

Model Share Transfer Restriction

The share transfer restriction below is a buy-and-sell agreement. Note that the shareholders decided to use a buy-and-sell agreement to cover all triggering events. They believed that the buy-and-sell agreement provided predictability regarding who had to buy and who had to sell, as well as guaranteeing that any shareholder who wanted out of the corporation could get out. Note also that they provided for a buy-out when a deadlock of directors occurs (Article 1, section 14). Such a provision must be considered carefully before including it in a share transfer restriction, because it can encourage those who want to buy out the other shareholders to create a deadlock. Note also that the agreement has two catch-all clauses that cover all other triggering events that are not specifically enumerated in the agreement (Article 1, sections 12 and 13). You will also see that shareholders who are forced to sell for good reason (such as death or retirement at an appropriate age) receive more for their shares than shareholders who leave the corporation in inappropriate ways or at inappropriate times (Article 4). While this agreement works well for the shareholders in this corporation, a different agreement may be required for shareholders of other corporations. Shareholders must carefully consider the share restriction to ensure that it meets their needs and fosters the behavior they want.

Restriction on Transfer of Shares

The shareholders agree to provide for certain restrictions on the transfer of their shares and for the purchase by the other shareholders upon the occurrence of certain events. The shareholders agree that such restrictions are in the best interests of the shareholders and the corporation. Accordingly, the parties agree as follows:

Article 1: Events Triggering Buy-and-Sell Obligations

Upon the occurrence of any one or more of the following events or conditions, the buy-and-sell obligations of this agreement shall be invoked:

- (1) the death of a shareholder;
- (2) a shareholder's voluntary retirement as an employee of the corporation on or after reaching his 55th birthday;
- (3) a shareholder's voluntary retirement as an employee of the corporation before reaching his 55th birthday;
- (4) a shareholder's compulsory retirement as an employee of the corporation upon his reaching his 70th birthday;
- (5) the for-cause termination of the shareholder's employment with the corporation by action of the corporation prior to the shareholder's reaching his 55th birthday;

(6) the for-cause termination of the shareholder's employment with the corporation by action of the corporation upon or after the shareholder's reaching his 55th birthday;

(7) the determination by a court that the shareholder is unable to undertake his responsibilities as an employee of the corporation due to mental illness or disease or disability;

(8) the filing of a petition in bankruptcy by a shareholder;

(9) the filing of an involuntary bankruptcy petition against a shareholder and the shareholder's failure to obtain dismissal of the petition within 30 days;

(10) any assignment by a shareholder of his assets for the benefit of his creditors;

(11) any transfer, award, or confirmation of any such shares to the shareholder's spouse pursuant to a decree of divorce, dissolution, or separate maintenance, or pursuant to a property settlement or separation agreement;

(12) any other event which, were it not for the provisions of this agreement, would cause any such shares, or any interest therein, to be sold, assigned, pledged, encumbered, awarded, confirmed, or otherwise transferred, for consideration or otherwise, to any person, whether voluntarily, involuntarily, or by operation of law, prior to the shareholder reaching his 55th birthday;

(13) any other event which, were it not for the provisions of this agreement, would cause any such shares, or any interest therein, to be sold, assigned, pledged, encumbered, awarded, confirmed, or otherwise transferred, for consideration or otherwise, to any person, whether voluntarily, involuntarily, or by operation of law, upon or after to the shareholder reaching his 55th birthday;

(14) the deadlock of the board of directors resulting in the inability of the board of directors to take any action on behalf of the corporation for a period of one year.

Article 2: Buy-and-Sell Obligations

(a) Upon the occurrence of any triggering event specified in Article 1, excepting section 13, the affected shareholder shall sell all his shares and the other shareholders shall purchase such shares in accordance with the provisions of Articles 3 and 4. The purchasing shareholders shall buy such shares in the same proportion in which the purchasing shareholders, between themselves, own shares of the corporation immediately prior to triggering event. In the event that any purchasing shareholder shall be required to buy a fractional share, that fractional share shall be purchased by the corporation in accordance with the provisions of Articles 3 and 4.

(b) Upon the occurrence of a deadlock of the board of directors, as defined by Article 1, section 13, shareholders Helio Castino, Kristin Katojian, and Jordan Long shall buy and the other shareholders shall sell their shares in accordance with the provisions of Articles 3 and 4. The purchasing shareholders shall buy such shares in the same proportion in which the purchasing

shareholders, between themselves, own shares of the corporation immediately prior to the triggering event. In the event that any purchasing shareholder shall be required to buy a fractional share, that fractional share shall be purchased by the corporation in accordance with the provisions of Articles 3 and 4.

Article 3: Timing of Purchase of Shares

(a) Upon the death of a shareholder, the purchasing shareholders shall purchase the shares of the deceased shareholder within 60 days of a written demand to the secretary of the corporation by the administrator or executor of the deceased shareholder.

(b) Upon the occurrence of any event in Article 1, subsection 2, 4, 6, 7, 13, or 14, the purchasing shareholders shall purchase the shares of the selling shareholder in 12 (twelve) equal quarterly installments beginning on the first day of the first full month beginning 90 days after the occurrence of such event.

(c) Upon the occurrence of any event in Article 1, subsection 3, 5, 8, 9, 10, 11, or 12, the purchasing shareholders shall purchase the shares of the selling shareholder in 20 (twenty) equal quarterly installments beginning on the first day of the first full month beginning 60 days after the occurrence of such event.

Article 4: Valuation of Shares

(a) Upon the occurrence of any event in Article 1, subsection 1, 2, 4, 6, 7, 13, or 14, the purchasing shareholders shall purchase the shares of the selling or deceased shareholder at the following price per share: Fifteen (15) times the corporation's average net income for the two most recent fiscal years preceding the triggering event, divided by the number of shares of the corporation outstanding on the date of the triggering event. The selling or deceased shareholder shall not receive interest on the value of his shares, unless a payment is not made on the date required by Article 3, in which case interest shall be calculated at the judgment rate.

(b) Upon the occurrence of any event in Article 1, subsection 3, 5, 8, 9, 10, 11, and 12, the purchasing shareholders shall purchase the shares of the selling shareholder at the following price per share: Ten (10) times the corporation's average net income for the two most recent fiscal years preceding the triggering event, divided by the number of shares of the corporation outstanding on the date of the triggering event. The selling shareholder shall not receive interest on the value of his shares, unless a payment is not made on the date required by Article 3, in which case interest shall be calculated at the judgment rate.