

**20. Farming: The Next Generation  
(Making Transition Actually Happen)**

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**Abstract/Summary**

*This session will review the "nuts and bolts" of bringing another generation into the active management and ownership of a farming operation. Employment agreements, stock options, buy-sell agreements, and entity operating agreements will be reviewed to give the operators an idea of strategies to use. A case study farm will be offered to review a common farming scenario.*

# CORPORATE BUY/SELL AGREEMENT

## COWLEY FARMS INC.

Section 6.5 **Permitted Transfers.** A stockholder may Transfer his, her, or its shares of Corporation stock to the following parties (a "Permitted Transfer") without triggering the other Stockholders' and the Corporation's purchase rights under this Article VI: (A) another Stockholder of the Corporation; (B) a trust whose current beneficiary is another stockholder of the Corporation; (C) a trust that is solely and wholly revocable by the transferring stockholder who is the grantor of the trust; (D) any spouse or lineal descendant of a Stockholder; and (E) a trust whose current beneficiary or beneficiaries are a Stockholder's spouse and/or one or more lineal descendants of a Stockholder. Notwithstanding the foregoing, for the purposes of this Article VI, any Stock held by a (a) spouse or lineal descendant of a Stockholder, or (b) a trust whose current beneficiary or beneficiaries are a Stockholder's spouse and/or lineal descendants shall be deemed held by the original transferring Stockholder. At any time a Stockholder is deemed to have offered to sell all of his, her, or its shares of Stock under this Article VI, such deemed offer shall also include any shares of Stock held by an individual or trust under the preceding sentence.

6.6~ **Lifetime Transfers.** A stockholder may not make any lifetime Transfer of his, her, or its shares of Corporation stock, except for a Permitted Transfer or a Transfer that complies with these bylaws. Any Corporation stockholder who wishes to make any voluntary Transfer of Corporation stock during his or her lifetime, or who has any information that would reasonably lead him or her to expect that an involuntary Transfer of his or her shares of Corporation stock is foreseeable during the stockholder's lifetime (other than a Transfer due to a stockholder's divorce, annulment or legal separation which is governed by Section 6.7 below), must promptly send a notice to all other stockholders and to the Corporation and shall be deemed to have offered to sell his, her, or its shares of the stock to be Transferred to the other stockholders and to the Corporation at the Agreement Price and on the Agreement Terms. Such notice shall include a statement of the type of proposed Transfer, the name, address (both home and office), and business or occupation of the person to whom such shares of the stock would be Transferred, and any other facts that are or would reasonably be deemed material to the proposed Transfer. When a revocable trust is a stockholder, a lifetime Transfer will be deemed to occur whenever the trustee of the trust transfers Corporation stock voluntarily or involuntarily during the lifetime of the grantor of such trust. When an irrevocable trust is a stockholder, a lifetime Transfer will be deemed to occur whenever the trustee of the trust Transfers Corporation stock voluntarily or involuntarily during the lifetime of the current beneficiary of such trust

6.6.1 The other stockholders of the Corporation shall have thirty (30) days from the determination of the Agreement Price under Section 6.9 below to elect to buy all or any of the shares of Offered Stock. Each other stockholder may elect to buy such shares of the Offered Stock in proportion to the number of shares of Corporation stock owned by the purchasing stockholder as compared to the number of shares of Corporation stock owned by all stockholders who desire to purchase the Offered Stock, or in such other proportion as the purchasing stockholders shall agree.

6.6.2. If the other stockholders do not elect to buy all of the Offered Stock within such thirty (30)-day period, the Corporation shall have thirty (30) days from the expiration of such thirty

(30)-day period to elect to buy all, but not less than all, of the Offered Stock the other stockholders did not elect to buy.

6.6.3. If the other stockholders and the Corporation do not agree to buy in the aggregate all of the Offered Stock within such two (2) option periods, the proposed lifetime Transfer may be completed. If a lifetime Transfer is not completed within sixty (60) days after the expiration of such two (2) option periods, the provisions of this Section 6.6 will again apply to such Offered Stock as if no such lifetime Transfer had been contemplated and no notice had been given. A lifetime Transfer is completed when the Corporation has been given notice that legal title to the shares of the stock has been transferred, subject to recordation on its books.

**6.7. Transfer Due to Divorce or Similar Events.** If a spouse of a stockholder (a "Spousal Stockholder") receives any shares of Corporation stock pursuant to an involuntary lifetime Transfer due to separation, divorce, annulment; under a marital property settlement, or another similar event, such Spousal Stockholder will immediately be deemed to have offered to sell to his or her former spouse who is a stockholder (the Divorcing Stockholder"), the other Corporation stockholders, and the Corporation all of the Spousal Stockholder's shares of stock at the Agreement Price and on the Agreement Terms.' When a revocable trust is a stockholder, this Section 6.7 will apply if the grantor of such trust is a party to a divorce, annulment or a similar event. When an irrevocable trust is a stockholder, this Section 6.7 will apply if the current beneficiary of such trust is a party to a divorce, annulment or a similar event.

6.7.1 The Divorcing Stockholder shall have thirty (30) days from the determination of the Agreement Price under Section 6.9 below to elect to buy all or any of the shares of Offered Stock.

6.7.2 If the Divorcing Stockholder elects not to buy all of the Offered Stock during such thirty (30) day period, each other stockholder shall have thirty (30) days from the expiration of such thirty (30)-day period to elect to buy all or any of the shares of Offered Stock the Divorcing Stockholder did not elect to buy. Each other stockholder may elect to buy such shares of the Offered Stock in proportion to the number of shares of Corporation stock owned by the purchasing stockholder as compared to the number of shares of Corporation stock owned by all stockholders who desire to purchase the Offered Stock, or in such other proportion as the purchasing stockholders shall agree.

6.7.3 If the Divorcing Stockholder and the other Stockholders do not agree to buy in the aggregate all of the Offered Stock within such two (2) option periods, the Corporation shall have thirty (30) days from the expiration of the second thirty (30)-day option period in which to elect to buy all, but not less than all, of the Offered Stock that the Divorcing Stockholder and the other stockholders did not elect to buy.

6.7.4 If all the shares of the Offered Stock are not purchased pursuant to Sections 6.7.1 through 6.7.3, the Spousal Stockholder shall be allowed to receive the Offered Stock, subject to the terms of this Article VI. Further, the Spousal Stockholder shall not have the right to purchase another stockholder's shares of stock when offered for sale pursuant to this Article VI.

**6.8 Transfers at Death of a Stockholder.** On the death of any stockholder, including the grantor of a revocable trust or the current beneficiary of an irrevocable trust that is a Stockholder, such stockholder's Personal Representative will immediately be deemed to have

offered to sell to the other stockholders of the Corporation and the Corporation all of the deceased stockholder's shares of Corporation stock at the Agreement Price and on the Agreement Terms.

6.8.1 Each other stockholder shall have thirty (30) days from the determination of the Agreement Price under Section 6.9 below to elect to buy all or any of the shares of Offered Stock. Each other stockholder may elect to buy such shares of the Offered Stock in proportion to the number of shares of Corporation stock owned by the purchasing stockholder as compared to the number of shares of Corporation stock owned by all stockholders and those shares that are authorized to be purchased stock under a corporate employee agreement who desire to purchase the Offered Stock; or in such other proportion as the purchasing stockholders shall agree upon .

6.8.2 If the other stockholders do not elect to buy all of the Offered Stock within such thirty (30)-day period, the Corporation shall have thirty (30) days from the expiration of such thirty (30)-day period to elect to buy all, but not less than all, of the Offered Stock the other stockholders did not elect to buy.

6.8.3 If the other stockholders and the Corporation do not agree to buy in the aggregate all of the Offered Stock within such two (2) option periods, the Offered Stock may be Transferred pursuant to the deceased stockholder's trust, Last Will and Testament or valid Will substitute or to the laws of the intestate succession, as applicable, subject to the terms of this Article VI.

For purposes of this Section 6.8, a stockholder's "Personal Representative" includes any administrator, executor, trustee, or other personal representative who is vested with the responsibility for administering the disposition of any stock on account of a deceased stockholder's death.

**Section 6.9 Agreement Price.** The Agreement Price shall be the fair market value of the Offered Stock on the date of any deemed offer of sale.

6.9.1 The fair market value of the Offered Stock shall be determined using the same methods as would be used for determining the estate tax value of the Offered Stock if the transferring stockholder had died on the date the deemed offer was made, ignoring any alternate valuation date (under Section 2032 of the Internal Revenue Code of 1986, as amended (the "Code") or special use valuation (under Code Section 2032A), except that all minority interest discounts shall be ignored. The fair market value shall be determined follows:

- (a) The fair market value of the Offered Stock will be that price that is mutually agreed upon by the transferring stockholder, or in the case of Transfers at death, the deceased stockholder's Personal Representative, and the buying party or parties.
- (b) If the transferring stockholder or, if applicable, a deceased stockholder's Personal Representative, and the buying party or parties are unable to agree on the fair market value of the Offered Stock within sixty (60) days from the date of the deemed offer to sell, the fair market value Of the Offered Stock will be determined by one (1) or more professional appraisers or independent certified public accountants who are qualified by experience and ability to appraise' the Offered Stock ("Qualified Appraisers"), selected under the procedures in this Section
- (c) If the fair market value of the Offered Stock is to be

determined by Qualified Appraisers, the transferring stockholder or, if applicable, a deceased shareholder's personal representative, and the buyer (or if there is more than one buyer, the buyers together) will each have the opportunity to appoint; at his, her or their own expense, a Qualified Appraiser, within thirty (30) days following the expiration of the sixty (60) day period within which the parties could not mutually agree on the fair market value. If either party fails to appoint a Qualified Appraiser, within this thirty (30) day period, the other Qualified Appraiser shall unilaterally establish the fair market value of the Offered Stock by a written opinion.

(d) If both parties appoint Qualified Appraisers within this thirty (30) day period, these two (2) Qualified Appraisers shall establish the fair market value of the Offered Stock in a single written opinion agreed to by both of them.

(e) If these two (2) Qualified Appraisers cannot agree on the fair market value of the Offered Stock within sixty (60) days of the appointment of the latter of them, these two (2) Qualified Appraisers shall together appoint a third Qualified Appraiser whose sole written opinion shall establish the fair market value of the Offered Shares.

**6.10. Agreement Terms.** The Agreement Price for the Offered Stock shall be paid in cash or by good personal or company check to the extent of any life insurance proceeds maintained by the buyer or buyers on the life of a deceased stockholder. All other portions of, and for all other events, the Agreement Price shall be paid in ten (10) equal annual payments of principal and interest. Such payments shall begin one year after the date of the closing, to be held at 1:00 p.m. on the thirtieth (30th) day after the date on which the option to buy expires or is exercised, or an obligation to buy becomes fixed, at the Corporation's primary place of business, or at any other place to which the parties agree. Such payments shall include interest compounded annually at the applicable federal rate established under Code Section 1274(d) on such closing date. Each buyer will prepare and give the seller a negotiable promissory note as evidence of this debt. Such note shall permit the buyer to prepay all or any part of the principal balance of the note at any time without penalty or premium. Each stockholder appoints the other stockholders as his, her, or its agents and attorneys-in-fact to execute and deliver all documents needed to convey his, her, or its shares of the Corporation, if such selling stockholder is not present at the closing. This power of attorney is coupled with an interest and does not terminate on the stockholder's disability or death, and continues for so long as these bylaws are in effect