of \$3.96752 per share.

2. CLOSING, DELIVERY AND PAYMENT.

2.1 Closing. The closing of the sale and purchase of the Shares under this Agreement (the "*Closing*") shall take place at 1:00 [REDACTED] on or before June __, 2012, at the offices of Cooley LLP, 101 California Street, 5th Floor, San Francisco, CA 94111-5800 or at such other

time or place as the Company and ~~Purchasers of a majority of the Shares~~ Purchaser may mutually agree (such date is hereinafter referred to as the “*Closing Date*”).

2.2 Delivery. At the Closing, subject to the terms and conditions hereof, the Company will deliver to ~~each~~ Purchaser a certificate representing the number of Shares to be purchased at such Closing by ~~such~~ Purchaser, against payment of the purchase price therefor by check, wire transfer made payable to the order of the Company, cancellation or conversion of indebtedness or any combination of the foregoing. In the event that payment by ~~a~~ Purchaser is made, in whole or in part, by cancellation or conversion of indebtedness, then ~~such~~ Purchaser shall surrender to the Company for cancellation or conversion at such Closing any evidence of such indebtedness or shall execute an instrument of cancellation or conversion in form and substance acceptable to the Company.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company hereby represents and warrants to ~~each~~ Purchaser as of the date of this Agreement as set forth below.

3.1 Title to Shares. The Company has valid marketable title to the Shares and holds the Shares beneficially and of record, free and clear of any pledge, lien, security interest, suit, proceeding, voting trust, proxy, restriction, claim, equitable interest or other encumbrance of any kind or nature whatsoever (collectively, “Encumbrances”) other than the restrictions set forth in the Company’s bylaws and Restated ~~Charter~~ Articles (the “Transfer Restrictions”). Upon the sale and transfer of the Shares, and payment therefor, in accordance with the provisions of this Agreement, the Purchaser will acquire valid marketable title to the Shares, free and clear of any Encumbrances other than pursuant to the Transfer Restrictions, the Fourth Amended and Restated Voting Agreement, dated June 16, 2011, the Sixth Amended and restated Investor Rights Agreement, dated June 16, 2011 and the Third Amended and Restated Right of First Refusal Agreement, dated June 16, 2011, each as amended from time to time.

3.2 Authority. The Company has full legal right, power and authority to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby, including the sale and issuance of the Shares, and this Agreement constitutes its valid and legally binding obligation, enforceable in accordance with its terms. The Company is not obligated to sell or otherwise transfer the Shares to any other person or entity other than pursuant to the Transfer Restrictions. The Company has been duly organized and is a validly existing corporation in good standing under the laws of the State of California and all corporate actions necessary to authorize the transactions contemplated by this Agreement have been duly taken. The officer(s) executing and delivering this Agreement on behalf of the Company are duly authorized to do so.

3.3 Consent. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any foreign, state or local governmental authority or other person on the part of the Company is required in connection with the consummation of the transactions contemplated by this Agreement, except as provided for the

Transfer Restrictions (all of which have been duly waived or properly complied with to the extent applicable to the purchases contemplated hereby).

3.4 No Conflicts. Neither the execution and delivery of this Agreement by the Company, nor the consummation by the Company of the transactions contemplated hereby, will violate, conflict with, result in the breach of, constitute a default under, be prohibited by, require any additional approval under, accelerate the performance provided by, or give any person a right to terminate or receive any payment or other compensation under, any (a) terms, conditions or provisions of the Company's governing documents, (b) any term or provision of any material mortgage, indebtedness, indenture, contract, agreement, instrument, judgment or decree to which it is a party or by which it is bound, or (c) material order, statute, rule or regulation applicable to the Company, other than, in the case of clause (b) and (c), any such violation, conflict, breach, default, prohibition, approval or acceleration that would not reasonably be expected to prevent or delay the consummation of the transactions contemplated by this Agreement.

3.5 No General Solicitation. At no time has the Company presented the Purchaser or any other party with or solicited the Purchaser or any other party through any publicly issued or circulated newspaper, mail, radio, television, internet or other form of general advertisement or solicitation in connection with the sale of the Shares.

3.6 No Broker-Dealer. The Company has not effected this sale of the Shares by or through a broker-dealer in any public offering.

3.7 Purchase Price. The Company acknowledges that the Purchase Price represents a negotiated price and may not reflect the fair market value of the Shares.

3.8 Litigation. There is no action, suit, proceeding or investigation pending or, to the Company's knowledge, currently threatened against the Company that questions the validity of this Agreement or the right of the Company to enter into this Agreement, or to consummate the transactions contemplated hereby or thereby.

4. REPRESENTATIONS AND WARRANTIES OF PURCHASERS.

~~Each~~ Purchaser hereby represents and warrants to the Company, ~~severally and not jointly,~~ as follows (*provided that* such representations and warranties do not lessen or obviate the representations and warranties of the Company set forth in this Agreement):

4.1 Requisite Power and Authority. Purchaser has all necessary power and authority to execute and deliver this Agreement and to carry out ~~their~~its provisions. All action on Purchaser's part required for the lawful execution and delivery of this Agreement has been taken. Upon ~~their~~its execution and delivery, this Agreement will be ~~the~~ valid and binding obligations of Purchaser, enforceable in accordance with ~~the~~ terms ~~hereof~~, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, ~~and~~ (ii) as limited by general principles of equity that restrict the

availability of equitable remedies, ~~and (iii) to the extent that the enforceability of the indemnification provisions of the Sixth Amended and Restated Investor Rights Agreement, dated as of June 16, 2011 (as amended from time to time, the “Investor Rights Agreement”) may be limited by applicable laws.~~

4.2 Investment Representations. Purchaser understands that the Shares have not been registered under the Securities Act of 1933, as amended (the “*Securities Act*”). Purchaser also understands that the Shares are being offered and sold pursuant to an exemption from registration contained in the Securities Act based in part upon Purchaser’s representations contained in the Agreement. Purchaser hereby represents and warrants as follows:

(a) Purchaser Bears Economic Risk. Purchaser has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to the Company so that it is capable of evaluating the merits and risks of its investment in the Company and has the capacity to protect its own interests. Purchaser must bear the economic risk of this investment indefinitely unless the Shares are registered pursuant to the Securities Act, or an exemption from registration is available. Purchaser understands that the Company has no present intention of registering the Shares or any shares of its Common Stock. Purchaser also understands that there is no assurance that any exemption from registration under the Securities Act will be available and that, even if available, such exemption may not allow Purchaser to transfer all or any portion of the Shares under the circumstances, in the amounts or at the times Purchaser might propose.

(b) Acquisition for Own Account. Purchaser is acquiring the Shares for Purchaser’s own account for investment only, and not with a view towards their distribution.

(c) Purchaser Can Protect Its Interest. Purchaser represents that by reason of its, or of its management’s, business or financial experience, Purchaser has the capacity to protect its own interests in connection with the transactions contemplated in this Agreement. Further, Purchaser is aware of no publication of any advertisement in connection with the transactions contemplated in the Agreement.

(d) Accredited Investor. Purchaser represents that it is an accredited investor within the meaning of Regulation D under the Securities Act.

(e) Company Information. Purchaser has had an opportunity to discuss the Company’s business, management and financial affairs with directors, officers and management of the Company and has had the opportunity to review the Company’s operations and facilities. Purchaser has also had the opportunity to ask questions of and receive answers from, the Company and its management regarding the terms and conditions of this investment.

(f) Rule 144. Purchaser acknowledges and agrees that the Shares are “restricted securities” as defined in Rule 144 promulgated under the Securities Act as in effect from time to time and must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Purchaser has been advised or is aware of the provisions of Rule 144, which permits limited resale of shares purchased in a

private placement subject to the satisfaction of certain conditions, including, among other things: the availability of certain current public information about the Company, the resale occurring following the required holding period under Rule 144 and the number of shares being sold during any three-month period not exceeding specified limitations.

(g) Residence. If Purchaser is an individual, then Purchaser resides in the state or province identified in the address of Purchaser set forth on **Exhibit A**; if Purchaser is a partnership, corporation, limited liability company or other entity, then the office or offices of Purchaser in which its investment decision was made is located at the address or addresses of Purchaser set forth on **Exhibit A**.

(h) Foreign Investors. If Purchaser is not a United States person (as defined by Section 7701(a)(30) of the Code), Purchaser 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 Shares or any use of this Agreement, including (i) the legal requirements within its jurisdiction for the purchase of the Shares, (ii) any foreign exchange restrictions applicable to such purchase, (iii) any government 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 Shares. The Company's offer and sale and Purchaser's subscription and payment for and continued beneficial ownership of the Shares will not violate any applicable securities or other laws of Purchaser's jurisdiction.

5. CONDITIONS TO CLOSING.

5.1 Conditions to Purchasers' Obligations at the Closing. Purchasers' obligations to purchase the Shares at the Closing are subject to the satisfaction, at or prior to the Closing Date, of the following conditions:

(a) Representations and Warranties True; Performance of Obligations. The representations and warranties made by the Company in Section 3 hereof shall be true and correct in all material respects as of the Closing Date with the same force and effect as if they had been made as of the Closing Date, and the Company shall have performed all obligations and conditions herein required to be performed or observed by it on or prior to the Closing.

(b) Legal Investment. On the Closing Date, the sale and issuance of the Shares shall be legally permitted by all laws and regulations to which Purchasers and the Company are subject.

(c) Consents, Permits and Waivers. The Company shall have obtained any and all consents, permits and waivers necessary or appropriate for consummation of the transactions contemplated by the Agreement (including any filing required to comply with the Hart Scott Rodino Antitrust Improvements Act of 1976, and except for such as may be properly obtained subsequent to the Closing).

(d) **Secretary's Certificate.** Purchasers shall have received from the Company's Secretary, a certificate having attached thereto (i) the Restated Articles as in effect at the time of the Closing, (ii) the Company's Bylaws as in effect at the time of the Closing, and (iii) resolutions approved by the Board of Directors authorizing the transactions contemplated hereby.

(e) **Blue Sky.** The Company shall have obtained all necessary "blue sky" permits and qualifications required by any state for the offer and sale of the Shares, or shall have the availability of exemptions therefrom.

5.2 Conditions to Obligations of the Company. The Company's obligation to issue and sell the Shares at the Closing is subject to the satisfaction, on or prior to the Closing, of the following conditions:

(a) **Representations and Warranties True.** The representations and warranties in Section 4 made by ~~those Purchasers acquiring Shares hereof~~ Purchaser shall be true and correct in all material respects at the date of the Closing, with the same force and effect as if they had been made on and as of said date.

(b) **Performance of Obligations.** ~~Such Purchasers~~ Purchaser shall have performed and complied with all agreements and conditions herein required to be performed or complied with by ~~such Purchasers~~ Purchaser on or before the Closing.

(c) **Consents, Permits and Waivers.** The Company shall have obtained any and all consents, permits and waivers necessary or appropriate for consummation of the transactions contemplated by the Agreement (including any filing required to comply with the Hart Scott Rodino Antitrust Improvements Act of 1976, and except for such as may be properly obtained subsequent to the Closing).

6. MISCELLANEOUS.

6.1 Governing Law. This Agreement shall be governed by and construed under the laws of the State of California in all respects as such laws are applied to agreements among California residents entered into and performed entirely within California. The parties agree that any action brought by either party under or in relation to this Agreement, including without limitation to interpret or enforce any provision of this Agreement, shall be brought in, and each party agrees to and does hereby submit to the jurisdiction and venue of, any state or federal court located in the County of San Francisco, California.

6.2 Survival. The representations, warranties, covenants and agreements made herein shall survive the closing of the transactions contemplated hereby. All statements as to factual matters contained in any certificate or other instrument delivered by or on behalf of the Company pursuant hereto in connection with the transactions contemplated hereby shall be deemed to be representations and warranties by the Company hereunder solely as of the date of such certificate or instrument. The representations, warranties, covenants and obligations of the Company, and the rights and remedies that may be exercised by ~~the Purchasers~~ Purchaser, shall not be limited or otherwise affected by or as a result of any information furnished to, or any

investigation made by or knowledge of, ~~any of the Purchasers~~ Purchaser or any of ~~their~~ its representatives.

6.3 Successors and Assigns. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon the parties hereto and their respective successors, assigns, heirs, executors and administrators and shall inure to the benefit of and be enforceable by each person who shall be a holder of the Shares from time to time; *provided, however,* that prior to the receipt by the Company of adequate written notice of the transfer of any Shares specifying the full name and address of the transferee, the Company may deem and treat the person listed as the holder of such Shares in its records as the absolute owner and holder of such Shares for all purposes.

6.4 Entire Agreement. This Agreement, the exhibits and schedules hereto and the other documents delivered pursuant hereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and no party shall be liable or bound to any other in any manner by any oral or written representations, warranties, covenants and agreements except as specifically set forth herein and therein. Each party expressly represents and warrants that it is not relying on any oral or written representations, warranties, covenants or agreements outside of the Agreement .

6.5 Severability. In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

6.6 Amendment and Waiver.

(a) This Agreement may be amended or modified only upon the written consent of the Company and ~~the Purchasers~~ Purchaser.

(b) The obligations of the Company and the rights of ~~the Purchasers~~ Purchaser under this Agreement may be waived only upon the written consent of the Company and ~~the Purchasers~~ Purchaser.

6.7 Delays or Omissions. It is agreed that no delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by another party under this Agreement, or the Restated Articles, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on any party's part of any breach, default or noncompliance under this Agreement, or under the Restated Articles, or any waiver on such party's part of any provisions or conditions of the Agreement, or the Restated Articles, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, the Restated Articles, by law, or otherwise afforded to any party, shall be cumulative and not alternative.

6.8 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail, telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the Company at the address as set forth on the signature page hereof and to Purchaser at the address set forth on **Exhibit A** attached hereto or at such other address or electronic mail address as the Company or Purchaser may designate by ten (10) days advance written notice to the other parties hereto.

6.9 Expenses. Each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of the Agreement.

6.10 Attorneys' Fees. In the event that any suit or action is instituted under or in relation to this Agreement, including without limitation to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all reasonable fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all reasonable fees, costs and expenses of appeals.

6.11 Titles and Subtitles. The titles of the sections and subsections of the Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

6.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

6.13 Broker's Fees. Each party hereto represents and warrants that no agent, broker, investment banker, person or firm acting on behalf of or under the authority of such party hereto is or will be entitled to any broker's or finder's fee or any other commission directly or indirectly in connection with the transactions contemplated herein. Each party hereto further agrees to indemnify each other party for any claims, losses or expenses incurred by such other party as a result of the representation and warranty in this Section 6.13 being untrue.

~~**6.14—Exculpation Among Purchasers.** Each Purchaser acknowledges that it is not relying upon any person, firm, or corporation, other than the Company and its officers and directors, in making its investment or decision to invest in the Company. Each Purchaser agrees that no Purchaser nor the respective controlling persons, officers, directors, partners, agents, or employees of any Purchaser shall be liable to any other Purchaser for any action heretofore or hereafter taken or omitted to be taken by any of them in connection with the Shares.~~

6.14 ~~6.15~~ **Pronouns.** All pronouns contained herein, and any variations thereof, shall be deemed to refer to the masculine, feminine or neutral, singular or plural, as to the identity of the parties hereto may require.

6.15 ~~6.16~~ **California Corporate Securities Law.** THE SALE OF THE SECURITIES THAT ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF SUCH SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO SUCH QUALIFICATION OR IN THE ABSENCE OF AN EXEMPTION FROM SUCH QUALIFICATION IS UNLAWFUL. PRIOR TO ACCEPTANCE OF SUCH CONSIDERATION BY THE COMPANY, THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON SUCH QUALIFICATION BEING OBTAINED OR AN EXEMPTION FROM SUCH QUALIFICATION BEING AVAILABLE.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed the **COMMON STOCK PURCHASE AGREEMENT** as of the date set forth in the first paragraph hereof.

COMPANY:

ALIPHCOM, a California Corporation

Signature: _____

Print Name: _____

Title: _____

Address: 99 Rhode Island Street
3rd Floor
San Francisco, CA 94103

SIGNATURE PAGE TO STOCK PURCHASE AGREEMENT

IN WITNESS WHEREOF, the parties hereto have executed the **COMMON STOCK PURCHASE AGREEMENT** as of the date set forth in the first paragraph hereof.

PURCHASERS:

MORT, INC.

By: _____

Name:

Title:

SIGNATURE PAGE TO STOCK PURCHASE AGREEMENT

LIST OF EXHIBITS

Schedule of Purchasers

Exhibit A

Amended and Restated Articles of Incorporation

Exhibit B

EXHIBIT A
SCHEDULE OF PURCHASERS

JUNE __, 2012

<u>NAME AND ADDRESS</u>	<u>COMMON STOCK</u>	<u>AGGREGATE PURCHASE PRICE</u>
Mort, Inc. 6100 Red Hook Quarter, B-3 St. Thomas, USVI 00802	1,260,233	\$4,999,999.64
TOTAL:	<u>1,260,233</u>	<u>\$4,999,999.64</u>

EXHIBIT B

AMENDED AND RESTATED ARTICLES OF INCORPORATION

Document comparison by Workshare Compare on Thursday, June 21, 2012
1:32:47 PM

Input:	
Document 1 ID	PowerDocs://SF/1272863/1
Description	SF-#1272863-v1-Aliph_-_Common_Stock_Purchase_Agreement_(Mort)
Document 2 ID	PowerDocs://SF/1272863/2
Description	SF-#1272863-v2-Aliph_-_Common_Stock_Purchase_Agreement_(Mort)
Rendering set	Cooley

Legend:	
Insertion	
Deletion	
Moved from	
<u>Moved to</u>	
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Padding cell	

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Moved to	2
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