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Sample Disability Buy-Out Agreement

Introduction

This sample agreement has been prepared solely to assist you and your attorney in the preparation of your business owner Buy/Sell agreement. This sample agreement is not intended to be used in this form. Rather, it is intended to suggest the type of language you and your attorney may wish to include in the disability buy-out section of a buy/sell agreement. A carefully drawn, agreement taking into account your specific business requirements is needed to express the intent and purpose of all parties. Such an agreement should be drafted by an experienced attorney familiar with your business.

Sample Disability Buy-Out Language

This agreement is between _____, _____, _____,
and _____ (Business Owner[s]) and _____ (Business Organization).

Purpose of this agreement

Business Organization and Business Owners desire to ensure continuity of existence and management of Business Organization. They recognize that a prolonged total disability of a Business Owner could jeopardize this objective.

The parties noted above desire to create a fair and workable arrangement to ensure that the interest of a disabled Business Owner will be purchased at a known price, and to provide a method for payment.

All interests in Business Organization now owned or later acquired by a Business Owner are subject to this agreement. Such interests may not be sold, transferred, assigned, given or bequeathed except in accordance with and subject to this agreement.

All Business Owners will apply for disability insurance to help fund the obligations under this agreement. All Business Owners agree to be parties to and execute this agreement.

In consideration of the mutual promises in this agreement, the parties agree as follows:

1. Purchase Obligation (Select One that is Applicable)

- Entity Purchase – Corporation will purchase a disabled Shareholder's shares.

In the event of the total disability, as defined in paragraph 3, of a Business Owner, Business Organization shall purchase and the disabled Business Owner shall sell and transfer all of the disabled Business Owner's shares of stock in Business Organization for the purchase price stated in paragraph 2.

- Entity Purchase – Partnership will purchase a disabled Partner's interest.

In the event of a total disability, as defined in paragraph 3, of a Business Owner, Business Organization shall purchase and the disabled Business Owner shall sell and transfer all of the disabled Business Owner's partnership interest in Business Organization for the purchase price stated in paragraph 2.

- Entity Purchase – Limited Liability Company will purchase a disabled Business Owner’s interest.

In the event of the total disability, as defined in paragraph 3, of a Business Owner, Business Organization shall purchase and the disabled Business Owner shall sell and transfer all of the disabled Business Owner’s interest in Business Organization for the purchase price stated in paragraph 2.

- Cross-Purchase – Any Business Entity – All non-disabled Owners will purchase disabled Business Owner’s interest.

In the event of the total disability, as defined in paragraph 3, of a Business Owner, all non-disabled Business Owners shall purchase and the disabled Business Owner shall sell and transfer the entire ownership interest of the disabled Business Owner for the purchase price stated in paragraph 2. Each non-disabled Business Owner will be responsible for paying that portion of the purchase price in proportion to that Business Owner’s ownership interest in the Business Organization at the time of the buy-out. The disabled Business Owner shall convey all ownership interest to the non-disabled Business Owners in proportion to their interest in Business Organization.

2. Valuation of the Business Organization (Select One that is Applicable)

- Corporate Stock – Fixed

Business Organization and Business Owners agree that for the purpose of carrying out this agreement, the value of each share of stock of Business Organization is \$_____, as of the date of this agreement. The purchase price shall be this value per share of stock, or any later agreed valuation amount, multiplied by the number of shares of stock owned by the disabled Business Owner at the date of the buy-out.

- Corporate Stock Valuation – Formula

(Insert Formula)

- Partnership Valuation – Fixed

Business Organization and the Business Owners agree that for the purpose of carrying out this agreement, the value of Business Organization’s capital assets is \$_____. The purchase price for a disabled Business Owner’s interest shall be this amount, or any later agreed valuation amount, multiplied by the disabled Business Owner’s percentage of ownership of the Business Organization at the date of the buy-out.

Included in the above capital asset figure are the following:

Goodwill \$_____; Unrealized accounts receivable \$_____; Inventory \$_____.

- Partnership Valuation – Formula

(Insert Formula)

- Limited Liability Company Valuation – Fixed

Business Organization and Business Owners agree that for the purpose of carrying out this agreement, the value of each percentage interest/unit of ownership interest (depending on form of ownership used) of Business Organization is \$_____, as of the date of this agreement. The purchase price of the Disabled Owner’s shall be this amount, or any later agreed upon valuation amount, multiplied by the Disabled Business Owner’s total percentage interest/units of ownership (depending on form of ownership used) of the Business Organization at the date of the buy-out.

- Limited Liability Company Valuation (Insert Formula)

(Insert Formula)

- Use the following language with any Fixed Valuation

For the purpose of this agreement, the business value shall be the most recent value determined in accordance with this section preceding the date on which the purchase must take place.

If Business Owners have not agreed upon a new value within the previous twelve (12) months, their failure to do so will not void this agreement. However, the last value agreed upon by Business Owners, in writing, shall be fully binding upon them. Provided that, if at the time of a buy-out no new value has been agreed upon by Business Owners owning a majority of the total ownership interest of the Business Organization for three (3) consecutive years, any Business Owner may require that the value be determined by the independent Certified Public Accountant (CPA) regularly retained by Business Organization to audit its books. If no such CPA is available, the value shall be determined by any other CPA selected by mutual agreement of Business Owners. Compensation of the CPA shall be charged equally to Business Owners.

3. Definition of Total Disability

For the purpose of this agreement, a Business Owner will be considered totally disabled in accordance with the definition of total disability contained in that Business Owner’s disability insurance policy listed in Schedule A.

4. Activation Date of Buy-Out

Business Organization or Business Owners shall purchase the disabled Business Owner’s entire Ownership interest in Business Organization when the disabled Business Owner has been totally disabled for a period of: (Select One that is Applicable)

• 12 months

• 18 months

• 24 months

5. Transfer of Business Interest

Within thirty (30) days after the activation date as set forth in paragraph 4, the disabled Business Owner shall execute and deliver any documents necessary to carry out the terms of this agreement.

6. Delivery of Payment (Select One that is Applicable)

• Lump Sum

The purchase price shall be paid to the disabled Business Owner in one lump sum. Payment will be made on the first day of the month following the month in which the purchase agreement is activated under paragraph 4.

• Monthly

The purchase price shall be paid to the disabled Business Owner in equal monthly installments over a period of _____ () months. The first installment is to be paid on the first day of the month following the month in which the purchase agreement is activated under paragraph 4. Each subsequent installment is to be paid on the first day of each subsequent month thereafter until the unpaid balance of the purchase price, including interest on the unpaid balance at _____ % per year, is paid in full.

• Down Payment – Monthly

The purchase price shall be paid to the disabled Business Owner as follows:

(1) Lump Sum Down Payment, \$ _____; (2) Equal monthly installments for _____ () months. The Lump Sum Down Payment is to be paid on the first day of the month following the month in which the purchase agreement is activated under paragraph 4. Each subsequent installment is to be paid on the first day of each subsequent month thereafter until the unpaid balance of the purchase price, including interest on the unpaid balance at _____ % per year, is paid in full.

6a. For Partnership Entity Buy-Outs Only

In addition, Business Organization shall pay the disabled Business Owner _____ () monthly payments, each of which shall be in the amount of \$_____, under Section 736(a)(2) of the Internal Revenue Code.

7. Monthly Payments Secured By Interest-Bearing Notes

If this agreement requires monthly payments of the purchase price, the payment obligation to the disabled Business Owner shall be represented by a negotiable promissory note. The note shall bear interest at the rate provided in paragraph 6. If there is a default in payments for a period of ninety (90) days, the full unpaid balance shall become due and payable at the election of the holder. The maker of the note shall have the right of pre-payment, in whole or in part, without penalty. The note shall be secured in a manner that is acceptable to all parties to this agreement.

8. Disposition of Life or Disability Income Insurance Policies

Any disabled Business Owner shall have the right to purchase any policy or policies of life or disability income insurance on his/her life owned by Business Organization or other Business Owners following the completion of the disability buy-out. This right must be exercised in writing within 30 days after the completion of the disability buy-out. The price of each life insurance policy shall be its net cash surrender value, including dividends, on the date of the exercise of the option. The prices of each disability income policy shall be any premium prepaid, other than by the insurer, if no more benefits are currently payable. If any further benefits are currently payable, the price shall be the present value of all future benefits that are payable without any change in the condition of the disabled Business Owner, discounted at _____%.

9. Death During Installment Payout Period

If a disabled Business Owner dies while receiving installment payments, all unpaid amounts under this agreement shall become due and payable within thirty (30) days after Business Owner's death or shall continue to be paid to a successor payee designated by the disabled Business Owner or, if no successor payee is designated, to the disabled Business Owner's estate. If Business Organization or remaining Business Owners receive any life insurance proceeds on disabled Business Owner's life, these proceeds must be used to pay any balance due disabled Business Owner as provided in paragraph 6. Any excess proceeds belong to the Business Organization or remaining Business Owners. Any remaining balance due after payment of life insurance proceeds will be payable to Business Owner's estate as provided in paragraph 6.

10. Control of Business Organization During Disability

"Totally disabled," "total disability" and "recovery" for a Business Owner are defined in the policy in Schedule A for each person. After a Business Owner becomes totally disabled for a continuous period of six (6) months, the disabled Business Owner shall then: (Select One that is Applicable)

- Relinquish and turn over all control of the operation of the Business Organization to the remaining Business Owners. Remaining Business Owners shall then exercise complete control of Business Organization, in accordance with their percentage of ownership, as if the ownership interest of the disabled Business Owner did not exist, until such time as the disabled Business Owner recovers or until the activation date in paragraph 4.
- Retain control over the operation of Business Organization in accordance with his/her ownership interest until the activation date as set forth in paragraph 4.

11. Fringe Benefits of a Disabled Business Owner

All fringe benefits (including wage continuation plans) covering a disabled Business Owner as an employee of Business Organization shall continue in force during the continuance of disability under the terms outlined in those fringe benefit plans.

12. Insurance to Fund the Agreement

In order to help fund the obligation under this agreement, disability insurance policies shall be purchased on each Business Owner who is a party to this agreement. These disability insurance policies shall be listed in Schedule A, which is attached to and made a part of this agreement. If any Business Owner is uninsurable or is insurable only at rates exceeding ____% of standard rates for other insureds of the same age and occupation, a fund shall be established for that Business Owner in an amount equal to the Table ____ premium for disability buy-out insurance on him/her at ____%. The same person or entity that would have paid the premium for the insurance shall pay that amount into the fund. The fund will be managed by Business Organization and will be used to help purchase that Business Owner's interest in case of disability. Disability for that Business Owner will be determined based on the definition contained in the policy on the insured owner of the largest share of Business Organization.

13. Liability of Insurance Company

No insurance company which has issued a policy as provided for in this agreement shall be a party to this agreement, and no such insurance company shall be under any obligation with respect to the performance of the terms and conditions of this agreement. Any insurer shall be bound only by the terms and conditions of its policies. Payment or other performance of its contract obligations by any insurance company in accordance with the terms of its policy shall completely discharge the insurance company from all claims, suits and demands of all parties to this agreement.

14. Termination or Amendment of the Agreement

This agreement may be terminated or amended by written agreement of all parties. It shall automatically terminate:

- (a) Upon the bankruptcy or insolvency of Business Organization;
- (b) When there remains only one Business Owner who is a party to the agreement;
- (c) When one Business Owner owns more than 90% of Business Organization;
- (d) Upon the cessation of Business Organization.

15. State Law Governs

This agreement shall be governed by the laws of the state of _____.

Executed by the parties as of this _____ day of _____ 20 _____.

Business Owner

Business Organization



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