BUY-SELL PROVISIONS

Sample Article for a Florida LLC Operating Agreement

ARTICLE [__]: BUY-SELL PROVISIONS

Section 1. Definitions.

"Agreed Value" means the value of the Company stated on the most recent Certificate of Agreed Value signed under Section 4 of this Article.

"Appraised Value" means the fair market value of the Company determined under Section 6 of this Article.

"Closing" means the completion of a purchase and sale under this Article, and "Closing Date" means the date the Closing occurs.

"Departing Member" means the Member whose Membership Interest is purchased on a Triggering Event, and includes the estate, personal representative, trustee, or other successor in interest of a deceased Member.

"Disability" means a Member's inability, because of illness, injury, or other physical or mental condition, to perform the Member's regular duties for the Company for 180 consecutive days. A Member is Disabled on the date a licensed physician determines in writing that the inability has continued for that period and is expected to continue. The physician is selected by agreement of the Company and the Member, or the Member's legal representative if the Member has one. If they have not agreed on a physician within 30 days after the Disability Notice is given, the physician is the Member's regular treating physician.

"Purchase Price" means the amount determined under Section 5 of this Article.

"Purchaser" means each Member other than the Departing Member. Each Purchaser shall buy the portion of the Departing Member's Membership Interest that the Purchaser's Percentage Interest bears to the total Percentage Interests of all Purchasers.

"Triggering Event" means the death of a Member, the Disability of a Member, or the Withdrawal of a Member.

"Withdrawal" means a Member's election to withdraw from the Company and sell the Member's entire Membership Interest, made by the notice described in Section 3 of this Article.

Section 2. Purchase and Sale on a Triggering Event.

On a Triggering Event, the Purchasers shall buy and the Departing Member shall sell the Departing Member's entire Membership Interest at the Purchase Price and on the terms of this Article. The obligation binds the Departing Member and the Departing Member's estate, personal representative, trustee, heirs, and successors.

At the Closing the Departing Member shall transfer the Membership Interest free of every lien, pledge, charging order, security interest, and other encumbrance, and shall pay or obtain the release of any encumbrance on it.

A purchase and sale required by this Article is a permitted transfer under this Agreement, each Member consents to it, and each Member shall sign any further consent or admission document this Agreement requires. If this Article conflicts with another provision of this Agreement as to the purchase and sale of a Membership Interest on a Triggering Event, this Article controls. This Article does not give a Member any right to transfer a Membership Interest that this Agreement does not otherwise allow.

Section 3. Triggering Events.

Death. A Member's death is a Triggering Event on the date of death. The deceased Member's personal representative shall give written notice of the death to the Company and to every other Member within 30 days after being appointed.

Disability. A Member's Disability is a Triggering Event on the date the physician's written determination is delivered to the Company. The Company or any Member may start the determination by giving written notice to the Member and to every other Member that the Member appears to be Disabled (the "Disability Notice").

Withdrawal. A Member may withdraw by giving written notice of withdrawal to the Company and to every other Member. The notice must state the date the Member intends to withdraw, which may not be earlier than 90 days after the notice is given. The Withdrawal is a Triggering Event on the date stated in the notice. A Member may revoke a notice of withdrawal only with the written consent of every other Member.

Status Before the Closing. From the date of a Triggering Event until the Closing, the Departing Member has no right to vote, to participate in the management of the Company, or to act for the Company, and the Departing Member's Membership Interest is not counted in determining whether the Members have approved an action. The Departing Member continues to receive the distributions allocable to the Membership Interest until the Closing.

Section 4. Annual Certificate of Agreed Value.

Within 90 days after the end of each fiscal year, the Members shall agree in writing on the value of the Company as a whole and shall record that value on a Certificate of Agreed Value in the form attached to this Article. Every Member shall sign the Certificate. The Members may sign a new Certificate at any time, and the most recent signed Certificate supersedes every earlier one.

Section 5. Purchase Price.

The Purchase Price for a Membership Interest is the Agreed Value multiplied by the Departing Member's Percentage Interest. If no Certificate of Agreed Value was signed within 24 months before the date of the Triggering Event, the Purchase Price is the Appraised Value multiplied by the Departing Member's Percentage Interest.

Section 6. Appraisal.

The Appraised Value is the fair market value of the Company as a whole on the last day of the month before the Triggering Event, determined by one appraiser who is qualified to value a closely held business and who is not a Member, an officer or employee of the Company, or a relative of a Member. The Company and the Departing Member shall select the appraiser by agreement. If they have not agreed on an appraiser within 30 days after the Triggering Event, the appraiser is selected by the accountant who prepares the Company's tax returns. The appraiser shall deliver a written determination of value to the Company and to the Departing Member within 60 days after being selected. The determination is final and binding on every party, and the Company pays the cost of the appraisal.

The Company shall give the appraiser the financial statements, tax returns, and other records the appraiser reasonably requests.

Section 7. Payment.

The Purchasers shall pay the Purchase Price in cash or immediately available funds at the Closing. A death benefit received under Section 8 of this Article on account of a Triggering Event is applied to the Purchase Price and paid to the Departing Member at the Closing.

Section 8. Insurance Funding.

Each Member shall apply for, own, and be the beneficiary of a policy of insurance on the life of each other Member in the face amount of [$_______]. Each Member shall cooperate in obtaining that insurance, including completing an application and submitting to any examination the insurer requires. The Company is not a party to any policy and has no purchase obligation under this Article.

The owner of a policy shall pay each premium on it when due and shall give the other Members evidence of payment on request. If the owner does not pay a premium when due, any other Member may pay it and recover the amount paid from the owner.

On the death of a Member, each surviving Member shall apply the death benefit that Member receives to that Member's portion of the Purchase Price.

If a Member is not insurable, if insurance is not obtained, or if a death benefit is less than the Purchase Price, the purchase obligations in this Article still apply, and the Purchase Price or the unfunded balance of it is paid under Section 7 of this Article.

At a Closing that follows a Disability or a Withdrawal, the Departing Member may buy any policy on the Departing Member's life held under this Section by paying its cash surrender value plus the unearned part of any premium already paid. The Departing Member must exercise this right in writing within 30 days after the Closing.

Section 9. Closing.

The Closing occurs at the Company's principal office on the 60th day after the Purchase Price is determined, or on another date and at another place the Purchasers and the Departing Member agree to in writing.

At the Closing the Departing Member shall deliver an assignment of the Membership Interest in a form reasonably satisfactory to the Purchasers, any certificate or other document evidencing the Membership Interest, and a written resignation from every office the Departing Member holds with the Company. At the Closing the Purchasers shall deliver the Purchase Price as provided in Section 7 of this Article.

Promptly after the Closing the Company shall update the schedule of Members and its other records to show the transfer. If the Departing Member does not deliver the documents required at the Closing, the Company may record the transfer on its books, hold the Purchase Price for the Departing Member, and treat the Membership Interest as transferred as of the Closing Date.

Section 10. Specific Performance.

A Membership Interest is unique, money damages are not an adequate remedy for a breach of this Article, and a party may enforce this Article by specific performance in addition to any other remedy available.

CERTIFICATE OF AGREED VALUE

Attachment to Article [__] of the Operating Agreement of [LLC NAME]

The Members of [LLC NAME] certify that the agreed value of the Company as a whole, for purposes of the buy-sell provisions in Article [__] of the Operating Agreement, is $[AGREED VALUE].

This Certificate is signed on [CERTIFICATE DATE] and supersedes every earlier Certificate of Agreed Value.

____

[MEMBER 1 NAME]

Member

____

[MEMBER 2 NAME]

Member