

[COMPANY]

MEMBER CROSS-PURCHASE AND RESTRICTION AGREEMENT

THIS MEMBER CROSS-PURCHASE AND RESTRICTION AGREEMENT (this “Agreement”), is made effective as of [DATE] the “Effective Date”), by and among [PARTNER 1] (“[PARTNER 1]”) and [PARTNER 2] (“[PARTNER 2]”) (individually a “Member” and collectively the “Members”), and [COMPANY], a [STATE] limited liability company (“Company”). In addition, the terms “Member” and “Members” shall also include additional holders of Units who become parties to this Agreement after the Effective Date pursuant to Section 10.2 hereof. The names and addresses of all of the Members are set forth on Exhibit A attached hereto.

Recitals:

The Members own all of the Units and desire to impose certain restrictions on the Units now or hereafter owned by each Member, for the benefit of Company and the Members. Company agrees to perform its obligations under this Agreement and acknowledges that the restrictions imposed by this Agreement promote Company’s own interests, including by providing for stability in the ownership of the Units.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants set forth in this Agreement, the Members and Company hereby agree as follows:

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ARTICLE 1.0. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

1.1. “Agreed Value” of a Unit, as of a particular Valuation Date, shall be calculated by dividing (a) the “value of Company” as of the Valuation Date as determined below, by (b) the total number of fully diluted Units as of the Valuation Date.

The “value of Company” shall be the fair value determined in good faith by a majority of the Managers in consultation with the Company’s certified public accountant. The “fair value” means the value that a willing buyer would pay to a willing seller for the purchase of all the Units of Company, when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, and both parties have knowledge of all relevant facts concerning the financial condition, business, operations, and prospects of Company.

In the event that the Managers fail to determine the “value of Company” within sixty (60) days after the applicable Valuation Date, then the Agreed Value shall be determined by an appraiser mutually selected during the fifteen (15) day period following the expiration of such sixty (60) day period by Company and the Member whose Units are to be appraised, and the costs of such appraisal shall be shared equally by Company and such Member. In the event that Company and such Member cannot mutually agree upon an appraiser during such fifteen (15) day period, then each party shall have an additional fifteen (15) days to select its own appraiser and the two (2) appraisers so selected shall, within ten (10) days, mutually select a third appraiser. If three (3) appraisers are used, then the Agreed Value shall be the average of the Agreed Value as determined by the two (2) closest appraisals, and each party shall pay all of the fees and expenses of the appraiser selected by such party and the parties shall share equally the fees and expenses of the third appraiser.

1.2. “Certificate” means the Certificate of Formation of Company, as amended.

1.3. “Code” means the Internal Revenue Code of 1986, and the rulings and regulations promulgated by the U.S. Treasury Department pursuant thereto, all as from time to time amended.

1.4. “Involuntary Transfer” means, with respect to any Unit, the issuance of an attachment, execution, or other lien against such Unit or the transfer of such Unit pursuant to a court order (including, but not limited to, any such order issued in connection with a divorce or bankruptcy proceeding).

1.5. “LLC Agreement” means the Limited Liability Company Agreement of [COMPANY] dated effective as of [DATE], as may be amended from time to time.

1.6. “Permanent Disability” means a physical or mental disability of such magnitude and effect that the Member is unable to perform the essential functions of the Member’s Engagement, as determined in good faith by the other Members, and such disability occurs during a period of three hundred (300) days during any three hundred sixty (360) day period. The “Disability Date” shall be the 300th day of such disability during such three hundred sixty (360) day period.

1.7. “Promissory Note” means a promissory note in the original principal amount of the Agreed Value or portion thereof, which promissory note shall be payable in no more than forty (40) equal quarterly installments.

1.8. “Securities Law” means any applicable Federal or state securities law, rule, or regulation, as amended.

1.9. “Unit” means, as of any particular date, any membership unit of Company.

1.10. "Unit Pledge Agreement" means a membership unit pledge agreement.

1.11. "Transfer" means any disposition of a legal or equitable interest in any Unit, whether by sale, pledge, gift, bequest, assignment, exchange, transfer in trust, or otherwise, or any contract or option with respect to any of the foregoing.

1.12. "Valuation Date" means, with respect to the determination of the Agreed Value of a Unit under this Agreement, the date on which such Agreed Value is to be determined.

Other capitalized terms used herein shall have the meanings ascribed to such terms herein.

ARTICLE 2.0. UNIT CERTIFICATES

2.1. Restrictive Legend

In the event that Company issues membership unit certificates with respect to any of the Units, such certificates shall be inscribed with such restrictive legends as, in the opinion of counsel to Company, are necessary or advisable to comply with this Agreement, the Securities Laws, the Certificate, or the LLC Agreement.

2.2. Removal of Legend

Upon termination of this Agreement, any such restrictive legend(s) shall be deleted from all of the membership unit certificates representing the Units (if any). In addition, upon the lapsing of all of the restrictions set forth herein with respect to all (but not less than all) of the Units represented by a particular membership unit certificate, any such restrictive legends shall be deleted from such certificate.

ARTICLE 3.0. GENERAL TRANSFER RESTRICTIONS

3.1. General Rule

Unless otherwise expressly permitted by this Agreement (including pursuant to Sections 3.2 and 3.3), no Member may Transfer any Units unless such Member receives the prior written consent of all of the other Members. Furthermore, in no event may any Member make a Prohibited Transfer.

3.2. Rule of Interpretation

If any Units are now or hereafter held in a Permitted Trust, then, for purposes of this Agreement, references to a Member which necessarily refer to an individual (for example, when referring to the death of a Member) shall be deemed to mean the individual (i.e., [PARTNER 1], [PARTNER 2], or any of the other individual Members as the case may be) who established such Permitted Trust and/or transferred Units to such Permitted Trust.

ARTICLE 4.0. DEATH OF A MEMBER; PERMANENT DISABILITY OF A MEMBER

4.1. Death of a Member

(a) In the event of the death of a Member, Company shall cause a determination to be made of the Agreed Value of all Units held by the deceased Member on the date of the deceased Member's death (the "Available Units"). For purposes of determining the Agreed Value, the date of such Member's death shall be the Valuation Date. Upon the determination of the Agreed Value of the Available Units, the estate of the deceased Member (the "Holder") shall sell such Available Units as provided below in this Section 4.1.

(b) Upon the death of any Member, each of the other Members shall have the first option (the "Member Option") to purchase from the Holder all or any portion of each such Member's pro rata portion of the Available Units (or such other portion as the Members purchasing Available Units otherwise agree), and Company shall have the second option to purchase (the "Company Option") from the Holder all of the remaining Available Units which are not purchased upon exercise of the Member Option, all upon and subject to the terms and conditions of this Section 4.1.

(c) The purchase price per Available Unit being purchased upon exercise of the Member Option and the Company Option shall be equal to the Agreed Value of the Available Units.

(d) If any of the Members desire to exercise the Member Option, such Member(s) must do so by written notice of exercise (the "Member Exercise Notice") given within sixty (60) days following the last to occur of (i) the death of the deceased Member, or (ii) the date on which the Agreed Value is conclusively determined. The Member Exercise Notice must be given to the Holder, Company, and each of the Members, and shall specify the number of Available Units such purchasing Member desires to purchase (as calculated pursuant to the provisions of this Section 4.1), a proposed date for the closing on the purchase of the Available Units being purchased, and the Agreed Value of such Available Units. The date for the closing shall be not fewer than fifteen (15) nor more than ninety (90) days following the last day of the thirty (30) day period set forth in subsection (e) below. For purposes of the Member Option, each purchasing Member's pro rata portion shall be calculated by dividing the number of Units owned by the purchasing Member by the total number of Units owned by all of the Members purchasing Available Units upon exercise of the Member Option, multiplied by the total number of Available Units; provided that if there is only one (1) purchasing Member, then the purchasing Member may purchase all or any portion of the Available Units upon exercise of the Member Option.

(e) If the Members do not purchase all of the Available Units, then Company shall have the option to purchase all or any portion of the remaining Available Units by giving written notice (the "Company Exercise Notice") to the Holder(s) and each of the Members within thirty (30) days after the expiration of the sixty (60) day period set forth in subsection (d) above. The Company Exercise Notice shall specify the number of remaining Available Units which Company (or its assignee(s)) desires to purchase hereunder.

(f) If Company does not purchase all of the Available Units, then such unpurchased Available Units may be transferred as a result of such Member's death pursuant to the deceased Member's will, trust, or other pertinent estate planning documents, or applicable statute (as the case may be), subject to the provisions of this Agreement (including Section 4.3(b)).

4.2. Permanent Disability of a Member

(a) In the event of the Permanent Disability of a Member, Company shall cause a determination to be made of the Agreed Value of all Units held by the disabled Member on the Disability Date (the “Available Units”). For purposes of determining the Agreed Value, the Disability Date shall be the Valuation Date. Upon the determination of the Agreed Value of the Available Units, the disabled Member (the “Holder”) shall sell such Available Units as provided below in this Section 4.2.

(b) Upon the Permanent Disability of any Member, each of the other Members shall have the first option (the “Member Option”) to purchase from the Holder each such Member’s pro rata portion of the Available Units (or such other portion as the Members purchasing Available Units otherwise agree), and Company shall have the second option to purchase (the “Company Option”) from the Holder all or any portion of the remaining Available Units which are not purchased upon exercise of the Member Option, all upon and subject to the terms and conditions of this Section 4.2.

(c) The purchase price per Available Unit being purchased upon exercise of the Member Option and the Company Option shall be equal to the Agreed Value of such Available Units.

(d) If any of the Members desire to exercise the Member Option, such Members must do so by written notice of exercise (the “Member Exercise Notice”) given within forty-five (45) days following the later to occur of (i) the Disability Date, or (ii) the date on which the Agreed Value is conclusively determined. The Member Exercise Notice must be given to the Holder, Company, and each of the Members, and shall specify the number of Available Units such purchasing Member desires to purchase (as calculated pursuant to the provisions of this Section 4.2), a proposed date for the closing on the purchase of such Available Units, and the Agreed Value of such Available Units. The date for the closing shall be not fewer than fifteen (15) nor more than ninety (90) days following the last day of the thirty (30) day period set forth in subsection (e) below. For purposes of the Member Option, each purchasing Member’s pro rata portion shall be calculated by dividing the number of Units owned by the purchasing Member by the total number of Units owned by all of the Members purchasing Available Units upon exercise of the Member Option, multiplied by the total number of Available Units; provided that if there is only one (1) purchasing Member, then the purchasing Member may purchase all or any portion of the Available Units upon exercise of the Member Option.

(e) If the Members do not purchase all of the Available Units, then Company shall have an option to purchase all or any portion of the remaining Available Units by giving written notice (the “Company Exercise Notice”) to the Holder(s) and each of the Members within thirty (30) days after the expiration of the forty-five (45) day period set forth in subsection (d) above. The Company Exercise Notice shall specify the number of remaining Available Units which Company (or its assignee(s)) desires to purchase hereunder.

4.3. General Provisions

(a) Upon the death or Permanent Disability of a Member, Company and the other Members shall use reasonable efforts to obtain a release of any personal guaranty given by the deceased or disabled Member, if any, with respect to any indebtedness or other obligations of Company.

(b) All of the Available Units which are purchased or otherwise Transferred in accordance with Sections 4.1 or 4.2 (except those Available Units purchased by Company) shall remain subject to this Agreement and the terms, conditions and restrictions set forth herein.

(c) Payment for any of the Units purchased in accordance with the provisions of Sections 4.1 or 4.2 shall be made in accordance with Section 8.2.

ARTICLE 5.0. TERMINATION OF ENGAGEMENT

5.1 Application of this Article

The provisions of this Article 5.0 apply to any Member who is, at any time, both a member of Company and an employee, manager, officer of, or consultant to, Company.

5.2. Purchase and Sale

In the event that a Member's Engagement with Company is terminated by Company or by the Member for any reason (other than as a result of such Member's death or Permanent Disability), Company shall cause a determination to be made of the Agreed Value of all Units held by such Member (the "Holder") on the date the termination of the Engagement becomes effective (the "Available Units"), which Agreed Value shall be the purchase price for the Available Units being purchased in accordance with this Article 5.0. For purposes of determining the Agreed Value, the date that the termination of such Member's Engagement becomes effective shall be the Valuation Date. Upon the determination of the Agreed Value of the Available Units, the terminated Member shall be obligated to sell such Available Units as provided below.

5.3. Company Option

(a) Upon the termination of the terminated Member's Engagement, Company shall have the option to purchase all or any portion of Available Units (the "Company Option"), all upon and subject to the terms and conditions of this Section.

(b) If Company desires to exercise the Company Option, then Company must do so by written notice of exercise (the "Exercise Notice") given within sixty (60) days following the later to occur of (i) the date on which the terminated Member's Engagement terminates, or (ii) the date on which the Agreed Value is conclusively determined. The Exercise Notice must be given to the Holder, Company, and each of the Members, and shall specify the number of Available Units that Company desires to purchase (as calculated pursuant to the provisions of this Section 5.3), the Agreed Value to be paid for such Available Units, and a proposed date for the closing on the purchase of the Available Units, which date shall not be more than ninety (90) days following the expiration of the sixty (60) day period set forth above.

5.4. General Provisions

(a) All of the Available Units, whether purchased in accordance with the provisions of Section 5.3 (except those Available Units purchased by Company) or not, shall remain subject to this Agreement and the terms, conditions and restrictions set forth herein.

(b) Payment for the Available Units purchased in accordance with this Article 5.0 shall be made in accordance with Section 8.2.

(c) Company may assign to any person (including one or more Members) its right to purchase some or all of the Available Units pursuant to Article 5.0.

ARTICLE 6.0. [INTENTIONALLY OMITTED.]

ARTICLE 7.0. INVOLUNTARY TRANSFERS

7.1 Purchase of Units Generally

In the event of an Involuntary Transfer with respect to any Units (the “Affected Units”) of a Member (the “Affected Member”), the Members and/or Company shall have the option to purchase all of the Affected Units, all in accordance with the provisions of this Article 7.0.

7.2. Purchase of Affected Units

(a) Upon the occurrence of an Involuntary Transfer of Units, each of the Members shall have the first option (the “Member Option”) to purchase each such Member’s pro rata portion of the Affected Units (or such other portion as the Members purchasing Available Units otherwise agree), and Company shall have the second option to purchase (the “Company Option”) all or any portion of the remaining Affected Units which are not purchased upon exercise of the Member Option, pursuant to this Article 7.0, at a price per Affected Unit equal to the Agreed Value. For purposes of determining the Agreed Value, the Valuation Date shall be the date on which the Members are notified or otherwise become aware of such Involuntary Transfer.

(b) If the Member(s) desire to exercise the Member Option, the Member(s) must do so by written notice of exercise (the “Member Exercise Notice”) given to the Affected Member, the other Members, and Company, and the third party benefited by such Involuntary Transfer (the “Third Party”). The Member Exercise Notice must be given within forty-five (45) days following the later to occur of (i) the date on which the Members are notified or otherwise become aware of such Involuntary Transfer, or (ii) the date on which the Agreed Value is conclusively determined. The Member Exercise Notice shall specify the number of Available Units such purchasing Member desires to purchase (as calculated pursuant to the provisions of this Section 7.2), the Agreed Value of the Affected Units, and a proposed date, time, and place for the closing on the purchase of the Exercised Affected Units; provided, that the closing shall not take place fewer than fifteen (15) nor more than ninety (90) days following the last day of the thirty (30) day period set forth in subsection (c) below. For purposes of the Member Option, each purchasing Member’s pro rata portion shall be calculated by dividing the number of Units owned by the purchasing Member by the total number of Units owned by all of the Members purchasing Affected Units upon exercise of the Member Option, multiplied by the total number of Affected Units; provided that if there is only one (1) purchasing Member, then the purchasing Member may purchase all or any portion of the Affected Units upon exercise of the Member Option.

(c) If the Members do not purchase all of the Affected Units, then Company shall have the option to purchase all or any portion of the remaining Affected Units by giving written notice (the “Company Exercise Notice”) to the Affected Member and each of the Members within thirty (30) days after the expiration of the forty-five (45) day period set forth in subsection (b) above, which Company Exercise Notice shall set forth the number of Affected Units to be purchased by Company.

7.3. General Provisions

(a) All of the Affected Units, whether purchased or not in accordance with the provisions of this Article 7.0 (except those Affected Units purchased by Company) shall remain subject to this Agreement and the terms, conditions and restrictions set forth herein.

(b) Payment for the Affected Units purchased pursuant to Section 7.2 shall be made in accordance with Section 8.2.

ARTICLE 8.0. CLOSING

8.1. Location and Time

The closing on the purchase and sale of Units shall be held at Company's office at 10:00 a.m. and shall occur on the applicable date specified herein, or at such other location, time, and date as the parties otherwise agree.

8.2. Closing Deliverables and Payment

(a) At the closing, the seller(s) shall deliver to the purchaser(s) duly executed unit assignments, transferring good and marketable title to those Units being Transferred, free and clear of all liens, encumbrances, and restrictions (excepting only the restrictions set forth in this Agreement, and in the Unit Pledge Agreement, if applicable), and any certificates representing the Units being Transferred.

(b) Payment for such Units being Transferred shall be made by delivery of one or more Promissory Notes in the original principal amount of the balance of the total Agreed Value for the Units being Transferred, secured by a pledge of the Units being Transferred upon terms and conditions set forth in a unit pledge agreement between such parties in the form of the Unit Pledge Agreement, and such other terms and conditions as are mutually agreed between the purchaser(s) and the seller(s) of such Units.

(c) If all of the Units owned by a Member are being purchased at the closing, then (i) any Units being purchased by any purchaser(s) other than Company shall first be purchased and paid for, and (ii) any Units being purchased by Company shall then be purchased and paid for, so that Company's purchase shall effect a complete redemption of the Member's ownership of the Units being sold by such Member.

(d) Company may assign to any person (including one or more Members) its right to purchase some or all of the Available Units.

ARTICLE 9.0. TERMINATION OF AGREEMENT

9.1. Events of Termination

This Agreement shall terminate upon the first to occur of the following:

- (a) written agreement to terminate this Agreement signed by each Member (or each such Member's respective heirs, or permitted successors and assigns); or
- (b) if, by reason of a sale or other Transfer of Units, only one of the Members owns any Units and, in addition, no Units are held by a Permitted Trust established by any other Member; or
- (c) when any Units are listed by Company on a national securities exchange or are regularly traded in a market maintained by one or more members of a national or affiliated securities association; or
- (d) a sale of all or substantially all of the assets of Company.

9.2. Surviving Obligations

Except as otherwise mutually agreed by the parties in writing, no such termination shall relieve the parties of any then-outstanding obligations under this Agreement with respect to any purchase or sale of Units occurring prior to the date of such termination.

ARTICLE 10.0. GENERAL PROVISIONS

10.1. Arbitration

Any controversy or claim arising out of or relating to this Agreement, or any breach or default under this Agreement, shall, with respect to all actions at law pertaining to such controversy, claim, breach, or default (excepting herefrom any action for equitable relief with respect thereto), be settled by arbitration in [CITY], before a single arbitrator in accordance with the then-prevailing Rules of Commercial Arbitration of the American Arbitration Association. The arbitrator shall not contravene or vary in any respect any of the terms or provisions of this Agreement. The award of the arbitrator shall be final and binding upon the parties hereto, and judgment upon such award may be entered in any court having jurisdiction thereof. The cost of the arbitration proceeding shall be paid equally by the parties thereto; provided, that the arbitrator shall be entitled to award attorneys' fees and the cost of the arbitration proceeding to the prevailing party.

10.2. Additional Members

Any third party to which Units are Transferred shall be subject to the provisions of the LLC Agreement, and may become a member of Company only in accordance with the provisions thereof. In addition, except as otherwise specifically set forth in this Agreement, prior to any permitted gift or other Transfer of Units to any third party who is not a party to this Agreement at the time of such Transfer taking effect, such third party transferee(s) shall agree to be bound by the terms and conditions of this Agreement, and shall be considered Members for purposes of this Agreement, by executing a counterpart signature page to this Agreement, substantially in the form attached hereto. Upon the execution of such counterpart signature page and the Transfer of such Units, Exhibit A shall be amended to include the name and address of the new Member, and such amended Exhibit A shall supercede and replace the then existing Exhibit A.

10.3. Miscellaneous

(a) **Notices.** Any notice required or permitted to be given under this Agreement by any party shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, to the other party at such other party's address set forth at the beginning of this Agreement. Either party may at any time change the address to which notices are to be sent to such party, by notifying the other party of the new address by like notice.

(b) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, covenants, understandings, representations, warranties, and undertakings, whether written or oral, between the parties regarding such matters.

(c) **Waivers, Modifications, Amendments, and Consents.** Neither this Agreement nor any provision may be waived, modified, or amended, nor may any consent be given under this Agreement, except by a written instrument executed and delivered by the party to be bound thereby.

(d) **Governing Law; Jurisdiction.** This Agreement and all rights, remedies, and obligations under this Agreement, including matters of construction, validity, and performance, shall be governed by the laws of the [STATE]. Subject to the provisions of Section 10.1 governing arbitration, the parties agree that the Federal and State courts of the [STATE] shall have exclusive jurisdiction, and the parties specifically consent to, and agree that they are subject to, the jurisdiction of such courts with respect to any actions for equitable relief relating to this Agreement.

(e) **Counterparts.** This Agreement may be executed in several counterpart copies, including the execution of counterpart signature pages by new Members in accordance with Section 10.2. Each such counterpart copy shall be deemed an original, but all of such copies together shall constitute one and the same agreement.

(f) **Severability.** Each term, condition, and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law. If there is any conflict between any term, condition, or provision of this Agreement and any statute, law, ordinance, order, rule, or regulation, the latter shall prevail; provided, that any such conflicting term, condition, or provision of this Agreement shall be curtailed and limited only to the extent necessary to bring it within the legal requirements and the remainder of this Agreement shall not be affected thereby.

(g) **Headings.** The descriptive headings of the Sections and subsections of this Agreement are inserted for convenience and reference only and shall not control or affect the meaning or construction of any of the provisions.

(h) **Binding Agreement.** Except as otherwise specifically set forth herein, this Agreement and all of the terms, conditions, rights, and covenants contained herein shall be binding upon and for the benefit of the parties hereto and their respective heirs, legatees, executors, administrators, personal and legal representatives, successors, and permitted assigns, to the same extent and with the same legal effect as if all of said parties had executed this Agreement and had expressly agreed to be bound hereby.

(i) **Pronouns; Plurals.** All pronouns and any variations thereof shall be deemed to include the masculine, feminine, neuter, singular, and plural thereof as the context may require. In addition, all nouns shall be deemed to include the singular and plural thereof as the context may require.

(j) **Further Assurances.** Each of the parties agrees to execute any additional documents or instruments and to perform any acts which may be reasonably requested by any other party and which are reasonably necessary or proper to carry out the purposes of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement, all as of the Effective Date.

Company: [COMPANY]

By: _____
Signature and Title - Duly Authorized

Members:

[PARTNER 1], Member

[PARTNER 2], Member

Counterpart Signature Page

**Counterpart Signature Page
to
Member Cross-Purchase and Restriction Agreement**

I, the undersigned, hereby agree to be bound by all of the terms, conditions and restrictions of the Member Cross-Purchase and Restriction Agreement (the "Agreement") effective as of [DATE] among [COMPANY] and the Members named in the Agreement, as amended to date, and to be deemed to be a Member for all purposes thereunder.

Dated: _____

Signature

Name (please print or type)

Exhibit A: List of Members and Addresses

The Members

[PARTNER 1 NAME AND ADDRESS]

[PARTNER 2 NAME AND ADDRESS]