

CONFIDENTIAL

BUSINESS PLANNING QUESTIONNAIRE

FOR

(hereinafter called the "Entity")

PREPARED BY: _____

DATE PREPARED: ___/___/___

TABLE OF CONTENTS

Schedule A	Instructions for Completion
Schedule B	Information Assembly Checklist
Schedule C	Ownership & Control
Schedule D	Valuation of the Entity
Schedule E	Ownership Succession
Schedule F	Voting Control Succession
Schedule G	Retirement Income Planning
Schedule H	"Key Employee" Issues
Schedule I	Funding of Purchases
Schedule J	Owners' Estate Planning
Schedule K	Miscellaneous Issues
Schedule L	Ethical Considerations

SCHEDULE A

INSTRUCTIONS FOR COMPLETION

1. **Type or Print.** Please type or legibly print all answers, preferably in black ink. This is only a questionnaire, not an encyclopedia. If your goals or wishes are not adequately reflected among the choices which are available, use the available space, and additional sheets if necessary, to set down your goals or wishes in as much detail as you think will be helpful.
2. **Definition – “Entity”.** In order to permit this questionnaire to be used in all cases, irrespective of the legal form of business organization involved (e.g. corporation, partnership, limited liability company, etc.), the business is generically referred to as the “Entity”. Don’t be confused by this perhaps unfamiliar term; it simply means a thing which has a separate and distinct legal existence (as distinguished from its owners or managers). As the basic principles of business succession planning (although not the precise details) are generally the same for all types of organization, the use of this generic term conveniently permits one form of questionnaire to be used in all circumstances.
3. **Definition – “Person”.** The word “person” is sometimes used to refer to a category that may include other legal entities besides natural persons (e.g. trusts, estates, partnerships, corporations, etc.). In such a case, supply the name, number, etc., of the actual entity rather than the name of the trustee, partner or other individual in charge of the entity.
4. **Definition – “Professional Advisors”.** As the collective term “advisors” or “professional advisors” will be used throughout this questionnaire, it is well to describe who they may consist of. In almost all instances they will include a lawyer and an accountant. In other cases, an independent valuation consultant will also be involved. In yet others, there may be life and/or disability insurance advisors, employee benefit plan consultants, executive compensation consultants, ESOP specialists, and possibly venture capital providers and/or investment bankers.
5. **Facts/Preferences.** Certain of the schedules are generally intended to reflect factual information, and there is space for only one response, which should represent the collective judgment of the principal owners. Other schedules are generally intended to elicit owners’ preferences, and there is space for as many as four individual responses, which should reflect the views of the persons having the four largest ownership interests, whose names and ownership percentages are as follows:

Column 1 reflects the wishes of _____ (___%).
Column 2 reflects the wishes of _____ (___%).
Column 3 reflects the wishes of _____ (___%).
Column 4 reflects the wishes of _____ (___%).
6. **Do Not Guess.** Please do not guess at the answers to the “factual” questions. If you are unsure of the correct answer to a specific question, just put a question mark beside the question number.
7. **Express Preferences.** Please do not try to guess at what the legal and/or tax consequences of a particular choice or set of choices may be. Answer each question on the basis of your personal preference, assuming that the legal and tax consequences are completely neutral. This of course may not be true, but that determination will be made later. Your advisors need to know what you want to achieve --- they can then advise you whether or not you can do so, and the costs and constraints, if any.

SCHEDULE B

INFORMATION ASSEMBLY CHECKLIST

The following checklist is designed to assist you in identifying and assembling the information which will be needed in connection with business succession planning for the Entity.

Where documents are requested to be furnished, please carefully observe the following requests, all of which are made in the interest of controlling costs and reducing the likelihood of error:

- Please do not furnish executed original documents, all of which should remain in your possession. Instead, please provide clear and legible photocopies thereof, all on 8½" 11" paper.
- Please use, as your photocopy source materials, final and signed (or otherwise authenticated) original documents, not drafts, unsigned copies, file copies, etc.
- Please see that each requested document is complete and is accompanied by all supporting schedules, exhibits, and/or other documents referred to in the requested document or otherwise needed in order to fully understand the requested document.
- Please see that each requested document is accompanied by all subsequent revisions, amendments, etc., so that no one will be relying on obsolete information.

It would be particularly desirable if all of the requested materials could be assembled in an 8½" 11" three-ring binder, photo-reducing any larger papers to the 8½" 11" size, and "tab indexing" the binder in categories from A-1 to D-4 (see below) so it will be easy to find one's way around in it. Each of the twenty or so "tabs" should be provided, even though there may be nothing applicable in a particular category, so that a single sheet of paper with the word "None" or "Not Applicable" can signify to the reader that the subject of that "tab" has received attention and not simply been ignored. If a certain document or series of documents is particularly bulky (such as, for example, real estate appraisals) you may wish not to put them in the binder, but instead insert a sheet giving some of the details (in this example, the identity of the asset, the name of the appraiser, the date of the appraisal, and the appraisal value), and keep the document(s) in your possession until specifically requested.

All of this is apt to require a fair amount of work, but the binder will be useful on an ongoing basis for reference purposes even after it has served its important initial function, and should save a great deal of "wheel spinning", time, and expense, both now and in the future. These are the materials which will be needed to be furnished with respect to the Entity:

Part A – General & Background Information

A-1. Description of the Entity. Typewritten narrative description of the Entity, describing in a general way its (a) business activities, (b) location, (c) organization, (d) management, (e) staffing, (f) physical premises, (g) assets, (h) liabilities, (i) sources of credit, (j) competitive position, (k) sales and marketing, (l) plans for future expansion or contraction, (m) plans for future diversification or concentration, (n) relationship to other closely held businesses having ownership wholly or partly in common, and (o) any other facts which seem relevant.

A-2. Ownership Certificates. If feasible, copies of any certificates evidencing currently issued and outstanding ownership interests in the Entity, and a copy of the Entity's ownership interest transfer ledger.

A-3. Transfers of Ownership. Information regarding the sale or other transfer of ownership interests within the past five years, including (a) names of the parties, (b) relationship of the parties, if any, (c) date of transfer, (d) size of ownership interest transferred, and (e) price paid, if any.

A-4. Encumbrances. Information regarding any existing encumbrances on any ownership interest, including copies of any loan agreements, promissory notes, security agreements, indemnity agreements, etc.

A-5. Owner – Employees. List identifying those owners (and relatives of owners) who are employed, either full or part time, by the Entity, and the approximate gross annual compensation of each, and their respective titles or job descriptions.

A-6. Informal Agreements. Information regarding any oral agreements or understandings which exist between or among any of the owners with respect to the present or future ownership or control of the Entity, precisely identifying the parties to such agreements or understandings and the substance thereof, and copies of any notes or other informal records relating to any of such agreements.

Part B – Legal & Organizational Information

B-1. Legal Documents. The legal documents which created the Entity and which govern its internal operation, as follows:

- A. If the Entity is a Corporation:
 - (i) Articles of Incorporation, and any amendments thereto, and any other “charter” documents, such as Articles of Consolidation, Merger, Share Exchange or Transfer.
 - (ii) Corporate By-Laws, and any amendments thereto.
- B. If the Entity is a Limited Liability Company:
 - (i) Articles of Organization, and any amendments thereto, and any other “charter” documents, such as Articles of Merger.
 - (ii) Operating Agreement, and any amendments thereto.
- C. If the Entity is a General Partnership:
 - (i) Partnership Agreement, and any amendments thereto.
 - (ii) Any Certificate which may have been filed under state laws relating to limited liability partnerships.
- D. If the Entity is a Limited Partnership:
 - (i) Certificate of Limited Partnership, and any amendments thereto.
 - (ii) Partnership Agreement, and any amendments thereto.
 - (iii) Any Certificate which may have been filed under state laws relating to limited liability partnerships.

NOTE: If you cannot find the “creating” documents, copies can be obtained (for a fee and with some delay) from the State Department of Assessments and Taxation, or equivalent public agency. Generally speaking, documents relating to internal governance are not filed with a public agency.

B-2. Trade Names. List showing any and all “trade names” now or previously used by the Entity, copies of all Trade Name Certificates filed with the state authorities, noting the action taken by such authorities thereon, and an indication of the expiration date(s) of any such Certificates.

B-3. Other Jurisdictions. Any documents by which the Entity is shown to be qualified to do business in state(s) other than the one in which it was formed, such as certificates, permits, governmental approvals, etc.

B-4. Buy-Sell Agreements. Any existing business succession (“Buy-Sell”) agreements, and any amendments thereto, and copies of the “declaration pages” of any life and/or disability insurance policies funding any such agreements.

B-5. Control Devices. Any voting trust agreements, irrevocable proxies, or other devices relating to the right to exercise control over the Entity.

B-6. Minutes Regarding Transfers. Minutes of all meetings of shareholders, directors, members, partners, etc., at which any resolutions regarding transfers of ownership interests, or imposing or purporting to impose any restrictions or conditions thereon, were adopted.

Part C – Economic & Tax Information

C-1. Financial Statements. Copies of (a) balance sheets, (b) income and expense statements, (c) statements of changes in financial position, and (d) statements of owners equity, for the Entity for at least the three, and preferably five, fiscal years most recently ended, and the latest available interim statements for the current year and for a like period of the prior year. Such copies should include all supporting schedules, exhibits and notes, and the full text of the preparer’s professional opinion regarding the statements.

C-2. Financial Statement Distortions. If, during the three or five year period covered by the Financial Statements, there were any inconsistencies or anomalies reflected in them, please note in an accompanying memorandum. Such items would include (a) changes in the method of financial reporting, (b) inconsistencies in the treatment of certain information, and (c) significant non-recurring events affecting the Entity’s financial position. It will be helpful if the memorandum describes (a) the nature and cause(s) of each distortion, (b) the magnitude thereof, year by year, and (c) a general description of the adjustments which would be needed to cure them.

C-3 “Off-Books” Items. Information regarding:

- Any assets of the Entity which may have value but which do not appear on the Entity’s balance sheet.
- Any liabilities of the Entity (actual, potential or contingent) which do not appear on the Entity’s balance sheet.
- Any tangible or intangible assets which have been in use by the Entity at any time during the last five years, but which are not owned by, leased to, or licensed to, the Entity.

- Any labor or services which have been furnished to the Entity during the last five years but which have not been paid for by the Entity.

C-4. Intangible Assets. Information regarding any intangible assets of the Entity, such as patents, trademarks, copyrights, secret processes, licenses, franchises, goodwill, etc.

C-5. Tangible Assets. Any existing appraisals of real property (including leasehold interests) and any inventories and/or appraisals of machinery, equipment, etc., owned by the Entity.

C-6. Benefit Plan Obligations. Information regarding any obligations of the Entity under any employee benefit plan which are not adequately reflected on the Entity's balance sheets and/or the Notes thereto.

C-7. Tax Returns. Federal income tax returns for at least the three, and preferably five, tax years most recently ended, and corresponding state income tax returns.

C-8. Management Letters. Management letters prepared by the Entity's accountants for at least the three, and preferably five, fiscal years most recently ended.

C-9. Tax Elections. Any document filed by the Entity with the Internal Revenue Service which evidences the Entity's election as to the manner in which it is to be treated for income tax purposes (e.g. Treasury Department Form 2553). Also, if the Entity is a Limited Partnership or a Limited Liability Company taxed as a partnership, identify the person who has been designated to serve as the "Tax Matters Partner".

C-10. Forecasts. Any forecasts, projections or other similar economic or business predictions prepared by management or by any outside consultant to the Entity at any time within the last five years.

C-11. Purchase Offers. Information regarding any bona fide purchase offer(s) which may have been received by the Entity at any time within the last five years, and the owner's evaluation of such offer(s) and responses thereto.

Part D – Operational Information

D-1. Leases, Licenses. Information regarding any leases, license agreements, or other documents to which the Entity is a party, under which (a) assets owned by the Entity are occupied or used by others or (b) assets owned by others are occupied or used by the Entity.

D-2. Employment Agreements. Information regarding any employment agreements and any non-competition, non-solicitation, and/or non-servicing agreements currently in force between the Entity and any of its present or former employees.

D-3. Other Agreements. Information regarding any agreements with suppliers or customers, royalty agreements, loan agreements, labor contracts and/or employee benefit plans (qualified or non-qualified).

D-4. Permits, Licenses. Information regarding any permits or licenses required for the operation of the Entity's business which are held by individuals or by business entities other than the Entity.

D-5. Personal Guarantees. Information regarding any personal guarantees given by, or personally owned assets pledged by, any of the owners, for the purpose of facilitating the extension of credit to the Entity and/or improving the Entity's eligibility for bonding.

D-6. Organizational Chart. A chart showing all management positions, including job titles, names of persons currently in each position, and reporting responsibilities within the Entity.

D-7. Customer/Supplier Info. If the Entity's base of customers or suppliers is heavily concentrated, information regarding each of the "major accounts", including percentage of Entity's annual dollar volume and an evaluation of the strength of the business relationship.

D-8. Competitor Info. Information regarding at least three other businesses which the Entity regards as its primary competitors, showing their size, location, ownership (if known), strengths, weaknesses, etc.

This list, while reasonably comprehensive, cannot be relied on to be complete in all instances, and you are urged to supplement these items with any other information which you think may be relevant to the questions of business valuation, ownership or control, or restrictions thereon. You should work closely with the Entity's accountants in compiling this information, as the accountants may well be aware of additional relevant materials which should be included.

SCHEDULE C

OWNERSHIP & CONTROL

1. **The Owners.** Please identify the persons who currently hold the eight largest ownership interests in the Entity, showing the following information for each:

<u>FULL NAME</u>	<u>MAILING ADDRESS</u>	<u>SOCIAL SECURITY OR TAX ID NO.</u>	<u>PERCENTAGE OF OWNERSHIP</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

2. **The Operators.** Please identify the persons who are currently in operating control of the Entity, and describe their respective titles or positions (e.g. President, Treasurer, General Partner, General Manager, etc.):

<u>NAME OF PERSON</u>	<u>TITLE OF PERSON</u>
_____	_____
_____	_____
_____	_____
_____	_____

3. **Economic Rights v. Control Rights.** In many, if not most, closely-held businesses, particularly the smaller ones, no distinction is made between the two forms of ownership interests -- economic rights, on the one hand and control rights, on the other. To be sure, in many cases there is no useful purpose served by separating the two, but where there is some family goal which could be better met by making such a distinction, you might wish to explore the possibility.

Some possible factual conditions favoring such separation might be (a) the existence of so many owners that direct owner-management would be cumbersome or even dangerous, (b) one or more of the owners being incapable of safely participating in control of the Entity, or (c) an owner's

desire to shift economic interests within the family for tax planning reasons coupled with an unwillingness to place the recipients of those economic interests in control of the Entity.

Based on this description, do you believe that circumstances suggest a segregation of economic and control rights now? Yes No. Please make any comments here: _____

4. **Operating Control v. Voting Control.** Control of an Entity is usually (but not always) divided into two categories – operating control and voting control. Operating control, as the name suggests, is control at the day-to-day operational level, the right to make all of the routine (as well as perhaps some non-routine) operating decisions. Voting control, on the other hand, is of a generally higher order, and would include the right to establish broad business policies and procedures, the right to expand or contract the business, the right to borrow and/or pledge assets, and the right to sell, merge or dissolve the business.

In many closely-held businesses the line between the two is blurry in places, probably because both types of control are held by the same persons. However, in situations in which the managers are (or in the foreseeable future will be) persons with a small (or perhaps even no) ownership interest in the Entity, it may be well to take the time and trouble to carefully define that line, so as to reduce the likelihood of misunderstandings on this subject.

Based on this description, do you believe that the Entity should address this issue now? Yes No. Please make any comments here: _____

5. **Governing Documents.** In all forms of business organization, the owners have the right (a) to determine the internal organizational characteristics of the Entity and (b) to determine who has the power to make and to carry out certain types of decisions on behalf of the Entity. If the owners do not make these determinations, however, the laws of the State in which the Entity is organized will govern these questions. In light of this information, the owners wish to proceed as follows (check one):

- A. The owners are satisfied that the existing organizational documents are adequate and appropriate, and see no need to take any action.
- B. The owners are uncertain as to the adequacy and appropriateness of the existing organizational documents and wish to undertake a review, jointly with their professional advisors.

- C. The owners are aware that there are shortcomings in the existing organizational documents and will provide their professional advisors with a memorandum in which they identify the problems and describe how they would like to see them resolved.

Please make any comments here: _____

SCHEDULE D

VALUATION OF THE ENTITY

The process of establishing the value of a business Entity, whether for business succession purposes or otherwise, involves two basic steps. The first is the selection of one or more appropriate valuation methodologies, based on the general type and characteristics of the Entity and the business or businesses in which it is engaged. The second is the correct application of the chosen methodology(ies) to the specific facts of the Entity under discussion.

Valuation is a pivotally important part of the business planning process. On the economic side of the ledger, it determines how much a deceased, disabled or departing owner will receive for his interest in the Entity and, conversely, how much the other owners will have to pay for it. On the tax side, it significantly influences the weight which will be given by the tax authorities to the agreed economic relation among the owners. This can be crucially important if any of the owners are related to each other.

Business valuation is one of those tasks which is fairly easy to discuss on a general level, but is much more difficult to perform in the context of a specific assignment.

1. **Recent Valuation.** Has a formal valuation of the Entity been performed within the last five years? Yes No. If so, please attach a copy of the complete valuation report.

2. **Choice of Methodology.** If a formal valuation of the Entity were to be performed at this time, which three of the following-described methodologies do you believe would be most suitable. Use "1" to signify the most suitable, "2" to signify the next, etc.:

- | | |
|---|--|
| <input type="checkbox"/> Industry Standards | <input type="checkbox"/> Other Comparable Sales |
| <input type="checkbox"/> Comparison to Publicly Traded Companies | <input type="checkbox"/> Capitalization of (a) Adjusted Earnings, (b) Cash Flow, or (c) Net Operating Income |
| <input type="checkbox"/> Adjusted Net Worth plus Capitalized Excess (a) Adjusted Earnings, or (b) Cash Flow | <input type="checkbox"/> Adjusted Net Worth plus (a) Discounted Future Earnings, or (b) Cash Flow |
| <input type="checkbox"/> Book Value – Unadjusted | <input type="checkbox"/> Going Concern Value |
| <input type="checkbox"/> Book Value – with Adjustments | <input type="checkbox"/> Return on Investment |

Please explain the reasons for your answer: _____

3. **Management Assessment.** Although most of the valuation process is *quantitative* in nature, it will be helpful, during that process, to have a subjective but candid assessment, by the Entity's manager(s), of a number of *qualitative* factors. The responses which you give to each of the following questions should be a number between 1 and 10 --- 1 representing the *least* desirable status and 10 representing the *most* desirable. If you believe a particular question is inapplicable,

simply mark “N/A”. Try not to be either too self-satisfied or too critical --- no business is perfect and none is wholly imperfect. Write your answer in the box beside each question:

- A. **The Industry.** Assess the future economic prospects for the industry in which the Entity operates.
- B. **The Entity.** Assess the comparative economic prospects for the Entity within that industry, e.g., how does it compare with other similar businesses.
- C. **Goodwill.** Assess the Entity’s “goodwill”. Goodwill is the capacity to earn higher than normal profits due to a favorable reputation and/or consumer identification of the business name.
- D. **Senior Management.** Assess the Entity’s senior managers, as a group, in terms of general (and any necessary specialized) knowledge, diligence, experience, leadership qualities, personality, and loyalty to the Entity.
- E. **Personnel.** Assess the Entity’s entire “human resources”, in terms of talent, effort, productivity, flexibility, experience and loyalty to the Entity. Consider the availability of qualified personnel, labor costs, employer/employee relations, and the costs of turnover and training.
- F. **Capital/Credit.** Assess the Entity’s access to the capital and/or the credit it needs in order to carry on its current and anticipated future business activities.
- G. **Contingent Liabilities.** Assess the Entity’s vulnerability to contingent liabilities, such as product liability, environmental hazards, or service or warranty obligations.
- H. **Adaptability.** Assess the Entity’s capacity and willingness to adapt itself profitably to changing circumstances. In this connection, give particular thought to changes in technology, transportation, trade practices, taxes, public tastes and preferences, etc.
- I. **Marketing.** Assess the Entity’s effectiveness in the conduct of its advertising, marketing, public relations and/or sales activities.
- J. **Physical Facilities.** Assess the adequacy, suitability and condition of the Entity’s machinery, plant and equipment, with particular reference to their effect on the Entity’s overall efficiency and competitiveness.
- K. **Information Systems.** Assess the effectiveness of the information systems currently utilized by the Entity, including the entry or

capture, the storage, the safe-guarding, the analysis, and the reporting, of all data needed for its secure and intelligent operation.

L. Intellectual Property. Assess the value to the Entity of any patents, trademarks or copyrights, or any secret formulas or processes, which are either owned by, or favorably available to, the Entity.

M. Governmental Factors. Assess the Entity's vulnerability to existing, and potential future, governmental regulation and associated compliance problems, and, conversely, the benefit to the Entity of any existing or projected government subsidies, trade protections, licensing restrictions, tax concessions, etc.

N. Customer Relations. Assess the relations between the Entity and its customers. In this connection, pay particular attention to the diversity of the customer base, the persistence of the customers, and the ability and willingness of the customers to pay in full and on time, to pay appropriate prices, and to refer other desirable customers.

O. Supplier Relations. Assess the relations between the Entity and its suppliers. In this connection, pay particular attention to any unusually favorable or unfavorable pricing or terms of sale, any useful intelligence (tips) furnished by the suppliers, and the suppliers' willingness to meet any particular or unusual requirements of the Entity.

P. Special Relationships. Assess the value to the Entity of any special relations which may exist between the Entity and any other business or individual, including, by way of example, exclusive agreements to furnish supplies or to purchase products, distributorship agreements, license or franchise agreements, unusually advantageous (or disadvantageous) leases, unusual employment agreements, etc.

Q. Barriers to Entry. Assess the comparative difficulty which would be faced by another person or organization seeking to enter and compete in the types of business carried on by the Entity.

R. Efficiency. Assess the Entity's overall efficiency in the conduct of its business activities.

4. **Who Will Provide Valuation.** I am satisfied that valuation of the Entity will be an important part of the planning process. I wish to proceed as follows in connection with that part of the exercise. Check all of the boxes which apply:

I want to be personally involved and will promptly prepare myself to knowledgeable participate in any decision-making which may be required on this subject. I understand that this commitment will require at least 50,

and perhaps many more, hours of intensive study on my part. Please advise me how to proceed from here.

I want my existing professional advisors to furnish whatever valuation computations and/or opinions may be required or useful in the decision-making on this subject, recognizing, however, that this is not their primary area of expertise and their results may not be as accurate or as defensible as those of an independent valuation expert.

I want to engage the services of an independent valuation expert in whom my existing professional advisors have confidence, to try to increase the accuracy and/or defensibility of the conclusions arrived at on this important subject. I realize there may be significant extra expense but I believe this will be the best solution.

I am not certain as to how I want to resolve this question, and wish to consult further with my existing professional advisors before making a decision.

Please make any comments here: _____

SCHEDULE E

OWNERSHIP SUCCESSION

The question confronting us here is – who will succeed to the present owners’ interest(s) in the Entity when they (a) lose the desire to continue to own it, or (b) lose the capacity or willingness to run it, or (c) become disabled or incompetent, or (d) die.

This is really the fundamental point of the entire business succession plan --- how best to arrange for the inevitable transition from the present owners to the future owners. The future of the Entity hangs largely on the outcome of this exercise. Even under the best of circumstances, closely-held businesses have a fairly high mortality rate --- a good succession plan can greatly increase the odds for its survival.

1. **Methods of Transfer.** There are a limited number of methods by which transfers of ownership are accomplished – basically they are (a) sale, (b) gift, or (c) bequest. Transfers can be carried out by a combination of methods also (e.g. part gift, part sale), if desired. Each category can be further broken down, however, and to stimulate your thinking, and to cause you to focus on the specific possibilities, some of the more obvious ones are shown here (check all of the boxes which apply):

COLUMN NUMBER

1 2 3 4

Part A - Sales

- | | | | | |
|---|--------------------------|--------------------------|--------------------------|--------------------------|
| A-1 Sale to other existing owner(s) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| A-2 Sale to outsider(s) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| A-3 Sale to existing or prospective “Key Employee(s)” | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| A-4 Sale to Employee Stock Ownership Plan (ESOP) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| A-5 Sale pursuant to “Buy-Sell” Agreement | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| A-6 Sale to those children who will operate the Entity | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| A-7 Other (specify)_____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Part B - Gifts

- | | | | | |
|---|--------------------------|--------------------------|--------------------------|--------------------------|
| B-1 Gift to spouse, outright | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B-2 Gift to children generally, equally or unequally | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B-3 Gift to those children who will operate the Entity | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B-4 Gift to trust for spouse and/or children | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B-5 Gift to charity, outright or in trust | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

- B-6 Gift to existing or prospective “Key Employee(s)”
- B-7 Other (specify)_____

Part C - Bequests

- C-1 Bequest to spouse, outright
- C-2 Bequest to children generally, equally or unequally
- C-3 Bequest to those children who will operate the Entity
- C-4 Bequest to more remote descendants (e.g. grandchildren)
- C-5 Bequest in trust for spouse and/or children
- C-6 Bequest to charity, outright or in trust
- C-7 Other (specify)_____

Part D – Other Dispositions

- D-1 Split up business into multiple units to facilitate transfer (by sale, gift or bequest) to different individuals (family and/or key employees)
- D-2 “Downsize” the business in anticipation of, or in conjunction with, any of the transfers
- D-3 Liquidate business either during lifetime or after death of owner

Please make any comments here: _____

SCHEDULE F

VOTING CONTROL SUCCESSION

1. If voting control of the Entity is now, and is desired and intended to remain indefinitely, in the same hands as the ownership interests, and in the same proportions (such as, for example, a general partnership or a corporation which has only one class of stock) the rest of this Schedule does not apply to your situation. Stop here and move to the next Schedule.

2. If voting control of the Entity is now, or is intended to become, placed in hands (or in proportions) which differ from the ownership interests, please identify the reason(s) for this. Check the selection(s) below which most closely reflect the facts of your situation:
 - Ownership interests are/will be held by persons who are currently young or inexperienced in business and, until they gain maturity and experience, it is better that control be placed in the hands of others.

 - Ownership interests are/will be held by persons who are not likely ever to have the business ability to control the Entity.

 - Ownership interests are/will be held by so many persons that it would likely prove cumbersome or disruptive for all of them to have control.

 - Ownership interests are/will be held partly by persons who are both capable of and interested in controlling the Entity and partly by persons who are not, and it is better to place control exclusively in the hands of the owner-manager(s) than partly in the hands of the passive owner(s).

Please make any comments here: _____

SCHEDULE G

RETIREMENT INCOME PLANNING

In families which own an interest in a closely-held business, the business Entity is often the primary vehicle for the owner's and/or manager's retirement income planning. Typically, this planning is carried out, at least in part, through the use of one or more "qualified" employee benefit plans, which, if correctly designed and administered, may enjoy advantageous tax treatment. There are also various forms of "non-qualified" plans which, even though they may lack special tax treatment, are sometimes used to provide additional economic benefit to certain employees. If the Entity currently has in place any such plan or plans, please provide the following information:

1. **Retirement Planning.** Does the Entity currently have a "qualified" employee benefit plan? Yes No. If so, please indicate (with thousands omitted, showing \$47,000 simply as 47) the vested portion of the benefit of the four principal owners, both at present and at their respective anticipated retirement dates:

		AT PRESENT				AT RETIREMENT			
		A	B	C	D	A	B	C	D
A.	Pension plan – Defined Ben.	___	___	___	___	___	___	___	___
B.	Pension plan – Defined Cont.	___	___	___	___	___	___	___	___
C.	Profit Sharing Plan	___	___	___	___	___	___	___	___
D.	Section 401(k) Plan	___	___	___	___	___	___	___	___
E.	SEP – IRA	___	___	___	___	___	___	___	___
F.	ESOP	___	___	___	___	___	___	___	___
G.	Stock Bonus Plan	___	___	___	___	___	___	___	___
H.	Other (specify) _____	___	___	___	___	___	___	___	___

2. **Disability Planning.** Does the Entity currently have a Salary Continuation Plan which will benefit the owner/employees in the event of their disability? Yes No. If so, are the Entity's obligations under the plan funded by disability insurance? Yes No. If there is such a plan, please indicate (with thousands omitted) the approximate annual payment to each of the four principal owners, assuming their disability occurred in the near future.

		A	B	C	D
A.	Benefit payable to Owner/Employee	___	___	___	___
B.	Benefit payable to spouse after death of Owner/Employee	___	___	___	___

3. **Deferred Comp.** Does the Entity currently have a “non-qualified” deferred compensation plan in effect? Yes No. If so, are the Entity’s obligations under the Plan funded by life insurance or an annuity? Yes No. If there is such a Plan, please indicate (with thousands omitted) the approximate total benefit which will be due to each of the four principal owners on the dates of their respective anticipated retirements.

	A	B	C	D
Anticipated benefit for each Owner/Employee	_____	_____	_____	_____

4. **Retirement Income Sources.** Describe (with thousands omitted) the expected sources and annual amounts of retirement income for each of the four principal owners.

	A	B	C	D
A. Proceeds from Qualified Plans	_____	_____	_____	_____
B. Proceeds from Deferred Compensation	_____	_____	_____	_____
C. Consulting Agreement with Entity	_____	_____	_____	_____
D. Sale or Redemption of Ownership Interest in Entity	_____	_____	_____	_____
E. Real Property Leased to Entity	_____	_____	_____	_____
F. Equipment Leased to Entity	_____	_____	_____	_____
G. Other Investment Income	_____	_____	_____	_____
TOTAL:	=====	=====	=====	=====

Please make any comments here: _____

SCHEDULE H

“KEY EMPLOYEE” ISSUES

For purposes of the following discussion, the term “Key Employee” refers to any person who is not a member of the owner’s immediate family but whom the owners and/or the managers of the Entity regard as important to the future success of the Entity. Such a person may be (a) an employee, (b) an “outside” director or other regular advisor to management, or (c) a paid consultant. It is a person whose experience, skill, judgment and/or knowledge is believed to be sufficiently desirable, and/or difficult to replace, that methods have been or should be considered to increase the likelihood of that person’s continuing indefinitely in the employ of, or being otherwise available to assist, the Entity. If no Key Employee issues are or may become present, stop here and move to the next Schedule. If such issues are now or may become an issue, please answer the following questions:

1. **Key Employee Loyalty.** The owners are aware that (a) partial ownership and (b) performance-based compensation are customary techniques for enhancing the loyalty of Key Employees. Their thoughts on these subjects are as follows:

- | | YES | NO |
|--|--------------------------|--------------------------|
| A. The owners presently intend, or are giving consideration, to transferring ownership of the Entity in whole or in part, to one or more Key Employees. | <input type="checkbox"/> | <input type="checkbox"/> |
| B. If the answer to A is “No”, the owners would nonetheless like to be made aware of specific techniques for moving ownership interests to Key Employees. | <input type="checkbox"/> | <input type="checkbox"/> |
| C. The owners presently intend, or are giving consideration, to compensating Key Employees, at least in part, on the basis of their future contribution to the profitability of the Entity (other than by pure cash bonuses awarded from time to time in management's discretion). | <input type="checkbox"/> | <input type="checkbox"/> |
| D. If the answer to C is “No”, the owners would nonetheless like to be made aware of specific techniques for providing such compensation. | <input type="checkbox"/> | <input type="checkbox"/> |

2. **Duration of Need.** The owners primary interest in assuring the continuing availability of Key Employees is to maintain the profitability and stability of the Entity, after their disability or death:

- | | | |
|--|--------------------------|--------------------------|
| A. Until one or more of their children is of sufficient age and maturity to assume voting and/or operating control of the Entity. | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Until a decision can be carefully made and carried out as to the profitable disposition of the Entity, whether by sale as a going business or in liquidation. | <input type="checkbox"/> | <input type="checkbox"/> |

C. Until the death of the owner's spouse and children, or until there is a profitable opportunity for a sale, for a merger, or for a transition to public ownership, whichever comes first.

D. Other (specify in detail): _____

3. **Extent of Commitment.** Which (if any) of the following statements most accurately reflects the owners present wishes regarding Key Employee(s) involvement. Check only one of the boxes:

A. One or more Key Employees will continue the business (with a child or children of the owner having at most a minority interest), and the owners are willing to enter into a legally binding arrangement at this time to implement this decision.

B. One or more Key Employees will continue the business (with a child or children of the owner having at most a minority interest), but the owners are willing at this time to enter only an arrangement that they can revoke in the future without obtaining the consent of the Key Employee(s) or any other person.

C. One or more Key Employees will continue the business (with a child or children of the owner having a majority interest), and the owners are willing to enter into a legally binding arrangement at this time to implement this decision.

D. One or more Key Employees will continue the business (with a child or children of the owner having a majority interest), but the owners are willing at this time to enter only an arrangement that they can revoke in the future without obtaining the consent of the Key Employee(s) or any other person.

Please make any comments here: _____

SCHEDULE I

FUNDING OF PURCHASES

Most business succession agreements involve the creation of certain obligations (or in some cases options) to acquire ownership interests which are held by a deceased, disabled, or departing owner. In most cases, some portion of the purchaser's capital needs will be met by bank borrowings, by the proceeds of liquidation of other assets, or by the accumulated savings, of the acquiring party. In many instances, the agreement provides that some portion of the ownership interest to be acquired will be paid for in installments, over a period of time, in the manner prescribed in the agreement --- a technique known as "seller financing". In that event, the purchasing party's capital needs may be met, at least in part, through the future earnings of the Entity and/or the individual purchaser. In many instances also, the Entity and/or the owners elect to use some form of life and/or disability insurance product to also provide all or a portion of the capital required. The following questions are designed to alert you to various issues presented by, and to elicit certain facts and/or preferences regarding, (a) any seller financing which seems appropriate, and (b) any insurance which seems appropriate.

PART A – SELLER FINANCING

If seller financing is to play a role in the purchase of an ownership interest, certain decisions will need to be made. Here is a list, fairly complete, of the issues which will need to be considered:

- What portion of the purchase price will be paid in cash and what portion will be financed?
- What will be the duration of the financing?
- At what times and in what amounts will principal become payable? Will principal be paid back in periodic installments over the life of the loan, or in a "balloon" at the end of the term, or in some combination?
- At what rate(s) and at what intervals will interest be calculated and payable? Will the interest rate be fixed or will it "float" with the prime rate or some other index? If it floats, will there nonetheless be agreed minimum and/or maximum rates?
- What events or types of events will be treated as a default on the part of the debtor and what will be the rights of the creditor in those events?
- If the debtor is the Entity itself, should the remaining owners (and perhaps also others) personally guarantee the repayment?
- What assets, if any, should be required to be pledged in order to secure the repayment? The likely candidates would be (a) the ownership interest which is being purchased, (b) other investment assets owned by the debtors, and/or (c) real property or other tangible assets owned by the Entity.

- Should specimen forms of the debt and security instruments (e.g. promissory note and pledge agreement) form a part of the agreement, to reduce the likelihood of later disputes about the exact form which these important documents take?
- Should the financing arrangements be contingent upon the prospective debtor(s) demonstrating a certain level of credit worthiness?
- Should there be a provision to extend the duration of (or otherwise modify) the financing arrangements if two (or more) substantial owners die in quick succession?

PART B - INSURANCE

At first glance, it may seem simple to figure out what insurance would be most appropriate. As you are about to see, it is not. Some advisors will simply try to develop a sense of how much premium the prospective policy owner will be able to pay, and then tailor their recommendations accordingly. This is going at the problem exactly backwards; the premium amount is one of the last considerations, not one of the first. Because life insurance, rather than disability insurance, is overwhelmingly the more common tool in this setting, the following discussion deals principally with life insurance. Here is a list, undoubtedly incomplete, of things which may need to be considered:

- What events should be insured against? The death of an owner, in which life insurance is the proper tool; the disability of an owner, in which disability insurance may play a role; or simply the departure of an owner, for which no form of insurance protection is available.
- How should the coverage be tailored to fit the need? For example, whose lives should be insured; what type of coverage (e.g. permanent, temporary, or a blend of the two) should be specified; what amount of coverage is presently needed; and what arrangements, if any, should there be for possible increases of coverage in the future?
- Care must be taken to match ownership and beneficiary designations to the obligations created under the agreement. It is not productive to provide insurance proceeds to someone who does not have a purchase option or obligation under the agreement. A related question is whether or not insurance should be placed in force if the purchase arrangements are only an option, and not an obligation?
- Consideration should be given to the safety of the insurance investment. Careful attention should be paid to the insurer's rating, and, if substantial amounts are involved, consideration should also be given to spreading the risk among several insurers, so as to reduce the economic hazards of putting too many eggs in one basket.
- A number of issues relate to the premiums to be paid. What is the stability of the projected premium expense; is it a guaranteed level premium or is it vulnerable to periodic increase? Is any portion of the premium going to be

deductible to the payor for income tax purposes? And finally, what is the amount of the premium, and is it affordable?

- What should be the beneficiary's obligations with respect to the insurance proceeds and what should be done with any "surplus" proceeds (e.g. amounts not needed to fulfill the purchase price)?
- Should the policies be held by their respective owners, and thus be vulnerable to lapse, to the claims of creditors, or to willful misapplication, or should an independent party (e.g. a trustee) be employed to hold the policies, to supervise premium payments, and to disburse the proceeds of the policies in accordance with the agreement?
- What arrangement should be made for ownership of the policies if the business succession agreement should be cancelled, either by the dissolution of the Entity, by the voluntary action of the parties, or by the deaths of all of the owners in rapid sequence?

With this as background, please consider the following questions:

1. **Life Insurance – Entity.** If the Entity currently owns, and is the beneficiary of, insurance on the lives of any of the owners, please furnish the following information:

Name of Insured	Death Benefit
_____	_____
_____	_____
_____	_____
_____	_____

2. **Life Insurance – Owners.** If the owners of the Entity currently own, and are the beneficiaries of, insurance on the lives of each other, please furnish the following information:

Name of Policy Owner	Name of Insured	Death Benefit
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. **Disability Insurance – Entity.** If the Entity currently owns disability insurance on any of the owners, please furnish the following information:

Name of Insured	Annual Benefit
_____	_____
_____	_____

4. **Types of Coverage.** Type of life insurance policy(ies). Check all of the boxes which apply. This question may be somewhat confusing, due to the large variety of policy names presently in the marketplace. To help you to make sense of the insurance “Tower of Babel”, here is a list, arranged in four columns, which group the most prevalent policy names into functionally meaningful categories:

DURATION OF COVERAGE	PREMIUM PAYMENT	NUMBER OF INSUREDS	PREMIUM PAYOR
<input type="checkbox"/> Whole Life, also called Ordinary or Permanent Life	<input type="checkbox"/> Single-Premium	<input type="checkbox"/> Single Insured	<input type="checkbox"/> Insured
<input type="checkbox"/> Term Life, also sometimes called Renewable or Convertible Term	<input type="checkbox"/> Limited-Pay	<input type="checkbox"/> Survivorship	<input type="checkbox"/> Owner
<input type="checkbox"/> Group Term Life	<input type="checkbox"/> Variable	<input type="checkbox"/> First-to-Die	<input type="checkbox"/> Split-Dollar
<input type="checkbox"/> Whole Life w/Term Rider	<input type="checkbox"/> Universal	<input type="checkbox"/> Second-to-Die	<input type="checkbox"/> Reverse Split-Dollar
	<input type="checkbox"/> Variable Universal		<input type="checkbox"/> Section 162 Plan
	<input type="checkbox"/> Current Assumption		
	<input type="checkbox"/> Adjustable		

5. **Application of Proceeds.** Please indicate the purpose(s) for which the Entity-owned life and/or disability insurance exists. Check all of the boxes which apply:

- Redeem ownership interest on death or disability of owner.
- Replace owner as a “Key Employee”.
- Provide deferred compensation for owner.
- Satisfy requirement of bonding company or lender.
- Pay off debts owed by Entity.
- Other (specify)_____.

SCHEDULE J

OWNERS' ESTATE PLANNING

There are a number of areas in which business succession planning may impinge upon the general estate (and estate tax) planning of the principal owner(s) of the Entity. These areas can relate (a) to dispositive issues (that is, how will the owner dispose of the various assets comprising his estate) or (b) to death tax issues (that is, how best for the owner to attempt to qualify his estate for any special tax breaks which may reduce the economic burden created by his death). This Schedule advertises to, or contains questions relating to, both of these subjects.

1. **Tax Matters.** Under various provisions of the Internal Revenue Code (and perhaps under certain provisions of applicable state tax laws as well), a decedent who has an ownership interest in a business may be subject to certain special tax treatment not afforded to the owners of other types of assets.

Such treatment might include, for example, (a) the taxable value of the interest for estate tax purposes, (b) the income tax treatment resulting from the business' redeeming a deceased owner's interest, and (c) the deferral of estate tax due by reason of the inclusion of such an ownership interest in a decedent's estate. Additionally, there are certain special rules relating to intra-family transfers which present substantial tax risks to the business owner. All such provisions are subject to numerous and complex exclusions, limitations and qualifications, and both the relief provisions, the penalty provisions, and the qualifications change periodically. For this reason, the above descriptions are intentionally vague, general and incomplete, in an attempt to delay as long as possible the obsolescence of this questionnaire.

Your professional advisors will need to ask you, in order to assess your eligibility for preferential tax treatment and/or your vulnerability to tax penalties, quite a number of specific questions, the answers to which, if thoroughly and candidly given, will help them to steer you through this difficult and constantly changing aspect of business succession planning. Because of the concern for obsolescence mentioned above, those tax-related questions are intentionally *not* made a part of this questionnaire. Your professional advisors may wish you to complete another, more narrowly focused, questionnaire dealing with these issues.

2. **Dispositive Matters.** In families which own an interest in a closely-held business, and in which one or more of the owners' children are active in the business (hereinafter the "business children") and one or more children are not active in the business (hereinafter the "non-business children"), the question arises as to how best to plan for the distribution of the owner's estate. Since in most cases the business is the economic engine that provides the family's prosperity, and is often the largest asset of the owner (and perhaps also the asset with the greatest potential for future growth), the answers chosen may have a significant economic, and perhaps also emotional or psychological, impact on the children.

There are two principal problems, a philosophical one and a practical one. The former is the question of whether to try to treat all of the children equally, by value, and if not, how unequal an arrangement may be appropriate. The latter is the question of how best to fund the distributive shares of the business children and the non-business children, respectively.

In light of these observations, the owners are presently inclined as follows on the question of equality of treatment of the various children (each check one):

		COLUMN NUMBER			
		1	2	3	4
A.	All children are to be treated strictly equally, with the business interest allocated to the business children to the greatest extent possible.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B.	All children are to be treated equally in a general sense of the term, but with some effort being made to recognize and make adjustment for the economic contribution made by the business children.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C.	The parent(s) will simply attempt to do "rough justice" to the various children, recognizing that it is not practical to try to be more precise.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

In light of these stated preferences, the owners are presently inclined as follows on the question of funding the distributive shares of the various children (each check one):

A.	The business children will share equally in the business – the non-business children will get whatever is left.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B.	All of the children will receive interests in the business. The business children will get economic interests and voting control; the non-business children will get economic interests only.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C.	Any prospective imbalances in the amounts going to the various children might be mitigated by one or more of the following techniques (each check however many apply):				
1.	Owners pulling any "excess" capital out of the business and investing it in non-business assets.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	Owners purchasing any expensive new assets personally and leasing them to the business.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	Owners purchasing (or arranging for the purchase of) life insurance to fund non-business childrens' inheritance.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	Owners assisting non-business children to start their own separate businesses; with business advice, business opportunities, business loans, credit, etc.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Allocation of Future Growth. The owners are mindful that future growth in the value of the business will be increasingly attributable to the efforts, skills, and judgment of the business children. Accordingly, the owners might wish to explore possible methods by which such increases in value will benefit primarily, or perhaps entirely, those children. In light of this observation, the owners wish to proceed as follows (each check one):

- A. The owners appreciate the efforts and abilities of the business children but do not wish to give up any additional value created by them.

- B. The owners recognize the additional value created by the business children and wish to share that increase equitably between the owners and the business children.

- C. The owners wish to explore ways in which all or substantially all of the growth in value will inure to the benefit of the business children.

Please make any comments here: _____

SCHEDULE K

MISCELLANEOUS ISSUES

This Schedule raises a number of questions or issues which are not present in all business succession planning exercises but which should nonetheless be brought generally to the owners' attention so they can consider them:

1. **Close Corporation Issues.** If the Entity is a statutory "close corporation" (e.g. direct control by shareholders – no Board of Directors), it may be possible and desirable to subordinate certain aspects of the law governing such corporations to the proposed business continuation agreement. The specific candidates for such subordination might be provisions (a) relating to restrictions on the issuance of stock, (b) relating to restrictions on the transfer of stock, (c) relating to unanimous shareholder approval of a proposed consolidation, merger, share exchange or transfer of assets, (d) relating to the right to dissolution, and (e) relating to the right to avoid dissolution.

The owners Do Do Not Do Not Know whether or not they --- wish the agreement to contain a provision subordinating the statutory provisions described above.

2. **Owner-Employees Only.** The owners have considered the question of whether or not ownership of an interest in the Entity should be restricted to persons who are active full-time (or perhaps in some cases less than full-time) employees of the Entity. In considering this issue, they have been specifically mindful that (a) life insurance will not ordinarily be a suitable funding mechanism, and (b) employees who are owners of minority interests may have some vulnerability to involuntary termination of their employment.

The owners Do Do Not Do Not Know whether or not they --- wish the agreement to restrict ownership to persons who are employed by the Entity.

If the answer to the above question is "Do", what should be the "triggering events" which would give rise to either a right or a duty, on the part of the other owners or of the Entity itself, to acquire such interest. Check all of the boxes which apply:

- A. Retirement at Normal Age.
- B. Retirement at an Earlier Age.
- C. Permanent Disability.
- D. Voluntary Termination.
- E. Involuntary Termination.

If the answer to the above question is "Do":

- A. The purchase or redemption of the Employee's ownership interest should be (check one):
 - 1. At the option of the Entity and/or other owners.

2. A matter of obligation on the part of the Entity and/or other owners.

B. The purchase price should be (check one):

1. The same as if the Employee had died while holding his ownership interest.

2. Some lesser amount.
State how much less and your reason: _____

_____.

C. The payment of the purchase price should be (check one):

1. All in cash.

2. At the option of the acquiring party, payable over a period of years, with interest.

3. **Resolving Disputes.** The owners have considered the possibility of disputes or disagreements arising in connection with their business continuation agreement and/or its administration. Their current thinking regarding the preferable method of resolving any such disputes is as follows (check one):

A. They are satisfied to have any disputes resolved in the courts in the event that informal discussions between the parties are not able to resolve them.

B. They wish to avoid recourse to the courts, and, accordingly, would like the agreement to contain a provision for mandatory arbitration of disputes under the appropriate arbitration statute or otherwise.

C. They are currently undecided and wish to discuss the comparative advantages and disadvantages with their professional advisors in order to make an informed decision.

4. **Exempt Transfers.** The owners have considered the possibility that one or more of them might wish, as part of an estate plan, to give or bequeath some or all of their ownership interest to certain other owners (e.g. their children), or to a trust for such other owner's (and the owner's family's) benefit, which plan might be prevented from being carried out if the agreement did not contain a provision allowing such transfers.

The owners Do Do Not Do Not Know whether or not they --- wish the agreement to allow such transfers without triggering an obligation or option to purchase.

5. **S-Corporation Issues.** Complete this Section only if the Entity is a Corporation which has made, or likely will be making, the "S-Corporation election" under IRC §1362.

The owners have considered the legal, tax and practical questions presented by the Entity's being an electing small business corporation under IRC §1362. They realize that their agreement might contain provisions which bind each of the owners to take all actions required to maintain the Entity's status as such, and, conversely, not to take any actions which would interfere with the Entity's status as such, unless and until a substantial majority (in interest) of the owners elect to terminate such status.

The owners Do Do Not Do Not Know whether or not they --- wish the agreement to contain such provisions.

6. **Deadlock.** The owners have considered the possibility that the Entity could be imperiled by the existence of an unbreakable deadlock between owners or groups of owners having equal voting power. They are aware that their agreement might contain a certain type of provision (variously called the "Russian Roulette" or "Slice-of-the-Pie" clause), under which an owner may insist (a) that his ownership interest be purchased by the other owner(s), or (b) at the other owner(s) election, that he be obliged to purchase the interest owned by the others.

The owners Do Do Not Do Not Know whether or not they --- wish the agreement to contain such a provision.

7. **Puts & Calls.** The owners have considered (a) the desirability of including in the agreement a provision known as a "put" right, under which an owner can require the Entity to purchase (redeem) his ownership interest in the Entity, either at any time or on the occurrence of certain specified events, and also (b) the desirability of including in the agreement a provision known as a "call" right, under which the Entity can require an owner to sell his ownership interest in the Entity either to the Entity or to the other owners, either at any time or on the occurrence of certain specified events.

The owners Do Do Not Do Not Know whether or not they --- wish the agreement to contain provisions for "put" or "call" rights.

8. **Tag-Along Rights.** The owners have considered that the holders of a majority interest in the Entity will have a stronger economic position than the holders of a minority interest in dealing with any outside party who may seek to acquire ownership and/or control of the Entity. In order to reduce their respective vulnerabilities in such an event, they might wish to agree, as a part of the business continuation agreement, to a "tag-along" sale provision, requiring any such would-be acquirer to offer to buy the interest owned by the minority owners on the same basis as the interest owned by the majority.

The owners Do Do Not Do Not Know whether or not they --- wish the agreement to contain such provisions.

9. **Voting Agreements.** The owners have considered the desirability of including in the agreement a provision binding the persons having voting control of the Entity to vote, on certain specified questions, in a certain pre-arranged and agreed manner. Such questions might, by way of example, relate to the composition of the governing body (e.g. Board of Directors) or amendments to the organizational documents (e.g. Articles of Incorporation, By-Laws, etc.). Such a voting provision might either (a) have no prescribed enforcement mechanism, (b) be enforced through an irrevocable joint proxy, or (c) be enforced through a Voting Trust Agreement.

The owners Do Do Not Do Not Know whether or not they --- wish the agreement to contain provisions ensuring an agreed vote on certain questions.

10. **Agreement Not to Compete.** The owners have considered the potential economic damage which might be done to the Entity if any owner, acting individually or in concert with others, should attempt to (a) compete with the Entity, (b) solicit or service the customers of the Entity, (c) disclose confidential information belonging to the Entity, or (d) appropriate for himself economic opportunities that might benefit the Entity. The owners have considered the desirability of including in the agreement a provision banning or restricting any such conduct on the part of any owner, and providing for sanctions or penalties in the event of breach.

The owners Do Do Not Do Not Know whether or not they --- wish the agreement to contain provisions banning or restricting competition, solicitation, servicing, disclosure, appropriation, etc.

11. **Windfall Provision.** The owners have considered the possibility that, at some time after a Business Succession Agreement is placed in effect, there might be an opportunity to sell the entire Entity to an outside party, on an extraordinarily advantageous basis and that, if such an event occurred, it might be desirable to allow the holders of some previously agreed portion of the ownership interest to abrogate the agreement, in order to allow such a sale to take place.

The owners Do Do Not Do Not Know whether or not they --- wish the agreement to contain provisions allowing it to be abrogated to allow a “windfall” sale to take place.

12. **Extraordinary Outcomes.** The owners are aware that future events do not always unfold as expected. The planned succession of ownership and/or control, as reflected in their Business Succession Agreement, may someday prove inappropriate for reasons which cannot now be anticipated. For example, it may prove attractive to sell the entire Entity to an Employee Stock Ownership Plan (ESOP), to “go public”, or to merge the Entity with another business organization.

The owners Do Do Not Do Not Know whether or not they --- wish the agreement to contain provisions which attempt to anticipate such extraordinary outcomes.

Please make any comments here: _____

SCHEDULE L

ETHICAL CONSIDERATIONS

All professional advisors (but most especially lawyers because of (a) the pivotal role played by lawyers in the business succession planning process, and (b) the stringency of the rules which govern their conduct) must have a clear and a shared understanding as to whom they represent and to whom their responsibility lies. This Schedule is designed to address these issues.

The problem exists in two separate, but somewhat related, forms. The first is the problem of multiple representation, or whether one person can fairly advise multiple clients who have, or who may come to have, differing interests. The second is the problem of non-representation of junior or minority owners, given that almost all business succession planning exercises are initiated and controlled by the senior/majority owners of the business. The goals of fairness and of equal access to independent and unbiased advice, on the one hand, and of reasonable efficiency and economy, on the other hand, are inherently in conflict, and can probably never be wholly reconciled. There is an acceptable answer, however, and that answer is informed consent.

Informed consent can be achieved, in the business succession planning context, by all of those who are potentially affected by the multiple representation and/or non-representation problems (a) being as fully informed as they may reasonably wish to be about both the theoretical and the practical implications of the problem, and (b) then evidencing their conscious choice to waive any objection they might otherwise have.

Please understand that this is a dangerously sketchy introduction to a potentially complex and important subject, so please discuss it in detail with your (respective) lawyers, and possibly also with other actual or prospective professional advisors as well, prior to making any firm decision.

In light of these observations, and of any information provided to them by their professional advisors, the principal owners have the following views regarding (a) multiple representation, and/or (b) non-representation of minority owners (each check one):

1. The owners acknowledge the potential problems inherent in multiple representation and/or non-representation of minority owners, and think that the most appropriate solution is:

- | | | | | | |
|----|---|--------------------------|--------------------------|--------------------------|--------------------------|
| A. | For the Entity to have its advisors and for each of the principal owners to have their own individual advisors. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B. | For each of the principal owners to have their own individual advisors – no separate advisors for the Entity. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| C. | For the Entity to have its separate advisors, with each individual owner having the right to engage his own individual advisors as and when needed. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| D. | For the Entity to have advisors who will represent both the Entity and all of the individual owners. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

2. The owners see none of the potential problems inherent in multiple representation and non-representation of minority owners and believe that only one set of professional advisors should be involved under any circumstances.

Please make any comments here: _____

\\busplan\quest2001.doc
10/30/01