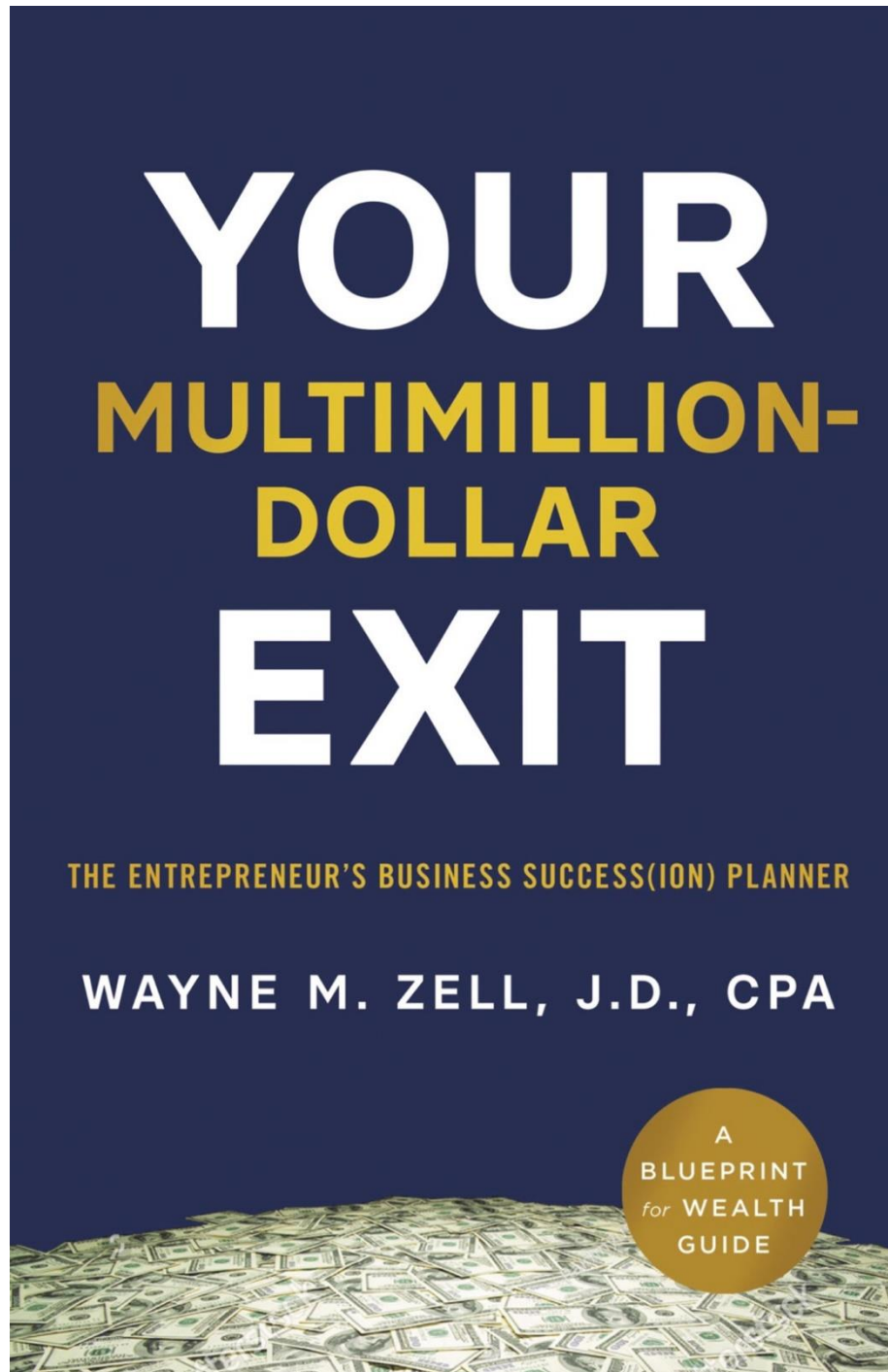


Management Succession Plan Sample



ABC, INC.

SAMPLE MANAGEMENT SUCCESSION PLAN

EFFECTIVE AS OF _____, 20__

This MANAGEMENT SUCCESSION PLAN (the “**Plan**”) of ABC, INC. (the “**Company**”), is made by [NAME OF STOCKHOLDER], in his individual capacity and as Trustee of the [NAME OF STOCKHOLDER] Revocable Trust dated as of _____ (the “**Trust**”), and is hereby adopted and approved effective as of the date set forth above, to provide for an orderly transition of leadership, management, and ownership of the Company in a manner designed to ensure stability, continuity and an ongoing commitment to the Company’s culture and priorities, if at any time [NAME OF STOCKHOLDER] were to die and/or become incapacitated (as that term is defined in the Trust). The Trust [is the sole stockholder] [owns ____ shares of common stock] of the Company and [NAME OF STOCKHOLDER] is the [sole current Trustee] of the Trust. This Plan shall only take effect upon [NAME OF STOCKHOLDER]’s incapacity or death.

The Plan consists of two parts: (1) Succession of Leadership and Management; and (2) Succession of Ownership.

1. Succession of Leadership and Management

The following persons shall continue to operate the Company on behalf of the Trust following the death or incapacity of [NAME OF STOCKHOLDER]:

A. Board of Directors: The following persons shall serve on the Board of Directors of the Company (the “**Board**”): [_____] and [_____] , as long as they remain continuously employed by the Company, the named successor Trustee of the Trust, [ADD OTHERS WITH INDUSTRY OR FUNCTIONAL EXPERTISE], and _____.

[NAME OF PRESIDENT] shall serve as President and will have responsibility and power to run the daily operations of the Company as set forth in Section 1B below. The Board will have the power to remove and replace [NAME OF PRESIDENT] and appoint a successor President of the Company if [NAME OF PRESIDENT] is no longer employed or serving as President.

The appointed President shall report to the Board and will serve and perform his/her duties in accordance with the Company’s bylaws and the terms and conditions of this Plan. The Board shall review activities of the Company for the preceding fiscal year and preceding quarters, provide guidance to the President on matters relating to the operation of the business, and exercise the powers and responsibilities set forth in the bylaws and this Plan.

Meetings of the Board shall be held at such times as the successor Trustee of the Trust may request from time to time and in accordance with the Company's bylaws; provided, however, that the Board shall meet no less than twice per calendar year for the first two years following *[NAME OF STOCKHOLDER]*'s incapacity or death. Members of the Board may participate in a meeting of the Board by means of conference telephone or video conferencing by means of which all individuals participating in the meeting can hear and be heard, and the bylaws shall be amended if necessary to facilitate such participation. The Board shall conduct its business by such other procedures as a majority of its members considers appropriate.

Board members shall be entitled to receive reasonable compensation for their services, based upon their regular hourly rates or such other amount as the successor Trustee of the Trust and the Board members shall agree, and as more fully set forth below. *[ADD OTHER COMPENSATION OR INCENTIVE PROVISIONS AS WELL AS NON-COMPETITION AND NON-INTERFERENCE COVENANTS TO ALLOW BOARD MEMBERS TO PARTICIPATE IN A BUSINESS EXIT IF DESIRABLE.]* In the event of any conflict between this Plan and the bylaws, this Plan shall control and govern.

B. Board and/or Officer's Duties and Responsibilities:

The Board shall have all the rights, power, duties, and responsibilities necessary to manage the Company, as set forth in the bylaws. The Board shall delegate the responsibility for the day-to-day operations and management of the Company to the President and the officers of the Company, subject to control and oversight by the Board.

The officers of the Company and their compensation immediately following Mr. Damico's incapacity or death shall be as follows:

<u>Title</u>	<u>Name</u>	<u>Annual compensation</u>
President	<i>[NAME OF PRESIDENT]</i>	\$__ + bonus determined by Board
CFO, Treasurer	<i>[NAME OF CFO]</i>	\$__ + bonus determined by Board
Secretary	<i>[NAME OF SECRETARY]</i>	\$__ + bonus determined by Board

[OTHER OFFICERS]

[OPTIONAL] If *[substantially all of the assets or business of]* the Company or *[great than ___% of the outstanding shares of]* the Company's *[common][voting]* stock is sold while the named officers are still serving, they shall be entitled to receive change in control bonuses aggregating *[___%]* of the

net proceeds from the sale to be divided among them *[as determined by the Board]**[proportionately to their base salaries prior to the change in control transaction]* and a retention bonus to be mutually agreed upon for remaining at the Company or its successor in interest post-closing for a minimum period of time.

The Company shall guarantee the employment and compensation of the named officers for *[__ months]* following the date on which *[NAME OF STOCKHOLDER]* becomes incapacitated or dies. The Company and the named officers may mutually agree upon an extended employment agreement following the initial *[__-month]* period.

Each officer shall be entitled to receive reasonable compensation for serving as an officer and employee, commensurate with the amount of time and effort and the experience and expertise such person provides in connection with their service to the Company. In this capacity, the officers' authority and priorities will include, among other things:

- Ensuring that the Company's business and operations continue without material disruption and that all corporate commitments previously made are executed.
- Maintaining the Company's unique culture.
- Adhering to the vision and values of the Company.
- Assuming responsibility for committing and managing corporate funds.
- Continuing, planning, developing, and implementing the Company's business plans for approval by the Board.
- Determining how, when, and by whom those persons and/or entities that need to be informed of the implementation of this Plan (including, without limitation, staff, clients, lenders, and the general public) should be so informed.
- The Company's CFO shall contact the Company's insurance representative for disability or life insurance filing with respect to the incapacity or death of *[NAME OF STOCKHOLDER]*, if applicable.

Notwithstanding anything to the contrary, without the consent of the Board, the President and the remaining officers shall not take any of the following actions:

- (a) Take any action that would obligate the Company to pay or make payments in excess of \$____,000;
- (b) Dispose of or liquidate any properties or business of the Company involving payments to or by the Company in excess of \$____,000;
- (c) Cause or permit the Company to engage in any activity that is not consistent with the purposes of the Company;

- (d) Engage in any financing or refinancing, including bank debt, private equity and debt offerings of securities or any other debt offering;
- (e) Issue new shares of stock or options or warrants to purchase stock in the Company;
- (f) Approve the annual operating and capital expenditure budget for the Company;
- (g) Approve any change in auditor, accounting firm, tax advisers, or law firms for the Company;
- (h) Hire or fire any officer of the Company. For purposes hereof, a “officer” includes the President, Senior and Executive Vice Presidents, Treasurer, Chief Financial Officer, and Secretary of the Company;
- (i) Approve any changes in officer, other than increases that match increases in the Consumer Price Index;
- (j) Enter into any transaction with any family member of any member of the Board or any officer of the Company;
- (k) Cause the Company to be a party to (i) a merger or (ii) an exchange or other reorganization, or initiate discussions with any third party with respect to the foregoing;
- (l) Amend or restate the Articles of Incorporation or bylaws of the Company;
- (m) Liquidate or dissolve the Company;
- (n) Make any distributions of cash or property to the shareholders of the Company, except as approved in the annual budget of the Company or by the Board;
- (o) Lend money to or guaranty or become surety for the obligations of any person except a corporation, partnership, joint venture, or limited liability company of which the Company is a majority stockholder or member;
- (p) Institute, prosecute, defend, settle, compromise, and dismiss lawsuits or other judicial or administrative proceedings brought on or in behalf of, or against, the Company in connection with activities arising out of, connected with, or incidental to this Agreement, and to engage counsel or others in connection therewith;
- (q) Sell, exchange, or otherwise dispose of all or substantially all of the assets or business of the Company; or

- (r) Declare, or do any other act that would result in, receivership, assignment for the benefit of creditors, voluntary bankruptcy, or insolvency of the Company.

The successor Trustees of the Trust shall elect the members of the Board named herein at each annual meeting of the Board, and shall appoint replacement Board members or additional members, all subject to the consent of a majority of the members of the Board.

2. Succession of Ownership.

If the Trust is the *[sole][majority]* stockholder of the Company at the time of *[NAME OF STOCKHOLDER]*'s death or incapacity, then upon *[NAME OF STOCKHOLDER]*'s death or incapacity, the successor Trustees of the Trust shall have the power to take any of the following actions, subject to the approval of a majority of the members of the Board *[and other stockholders, if required,]* and any restrictions contained in any agreements or any commercial loan or financing documents to which the Company is then bound:

A. Sale to Third Party

The successor Trustees, with the prior approval of the Board, may offer an independent, third party the opportunity to purchase the stock owned by the Trust and/or substantially all of the assets or business of the Company for fair market value.¹ In such case, the successor Trustees must engage an appraiser or investment banker to value the Company or issue a "fairness" opinion before the stock or assets are sold or hire an independent business broker or investment banker to assist in the sale of the Company and/or its assets. The sale of stock may be accomplished by the sale of stock held by the Trust *[and the remaining stockholders]* or the issuance and sale of authorized but unissued shares of stock by the Company.

B. Continue to Own the Business

The successor Trustees, with the prior approval of the Board, may hire a third party to continue to operate the Company as President in accordance with Section 1 of this Plan; provided the President reports directly to the Board and is compensated by the Company.

[S CORPORATION PROVISIONS:] If the Trust continues to own the shares of the Company and the Company has elected to be treated as an S corporation under federal income tax law, the Trustee will have the power to transfer such shares to (1) a marital or family trust for the benefit of *[NAME OF*

¹ If there are other stockholders, it is best practice to include this power as a "drag along" right in a separate stockholders' agreement.

STOCKHOLDER]’s surviving spouse that qualifies as a stockholder of an S corporation, or if *[NAME OF STOCKHOLDER]*’s spouse is no longer living with him, divorced from him, or has predeceased him, (2) a qualified subchapter S corporation trust or electing small business trust that qualifies as an S corporation shareholder, or (3) his/her children pursuant to the terms and conditions of the Trust.

If the shares are transferred to *[NAME OF STOCKHOLDER]*’s children from the Trust, then the children shall serve as members of the Board for as long as they own shares of the Company.

3. **Modification of Plan.** This Plan may be amended, modified, or changed by *[NAME OF STOCKHOLDER]* at any time for any reason. If *[NAME OF STOCKHOLDER]* is incapacitated or deceased, this Plan may only be amended by the successor Trustees of the Trust, with the prior approval of the Board.
4. **Term.** This Plan shall terminate upon the earlier occurrence of (a) the sale by the Trust of more than *[_____ percent (___%)]* of the capital stock of the Company, or (b) the sale by the Company of all or substantially all of the Company’s assets and/or business to a third-party purchaser, or (c) the dissolution or liquidation of the Company pursuant to the bylaws and Articles of Incorporation.

[The next page is the signature page]

IN WITNESS WHEREOF, the undersigned have signed this Management Succession Plan under seal effective the date first set forth above.

ABC, INC.

By: _____
[NAME OF STOCKHOLDER], [TITLE], President & CEO

[_____] REVOCABLE TRUST

By: _____
[NAME OF STOCKHOLDER], Trustee

BOARD OF DIRECTORS:

Print Name: _____

Print Name: _____