

INTEREST TRANSFER AGREEMENT

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Executive Summary

This form is a **hybrid** buy-sell agreement and contemplates an operating company that may or may not be treated as an S corporation for tax purposes (which could be an LLC or a corporation since either could make an S election) in which the owners, who are married, are employed by the entity on a full-time basis.

The guts of the agreement is in Sec. 1.01(a), which negates any possibility of a transfer outside of the stricture of the agreement.

Section 2.01(a) provides for a **call** option right in favor of the remaining owners at death, with a very broad exception for permitted transferees (as defined in the buy-sell agreement); however, **Section 2.02(b)** requires the entity to redeem any interests not purchased pursuant to the other owners' **call** option rights. **Section 2.01** is an example of a form of "**wait and see**" clause to allow the other owners the ability to judge, at the time of death instead of at the time of signing the buy-sell agreement, whether it is better for them to exercise the **call** option rights, in

part or in full, or to let the entity **redeem** the interests. **Section 5.03** provides that the life insurance policies can be owned by the entity, the owners or by both.

Furthermore, **Section 2.02** gives a **put** option right to an owner who is a “good boy,” i.e., either **retires** (as defined in the buy-sell agreement), is **disabled** (as defined in the buy-sell agreement), is **declared incapacitated** by a court or whose employment is terminated **without cause** (as defined in the buy-sell agreement).

Conversely, **Section 2.03** gives a **call** option right to the **entity** if an owner is a “bad boy,” i.e., **voluntarily quits** but is neither retired nor disabled, is **terminated for cause** (as defined in the buy-sell agreement), goes **bankrupt, attempts to obstruct** the disability determination process and is declared **presumptively disabled**, has his interest **seized** by a **creditor, competes** with the entity or shares **confidential** entity business information with a **competitor**.

Section 2.04 contains a right of **first refusal** for transfers (as defined in the buy-sell agreement) to persons **other** than permitted transferees (as defined in the buy-sell agreement), which provides for a price that is equal to the **lower** of the value pursuant to the buy-sell agreement or the price in a **bona fide offer** (as defined in the buy-sell agreement). **Section 2.04(a)** provides a **procedure** for an owner who wants the **offered interests** (as defined in the buy-sell agreement) **appraised** instead of simply paying the price contained in a bona fide offer, and a **procedure** for selecting one business appraiser if there is **more than one electing owner** (as defined in the buy-sell agreement) as well as what happens if the **offering owner** (as defined in the buy-sell agreement) **disagrees** with the appraisal of the offered interests that the **electing owner** (as defined in the buy-sell agreement) commissioned at **his** expense.

Section 2.05 pertains to **transfers** between a **spouse owner** and his **spouse**, giving the spouse owner **prior right** to acquire any interest of his spouse. **Section 2.06** contains both **tag-along** and **drag-along** clauses, and inclusion of **both** of these clauses is a **fairly even-handed way** to protect the interests of **both** the minority owners and the majority owners.

The agreement provides for valuation that differs in calculation based upon the particular triggering event. For **death**, **Section 3.01** provides that the value of a deceased owner’s interests is the fair market value for tax purposes as finally determined, which qualifies under Code Section 2703, with a **valuation floor**

contained in **Section 3.01(a)(iii)** of the **death proceeds** of life insurance policies on the deceased owner's life that are owned by the entity or by a fellow owner for use in the buy-sell agreement buyout, as reflected on Annexes 6.03-Entity and Owner, with a two way **tax adjustment** clause if the value as finally determined for tax purposes is either **higher or lower** than that price for which the interests were transferred.

For exercises of a **right of first refusal**, **Section 3.02** provides that the value is the **offer price** (as defined in the buy-sell agreement), which is the **lower** of the **buy-sell agreement value** or the price contained in a **bona fide third party offer**, with a **mechanism** for resolving valuation disputes. For **all other events**, **Section 3.03** provides that the value as of the **effective date of transfer** (as defined in the buy-sell agreement) is that reached by a **qualified business appraiser** hired and paid for by the **purchaser**, with a **procedure** for handling valuation **disputes**, which involves hiring **only one** more business appraiser who is to be selected by the business appraisers that each party picked, with either one of the business appraisers being i to be the final business appraiser.

For purchases at **death** or pursuant to an owner **put** option right, **Section 4.01** requires purchase prices to be **paid in full** to the extent of the existence of **life insurance** proceeds, with the balance paid at the **purchaser's** election in cash or in installments of up to fifteen (15) years. For all other events **except** for a purchase of a **seized** interest, **Section 4.02** provides that the purchase price can be paid at the **purchaser's** option in cash or in installments of up to fifteen (15) years.

For the purchase of a **seized interest**, **Section 4.02(b)** provides that the purchaser can take up to **thirty** (30) years to pay it off, and the seizing seller can demand **no** security for the installment note (**Section 4.03(b)**). This is a creditor repellent provision.

Section 4.03 provides the **terms** of the **note** and for **security** for repayment of the note, which the **seller** (other than a seizing seller) is entitled to **demand**. The security terms are fairly **onerous** and contain a series of restrictions in the form of covenants that the entity must observe, as well as for audit rights and copies of tax returns for as well as financial statements.

For **certain** purchases by the **entity** alone, **Section 4.05** does two things. **First**, it permits the entity to reduce its monthly note obligation by extending the payout,

even if it takes it outside of the ten (10) year maximum time period for installment payouts, **if** continuing to pay the note at the original level would cause the entity to **default** on any obligation to any creditor or if the payment would take the entity's capital level **below** the minimum capital requirements under applicable state law for the entity to have. **Second**, if the entity has to redeem **two (2) or more** interests within a **twenty-four (24) month period** and if to do so would create an event of default to any creditor, it essentially permits the entity to reduce a note to the minimum level that would alleviate the default.

Article V contains a comprehensive list of possible S corporation provisions. **Section 5.01** provides for some representations and warranties by the entity and the owners, as well as some restriction on the entity. **Section 5.02** contains a place to put the requisite percentage vote of the Owners to revoke the S election, which must be greater than a majority. **Section 5.03** sets out a series of restricted transfers by owners.

Section 5.04 provides relative to allocations of entity income and deductions in the year of a complete transfer of interests by an owner as well as when the S election terminates. **Section 5.05** deals with the entity's accumulated adjustments account. **Section 5.06** provides two options where minimum tax dividends are desired. **Section 5.07** allows for the selection of a tax matters owner if that is desirable by your owners. **Section 5.08** allocates responsibility for income taxes. **Section 5.09** provides for the appointment of an entity officer as agent under a power of attorney to make certain decisions concerning the S election, if that provision is desirable.

Article VI contains the **miscellaneous** provisions, but **many** of these provisions are **very important**, most notably the life insurance provision (**Section 6.03**), notice provision (**Section 6.07**), arbitration (**Section 6.12**), termination of the buy-sell agreement (**Section 6.13**), and non-competition/non-disclosure/no-hire (**Section 6.23**).

The Interest Transfer Agreement can be daunting at first glance, even with this executive summary. To help you through the document, I prepared a Short Chart Guide to the Interest Transfer Agreement. It will give on one page a summary of all of the triggering events, who has the right, who is obligated, how the interest will be valued together with who is responsible for paying the appraiser(s), if applicable. The numbers on the Chart are references back to sections in the Interest Transfer Agreement.

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INTEREST TRANSFER AGREEMENT

THIS INTEREST TRANSFER AGREEMENT is made and entered into, effective as of the Effective Date, by and among:

1. [NAME OF ENTITY], a [NAME OF STATE] [TYPE OF ENTITY], represented herein by [NAME OF OFFICER], its [OFFICE HELD], duly authorized (“Entity”); and
2. [NAME OF OWNER]; and
3. [NAME OF OWNER [INSERT AS MANY NAMES AS THERE ARE OWNERS]]

(individually, together with all persons who in the future may own Interests, may be referred to herein, but without specific reference to any particular person, sometimes as “Owner”, and, collectively, as “Owners”); and

4. [NAME OF SPOUSE]; and
5. [NAME OF SPOUSE [INSERT AS MANY NAMES AS THERE ARE SPOUSES]]

(individually, the persons named in Nos. [4-5] above, together with any future spouse of an Owner or of any future Owner, without specific personal reference, individually, “Spouse;” provided, however, that as to any Owner, the reference to a “Spouse” in connection with that Owner shall refer to any and all persons, as the context may require, to whom the Owner is or ever was married; and collectively, as “Spouses”)

WITNESSETH:

WHEREAS, the Owners own or are expected to own all of the Interests in the Entity as more fully set forth on Annex **Ownership** annexed hereto;

WHEREAS, the parties believe that it is in their mutual best interests to restrict transferability of the Interests in the Entity in order to provide for continuity

and harmony in the management and policies of the Entity and to provide with respect to permitted Transfers of Interests; and

[[INSERT IF THE ENTITY, WHICH CAN BE A LIMITED LIABILITY COMPANY OR A CORPORATION, IS TAXED AS AN S CORPORATION] WHEREAS, the Entity and the Owners have elected for the Entity to be taxed as an S corporation, and the parties desire to protect that election;]

NOW, THEREFORE, in consideration of the mutual covenants, conditions, stipulations and agreements contained below, the receipt and sufficiency thereof is acknowledged, the parties hereto agree as follows:

I. GENERAL RESTRICTIONS AND CONDITIONS

1.01 General Transfers, Issuances and Breaches Prohibited.

(a) General Prohibition on Transfers; Absolute Nullity of Attempted Transfers in Contravention of the Agreement. Owners and Spouses shall not Transfer all or any part of the Interests owned by each such Owner and/or his Spouse except as provided in this Agreement. Any Transfer or attempt to Transfer Interests, or, on the part of the Entity, to issue or authorize any additional Interests, in any manner other than as provided in this Agreement, shall be considered an absolute nullity and shall not be reflected on the Entity's books and records. Except as provided herein, Owners and/or their Spouses may only make Transfers of Interests to Eligible Owners and then only pursuant to the terms and conditions of this Agreement.

(b) Entity. The Entity shall neither authorize nor issue any Interests of a particular class, or any new class of Interests, except, with respect to new shares of Interests of a particular class, with the unanimous consent of the owners of the Entity of that class (i) by resolution or (ii) via written consent in lieu of a meeting,

and with respect to new classes of Interests, pursuant to the Certificate of [INCORPORATION/ ORGANIZATION/PARTNERSHIP].

(c) No Breach. Each party to this Agreement, as well as his Representatives, successors and assigns, may only make valid Transfers of Interests to Eligible Owners, and each is prohibited from taking, or causing to be taken, any direct or indirect action that would breach this Agreement or cause the Entity to breach this Agreement.

(d) Abrogation. The parties agree that this Agreement shall expressly abrogate, supersede and revoke all prior agreements and understandings relative to the Transfer of Interests, and that the abrogation, supersession and revocation of those agreements and/or understandings shall become effective simultaneously on the Effective Date.

1.02 Certificate Legend; Other Agreements.

(a) Certificate Legend. Upon execution of this Agreement, the Owners and Spouses agree to turn over, or to utilize their best efforts to cause to be turned over, their certificates of ownership in the Entity to an authorized officer or manager of the Entity, who shall cause the following endorsement to be added to all such certificates:

The ownership interests represented by this Certificate are subject to an Interest Transfer Agreement dated _____, 20__ by and among [NAME OF ENTITY], a [STATE OF ORGANIZATION] [TYPE OF ENTITY], the owners of the Entity and others, a copy of which is on file in the registered office of the Entity. Any Transfer, assignment, sale, pledge, donation or other disposition or encumbrance of the interests represented by this certificate in violation of the aforescribed agreement is absolutely null, void and without legal effect.

These securities have not been registered under the Securities Act of 1933, as amended (the "Act"), or any state securities laws, and may

not be offered, offered for sale, sold, assigned, transferred or otherwise disposed of in the absence of an effective registration statement under the Act or any state securities laws or an applicable exemption from such requirement.

(b) Additional Agreements. All parties to this Agreement further agree to execute such additional documents, including requiring a new Spouse to execute an acknowledgment to this Agreement, as counsel to the Entity shall deem necessary or appropriate in order to effectuate this Agreement.

1.03 Definitions. Unless otherwise provided, the following terms, where capitalized, shall be defined as follows:

“Affiliate” means and includes, with respect to any person (i) any person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a person or any affiliate or relative of that person; (ii) any officer, director, manager, owner, employee or relative of that person; (iii) any entity in which the fiduciary, or any affiliate or relative of that person, is an officer, director, manager, employee or owner; (iv) any trust for the benefit of that person or any relative of that person; and (v) any estate of any relative of that person, it being the parties’ intention that the term “Affiliate” be interpreted in its broadest sense to include a person as an Affiliate.

“Agreement” means this document, together with any and all additional amendments or modifications hereto adopted pursuant to the terms herein, and all annexes and schedules hereto.

“Bona Fide Offer” means a legally binding written agreement with an Eligible Owner other than an Owner to purchase all or a portion of the Interests owned by an Owner, or all or substantially all of the assets of the Entity, which written agreement with respect to Interests must be contingent upon non-exercise of the

Options. At a minimum, such person must place in escrow as earnest money at least [STATE PERCENTAGE (%)] of the proposed purchase price to be paid for the Transferring Owner's Interests or for the asset purchase and must provide written evidence of such person's financial ability to consummate the purchase of such Interests to the satisfaction of counsel to the Entity.

"Cause" means engagement in personal conduct of such serious nature as to render the Owner's continued association with the Entity professionally detrimental to the interests of the Entity as determined by arbitration, including, by way of illustration and not exclusively, (i) any final and nonappealable federal or state conviction of an offense involving fraud or malfeasance or final and nonappealable determination of civil liability arising out of an offense involving fraud or malfeasance; (ii) final and nonappealable loss, or suspension, for a period of longer than one (1) year, of any professional license required for the Owner to actively participate in the business of the Entity; (iii) competing, directly or indirectly, with the Entity, as determined on the standard of a preponderance of the evidence in arbitration or (iv) embezzlement or misappropriation of funds of the Entity in excess of \$[INSERT AMOUNT] as determined on the standard of a preponderance of the evidence in arbitration.

"Code" means the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States Internal Revenue law.

"Death Option" has the meaning set forth in Section 2.01(a).

"Death Option Period" has the meaning set forth in Section 2.01(c).

"Deceased Owner" has the meaning set forth in Section 2.01(a).

"Disability" means a condition resulting from sickness or injury that occurs while an Owner is employed with the Entity on an active, full-time basis, which renders the Owner unable to perform the duties of the occupation that the Owner was engaged

in when the condition commenced, and which condition is continuous and uninterrupted for a period of [NUMBER OR DAYS/MONTHS IN WORDS] (CORRESPONDING NUMBER) consecutive months ([IDENTIFY WHATEVER SALARY CONTINUATION, IF ANY, THAT WILL BE PAID TO THE PRESUMPTIVELY DISABLED OWNER DURING THE DISABILITY PERIOD PRIOR TO THE BUYOUT]); provided, however, that Presumptive Disability does not immediately constitute Disability for purposes of this Agreement. Except as otherwise provided herein, Disability also shall be immediate upon a determination by the Social Security Administration that the Owner is eligible for SSI or other disability benefits. Notwithstanding any other provision in this definition to the contrary, if the Entity has purchased and maintains a policy of disability insurance on the Owner and that policy contains a different definition of disability or waiting (elimination) period before benefits commence there under, then the definition of disability and/or the waiting (elimination) period contained in the policy and the determination of disability made by the issuing insurer shall control for purposes of this Agreement. On the Effective Date, the Entity owns the policies of disability insurance of the lives of the Owners as are more fully described on Annex-**Disability Policies** to this Agreement. “Drag Along Call” has the meaning set forth in Section 2.06(c).

“Effective Date” means [DATE THAT THE AGREEMENT BECOMES EFFECTIVE].

“Effective Date of Transfer” means, with respect to any Transfer:

- (a) Death. If the Transfer occurs due to death, then the date of death.
- (b) Disability. If the Transfer occurs due to a Disability, then the [FIRST/LAST] day of the [INSERT WAITING OR ELIMINATION TIME PERIOD] month period during which the Owner was out with the illness or injury.
- (c) Mandatory Transfer. If the Transfer occurs on any Option, and the Transfer is mandatory to the Transferring Owner, then the date of exercise of the Option.

(d) Optional Transfer. If the Transfer occurs on any Option, but the Transfer is optional to the Transferring Owner, then the date of the last Option to Transfer is exercised [OR THE DATE OF THE TRIGGERING EVENT].

(e) Call. If the Transfer occurs due to exercise of the Drag Along Call, then the date specified in the call.

(f) Bona Fide Offer or Desire to Transfer. If an Owner receives a Bona Fide Offer or simply desires to Transfer his Interests, then the date of the notice of the same given to the Entity and to other Owners.

“Electing Owner” means an Owner who has exercised a Refusal Option and who sends notice of intent to have the Offered Interests appraised pursuant to Section 2.04(a)(iv).

(g) Financial Statements to Use. The Appraiser(s) will utilize internal financial statements of the Entity as of the [SPECIFY WHETHER MONTH-END OR QUARTER-END STATEMENTS ARE TO BE USED immediately preceding the Effective Date of Transfer.

“Eligible Owner” means [INSERT FAMILY DESCRIPTION IF OWNERSHIP IS BEING RESTRICTED TO FAMILY, ALTHOUGH IT COULD BE SIMPLY TO SAY “FAMILY MEMBER” SINCE THAT ALSO IS A DEFINED TERM) [IF THE ENTITY IS OR EVER COULD BE AN S CORPORATION, INCLUDE THE FOLLOWING] [any person, including a trust or entity, who is or who would be, at the time of the proposed Transfer, eligible to be and to continue to be an owner of an entity that is maintaining an election to be taxed as an “S corporation” and, further, a person to whom any Transfer of Interests could be made without causing the Entity to become an “ineligible corporation” pursuant to Section 1361(c)(2) of the Code as it then exists and states, as determined by counsel to the Entity.]

“Entity” means [NAME OF ENTITY], or its successors and assigns.

“Entity Election Event(s)” has the meaning set forth in Section 2.03.

“Entity Option” has the meaning set forth in Section 2.03.

“EOLI Notice” has the meaning set forth in Section 6.11.

“Exercising Owner” has the meaning set forth in Section 3.03(a).

“Extended Spousal Option Period” has the meaning set forth in Section 2.05(b).

“Family Member” means any of the following with respect to a particular Owner:

(a) Identification. [NAME(S) OF PARENTS] and their descendants [OR THOSE DESCENDANTS WHO ARE ACTIVE IN THE ENTITY], and any trust for the benefit of one of those individuals [AS LONG AS THE TRUSTEE OR A CO-TRUSTEE IS A FAMILY MEMBER].

(b) Spousal Trust. A trust for the benefit of an Owner’s Spouse, as long as the trust terms do not allow principal distribution of Interests to the Spouse during the term of the trust or on its termination or allow the Spouse to vote or otherwise control the Interests, and on termination of the trust, the Interests must pass to a Family Member as defined in (a) above.

“First Refusal Option” has the meaning set forth in Section 2.04(a).

“First Refusal Option Period” has the meaning set forth in Section 2.04(a).

“Follow Spousal Option” has the meaning set forth in Section 2.05(a).

“Follow Spousal Option Period” has the meaning set forth in Section 2.05(a).

“Interests” means, unless the contextual reference clearly provides otherwise, as applied to an Owner or a Spouse, (a) an Owner’s common, preferred stock or other equity interests in the Entity that are or become issued and outstanding, as well as all rights with respect to stock, debentures or bonds in the Entity including, without limitation, options, rights and warrants, as well as (b) the community property or quasi-community property rights or other claims of any Spouse in the Interests in

the Entity registered in the name of the Owner who is married to that Spouse or in the name of the Spouse.

“Living Trust” means a trust of which an individual Owner is a grantor and the initial trustee or co-trustee, over which the individual Owner has the full right of revocation, and which will function during the Owner’s life primarily for the benefit of the Owner. However, if a subsequent amendment to this trust would cause the trust to function during the Owner’s life other than primarily for the Owner’s benefit, then that action is to be treated as a Transfer to someone other than a Permitted Transferee (unless the trust after such changes otherwise would qualify as a Permitted Transferee). For all purposes of this Agreement, the Interests owned by a Living Trust shall still be considered as owned by the individual grantor of the Living Trust, and all references to the death of a Owner, or any other provision that would apply to an individual and not a trust, shall be considered as applying to individual grantor of the Living Trust. However, for purposes of making payments to an Owner (such as dividends, liquidating distributions and payments in exchange for the Interests owned by the trust) or the Owner’s estate, those payments shall be made to the Living Trust. The trustees, successor trustees, and all present and future beneficiaries of a Living Trust shall be fully bound by the provisions of this Agreement. Any notices required to be given to an Owner whose Interests have been Transferred to a Living Trust shall be mailed to the individual grantor as trustee of the Living Trust, or to any successor trustee of whom the Entity has received notice of appointment as successor trustee, together with such proof of appointment as counsel to the Entity shall require.

“Majority Owners” has the meaning set forth in Section 2.06(a).

“Married Owner” has the meaning set forth in Section 2.05(a).

“Minority Owners” has the meaning set forth in Section 2.06(a).

“Offer Price” has the meaning set forth in Section 2.04(a)(i).

“Offered Interests” has the meaning set forth in Sections 2.02(a) and 2.04(a), as the proper context may require.

“Offering Owner” has the meaning set forth in Section 2.02(a).

“Option” means, unless the contextual reference clearly requires otherwise, the Death Option, Owner Option, Entity Option, First Refusal Option, Second Refusal Option, Spousal Option, Seizure Option, Tag Along Put, Drag Along Call or Follow Spousal Option, whichever is applicable, and “Options” refers to all of the foregoing Options unless the specific contextual reference clearly otherwise provides or contemplates.

“Owner Option” has the meaning set forth in Section 2.02(a).

“Owner Option Period” has the meaning set forth in Section 2.02(a).

“Permitted Transferee” means the Entity, [A CURRENT OWNER], an Owner’s Living Trust [, OR A FAMILY MEMBER], if such transferee is an Eligible Owner, becomes a party to this Agreement and holds the Interests subject to the provisions of this Agreement by signing an Addendum in the form attached hereto as Annex-
Addendum.

[NOTE: ADD IF ENTITY IS AN S CORPORATION] In order to be a Permitted Transferee, the transferee must be an Eligible Owner, and the Transfer must not cause the total number of shareholders to exceed the number then allowed for S corporations under the Code (which is currently 100). Prior to the Transfer of any Interests to a trust, a copy of the trust instrument and all documents related hereto shall be submitted to counsel for the Entity for determination of whether the Transfer of the Interests to such trust shall cause or result in an inadvertent termination of the Entity’s S corporation status.

"Prescribed Interest Rate" means the applicable federal rate in effect during the month in which occurs a Transfer of an Interest, as prescribed by the United States Department of the Treasury pursuant to Section 1274(d) of the Code, compounded monthly; provided, however, that if at any time during the term of this Agreement, the United States Department of Treasury issues no such interest rate, then the "Prescribed Interest Rate" shall be the then composite prime interest rate offered by the three (3) largest (by capital) banks in the United States.

"Presumptive Disability" means, except as provided in this Agreement, the following events shall constitute "Presumptive Disability" for purposes of triggering an Entity Option in this Agreement: (a) an Owner's failure to physically report in person to work at any of the then existing public establishment(s) of the Entity to which that Owner was assigned in writing and/or had up until occurrence of the sickness or condition giving rise to the possible Disability spent more than one-half ($\frac{1}{2}$) of his work time for a consecutive period of [NUMBER OR DAYS/MONTHS IN WORDS (CORRESPONDING NUMBER)] business days; or (b) an Owner's failure to submit to a medical, psychiatric or psychological examination by an authorized medical representative (which may, but need not, be a licensed physician or psychologist, it could be a nurse, social worker or geriatric care giver) designated by the Entity or by any Owner within [NUMBER OR DAYS/MONTHS IN WORDS (CORRESPONDING NUMBER)] days of delivery of notice of such request to the Owner or his Spouse or Representative.

"Refusal Option" means a First Refusal Option or a Second Refusal Option, as the context may require.

"Remaining Owner(s)" has the meaning set forth in Section 2.01(a).

"Representative" means, with respect to an Owner or Spouse, all legatees, heirs, trustees, curators, conservators, executors, administrators, personal

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representatives and all persons or agents authorized by any proper court or pursuant to any valid power of attorney, of the Owner or a Spouse.

"Retirement" means an act whereby an Owner (a) has been in the active full-time employment with the Entity for a period of not less than [ENTER TERM OF YEARS] years, (b) is at least age [ENTER RETIREMENT AGE]), (c) provides written notice at least one hundred and eighty (180) days in advance of his intended date of cessation of active, full-time employment of an intention to voluntarily cease active, full-time employment with the Entity; (d) agrees in writing not to compete, directly or indirectly, with the Entity for a period of [INSERT NUMBER EXPRESSED IN WORDS] ([INSERT NUMBER]) years from the date of the Owner's Retirement in any county in which the Entity does business, and to keep all trade secrets, manufacturing processes and customer lists confidential in a form acceptable to counsel to the Entity; and (e) actually ceases active, full-time employment with the Entity.

"Second Refusal Option" has the meaning set forth in Section 2.04(b).

"Second Refusal Option Period" has the meaning set forth in Section 2.04(b).

"Seizure Option" has the meaning set forth in Section 2.03.

"Seizure Option Period" has the meaning set forth in Section 2.03.

"Spousal Election Event" has the meaning set forth in Section 2.05(a).

"Spousal Option" has the meaning set forth in Section 2.05(a).

"Spousal Option Period" has the meaning set forth in Section 2.05(a).

"Terminated Owner" has the meaning set forth in Section 2.03.

"Transfer" means (a) when used as a verb, to donate, sell, exchange, assign, redeem, transfer, pledge, hypothecate, encumber, bequeath, devise or otherwise dispose of, directly or indirectly, whether voluntary or involuntary, or whether arising from a divorce, separation, death, attachment, execution, bankruptcy,

foreclosure, judicial order, operation of law or otherwise; (b) when used as a noun, the nouns corresponding to such verbs; and (c) when used as an adjective, the adjectives corresponding to such verbs.

[IF THE ENTITY IS AN S CORPORATION, ADD THE FOLLOWING:] A “Transfer” also shall include (a) a failure to make an election that, if made, would qualify such person as an eligible S corporation shareholder as provided in Code Section 1361, and (b) any change in circumstances or any event that results in Interests being held by a person who is ineligible to be an S corporation shareholder, or (c) cause the number of Owners to be in excess of the then existing maximum number of permitted Owners, as provided in Code Section 1361 (which is currently 100).

If a corporation or other business entity is the Owner, then a Transfer of an ownership interest in such entity or any reorganization of such entity that results in the individual(s) who own the controlling interest in the entity no longer owning a controlling interest, or may result in other individuals or entities owning a direct or indirect ownership or beneficial interest in the Entity, shall be a “Transfer” under this Agreement.

If a trust is the Owner, then a change in the terms of the trust or in circumstances that result in the individual(s) who are the primary beneficiary(ies) of the trust no longer being the primary beneficiary(ies) [AND/OR THE PERSONS CURRENTLY SERVING AS TRUSTEE ARE NO LONGER SERVING AS TRUSTEE] shall be a “Transfer” under this Agreement.

The existence or creation of a Spouse’s interest in the Interests by virtue of applicable state laws shall not be a Transfer as long as the Spouse complies with and continues to comply with all the terms of and obligations under this Agreement; provided, however, if an Owner’s marriage is terminated by divorce or death, and such Owner does not succeed to any interest that the former spouse

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or deceased spouse might have in his Interests pursuant to the Spousal Option, or if a creditor of a spouse or any other party succeeds to such spouse's interest in his Interests, or if such spouse is determined to have rights beyond what this Agreement provides, then each of those events constitutes a Transfer.

"Transferring Owner" means any Owner who is Transferring Interests.

II. TRIGGERING EVENTS; RIGHTS AND OBLIGATIONS

2.01 Death of an Owner.

(a) Death Option-First Option of Remaining Owners of Same Class of Interests.

Except as to Transfers to Permitted Transferees, upon the death of an Owner ("Deceased Owner"), the remaining Owners of the same class of Interests as those of the Deceased Owner ("Remaining Owner(s)) shall have the option to purchase, in amount(s) set forth in Section 2.01(d) ("Death Option"), all or any part of the Interests of the Deceased Owner and his Spouse, and the Deceased Owner and his Spouse and Representatives obligate and bind themselves to Transfer up to all of the Interests owned by or for the benefit of the Deceased Owner and his Spouse at the price determined pursuant to Section 3.01 and upon the terms and conditions contained in this Agreement. However, if less than all of the said Remaining Owners exercise the Death Option, then the Interests covered by the Death Option over which the Death Option is not exercised may be exercised in similar proportions by the said Remaining Owner(s) who purchase Interests pursuant to this Section 2.01(a), it being understood that only one (1) Remaining Owner may wind up exercising a Death Option for up to all of the Interests of the Deceased Owner and his Spouse.

(b) Death Option-No Action on Death Option by Remaining Owners of Same Class of Interests.

If the Remaining Owner(s) do not exercise the Death Option to purchase all of the Interests of the Deceased Owner and/or his Spouse for any

reason, then the Entity hereby is obligated to redeem the Interests of the Deceased Owner and/or his Spouse that are not purchased by the Remaining Owner(s).

(c) Time of Performance. The Remaining Owner(s) of the Entity shall have one hundred eighty (180) days from receipt of notice of the Deceased Owner's death ("Death Option Period") within which to exercise their Death Options and to purchase the Interests of the Deceased Owner and his Spouse. If the Remaining Owner(s) fails to exercise the Death Option within the one hundred eighty (180) day time period, then the Entity shall purchase the Interests of the Deceased Owner and his Spouse within ninety (90) days of the end of the Death Option Period or receipt of notice of all of the Remaining Owners' decisions not to exercise the Death Option, whichever first occurs, to purchase all of the Interests of the Deceased Owner and his Spouse.

(d) Effect of Rights and Obligations. The Death Option granted in Section 2.01(a) in favor of the Remaining Owners of the same class of Interests as that of the Deceased Owner and/or his Spouse shall be joint and several vis-a-vis the Remaining Owners who exercise the Death Option to purchase the Interests of the Deceased Owner and his Spouse. However, those Owners who are exercising their respective Death Options may, amongst themselves, divide these obligations amongst themselves as they may agree in writing. In the absence of any such written agreement, these Remaining Owners shall share the Death Option in accordance with the percentage of the Interests of each Remaining Owner in the class of Interests as the Deceased Owner as of the date of commencement of the Death Options pursuant to Section 2.01(a) shall bear to the total percentage Interests of all Remaining Owners of the same class of Interests as the Deceased Owner as of the date of commencement of the Death Options who exercise the Death Option. All surviving Owner(s), including Owners of different classes of

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Interests, shall guarantee the purchase of the Interests by the Entity, and they shall all step forward and either pay the balance of the Price or actually purchase the Interests that are subject to the Death Option if the Entity defaults for any reason whatsoever, and this liability shall be joint and several vis-à-vis all surviving Owners.

(e) Right to Acquire the Unused Life Insurance Policies on the Lives of the Remaining Owners. The Remaining Owner(s) (or their respective successors and assigns) shall have the right and option (but not the obligation) to acquire all policies of life insurance insuring their respective lives that are owned by the Deceased Owner's estate or Living Trust that were intended for use for a buyout pursuant to this Agreement at a value equal to the cash surrender value of each policy; provided, however, with respect to all policies of pure term insurance, the value shall be limited to the unused amount of premium as of the Effective Date of Transfer.

2.02 Owner Election Events.

(a) Owner Option-Owner Election Event. Upon the Disability, any declaration of incapacity, partial or full, by a proper court, Retirement, or involuntary termination of employment with the Entity other than for Cause, of an Owner (individually, "Owner Election Event" and collectively, "Owner Election Events"), and for a period of one hundred and eighty (180) days from the occurrence of an Owner Election Event ("Owner Option Period"), the Owner, and his Representatives, shall have the right and option (but not the obligation) to offer ("Owner Option") to the Entity for Transfer, in a single transaction, as much of the Interests in the Entity owned by the Owner and/or his Spouse as the Owner, or his Representative, shall desire to Transfer ("Offered Interests"), and the Entity shall purchase, and the Offering Owner and his Representative and Spouse shall Transfer, all of the Offered Interests upon the terms and conditions contained in this Agreement.

(b) Default by Entity. If the Entity defaults in its obligations under Section 2.02(a) to purchase the Offered Interests for any reason, such as the possibility that a purchase of the Offered Interests would violate applicable state law concerning minimum required capital or would violate a covenant or other restriction on the Entity, then the remaining Owners of the same class of Interests as the Offered Interests are separately obligated to purchase the Offered Interests on receipt of notice of the Offering Owner's timely exercise of the Owner Option during the Owner Option Period and receipt of notice of the Entity's default in its obligations to purchase the Offered Interests.

(c) Time of Performance. The purchase of Offered Interests by the Entity pursuant to Section 2.02(a) shall be consummated within one hundred eighty (180) days from receipt of notice of the Owner's exercise of the Owner Option. If the Entity fails to purchase all of the Offered Interests within the above time period, then the remaining Owners of the same class of Interests as the Offered Interests shall purchase the Offered Interests that the Entity fails to purchase within one hundred eighty (180) days of receipt of notice of the failure by the Entity to purchase all of the Offered Interests.

(d) Effect of Obligations. The obligations imposed by Section 2.02(b) on the remaining Owners of the same class as of the Offered Interests to purchase the Offered Interests shall be joint and several *vis-a-vis* those remaining Owners and the Offering Owner and his Spouse. However, the said remaining Owners may, amongst themselves, divide these obligations amongst them as they may agree; provided, however, that in the absence of any such agreement, these obligations shall be divided in accordance with the percentage of the Interests of each remaining Owner in the same class as the Offered Interests as of the date of commencement of the obligations of the remaining Owners pursuant to Section

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2.02(b) shall bear to the total percentage Interests of all remaining Owners of the same class of Interests as the Offered Interests as of the date of commencement of the said obligations pursuant to Section 2.02(b).

(e) Right to Acquire the Unused Life Insurance Policies on the Life of the Offering Owner. An Offering Owner (or his successors and assigns) whose Interests are completely purchased pursuant to Section 2.02 shall have the right to acquire all policies of life insurance insuring his life that are owned by the Entity and/or the other Owners that were intended for use for a buyout pursuant to this Agreement at a value equal to the cash surrender value of each policy; provided, however, with respect to all policies of pure term insurance, the value shall be limited to the unused amount of premium as of the Effective Date of Transfer.

2.03 Entity Election Events. Upon the occurrence of any of the following events with respect to an Owner ("Terminated Owner"): (a) the voluntary termination of employment of an Owner for reasons other than Retirement or Disability, (b) insolvency or any filing for relief under applicable bankruptcy laws by an Owner or an involuntary petition for bankruptcy filed by a creditor of the Terminated Owner or by a bankruptcy trustee, (c) seizure of Interests of an Owner by a creditor, (d) involuntary termination of employment of an Owner for Cause, (e) competing, directly or indirectly, with the Entity, (f) an Owner's disclosure of confidential information concerning the Entity to any of its competitors or to any agent or Affiliate thereof, as determined in arbitration, or (g) Presumptive Disability (individually, "Entity Election Event", and collectively, "Entity Election Events"), and for a period of one hundred eighty (180) days, except as provided below in this Section 2.03 ("Seizure Option Period"), the Entity shall have the right and option (but not the obligation) to purchase, which it shall exercise in writing by giving notice to the Terminated Owner as provided herein, in the case of insolvency or

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seizure of Interests of a Terminated Owner and/or his Spouse by a creditor, any and all of the Interests owned by the Terminated Owner, his Representative and/or his Spouse ("Seizure Option"), and in all other Entity Election Events enumerated in this Section 2.03, all, but not less than all ("Entity Option"), of the Interests owned by a Terminated Owner, his Representatives and his Spouse, and the Terminated Owner, his Representative and/or his Spouse shall Transfer all of his Interests under the Entity Option and up to all of his Interests pursuant to the Seizure Option, at the price determined pursuant to Section pursuant to the terms and conditions contained in this Agreement.

2.04 **Right of First Refusal.**

(a) First Refusal Option.

(i) General. Except as otherwise provided in this Article II, any Owner desiring to Transfer all or any part of his Interests ("Offering Owner") or who has received a Bona Fide Offer to purchase the Owner's Interests must first offer said Interests ("Offered Interests") to the remaining Owners of the same class of Interests as the Offered Interests and provide a written copy of the Bona Fide Offer to the Entity's officers and to each other Owner, and, for a period of ninety (90) days from receipt of notice of the offer from the Offering Owner ("First Refusal Option Period"), those remaining Owner(s) shall have the right and option (but not the obligation) ("First Refusal Option") to purchase all, but not less than all, of the Offered Interests at the lower of the price determined pursuant to this Agreement or the price set forth in a Bona Fide Offer that is received by the Offering Owner ("Offer Price").

(ii) Sharing Amongst the Owners Generally. Each Owner (other than the Offering Owner) of the same class of Interests as the Interests of the Offering

Owner shall have the right and option pursuant to the First Refusal Option to purchase such portion of the Offered Interests as the percentage of the Interests owned by him or her in the same class of Interests as the Offered Interests at the commencement of the First Refusal Option Period shall bear to the total percentage of Interests owned by all other Owners of the same class as the Offered Interests who are eligible to and who exercise their First Refusal Options to purchase the Offered Interests at the Offer Price (or pertinent percentage thereof) on the terms described above.

(iii) If Less Than All Owners Exercise the First Refusal Options. If any of the Owner(s) of the same class as the Offered Interests do not timely exercise their First Refusal Options, then the Offered Interests over which the First Refusal Option is not exercised may be exercised in similar proportions by the remaining Owners of the same class as the Offered Interests, and so forth, it being understood that only one (1) owner of the same class as the Offered Interests may end up exercising the First Refusal Option to purchase all of the Offered Interests if that Owner is the only Owner who exercised his First Refusal Option. No Owner who is deciding whether or not to exercise his First Refusal Option shall have any extra time to exercise his First Refusal Option in case less than all of the Owners of the same class as the Offered Interests do not exercise their First Refusal Options, it being understood that an exercise of the First Refusal Option could mean that the Owner would have to purchase all of the Offered Interests.

(iv) Appraisal. If an Owner elects to exercise his First Refusal Option but desires to explore purchasing the Offered Interests at the price determined pursuant to Article III if that price is lower than that set forth in the Bona Fide Offer (“Electing Owner”), then that Electing Owner shall send the Offering

Owner notice of intent to cause an appraisal of the Offered Interests and cause, at his expense, an appraisal of the Offered Interests pursuant to the procedure set forth in Section 3.03 by a qualified business appraiser who possesses the minimum qualifications set forth in Section 3.03(b). If there is more than one (1) Electing Owner, then the procedure for selecting one (1) business appraiser to appraise the Offered Interests that is set forth in Section 2.04(a)(vi) shall apply.

(v) Deadline for Appraisal; Effect of Failure to Exercise. The appraisal of the Offered Interests pursuant to Section 2.04(a)(iv) shall be completed in ninety (90) days from the date of selection of the business appraiser, and the parties agree to use their best efforts to assist one another and the business appraiser to facilitate the timely appraisal of the Offered Interests. If the appraisal of the Offered Interests is not completed within the ninety (90) day appraisal period, then, for a period of five (5) business days, the Owner(s) who exercised his First Refusal Option shall have the option to purchase the Offered Interests at the price set forth in a Bona Fide Offer. If the Owner fails to timely exercise his option to purchase the Offered Interest at the price set forth in a Bona Fide Offer, then the First Refusal Option shall be deemed to have ceased as if the exercise of the First Refusal Option shall have never occurred, and the Second Refusal Option Period shall commence from the ninety-first (91) day following the appointment of the business appraiser.

(vi) Procedure for Selecting the Appraiser Where More Than One Owner Desires to Value the Offered Interests. If there is more than one (1) Electing Owner, then all Electing Owners shall endeavor to jointly engage and pay one (1) business appraiser to value the Offered Interests; provided, however, that nothing shall prohibit an Electing Owner from engaging his own business

appraiser at his expense to assist him in his analysis. If the Electing Owners fail to agree on a business appraiser to appraise the Offered Interests within ten (10) days of exercising their respective First Refusal Options, then one (1) business appraiser shall be selected by arbitration, which shall take place within twenty (20) days of the end of the ten (10) day period over which the Electing Owners were unable to agree on one (1) business appraiser. If a business appraiser is not selected by arbitration timely, then the First Refusal Options shall be exercised, if at all, at the price set forth in a Bona Fide Offer, which shall then become the final Offer Price, and each Owner who elected to exercise his First Refusal Option shall then have five (5) business days following the end of the twenty (20) day arbitration period to decide whether to continue to exercise his First Refusal Option, the end of that five (5) business day period shall be treated for purposes of the Second Refusal Option as the beginning of the Second Refusal Option Period.

(b) Second Refusal Option. If all of the remaining Owners of the same class of Interests as that of the Offered Interests fail to timely exercise their First Refusal Options, and or a period of ninety (90) days from the expiration of the First Refusal Option Period, the cessation of the First Refusal Option pursuant to Section 2.04(a)(v) or receipt of notice of non-exercise of the First Refusal Option by all of the Remaining Owners of the same class of Interests as the Offered Interests, whichever last occurs ("Second Refusal Option Period"), the Offered Interests shall then be offered to the Entity ("Second Refusal Option") at the price and on the terms set forth in a Bona Fide Offer, it being understood that the Entity shall not have the right to trigger an appraisal of the Offered Interests either pursuant to Section 3.03 or Section 2.04(a).

(c) Terms of Payment. The terms of payment of the Offer Price for Interests on exercise of a Refusal Option with respect to the Offered Interests shall be as provided in Article IV herein; provided, however, that if the terms of payment that are set forth in a Bona Fide Offer are more favorable to the purchaser than the terms set forth in Article IV, then those terms shall be used. If a Bona Fide Offer does not contain all of the terms set forth in Article IV, *e.g.*, no interest rate provision or installment payout, then Article IV shall supply the missing terms.

(d) Limited Right of Disposition. If the Entity and the Owners do not exercise the First Refusal Options or the Second Refusal Options granted in this Section 2.04, then the Offering Owner shall be free to dispose of the Offered Interests as provided herein without other restriction other than that the transferee be an Eligible Owner and agree to become a party to this Agreement for a period of sixty (60) days from the expiration of the Entity's Second Refusal Option or receipt of notice of non-exercise by the Entity of its Second Refusal Option. If the Offered Interests are not disposed of within that sixty (60) day period, then the Offered Interests shall continue to be subject to all of the terms and conditions of this Agreement, and the right of first refusal process shall begin anew.

(e) Exceptions. Notwithstanding any other provision in this Article II, any Owner may Transfer, whether during lifetime or at death, his Interests (i) via a will, trust (revocable or irrevocable) or entity owned by Family Members; provided, however, that any entity owner shall be required to be an Eligible Owner, to or for the benefit of any Permitted Transferee, any entity that is an Eligible Owner and that is controlled by Permitted Transferees and/or an Owner's Spouse that makes specific legacy or allocation of all or any part of that Owner's Interests to or for the benefit of a Permitted Transferee even if a Spouse or persons other than a Permitted Transferee also are beneficiaries of the legacy or revocable trust; provided,

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however, that an Owner be given control over the Transferred Interests, pursuant to the terms of this Agreement; or (ii) via lifetime Transfer to or for the benefit of a Permitted Transferee of all or any part of the Owner's Interests, said Transferring Owner being permitted to take a pledge of the sold Interest as security for payment of the purchase price; it being understood that an Owner need not treat Family Members equally in any such Transfer; provided, however, that an Owner be given control over the Interests, pursuant to the terms and conditions of this Agreement. A surviving Spouse may only enjoy lifetime income rights; provided, however, that no surviving Spouse shall be granted the power to Transfer (although the surviving Spouse may have a right to demand that trust assets be made reasonably productive of income) or to vote the Interests of the Spouse's deceased spouse.

2.05 Spousal Election Events.

(a) Death, Divorce or Insolvency of a Spouse; Refusal. Except as otherwise provided in Section 2.05(b) herein, upon the death of an Owner's Spouse or upon the divorce or legal separation of an Owner and his Spouse or insolvency or any filing by a Spouse for relief under applicable bankruptcy laws, seizure of Interests of a Spouse by a creditor or a refusal by a Spouse who is not a party to this Agreement to acknowledge, in writing, the existence and terms of this Agreement in such form as counsel to the Entity shall require ("Spousal Election Event"), then, for a period of one hundred eighty (180) days from the occurrence of a Spousal Election Event ("Spousal Option Period"), that Owner ("Married Owner") shall have the right and option (but not the obligation) ("Spousal Option") to acquire or receive all, but not less than all, of the Interests owned by his Spouse or his Spouse's estate. If the Married Owner timely exercises his Spousal Option during the Spousal Option Period, then the Spouse of the Married Owner and/or his Representatives shall Transfer the Spouse's Interests pursuant to the terms and conditions

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contained in this Agreement, it being understood that the Spouse of the Married Owner may Transfer his Interests with or without consideration to the Married Owner at any time. If the Married Owner fails to timely exercise his Spousal Option within the Spousal Option Period, then the Entity shall have one hundred eighty (180) days from the expiration of the Spousal Option Period or receipt of notice of non-exercise of the Spousal Option by the Married Owner, whichever is earlier ("Follow Spousal Option Period"), within which to exercise an option ("Follow Spousal Option") to acquire the Spouse's Interests, pursuant to the terms set forth in Section 3.03 and Article IV of this Agreement. If the Entity timely exercises its Follow Spousal Option during the Follow Spousal Option Period, then the Spouse and his Representative shall Transfer the Spouse's Interests to the Entity pursuant to the terms and conditions contained in Sections 3.03 and Article IV of in this Agreement. If the Married Owner does not timely exercise his Spousal Option, and the Entity does not timely exercise its Follow Spousal Option, then the provisions of this Agreement shall nevertheless continue to apply to the Spouse's Interests.

(b) Extension of time. Notwithstanding the provisions of Section 2.05(a) above, if a Married Owner has control over his Spouse's Interests by virtue of being a Representative, or by having the power to vote said Interests, directly or indirectly, then the Spousal Option in favor of the Married Owner shall not lapse until ninety (90) days after he loses control of his Spouse's Interests ("Extended Spousal Option Period"). The Owner's loss of control shall be deemed a Spousal Election Event. The Follow Spousal Option in favor of the Entity shall expire within the time limits set forth in Section 2.05(a) commencing from the expiration of the Extended Spousal Option Period or receipt of notice of non-exercise of the Spousal Option by the Married Owner, whichever is earlier.

2.06 Tag-Along Put Option Rights; Drag Along Call Option Right.

(a) Tag Along Put Rights. If one or more Owners, either individually or collectively own greater than 50% of the Interests (collectively, “Majority Owners”), offer, agree to accept a Bona Fide Offer to Transfer Interests or Transfer Interests pursuant to this Agreement over a period of twenty-four (24) months commencing from the date of the first event to a purchaser (or to purchasers who are Affiliated) or who vote to sell all or substantially all of the assets of the Entity, and if, following any such Transfer or proposed Transfer, the remaining Owners (“Minority Owners”) collectively own or would own less than fifty (50%) of the Interests and/or would not receive a proportionate share of the projected price (including amounts to be paid to individual Owners under any separate agreement or arrangement including, without limitation, consulting agreements, leases, licenses, non-competition/confidentiality agreements, severance packages, etc.), then the Majority Owners shall provide notice of the terms of all offers or Transfers, together with full disclosure of the identity of the purchaser(s) or prospective purchaser(s) and the total amount of consideration or other remuneration that the purchaser(s) or prospective purchaser(s) has or have paid, caused to have paid, will pay or will cause to be paid in the future to the Majority Owners, including, without limitation, for stock, options, agreements not to compete, leases, employment and consulting agreements, prepaid salary or bonuses, to the Minority Owners, and the Majority Owners shall negotiate with prospective purchasers on behalf of the Minority Owners for the same terms and conditions for the purchase of the Majority Owners’ Interests (“Tag Along Rights”) by the purchaser or prospective purchaser. The Tag Along Rights granted to the Minority Owners in this Section 2.06(a) shall be in addition to the rights granted elsewhere to Owners in this Article II. A Minority Owner shall have thirty (30) days from receipt of information from the Majority Owners about the offer to accept or reject the offer.

(b) Put Rights. If a Majority Owner Transfers or agrees to Transfer Interests in contravention of the Tag Along Rights afforded to Minority Owners in Section 2.06(a) above, each Minority Owner shall have the right and option (but not the obligation) to Transfer to the Majority Owner (“Tag Along Put”) all, but not less than all, of the Interests of all Minority Owners at the higher of the total amount per percent of Interests (or fraction thereof) paid to the Majority Owners as described in Section 2.06(a) by the purchaser for cash within ten (10) days of receipt of notice of the Minority Owners’ exercise of the Tag Along Put pursuant to this Section 2.06(b), and each Majority Owner shall be jointly and severally liable for the purchase of the Interests that are subject to the Tag Along Put.

(c) Drag Along Call. If a Majority Owner receives a Bona Fide Offer from an outside party to purchase all of the Majority Owners’ Interests or all or substantially all of the assets of the Entity, and if the Majority Owners, after exercising the Majority Owners’ fiduciary obligation to the Minority Owners to carefully review and consider said Bona Fide Offer, a copy of which the Majority Owners shall provide to the Minority Owners (who shall maintain as confidential the existence of the Bona Fide Offer, together with all of its terms), has determined that it is in the best interests of all Owners to accept the Bona Fide Offer, the Majority Owners shall have the right and option (but not the obligation) (“Drag Along Call”), exercisable in writing with notice to the Minority Owners as provided herein, to call all Interests owned by the Minority Owners to be Transferred to the outside party, and all Owners who have not tendered their Interests shall be required to Transfer their Interests to the outside party at the same price and on the same terms and conditions as were offered to the Majority Owners pursuant to the Drag Along Call.

2.07 Notice Requirement for Exercise of Option; Written Document Requirement; Possible Court Approval Necessary. All notices of exercise or non-

exercise of Options shall be given pursuant to Section 6.07 herein. The parties understand that any such exercise is, or may be, subject to approval by the court having jurisdiction over the estate of a Deceased Owner or his Spouse or Representative or the Representative of a Spouse, over the trustee of any trust who holds the Interests in trust as trustee for the beneficiaries of that trust or in the case of an incapacitated Owner who is subject either to an interdiction, guardianship or conservatorship proceeding, a court with jurisdiction over that Owner's interdiction, guardianship or conservatorship proceeding or in the case of an incapacitated Owner who is subject either to an interdiction, guardianship or conservatorship proceeding, a court with jurisdiction over that Owner's interdiction, guardianship or conservatorship proceeding. All parties agree that their Representatives shall timely and diligently seek any such approval.

III. PRICE

3.01 Death.

(a) Death.

(i) Price. If a Transfer of Interests is triggered by the exercise of the Death Option, then, except as provided in Section 3.01(a)(iii), the price of the Interests owned by or for the benefit of the Deceased Owner and/or the Deceased Owner's Spouse shall be the value of the Deceased Owner's Interests and/or the Interests of the Deceased Owner's Spouse as finally determined for tax purposes; prepared initially by a business appraiser who meets the minimum qualification requirements set forth in Section 3.03(b)(i) below and who is hired and paid by the Representative of the Deceased Owner.

(ii) Appraisal Procedure. The business appraiser shall value the Interests of the Deceased Owner pursuant to the valuation methodology set forth in

Section 3.03; provided, however, that if there is a dispute as to value, then the appraiser selection provisions Section 3.03 shall apply

(iii) Floor of Price. Notwithstanding the foregoing, the price of a Deceased Owner's Interests shall not be less than the death proceeds of all policies of life insurance owned by the Entity or by another Owner that insured the life of the Deceased Owner and/or the Deceased Owner's Spouse and that are listed for illustration purposes only on Annex **6.03-Entity** and **6.03-Owners** (with the stipulation that these annexes are to be immediately updated to reflect policies acquired after the Effective Date), unreduced by loans against or secured by those policies.

(b) Tax Adjustments. The parties recognize that the Internal Revenue Service, the applicable state taxing authorities, and/or the courts may, after any Transfer pursuant to this Agreement, rule that the value of the Interests of the Deceased Owner for estate and/or inheritance tax purposes is higher or lower than the value of those Interests as listed on the estate and/or inheritance tax return, and all parties who purchase or Transfer such Interests agree to pay an additional amount to the seller equal to the increase in the value of the Interests as computed herein as finally determined for federal estate and/or income tax purposes, or to return the difference in value to the buyer(s) if the value as finally determined for tax purposes is less than that shown on the federal estate and/or state inheritance tax return, in both cases plus interest from the due date of the estate and/or inheritance return at the applicable federal rate for the month during which the return was due. The parties further agree that the Interests owned by or for the benefit of the Deceased Owner's Spouse shall be valued utilizing the same methodology used to value the Deceased Owner's Interests.

(c) Appraisal Information; Good Faith Obligation to Defend. The Owner, his Spouse and Representatives agree to provide the Entity and the other Owners with a copy of the appraisal report, and the Entity and remaining Owners agree to cooperate in the appraisal process and provide the business appraiser with all requested information. The Owners and their Representatives agree that the estate of the Deceased Owner shall have a good faith obligation to contest to conclusion any attempt by the taxing authority to change the value as originally determined herein as well as an obligation to keep the Entity and/or the other purchasers apprised of developments in the audit, appeal or judicial proceeding. The purchasing parties shall have a right to intervene in the audit, appeal and/or judicial proceeding to protect their interests.

3.02 Exercise of Right of First Refusal Option. The price of the Offered Interests pursuant to Section 2.04, pertaining to exercises of a Refusal Option, shall be the Offer Price.

3.03 Other Events. The price to be paid for the redemption or purchase of Interests, including any interest of a Spouse in Interests of an Owner, in the exercise of any Option other than the Death Option, a Tag Along Put, Drag Along Call and a Refusal Option, shall be determined as follows in Section 3.03(a) below.

(a) General. Any Owner who is exercising an Option to Transfer or to purchase Interests other than the Options listed in this Section 3.03 above (“Exercising Owner”) or the Entity, whichever is applicable, shall have the Offered Interests appraised at his or its expense at the fair market value standard of value for tax purposes as set forth in Section 3.03(b) as of the Effective Date of Transfer by a business appraiser who meets the qualifications set forth in Section 3.03(b)(i). Notwithstanding any other provision in this Article III, if the Transferring Owner disagrees with the value reached in the appraisal of the Transferring Owner’s

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Interests by the Exercising Owner, then the Transferring Owner shall have the right and option to trigger an arbitration regarding the valuation of the Interests pursuant to this Section 3.03. The Owner who is exercising the Refusal Option shall have an affirmative duty to turn over a copy of the appraisal, and to make his business appraiser available, together with his work papers, to the Transferring Owner.

(b) Procedure.

(i) Selection; Qualification of Business Appraiser. The parties shall endeavor to mutually agree on a business appraiser. If the parties are unable to do so within thirty (30) days of the occurrence of a triggering event to which this Section 3.03 applies, each party to the proposed transaction shall, within ten (10) days of notice of the dispute, select a business appraiser who is qualified to appraise Interests and who possesses any of the following business valuation designations: (A) “Accredited Senior Appraiser” designation from the American Society of Appraisers; (B) “Certified Business Appraiser” designation from the Institute of Business Appraisers (now subsumed into the National Association of Certified Valuation Analysts); (C) “Certified Valuation Analyst” designation from the National Association of Certified Valuation Analysts; (D) “Accredited in Business Valuation” designation from the American Society of Certified Public Accountants; or (E) “Chartered Financial Analyst” designation from the CFA Institute or [IF IN CANADA (F) “Chartered Business Valuator” designation from the CBV Institute].

(ii) Valuation Methodology. Within fifteen (15) days of their selection, the sole role of the two (2) business appraisers is to, and the business appraisers shall, select a business appraiser (who could be either of the two (2) business

appraisers who are doing the selecting) who is qualified to appraise Interests and who possesses at least one (1) of the business valuation designations set forth in Section 3.03(b)(i). That business appraiser shall appraise the subject Interests at the “fair market value” standard of value as defined in Treasury Regulation Section 20.2031-1(b) and pursuant to the principles of Revenue Ruling 59-60, as modified by subsequent pronouncements, as well as the applicable business valuation standards of any of the above business valuation organizations in which the business appraiser is certified and a member[, AT THE MARKETABLE MINORITY LEVEL OF VALUE, I.E., WITH NO LACK OF MARKETABILITY DISCOUNT]. The value reached by that business appraisal shall be binding on all parties to the Transfer of the Interests. The costs of all of the business appraisers chosen pursuant to this Section 3.03(b)(ii) shall be divided by the parties to the Transfer of the Interests. If, for any reason whatsoever, the parties have failed to select a qualified business appraiser within sixty (60) days of notice of a desire to have an appraisal as provided above, then the business appraiser shall be selected by arbitration pursuant to this Agreement.

(iii) Life Insurance Policies and Death Proceeds. For purposes of any valuation pursuant to this Agreement, if the Entity is required to purchase the Interests on the death of an Owner upon exercise of an Owner Option and if the Entity owns life insurance policies of the life of the Deceased Owner, then those policy death proceeds shall only be taken into account in the valuation of the Interests of the Deceased Owner if the sum of all of the death proceeds of the life insurance policies on the life of the Deceased Owner is greater than the value reached without any consideration of the life insurance policies, it being the intention of the Agreement to use the life

insurance death proceeds as a floor for the valuation of the Interests of a Deceased Owner. Life insurance that the Entity owns on the life of an Owner and/or his Spouse that is to be used to finance, in whole or in part, the Entity's purchase obligation shall not count as an asset of the Entity for valuation purposes because of its temporary in-and-out nature.

IV. TERMS OF PAYMENT

4.01 Death and Owner Option Events.

(a) Insurance Proceeds. Except as provided in Section 4.02(b), payment for Interests acquired pursuant to the death of an Owner pursuant to Sections 2.01 or pursuant to exercise of an Owner Option pursuant to Section 2.02 shall be made in cash within ten (10) days of receipt of proceeds from all policies of life insurance on the life of a Deceased Owner and/or his Spouse to the extent that the price of the Interests do not exceed the net proceeds of any policies of life insurance owned that insured the life of the Deceased Owner and/or his Spouse that are owned by any party to this Agreement pursuant to this Agreement, unreduced by loans against such policies or loans secured by those policies.

(b) Excess Purchase Price. Except as provided in Sections 4.02(b) and 4.05 below, payment of the purchase price of Interests sold pursuant to Section 2.01 that is in excess of net life insurance proceeds insuring the life of the Deceased Owner, shall be made, at the option of the purchaser(s):

- (i) Cash. In cash, together with interest thereon at the Prescribed Interest Rate from the Effective Date of Transfer; or
- (ii) Installments. On an installment basis (not to exceed one hundred eighty (180) months in duration) that qualifies for installment treatment under Section 453 of the Code, together with interest thereon at the Prescribed Interest Rate from the Effective Date of Transfer; or

(iii) Combination. Any combination of cash and deferred equal monthly payments not to exceed one hundred eighty (180) months in duration, together with interest thereon at the Prescribed Interest Rate from the Effective Date of Transfer.

4.02 **Other Events.**

(a) Purchase Option. Except as provided in Sections 4.02(b) and 4.05, payment for Interests acquired by the Entity or by one or more Owners from an Owner, his Spouse and/or his Representative, pursuant to any other provision of Article II of this Agreement, shall be made at the option of the purchaser(s):

(i) Cash. In cash, together with interest thereon at the Prescribed Interest Rate from the Effective Date of Transfer; or

(ii) Installment. On an installment basis (in equal monthly installments over a period not to exceed one hundred eighty (180) months) that qualifies for installment treatment under Section 453 of the Code, together with interest thereon at the Prescribed Interest Rate from the Effective Date of Transfer; or

(iii) Combination. Any combination of cash and deferred equal monthly payments over a period not to exceed one hundred eighty (180) months, with interest thereon at the Prescribed Interest Rate from the Effective Date of Transfer.

(b) Extension for Certain Transfers. If the seller is other than an Owner, his Spouse or a Representative and/or the Transfer is being made pursuant to the exercise of a Seizure Option, then the terms of Sections 4.01(a) and/or 4.02(a) shall apply, except that the one hundred eighty (180) month period shall be, at the option of the purchaser(s), three hundred sixty (360) months in each place that the one hundred eighty (180) month periods appear therein.

(c) Terms of Payment. The terms of payment shall be governed by this Article IV.

4.03 **Terms of Note; Security.**

(a) Note. Any deferred payments under Sections 4.01 and 4.02 shall be represented by a negotiable promissory note payable to the appropriate payee(s), bearing interest per annum at the Prescribed Interest Rate from the Effective Date of Transfer, and shall contain a provision for the immediate acceleration of the remaining unpaid balance upon the sale of all or substantially all of the assets of the Entity or Transfer of all of the Interests as well as default on any payment, plus reasonable attorney's fees if that the note is placed with an attorney for collection, as well as on the sale of all or substantially all of the assets of the Entity or the Transfer of all or substantially all of the Interests. The promissory note also shall permit prepayment without penalty and also, where applicable, shall contain the terms set forth in Section 4.05 and Section 4.02(b)(iii) (or, if applicable, Section 4.02(a)(ii)).

(b) Security.

(i) General Security. If, in the Transfer of Interests pursuant to Sections 2.01, 2.02, 2.04 or 2.05, the non-cash portion of the price exceeds the sum of \$[INSERT AMOUNT], then the purchaser(s) of the Interests shall give a first security interest in the acquired Interests to the Transferring Owner; provided, however, that if the Entity is the purchaser, then the Entity shall give a first security interest in the assets of the Entity in an amount necessary to cover 125% of the remaining indebtedness in the purchase of the Interests; provided, further, however, if an Owner is the purchaser, then the purchasing Owner shall give a first security interest in his assets in an amount

necessary to cover 125% of the remaining indebtedness in the purchase of the Interests.

- (ii) Default and Acceleration. The security documents shall contain default and acceleration provisions as well as other provisions that are customary in commercial loan documents between unrelated parties and shall be subject to the approval of the Transferring Owner's counsel, which approval shall not be unreasonably withheld.
- (iii) Access to Financial Information and Audit Rights. While any amount of the indebtedness to the Transferring Owner remains unpaid, unless the purchaser and the Transferring Owner agree in writing otherwise, the security documents shall grant the Transferring Owner and his Representatives and designees reasonable and customary access to the financial position of the Entity that is granted to a commercial lender, including, without limitation, copies of all annual financial statements (balance sheet and income statement) within thirty (30) days of their receipt, but in no event later than ninety (90) days after the end of the Entity's fiscal year, and copies of tax returns of the Entity within one hundred eighty (180) days after the end of the Entity's taxable year as well as reasonable audit rights relative to the financial position of the Entity.
- (iv) Entity Restrictions. While any amount of the indebtedness to the Transferring Owner remains unpaid, unless the purchaser and the Transferring Owner agree in writing otherwise, the security documents shall contain affirmative and negative covenants that are customary in commercial loan documents between unrelated parties that shall include, at a minimum, the following restrictions:

- (A) No Dividends. There shall be no dividends declared or paid to the Owners.
- (B) Limits on Increases in Owners' Compensation. The compensation of the Owners paid by the Entity or any Affiliate shall not increase, save a cost-of-living adjustment utilizing the Consumer Price Index for All Urban Consumers issued by the United States Department of Labor Bureau of Labor Statistics, without the advance written consent of the Transferring Owner or his Representatives.
- (C) Maintenance of Financial Ratios. The Entity shall maintain the following minimum ratios unless the Transferring Owner or his Representatives gives advance written consent otherwise:
 - (I) Current Ratio. A current ratio (current assets to current liabilities) of 1.25 to 1.
 - (II) Debt to Tangible Net Worth. A ratio of total debt to tangible net worth of the Entity of 3 to 1.

4.04 Delivery of Certificates. Upon receipt of the consideration for the Interests or Offered Interests (including a promissory note for any deferred portion thereof), the Owner or his Representative and his Spouse shall forthwith immediately deliver the certificates or other documents evidencing Interests to the appropriate party(ies), duly endorsed or with executed stock powers attached, and shall agree to execute such additional agreements as counsel to the Entity shall deem necessary or appropriate in order to effectuate the foregoing, including, without limitation, a lost security affidavit and indemnification agreement, it being understood that the obligation under this Section 4.04 shall exist indefinitely.

4.05 Exception Permitting Extension of Installment Payments for Certain Purchases by the Entity.

(a) Avoidance of Default. If, at the time of occurrence of an event or exercise of an Option that requires or calls for the Entity to purchase Interests, the purchase obligation of the Entity is to be paid in part by a note, and if the Entity is making payments on a note pursuant to a purchase of Interests, then, notwithstanding any other provisions in this Agreement:

(i) Reduction of Obligation Through Extension of Time for Payment. The obligations of the Entity pursuant to the purchase of the Interests shall be reduced to the lowest monthly level that the CPA's and counsel to the Entity opine will not cause the Entity to default on its purchase obligation, be in default on any of its obligations to any creditors other than any other party to this Agreement or go below its level of required minimum capital for purposes of state law, provided, however, that the regular terms of payment as provided in this Article IV and in the applicable notes on which the Entity is paying shall automatically go back into effect when the CPA's and counsel to the Entity opine that such payments will not trigger any such defaults.

(ii) Two or More Purchases Outside of Twenty-Four Month Time Frame. If Section 4.05(b) is inapplicable because the Entity purchases of Interests of two (2) or more Owners occurs outside of the twenty-four (24) month time frame, then this Section 4.05(a) could apply to reduce the obligations to the Owners whose Transfers had already taken place as well as set the payment obligation of the Entity on any new purchase(s) of Interests; provided, however, that the payments made to all Transferring Owners whose notes are outstanding, including any new purchases of Interests, shall be equal for the relative sizes of the Interests purchased, such that if the Interests purchased from Owner A equaled 25%, but the Interests purchased from Owner B equaled 50%, the monthly installment payment to Owner A would

be one-half (½) of the monthly installment payment to Owner B, and that would constitute “equal” for purposes of this Section 4.05(a)(ii).

(iii) Example. For example, if the Entity was redeeming the Interests of Owner A and was paying \$10,000 per month on that payment obligation, and at any time during the repayment of the note to Owner A, said payment could cause an event of default to any creditor of the Entity, then this Section 4.05(a) permits the Entity to reduce the payout obligation to Owner A, such that if the CPA’s and counsel to the Entity opine that the Entity can afford to pay only \$8,000 per month without triggering an event of default with respect to any creditor, then the monthly payment to Owner A will be reduced to \$8,000 per month. The purpose of Sec. 4.05(a) is to protect the ongoing financial viability of the Entity, which is in the best interests of the Transferring Owner.

(b) Multiple Purchases of Interests. If, at the time of occurrence of an event or exercise of an Option that requires or calls for the Entity to purchase Interests, the purchase obligation of the Entity is to be paid in part by a note, and if the Entity could be obligated to make payments on a note pursuant to more than one (1) purchase of Interests within twenty-four (24) month of one (1) another, then, notwithstanding any other provisions in this Agreement:

(i) Reduction of Obligation Through Extension of Time for Payment. The obligations of the Entity pursuant to all of the purchases of Interests that were made within twenty-four (24) months of one another shall be reduced to the lowest monthly level, equal between the Transferring Owners for the relative sizes of the Interests that the Entity purchased (see the example in Section 4.05(a)(ii) for how this provision is intended to operate), that the CPA’s and counsel to the Entity opine will not cause the Entity to default on

any of its purchase obligations, be in default on any of its obligations to any creditors other than any other party to this Agreement or go below its level of required minimum capital for purposes of state law; provided, however, that the regular terms of payment as provided in this Article IV and in the applicable notes on which the Entity is paying shall automatically go back into effect when the CPA's and counsel to the Entity opine that such payments will not trigger any such defaults.

- (ii) Example. For example, if the Entity was redeeming the Interests of Owner A and was paying \$10,000 per month on that payment obligation note, and within twenty-four (24) months, the Entity elects to or is forced to redeem the Interests of Owner B following the occurrence of a triggering event pursuant to this Agreement and would have to pay another \$10,000 per month to Owner B, and these two payments could cause an event of default, then this Section 4.05(b) permits the Entity to reduce the payout obligation to each Transferring Owner, such that if the CPA's and counsel to the Entity opine that the Entity can afford to pay only \$10,000 per month between the two (2) sellers without triggering an event of default with respect to any creditor, then the monthly payment to each Transferring Owner will be reduced to \$5,000 per month. The purpose of Sec. 4.05(b) is to alleviate a potential unfair result where a second purchase obligation comes on within a fairly short period of time of the first purchase obligation. If a second purchase occurs outside of the twenty-four (24) month time frame, then the only provisions of relief for a subsequent seller would be pursuant to Sec. 4.05(a) above or the applicable secondary purchase obligations that are contained in Article II.

V. SPECIAL S CORPORATION ISSUES

5.01 Representations and Warranties Concerning S Entity Matters.

During all times that, and for as long as, the Entity is an “S” corporation, and as long as each particular eligibility requirement or limitation set forth herein applies to the Entity pursuant to the Code, all parties make the following representations and warranties:

(a) Eligible Owners. Each party represents and warrants that he is an Eligible Owner. Prior to receiving title to any Interests, any trustee or entity shall produce a certified copy of the governing instrument of the trust or entity to counsel for the Entity to ensure status as an Eligible Owner.

(b) Representatives. Each Owner and his Spouse agrees that his Representative (and, if applicable, the Spouse’s Representative) shall not file an affirmative refusal to consent to the S election of the Entity and, further, that the Representative shall file with the Entity a written commitment not to file an affirmative refusal in a form sufficient to satisfy counsel for the Entity within ten (10) days of notice of request by the Entity or any Owner(s).

(c) Ineligible Entity. The Entity, its Owners and their Spouses agree that none of them shall cause the Entity to take any actions which would cause the Entity to become an “Ineligible Entity” as defined in Section 1361(b)(2) of the Code.

(d) Interest Classes. The Entity shall not issue any class of Interests that differs from other existing classes in any way other than voting rights.

(e) Debt. The Entity shall not issue debt other than “straight debt” as defined in Section 1361(c)(5) of the Code.

(f) Best Efforts. The Entity, its Owners and their Spouses agree that all shall use their best efforts to avoid a termination of the S election of the Entity and, if the S election ever terminates during the term of this Agreement, they shall use their best efforts to seek an “inadvertent termination” ruling from the Internal Revenue

Service. The Owners and their Spouses who cause the Entity to have to seek an “inadvertent termination” ruling from the Internal Revenue Service shall be personally responsible for the costs of obtaining that ruling.

5.02 Revocation of S Election, etc. Owners owning [SELECT A PERCENTAGE GREATER THAN A MAJORITY, WHICH IS REQUIRED TO REVOKE AN S ELECTION] or more of each class of Interests may at any time and from time to time agree in writing:

(a) Revoke Election. To direct all Owners and their Spouses to consent to a revocation of the Entity’s S Election, in which event every Owner and Spouse shall within thirty (30) days thereafter execute and deliver to the Entity a consent to a revocation of the election in a form meeting the requirements of the Code as determined by counsel to the Entity; and

(b) Corporate Actions. To authorize the Entity to act (or to refrain from acting) in a manner that would otherwise violate Article V of this Agreement, in which event the action (or failure to act) shall be deemed for all purposes to comply with this Agreement.

5.03 Void Transfers. No Owner shall Transfer any of his Interests to:

(a) Maximum Number of Owners. A person who, when added to the other Owners of the Entity, would cause the total number of Owners of the Entity to exceed the number permitted by Code Section 1361(b)(1)(a) that is then in effect (as of the date of this Agreement, that number is 100);

(b) Nonresident Alien. An individual who is a nonresident alien;

(c) Nonqualifying Trust. A trust that fails to satisfy the requirement of Code Section 1361(c)(2), (d) or (e) or other requirements for permitted shareholders of an S corporation;

(d) Nonqualifying Representative. A Representative, unless the Representative

is directed by the governing instrument or enters into an agreement not to revoke the Entity's S election (except for a revocation permitted in accordance with this Agreement); or

(e) Any Person Who Has Bad Intentions Concerning S Election. Any person whom any Owner knows, or has reasonable grounds to believe, will take action that will cause the Entity's S election to terminate.

Any such transfer shall be null and void *ab initio*, and the Entity shall ignore it on its books and records.

5.04 Income Allocation for Partial Year. [CHOOSE ONE OF THE FOLLOWING]

[CLOSE THE BOOKS ALTERNATIVE]

(a) Allocation Method for Transfers. An election shall be made by all of the Owners, including the Transferring Owner and the purchasing Owner, pursuant to Code Section 1377(a)(2) to treat the Owners as though the taxable year of the Entity during which a Transfer occurs consisted of two (2) taxable years, the first of which ended on the Effective Date of Transfer. The Entity and each Owner hereby agree to take all actions and execute and file such elections, consents and other documents as may be necessary for such election to be made in the opinion of counsel to the Entity.

[PRO RATA ALTERNATIVE]

(a) Allocation Method for Transfers. Upon a complete Transfer of Interests of an Owner, the income, deductions, credits and other tax attributes of the Entity for the entire tax year shall be allocated between the Owners, including the Transferring Owner, on a pro rata basis, based on the portion of the tax year ending on the Effective Date of Transfer.

(b) S Termination Year Election. The parties agree that the Entity [CHOOSE ONE

shall/shall not] make an election under Code Section 1362(e)(3) to allocate items of income, deduction or loss upon any termination of the S election of the Entity between the S short year and the C short year according to the time that they were incurred or realized as reflected on the books and records of the Entity, rather than on a pro rata basis. The Entity and each Owner hereby agree to take all actions and execute and file such elections, consents and other documents as may be necessary for such election to be made in the opinion of counsel to the Entity.

5.05 Agreement Concerning AAA.

If the Entity was formerly a C corporation for income tax purposes before converting to S, the parties agree [CHOOSE ONE to consent/do not consent] to the election under Code Section 1368(e)(3) to treat all distributions during the Entity's taxable year as being out of the Entity's accumulated earnings and profits to the extent thereof, rather than from the accumulated adjustments account.

5.06 Tax Dividends [IF DESIRED, CHOOSE ONE OF THE FOLLOWING OPTIONS]

[OPTION NO. 1: DIVIDENDS TO MEET ESTIMATED QUARTERLY TAX PAYMENTS]

The Entity shall pay cash dividends during the course of and immediately following the end of each fiscal year in amounts sufficient for the Owners to pay their federal and state income taxes attributable to the Entity determined based on the highest marginal federal, state and local income tax rates and also to allow the Owners to make estimated tax payments on a quarterly basis without incurring any penalty, all as provided herein. These dividends shall be paid no later than the due date of the Owners' income tax returns and estimated tax payments. Notwithstanding the foregoing, however, dividends shall only be paid out of surplus or other funds to the extent allowed by law and by other contractual restrictions that there may be on the Entity at the time of the scheduled dividend payment.

For purposes of determining the amount of the distribution to be made pursuant to this Section 5.06, each Owner is assumed to be taxable at the highest marginal federal, state (for the state with the highest marginal rate of the states in which Owners are domiciled), and local (for the local government with the highest marginal rate of the localities in which Owners are domiciled) income tax rates that are applicable to married individuals filing a joint tax return, and, further, to fully utilize any losses, deductions, and credits that are passed through to the Owners pursuant to Code Section 1366. Dividends paid pursuant to this Section 5.06 shall not be in addition to other dividends paid during and immediately after the end of the fiscal year, but, instead, other dividends paid during and immediately after the end of the fiscal year shall be deemed to satisfy the requirement that dividends for income tax purposes be made to the extent such other dividends have been paid. The Entity may also pay dividends in excess of the amounts required by this Section 5.06.

[OPTION NO. 2: ANNUAL TAX DIVIDENDS]

Provided that sufficient cash flow exists in the opinion of the management and the Owners of the Entity, the Entity agrees to distribute cash to each Owner, within [NUMBER OF DAYS] days after the end of the Entity's tax year, in sufficient amounts to pay federal, state and local income taxes on the net distributive share of income, losses, deductions and credits that have passed through to the Owners under Code Section 1366 as shown on each Owner's Schedule K-1 of the Entity's informational tax return Form 1120-S. For purposes of determining the amount of the distribution to be made pursuant to this Section 5.06, each Owner is assumed to be taxable at the highest marginal federal income tax rate that is applicable to married individuals filing a joint tax return, plus the highest marginal state and, if applicable, local, income tax rate that is applicable to the Owner who has the

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highest total marginal income tax rate of all of the various state and local taxing authorities in which Owners are domiciled, and to fully utilize any losses, deductions, and credits passed through under Code Section 1366.

5.07 Tax Matters Owner [IF DESIRED]

The parties hereby appoint the [PRESIDENT/MANAGER] of the Entity as the “Tax Matters Owner” to act on behalf of the Owners and the Entity for federal tax audit purposes.

5.08 Tax after Purchase. The parties agree that upon a Transfer of Interests in accordance with this Agreement:

(a) Transferring Owner Indemnification. The Transferring Owner shall indemnify and hold harmless the other Owners with respect to the Transferring Owner’s pro rata share of the tax liabilities that may have accrued during the time that the Transferring Owner held Interests.

(b) Entity and Remaining Owner Indemnification. The Entity and the other Owners shall indemnify, defend and hold harmless the Transferring Owner with respect to any tax liabilities or loss of tax benefits such Owner may incur as a result of any action taken by the Entity or other Owners after the disposal of the Interests, including, by way of example, any action that results in the termination of the Entity’s S election, or that causes a retroactive change or adjustment in the Entity’s tax returns, method of accounting or status as an S corporation for tax purposes.

5.09 Power of Attorney. [IF DESIRED] Each Owner hereby irrevocably appoints the [president/manager] of the Entity as his attorney-in-fact to enter into the agreements, consents and elections referenced under this Article V on behalf of the Owner, if the requisite vote is obtained or, in the case of an inadvertent termination, without the need for a vote. This power, coupled with an interest,
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shall constitute an irrevocable proxy to vote Interests for this limited purpose, shall not expire on the death or incapacity of the appointing Owner, and may not be revoked while this Agreement is in effect. The parties agree to execute any further documentation that may be required to enforce the terms of this Section 5.09.

VI.

6.01 Supersedes Prior Agreements; Binding Agreement on Successors. This Agreement shall supersede any and all prior agreements or understandings, written or oral, relating to the redemption and/or purchase of the Interests owned by the parties hereto and shall be binding upon them and their Representatives, successors and assigns, as well as the Entity and its successors and assigns. The parties hereto authorize and obligate their Representatives, successors and assigns to comply with the terms of this Agreement. Any Owner who marries on or after the Effective Date shall supply a copy of this Agreement to his Spouse within thirty (30) days prior to the marriage, or, if that is not possible, within ten (10) days following the marriage, and use his best efforts to obtain that Spouse's written acknowledgment of the terms and conditions of this Agreement and an agreement to be so bound, in such form as counsel to the Entity may require.

6.02 Specific Performance. The parties agree that if any party fails to perform any of the obligations under this Agreement, such performance shall be enforceable by a suit for specific performance in a court of competent jurisdiction. The prevailing party shall be entitled to all costs of pursuing this claim, including, without limitation, reasonable attorney's fees and expenses and court costs.

6.03 Insurance. The Entity presently maintains the policy(ies) of life insurance listed on 6.03-**Entity** attached hereto on the lives of the Owners for the purpose of funding, in whole or in part, its obligations to purchase Interests pursuant to this Agreement. The Owners presently respectively maintain the policy(ies) of life

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insurance listed on Annex 6.03-**Owners** attached hereto on the lives of Owners for the purpose of funding, in whole or in part, their individual obligations pursuant to this Agreement. The parties all agree to use their best efforts to maintain these policies, or policies of equivalent or greater face value, in full and effect and, further, to make reasonable efforts to obtain additional coverage. Each party also agrees that he will provide notice of premiums paid upon a notice of a request by the insured. The Owners and Spouses agree to cooperate as insureds or potential insureds. All parties agree not to pledge or in any way encumber the policies.

6.04 Usage; No Presumptions on Interpretation.

(a) Usage. As used herein, the singular shall include the plural and vice versa, and words used in one gender shall include all others, as appropriate. The word “including” shall mean including, without limitation.

(b) No Presumptions on Interpretation. The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

(c) References. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

6.05 Counterparts. This Agreement may be executed in several counterparts, one such counterpart for each party hereto and each copy of which shall serve as an original for all purposes, but all counterpart copies shall constitute but one and the same Agreement.

6.06 Headings. All headings set forth in this Agreement are intended for convenience only and shall not control or affect the meaning, construction or effect of this Agreement or any of the provisions thereof.

6.07 Notices. Any notice required or permitted hereunder, when reasonably calculated to give actual notice, may be made:

(a) Mail. By any form of mail, including, without limitation, electronic mail, addressed to the party to be given notice at his last known address;

(b) Personal Delivery. By personal delivery in the manner prescribed for services of legal process within the State of [NAME OF STATE]; and

(c) Other. In the manner prescribed by law of the place in which notice is given for service in that place in any action in any of its courts of general jurisdiction. Notice given under the terms of this Section 6.07(c) shall be made when the law requires personal delivery by an individual permitted to make service of legal process under the law of the place in which the notice is to be given.

6.08 Governing Law. This Agreement shall be governed by the laws of the State of [INSERT STATE NAME]. The parties hereto acknowledge and understand that a [INSERT STATE NAME] business [INSERT TYPE OF ENTITY] may purchase its own ownership interests only from its own surplus and without impairing its capital, and this Agreement is entered into in full consideration of this law.

6.09 Free Will; Ample Time; No Coercion. Each party represents and warrants that he is entering into this Agreement of his own free will and that no one, including, without limitation, another party, has exercised any coercion, force, pressure or undue influence against the party in connection with the negotiation and consummation of this Agreement. Each party further warrants and represents that he had the right and had ample time to (a) engage counsel to review this Agreement; (b) have counsel review this Agreement; (c) have the benefit of

counsel's advice relative to the Agreement; and (d) review and understand the Agreement and its consequences. Each party further represents and warrants that he did not rely upon the representations of any other party or counsel to the Entity in deciding to execute this Agreement.

6.10 Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or unenforceability shall not affect the validity and legality of the remainder of this Agreement.

6.11 Life Insurance Notice and Consent. It is anticipated that the Entity or Owners may from time to time obtain life insurance policies on the lives of the Owners. If those policies fall within the definition of “employer-owned life insurance policies” as defined in Code Section 101(j), it is intended that the policies qualify for an exclusion from those rules (and thus making the proceeds income tax-free) and that this Agreement comply with the notice and consent requirements necessary to obtain that exclusion. Therefore, each Owner is hereby given written notice (“EOLI Notice”) that the Entity or Owners intend to insure his life by purchasing life insurance policy(ies) in the maximum face amount of \$[ENTER AMOUNT], and that the Entity or Owners will be the owner and beneficiary of that policy and of any proceeds payable on such Owner’s death. By signing this Agreement, each Owner hereby gives advance written consent to being insured under such policy(ies) and to the continuation of the policy(ies) after such Owner ceases to have an Interest in the Entity or otherwise terminates employment (as defined in Code Section 101(j)(4)(B)) with the Entity (and no inference is intended that a Member is an “employee” for any purposes other than the possible application of Code Section 101(j)). The Owners also agree to enter into a separate EOLI Notice and consent

containing these terms with regard to each life insurance policy obtained before the issuance of that policy.

6.12 Arbitration. Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement, the transactions contemplated by this Agreement, or breach thereof shall be subject to mediation and, if no mediated resolution is reached, then subject to arbitration by a single arbitrator in [CITY AND STATE] in accordance with the Rules of the American Arbitration Association that are then currently in effect. The parties to the dispute shall promptly agree upon a mutually acceptable arbitrator, who must be an attorney in good standing in any United States jurisdiction and who is certified to handle arbitrations, but if the parties to the dispute fail to agree upon the name of a single arbitrator for a period of ten (10) business days, then any party to the dispute may make application by motion with any court of competent jurisdiction to appoint the arbitrator. The determination of the arbitrator shall include which party shall pay the cost of the arbitration and shall be final, binding on the parties and non-appealable, and may be entered in any court of competent jurisdiction to enforce it. The parties acknowledge, agree and stipulate that the activities of the Entity and the actions contemplated by this Agreement include the use of interstate mails, materials and commerce and thus involve interstate commerce, as that term is defined in the Federal Arbitration Act, 9 U.S.C. section 1, *et seq.*

6.13 Termination and Amendment of Agreement; Effect of Ownership Transfer

(a) Termination. This Agreement shall terminate on the occurrence of any of the following events:

- (i) Cessation. Cessation of the Entity's business;

(ii) Dissolution. Bankruptcy, receivership, or dissolution of the Entity;

(iii) Only One Owner. Reduction in the number of Owners to one; or

(iv) Voluntary Agreement. The voluntary written agreement of [ALL OF THE PARTIES] or [OWNERS OWNING A MAJORITY OR TWO-THIRDS OR 100% OF THE OUTSTANDING INTERESTS].

(b) Effect of Termination. Upon the termination of this Agreement, each Owner shall surrender to the Entity the certificates representing his Interests, and the Entity shall issue to him in lieu thereof new certificates for an equal number of Interests without the endorsement required by this Agreement.

(c) Effect of Ownership Transfer. Any Owner who Transfers of all of his Interests in accordance with the terms of this Agreement shall be relieved of all obligations under this Agreement and shall no longer be a party to this Agreement, except for any obligations or liabilities arising prior to such disposition of the Interests, and both the Entity and the remaining Owners shall indemnify, defend and hold harmless the Transferring Owner from and against whatever indebtedness of the Entity that the Transferring Owner is not relieved of by a creditor. In addition, the Entity and the remaining Owners shall utilize their best efforts to have the Transferring Owner relieved of all personal responsibility for debts of the Entity, including, without limitation, personal guarantees of Entity debt through, by way of example only, the substitution of alternative collateral, refinancing the indebtedness with a different lender or additional borrowings to reduce the level of indebtedness over which the Transferring Owner has responsibility in order to induce the creditor to release the Transferring Owner from liability.

(d) Simultaneous Deaths of Owners. If all of the Owners die simultaneously or within a period of [NUMBER OF DAYS EXPRESSED IN WORDS] (NUMBER) days, [THE OBLIGATIONS TO PURCHASE AND TRANSFER UNDER THIS AGREEMENT SHALL BE

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NULL AND VOID] OR [the Entity and Owners shall not be obligated to purchase, and the Owners and their Spouses and estates shall not be obligated to Transfer any Interests under this Agreement].

(e) Amendment. This Agreement may be amended or modified only by a written instrument executed by [ALL OF THE PARTIES TO THIS AGREEMENT] OR [OWNERS OWNING TWO-THIRDS OF THE OUTSTANDING INTERESTS].

6.14 Spouses' Interest. Any community property, quasi-community property or other interest that a Spouse might have in the Interests is subject to the terms and conditions of this Agreement, and the Spouse shall have no right to participate in management or operation of the Entity, including, without limitation, vote as an Owner or attend Owners' meetings, and shall have no rights or interest except through the Owner to whom he is married. Any right to purchase Interests owned by an Owner shall include the right to purchase any interest in any Interests that the Owner's Spouse or former spouse might have. Each Owner, by signing this Agreement, represents and warrants to the Entity that he has obtained the valid and legally binding consent of his Spouse to this Agreement as provided above and that such consent is effective to carry out these provisions, and the Owner agrees to indemnify the Entity from any expenses, damages, losses, claims, liability or adverse effect that may result by reason of a Spouse, deceased Spouse, or former Spouse having any rights or interest in the Entity other than through the Owner to whom he is or was married and in accordance with this Agreement.

6.15 Performance of Necessary Acts. The Owners agree to perform any further acts and to execute and deliver any additional documents which may be reasonably necessary in the opinion of counsel to the Entity in order to carry out the provisions of this Agreement.

6.16 Date of Execution. The date of this Agreement is intended as a date for the
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convenient identification of this Agreement and is not intended to indicate that this Agreement was executed and delivered on such date.

6.17 Entire Agreement. This Agreement (including the documents referred to herein) constitutes the entire agreement among the parties hereto, and there are no agreements, understandings, restrictions, warranties, or representations among the parties other than those set forth herein or herein provided for. This Agreement shall extend to and cover all Interests presently or subsequently held by any of the Owners.

6.18 Assignment. Neither this Agreement nor any right created hereby shall be assignable by Owner without the prior written consent of the Entity. Nothing in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto and their successors, any rights or remedies under or by reason of this Agreement.

6.19 Agreement is Not an Employment Contract. Nothing contained herein shall give any Owner the right to be retained in the employ of Entity or to interfere with the right of Entity to discharge the Owner at any time, nor shall it interfere with the Owner's right to terminate his employment at any time.

6.20 Setoff. If at any time a Owner (in any capacity) is indebted or otherwise obligated to the Entity or any of its Affiliates, the Entity may setoff against and deduct from any payments or other amounts due the Owner under this Agreement, or under any note issued to that Owner, the amount of the indebtedness and other obligations due the Entity and/or any of its Affiliates by such Owner, and any such setoff shall discharge the Entity's obligations to the extent of the amount setoff. The existence and amount of any such indebtedness or other obligations of the Owner shall be determined by counsel to the Entity.

6.21 Waiver. The failure of any party at any time or times to require performance

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of any provision of this Agreement shall in no manner affect the right to enforce that provision at a later time. No waiver by any party of any breach of any term contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such breach or a waiver of any other term contained in this Agreement.

6.22 Binding Effect. This Agreement shall be binding upon the Owners, and their heirs, executors, administrators or other legal representatives, irrespective of their desire to Transfer Interests, who shall be bound to carry out the provisions of this Agreement and to transfer the certificates evidencing ownership of such Interests to the Entity or to the Owners in full compliance with the terms and provisions of this Agreement. This Agreement shall inure to the benefit of the heirs, executors, administrators or other legal representatives of the Owners and to the successors and assigns of the Entity.

The Owners shall not make any agreement or contract with others that would tend to amend, alter, rescind or abrogate the provisions of this Agreement, nor will they make any will, deed of gift or other testamentary disposition in contravention of this Agreement. If any Owner violates the terms of this Agreement, then the Entity shall have the right to compel the holder or transferee to deliver such Interests in accordance with the provisions of this Agreement.

6.23 Covenants Not to Compete with, Disclose Confidential Information of, or Solicit Employees of, the Entity.

As a material consideration and inducement to the parties hereto to enter into this Agreement, the parties hereby covenant and agree as follows:

(a) Confidential Information. During the period that any Owner owns Interests, and at all times after he ceases to own Interests, neither an Owner nor any Affiliate of the Owner, shall, directly or indirectly, divulge or disclose, for any purpose

whatsoever, any confidential information of the Entity, including, without limitation, the Entity's trade secrets, systems, procedures, manuals, confidential reports, as well as the nature and type of services rendered by the Entity, the equipment and methods used and preferred by the Entity, and fees paid by its customers, which has been obtained by or disclosed to him or her as a result of his or her status as an owner, officer, director and/or employee of the Entity; provided, however, such Owner shall be permitted to divulge or disclose any financial or other relevant information to the extent reasonably necessary for him to perform his responsibilities and duties as an owner, director, employee and/or officer of the Entity; further, the following information is excluded from the scope of this provision: (i) information that is or becomes a part of the public domain; (ii) information that such Owner can reasonably and promptly demonstrate was already in the receiving party's possession at the time divulged or disclosed by such Owner; (iii) information that is required to be disclosed by law or to comply with a subpoena or court order; (iv) information that is required to be disclosed to the Internal Revenue Service or other taxing authority in connection with an audit; or (v) information necessary to enforce any term or provision of this Agreement.

(b) No Competition. During the period that any Owner owns Interests, and for a period of [ENTER NUMBER OF YEARS EXPRESSED IN WORDS THAT MUST BE A REASONABLE TERM UNDER THE CIRCUMSTANCES] ([NUMBER] years after he and his Permitted Transferees cease to own Interests, neither an Owner nor an Affiliate of an Owner, shall, directly or indirectly, within [SET OUT A REASONABLE GEOGRAPHIC REGION FOR NON-COMPETITION THAT MUST BE REASONABLE AND BEAR SOME RELATIONSHIP TO WHERE THE BUSINESS CONDUCTED ITS PRIMARY BUSINESS], engage in the business of or otherwise compete with the Entity in any of its business ventures, directly or indirectly, and

whether as a proprietor, partner, investor, owner, director, officer, consultant, independent contractor, co-venturer, employer, employee, principal, agent, manager, representative or in any other capacity.

(c) No Solicitation. During the period that any Owner owns Interests, and for a period of [ENTER NUMBER OF YEARS EXPRESSED IN WORDS THAT MUST BE A REASONABLE TERM UNDER THE CIRCUMSTANCES] ([NUMBER] years after that Owner and any of his Permitted Transferees cease to own Interests, with respect to the business described in the immediately preceding paragraph, neither the Owner nor any Affiliate of the Owner, shall, directly or indirectly, solicit business from, divert business from, or perform services for or to, any customer of the Entity, including any potential customer for which a bid has been or is expected to be submitted by the Entity.

(d) No Hire. During the period that any Owner owns Interests, and for a period of [ENTER NUMBER OF YEARS EXPRESSED IN WORDS THAT MUST BE A REASONABLE TERM UNDER THE CIRCUMSTANCES] ([NUMBER] years after that Owner and any of his Permitted Transferees cease to own Interests, neither the Owner nor any Affiliate of the Owner, shall, directly or indirectly, contract with, induce to act in accordance with, solicit for employment or employ any employee of the Entity in [CHOOSE ONE-any business/any business that would compete with the Entity], or any individual who was employed by the Entity within the [EXPRESS REASONABLE TIME PERIOD IN WORDS] ([NUMBER]) period preceding the purchase of such Owner's Interests.

6.24 Remedies for breach of Section 6.23 covenants.

(a) Injunctive Relief. The parties acknowledge that a violation of the covenants in Section 6.23 will cause irreparable damage to the Entity, the exact amount of which may not be subject to reasonable or accurate ascertainment, and therefore

the Owners hereby consent that in the event of such violation, the Entity shall as a matter of right be entitled to injunctive relief to restrain them, or any person or entity acting for or on behalf of them, from violating this covenant without the necessity of posting bond. Such remedies, however, shall be cumulative and in addition to any other remedies to which the Entity may then be entitled.

The Owners agree that if the Entity seeks an injunction against them to prevent them from violating these covenants, the time periods will not begin to run until such time as a court or arbitrator grants injunctive relief to the Entity, and that any time between the date of the inception of the non-compete period and the date injunctive relief is granted will not be credited toward the time period restriction.

The Owners represent and acknowledge that their experience and capabilities are such that they can obtain employment in businesses other than a business which competes with the Entity, and that the enforcement of a remedy by way of injunction will not prevent them from earning a livelihood.

(b) Reasonableness of Restrictions. It is expressly understood and agreed that although the parties consider the restrictions contained herein reasonable as to protected business, duration and geographic area, in the event any arbitrator or court of competent jurisdiction deems them to be unreasonable, then such restriction shall apply to the broadest business, longest period and largest territory as may be considered reasonable by such arbitrator or court, and this Agreement as so amended shall be enforced.

(c) Accounting for Profits. If there is any breach of the covenants the Entity shall be entitled to an accounting and repayment of all profits, compensation, commissions, remunerations or benefits that the breaching Owner directly or indirectly has realized and/or may realize as a result of, growing out of or in connection with any such violation. Such remedy shall be in addition to and not in

limitation of any injunctive relief or other rights or remedies to which the Entity is or may be entitled at law or in equity or under this Agreement, including, for this purpose, the right of the Entity to withhold any payments due to such Owner under any promissory note issued pursuant to any of the provisions of this Agreement.

(d) Forfeiture [OPTIONAL]. Upon a material breach of any of these covenants, the Entity may declare forfeited all amounts remaining to be paid to the breaching Owner, whether due under this Agreement or otherwise.

(e) Attorneys' Fees. The Entity shall be entitled to recover reasonable attorneys' fees and other litigation expenses incurred in enforcing its rights under the above covenants.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement by their duly authorized officers and representatives, to be effective as of the first date set forth below.

This ____ day of [MONTH], [YEAR]

[SIGNATURES]