



CONSIDERATIONS FOR BUY-SELL AGREEMENT¹

PROVIDED BY JACKSON WALKER L.L.P.

For additional information, contact:

Stephanie Chandler
schandler@jw.com
(210) 978-7704

DISCLAIMER: THE ATTACHED DOCUMENT AND ANY ADDITIONAL RESOURCES PROVIDED HERewith (THE "DOCUMENTS") HAVE BEEN PREPARED BY JACKSON WALKER L.L.P. ("JW") FOR GENERAL INFORMATIONAL PURPOSES ONLY AND DO NOT CONSTITUTE ADVERTISING, SOLICITATION OR LEGAL ADVICE. NEITHER THE AVAILABILITY, OPERATION, TRANSMISSION, RECEIPT NOR USE OF THE DOCUMENTS IS INTENDED TO CREATE OR CONSTITUTES THE FORMATION OF AN ATTORNEY-CLIENT RELATIONSHIP BETWEEN THE USER OF THE DOCUMENTS (THE "USER" OR "YOU") AND JACKSON WALKER OR ANY OTHER SPECIAL RELATIONSHIP OR PRIVILEGE. THE USER OF THE DOCUMENTS MAY NOT RELY ON THE DOCUMENTS FOR ANY PURPOSE WITHOUT SEEKING LEGAL ADVICE FROM LICENSED ATTORNEYS IN THE RELEVANT STATES. THE USER OF THE DOCUMENTS ACKNOWLEDGES THAT THE DOCUMENTS HAVE NOT BEEN DRAFTED OR TAILORED FOR THE USE OF ANY INDIVIDUAL OR COMPANY BASED ON HIS, HER, OR ITS PARTICULAR FACTUAL SITUATION. BY ACCEPTING THE DOCUMENTS, YOU ACKNOWLEDGE AND AGREE THAT YOU ACCEPT FULL RESPONSIBILITY FOR DETERMINING THE VALUE AND USE OF ANY OF THE DOCUMENTS. ADDITIONALLY, YOU AGREE TO USE THE DOCUMENTS IN COMPLIANCE WITH ALL APPLICABLE LAWS, INCLUDING THE APPLICABLE SECURITIES LAWS, AND YOU AGREE TO HOLD JW HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, OBLIGATIONS OR LIABILITIES ARISING FROM YOUR FAILURE TO COMPLY. **THE DOCUMENTS ARE PROVIDED AS-IS WITH NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. YOU ASSUME COMPLETE RESPONSIBILITY AND RISK FOR USE OF THE DOCUMENTS.** SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. JW EXPRESSLY DISCLAIMS ALL LIABILITY, LOSS OR RISK INCURRED DIRECTLY OR INDIRECTLY FROM THE USE OF THE DOCUMENTS. BY USING THE DOCUMENTS, THE USER WAIVES ANY RIGHTS OR CAUSES OF ACTION OR CLAIMS THAT HE OR SHE MAY HAVE AGAINST JW IN CONNECTION THEREWITH. THE DOCUMENTS ARE PROVIDED ONLY AS GENERAL INFORMATION AND MAY NOT REFLECT ALL RELEVANT BUSINESS, LEGAL, AND TAX DEVELOPMENTS AND CURRENT ISSUES, AND AS A RESULT, THE DOCUMENTS MAY BE INCOMPLETE OR INCORRECT. JW DOES NOT ENDORSE AND IS NOT RESPONSIBLE FOR ANY THIRD-PARTY CONTENT THAT MAY BE ASSOCIATED WITH THE DOCUMENTS. EVEN IF AN AGENT USES THE DOCUMENTS ON YOUR BEHALF (FOR EXAMPLE, AN ATTORNEY, EMPLOYEE, OR OTHERWISE), YOU ARE STILL BOUND AS A PRINCIPAL BY ALL OF THE TERMS AND CONDITIONS HEREIN. ANY COMMUNICATION RECEIVED FROM JW, ITS AGENTS, EMPLOYEES OR OTHER ASSOCIATED ENTITIES DOES NOT CONSTITUTE LEGAL ADVICE AND WILL NOT BE RECOGNIZED AS SUCH, UNLESS JW HAS BEEN FORMALLY ENGAGED VIA A FULLY EXECUTED ENGAGEMENT LETTER WITH JW TO PROVIDE LEGAL SERVICES AND THEN SOLELY WITH RESPECT TO THE CLIENT DESIGNATED BY SUCH ENGAGEMENT LETTER.

IRS CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, WE INFORM YOU THAT ANY TAX ADVICE CONTAINED IN THIS COMMUNICATION, UNLESS EXPRESSLY STATED OTHERWISE, WAS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (I) AVOIDING TAX-RELATED PENALTIES UNDER THE INTERNAL REVENUE CODE OR (II) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TAX-RELATED MATTER(S) ADDRESSED HEREIN.

3647905v.2

¹ Typically incorporated in a shareholders agreement for a corporation or in the company agreement for a limited liability company or in the partnership agreement for a limited partnership.

SUGGESTED OPTIONS FOR TERMS OF BUY-SELL AGREEMENT

The information below outlines some decisions that you, as an Equity Owner of the company, should consider when making a determination of what an agreement among Equity Owners will include:

Buy-Sell Trigger Events	Examples of Consequence/Action	Price	Terms
First Right of Refusal (ROFR) on Third Party Offer	<ol style="list-style-type: none"> 1) Entity has first option to buy all or part the interest (for 60 days) 2) Other Equity Owners have option to buy all or part of the interest for 60 days 	Value and terms of pending bona fide offer/Some other calculation?	To be determined. See example of options below.
Death or disability of Equity Owner	<ol style="list-style-type: none"> 1) Entity has first option to buy the interest (for 60 days) 2) Other Equity Owners have option to buy the interest for 60 days 	To be determined. See examples of options below.	To be determined. See example of options below.
Divorce	<ol style="list-style-type: none"> 1) Divorced Equity Owner has 90 day option to buy spouse's interest 2) The Entity then has an option for 60 days to buy the spouse's interest 3) The remaining Equity Owners have an option for 60 days to buy the spouse's interest 	To be determined. See examples of options below.	To be determined. See example of options below.
Death of Spouse of Equity Owner	<ol style="list-style-type: none"> 1) If a current Equity Owner does not succeed to the deceased spouse's interest, then the Entity has the option to purchase for 60 days 2) Other Equity Owners have an option to purchase for 60 days. 	To be determined. See examples of options below.	To be determined. See example of options below.
Drug Addiction/Conviction/ Other Bad Boy Activities	<ol style="list-style-type: none"> 1) Entity has first option to buy all or part the interest (for 60 days) 2) Other Equity Owners have option to buy all or part of the interest for 60 days 	To be determined. See examples of options below.	To be determined. See example of options below.

Buy-Sell Trigger Events	Examples of Consequence/Action	Price	Terms
Termination of Employment	<ol style="list-style-type: none"> 1) Entity has first option to buy all or part the interest (for 60 days) 2) Other Equity Owners have option to buy all or part of the interest for 60 days 	To be determined. See examples of options below.	To be determined. See example of options below.
Termination of Involvement ²	<ol style="list-style-type: none"> 1) Entity has first option to buy all or part the interest (for 60 days) 2) Other Equity Owners have option to buy all or part of the interest for 60 days 	To be determined. See examples of options below.	To be determined. See example of options below.
Bankruptcy of Equity Owner	<ol style="list-style-type: none"> 1) Entity has first option to buy the interest (for 180 days) 2) Other Equity Owners have option to buy the interest for 60 days 	To be determined. See examples of options below.	To be determined. See example of options below.
Right of Co-Sale; Tag Along Rights.	If any Equity Owner proposes to sell, pledge, or otherwise transfer any Equity Interests, the other Equity Owners shall each have the right of co-sale with respect to such Equity Interests - a right to sell its "pro rata share" of all Equity Interests that the Selling Equity Owner proposes to transfer and on the same terms as the Selling Equity Owner.	Value and terms of pending bona fide offer/Some other calculation?	To be determined. See example of options below.

² If the organization is being formed with the expectation that each of the owners be actively engaged, but not in the capacity as an employee, consideration of determining a required level of continued involvement and what metrics satisfy that termination can be considered.

Buy-Sell Trigger Events	Examples of Consequence/Action	Price	Terms
Forced Co-Sale; Drag Along Rights.	If at any time the holders of at least fifty percent (50%) of the Equity Interests shall determine to sell or exchange, then, upon the written request of such Seller each other member shall be obligated to sell, transfer and deliver, or cause to be sold, transferred and delivered to such Third Party, all Equity Interests owned by it at the same price per Unit and on the same terms as are applicable to the Seller.	Value and terms of pending bona fide offer/Some other calculation?	To be determined. See example of options below.
Push-Pull	If a Equity Owner becomes dissatisfied with the operation of the Entity and desires to sell all of its Equity Interests in the Entity, then the Dissatisfied Equity Owner shall offer to sell all of its Equity Interests in the Entity to the other Equity Owners. Such offer shall be in writing and shall set forth the price, terms, and conditions on which the Dissatisfied Equity Owner is willing to sell its Equity Interests. The other Equity Owners shall accept the Dissatisfied Equity Owner's offer or the other Equity Owner will be deemed to have offered its Equity Interests to the Dissatisfied Equity Owner for the same price and on the same terms and conditions as contained in the offer by the Dissatisfied Equity Owner.	Price – value proposed by triggering owner	Terms proposed by triggering owner

Buy-Sell Trigger Events	Examples of Consequence/Action	Price	Terms
Redemption [Provides for an exit strategy for an individual stockholder]	At any time after a specified period of time from purchase of the Shares, at the Corporation's sole discretion/at the shareholder's discretion, the Corporation can be required to redeem, in whole or in part, shares of Common Stock at a specified price.	To be determined. See examples of options below.	To be determined. See example of options below.

EXAMPLE

PRICING OPTIONS:

1. “Agreed Value” – once a year the Equity Owners shall attempt to agree in advance what the value of their interests would be upon the occurrence of a triggering event. If no Agreed Value has been made in the preceding calendar year and a triggering event occurs, the purchase price shall be determined by appraisal. Three appraisers shall reach agreement.
2. Value as designated by the Board/Managers, excluding any Board Member/Manager who is also a transferring Shareholder/Member.
3. Appraisal of “Fair Market Value”:
 - a. Fair market value is determined by the buying and selling parties or, in the event that they are unable to agree, as determined by an arbitrator mutually selected by the buying and selling parties or, if they are unable to agree upon an arbitrator, as determined by an arbitrator selected by two other arbitrators, each of whom shall be selected by the buying and selling parties. Decide whether in determining the fair market value of the interest, the Appraiser shall apply any customary and appropriate discounts or premiums for minority interests, control, rights to participate in management, marketability and other factors the appraiser deems to be customary and appropriate.
 - b. If the selling price (the “Selling Price”) of an offer made pursuant to Section 6 is to be determined by an appraisal, then the Selling Price shall be the fair market value of the Corporation on a per share basis. The Selling Price shall be determined by a single appraiser if the Initiating Shareholder and the Receiving Shareholder can agree on an appraiser within five (5) business days of receipt by the Receiving Shareholder of the notice of offer to sell from the Initiating Shareholder, otherwise the Selling Price shall be determined by a board of three (3) reputable appraisers selected as provided in Section [X] [(i) below], pursuant to the process set forth below. No appraiser shall have any direct or indirect financial or other business interest in the Initiating Shareholder or the Receiving Shareholder or any corporation or partnership affiliated with either of them.
 - i. One (1) appraiser shall be appointed by the Initiating Shareholder and one (1) appraiser shall be appointed by the Receiving Shareholder. The third (3rd) appraiser shall be appointed by the two (2) appraisers first appointed. If the two (2) appraisers first appointed are unable to agree on a third (3rd) appraiser within thirty (30) days after the appointment of the second (2nd) of them to be appointed, or if any party refuses or neglects to appoint an appraiser as herein provided, then such third (3rd) appraiser or such other appraiser whose appointment was not made as aforesaid shall be appointed by the American Arbitration Association pursuant to the usual procedure of that

organization in such cases. Both parties will use their best efforts to request that the American Arbitration Association appoint such appraiser within thirty (30) days.

- ii. Each appraiser shall independently determine what it believes to be the Selling Price (each a “Determination”).
 - iii. If the Determinations of any two (2) or all three (3) of the appraisers shall be identical, such Determination shall be deemed to be the Selling Price. If the Determinations of all three (3) appraisers shall be different, then the Selling Price shall be determined as follows:
 - A. If neither the highest Determination nor the lowest Determination differs from the middle Determination by more than ten percent (10%) of such middle Determination, then the Selling Price shall be deemed to be the average of the three (3) Determinations;
 - B. If either the highest Determination or the lowest Determination, but not both, differs from the middle Determination by more than ten percent (10%) of such middle Determination, then the Selling Price shall be deemed to be the average of the middle Determination and the Determination closest in amount to the middle Determination; and
 - C. If both the highest Determination and the lowest Determination differ from the middle Determination by more than ten percent (10%) of such middle Determination, then the Selling Price shall be the middle Determination.
 - iv. The Selling Price as determined in accordance with the above provisions shall be binding and conclusive on all parties.
 - v. Each party shall bear the cost of selecting its appraiser; the cost of the third appraiser, or any appraiser jointly agreed to by the parties, shall be borne equally by the Initiating Shareholder and the Receiving Shareholder.
4. Purchase price plus some return [6%-12% is somewhat typical] for each year shareholder has held shares.
5. Accounting Calculation:
- a. Cash Flow – Sell Interest at a price equal to two (2) times the Entity’s aggregate per Cash Flow for the most recently ended four fiscal quarters multiplied by the percentage ownership interest of selling Equity Owner. “Cash Flow” means the net operating cash flow of the Entity determined in accordance with generally accepted accounting principles

consistently applied/in accordance with the procedures used for preparation of the Entity's tax-related filings. Can vary the multiplier.

- i. *Note: you can vary the multiplier, the base accounting measure being multiplied and the term upon which the base accounting measure is calculated.*
- b. EBITDA – Sell interest at a price equal to seven (7) times the average EBITDA for the preceding three (3) months (on an annualized basis). “EBITDA” shall mean the Company's earnings from operations before interest, taxes, depreciation and amortization. EBITDA shall be determined in accordance with generally accepted accounting principles (GAAP) as consistently applied by the Company as determined by the firm of independent certified public accountants engaged by Company for purposes of its own audit. In determining such EBITDA:
 - i. EBITDA shall be computed without regard to "extraordinary items" of gain or loss as that term shall be defined in GAAP;
 - ii. EBITDA shall not include any gains, losses or profits realized from the sale of any assets other than in the ordinary course of business; and
 - iii. No deduction shall be made for legal or accounting fees and expenses arising out of this Agreement or the Purchase Agreement.
- c. Book Value
- d. Balance of Capital Account

PAYMENT TERM OPTIONS:

1. Paid 10% in cash at closing, and 90% in an unsecured promissory note at prime interest for ten years, payable in 10 equal annual installments of principal and interest. Please note, you can vary allocation of payments, interest rate, number of payments, etc.
2. Cash at closing.
3. Life insurance funded buy-sell.