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LLC AGREEMENT QUESTIONNAIRE

(To assist in drafting the LLC Agreement)

Company Name: _____

Working through this questionnaire will help you understand the choices and options available to you in entering into a Member Control Agreement amongst the members of your limited liability company. If you have any questions while you are working through this questionnaire or if you need help in considering some of the options, please call our office at 206.236.1500.

Triggering Events

1. Triggering events are the events that would trigger an obligation to purchase and/or sell a member's membership interest under the agreement. The most common triggering event is the death of a member. Usually, upon the death of a member, the company and/or the remaining members purchase the deceased member's shares from the estate of the deceased member. Do you want to provide for such a purchase upon the death of a member?

Yes

No

2. Most commonly, after the death of a member, the purchase of the deceased member's membership interest is mandatory. In other words, the company and/or the remaining members could not decline to purchase those shares. It is also possible to make the purchase optional to the company and/or the remaining members. The disadvantage of this strategy is that the members have no assurance that their membership interest would be purchased upon their death. Would you like to make the repurchase of membership interest upon death mandatory or optional?

Mandatory

Optional

3. If a member's membership interest is purchased, the membership interest can either be purchased by the company (a redemption) or by the remaining members (a cross purchase). Usually, it is best to provide as much flexibility as possible. This usually means giving the remaining members the option to purchase the membership interest and, if the remaining members decline to exercise that option, giving the company the "option" to redeem the membership interest or "requiring" the company to redeem the membership interest. Do you want to provide for optional purchase by the remaining members followed by, if the

remaining members do not exercise their option, a mandatory or optional purchase by the company?

Yes No

4. Other triggering events include events such as disability, retirement at normal retirement age, termination of employment before normal retirement age, proposed transfer of membership interest to a third party, involuntary transfers of membership interest (such as divorce or bankruptcy) and deadlock among members. It is also possible to provide for other triggering events. Do you want to provide for redemption and/or cross-purchase in the event of disability of an employee member?

Yes No

If so, do you want the purchase to be mandatory or optional?

Mandatory Optional

5. Do you want to provide for redemption and/or cross-purchase upon retirement at normal retirement age?

Yes No

If so, do you want the purchase to be mandatory or optional?

Mandatory Optional

6. Do you want to provide for redemption and/or cross-purchase upon termination of employment before normal retirement age?

Yes No

In the event of termination of employment before normal retirement age, optional redemption is more common because the company and the remaining members cannot plan or be prepared for a sudden termination. Do you want the purchase in the event of a termination of employment before normal retirement age to be mandatory or optional?

Mandatory Optional

7. Do you want to provide for redemption and/or cross-purchase in the event of a proposed transfer of shares to a third party?

Yes No

In the event of a proposed transfer, it is customary to provide for an optional right of purchase rather than a mandatory purchase. Do you want an optional or mandatory purchase in the event of a proposed transfer to a third party?

Mandatory Optional

8. Do you want to provide for redemption and/or cross-purchase in the event of an involuntary transfer (e.g. divorce, bankruptcy, etc.)?

Yes No

If so, do you want the purchase to be mandatory or optional?

Mandatory Optional

9. Another frequently used triggering event is a redemption and/or cross-purchase in the event of a company deadlock. This would be appropriate if there are an even number of members and there is some concern that there could be a 50/50 split, which would mean that no action on behalf of the company could be accomplished. In this event, one group would buy the other group out or the company would be split in two. This is never an entirely satisfactory situation since one party or group necessarily has to leave and another group gets to remain. Do you want to provide for redemption and/or cross-purchase in the event of a company deadlock?

Yes No

If yes, we will have to discuss the possible consequences for redemption and/or cross-purchase.

10. Do you want to provide for redemption and/or cross-purchase for any other events? If so, list here:

Purchase Price

11. There are a variety of mechanisms that can be used to establish the purchase price. Perhaps most common is an agreement among the members to set a price periodically (e.g. on an annual basis). If you elect this method, you need to have a backup method. It is very

common for members to agree to set a price annually but then to neglect to do so. A common backup method is to agree for valuation by appraisal. Other possible methods to set purchase price are formula prices (e.g. twice book value, three times earnings, etc.) or a fixed price. If the redemption and/or cross-purchase is on account of an offer by third party, it is common to set the purchase price at the lower of the offer price or the agreed price. Please indicate your primary price determination mechanism and backup price determination mechanism:

Primary Method:

_____ Annual Valuation	_____ Fixed Price
_____ Appraisal	_____ Other
_____ Formula	

Backup Valuation Method:

_____ Annual Valuation	_____ Fixed Price
_____ Appraisal	_____ Other
_____ Formula	

If you want to provide for redemption in the event of a proposed transfer to a third party, do you want the purchase price to be the lesser of the offer price or the agreed price?

Yes No Other

Payment Terms

12. Generally, amounts due under a Member Control Agreement are paid in installments, unless the amount is paid on account of a death. If life insurance is used, the insurance proceeds are usually enough to fund the purchase. Otherwise, installments are used over a period of years. Do you intend to provide for life insurance to fund the purchase in the event of death?

Yes No

13. If the purchase is triggered by something other than death, do you want to provide for purchase in installments?

Yes No Other

14. If you wish to provide for the purchase in installments, please indicate the time period and the interest rate:

Time Period: _____

Interest Rate: _____

Security and Personal Guarantees

15. Most often, a member whose membership interest is purchased will retain a security interest in the purchased shares. Other possible security would include an interest in the assets of the company and/or personal guarantees of the remaining members. Please indicate if you are interested in using any of these methods for securing the purchase price:

- _____ Pledge of Membership Interest
- _____ Security Interest in Assets
- _____ Personal Guarantees of Remaining Members

Estimated Tax Liability Distributions

16. The members of a limited liability company are obligated to include their percentage of the profits of the company as personal earnings on their federal and state income tax returns, regardless of whether the company actually distributes any of its income to the members. Often, a Member Control Agreement will include an obligation to make some minimum percentage distribution of the company's profits to the members to permit the members to pay their federal income taxes. Please indicate if you are interested in obligating the company to make these minimum distributions:

Yes No

If you are interested in obligating the company to make these minimum distributions, you need to select a uniform percentage of profits that are distributed to them members. Keeping in mind that the highest marginal federal income tax rate is 39.6%, please indicate what percentage profit distribution you would like to incorporate into the Member Control Agreement:

_____ %

This questionnaire is intended only as a guide to give you some ideas as to what is customary and what options are available. Any Member Control Agreement will be customized to fit your own individual situation and the possibilities are not limited to what is listed here. After you have completed this questionnaire or looked through it, we would like to sit down with you and come up with a definitive design for your Member Control Agreement so that it best meets your needs. Again, if you have any questions, please contact attorneys Stuart Scarff, Joseph Pew or paralegal, Anne Burgess, at stuart@scarfflaw.com joe@scarfflaw.com, or anne@scarfflaw.com and/or at (206) 236.1500.