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FOUNDERS' AGREEMENTS:
*Best Practices for Building a Solid
 Foundation for your Business*



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Discussion Topics

- The Basics of a Founders' Agreement
- Important Considerations for a Founders' Agreement
- Process for Implementing a Founders' Agreement
- Other Important Considerations for a Start-Up
- About Kaspar Law Co.

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***The Basics of a
 Founders' Agreement***

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**The Basics of a Founders' Agreement:
What is a Founders' Agreement?**

- New Year's Resolution
 - » Initial assessment of your business
 - Who you are
 - Where you are
 - What you want to do
 - Where you want to go
 - » Business plan
 - What are your goals and how will you achieve them?

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**The Basics of a Founders' Agreement:
What is a Founders' Agreement?**

- Prenupt
 - » Insurance against the unexpected, despite the best present intentions
 - » Framework for handling litigation-prone events:
 - Removal of founders
 - Winding up and termination of business
 - Allocation of cash and assets, including IP and other intangible assets

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**The Basics of a Founders' Agreement:
What does it cover?**

- Name of the business
- Type of business entity, governing law, tax treatment
- Business model/plan
- Identity of the founders
 - » Positions in the business
 - » Ownership/equity interest

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**The Basics of a Founders' Agreement:
What does it cover?**

- Roles and responsibilities of the founders
 - » Balance of powers
 - Who is the C-suite: CEO, COO, CFO, CIO/CTO, CMO
 - Who handles the day-to-day: sales, product development
 - » How decisions are made
 - By majority? How much is a majority? For what types of decisions?
 - By unanimity? For what types of decisions?
- Termination and business wind-up
 - » How to remove a founder, or how to close up shop

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***Important Considerations for a
Founders' Agreement***

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Important Considerations for a Founders' Agreement: Ownership & Equity

- Ownership and Equity
 - » If not equal shares, how are you distributing shares?
- Basis for equity distribution
 - » Initial capital contribution
 - » Intangible assets brought to the table
 - IP, business know-how, sales contacts
- Future hires and partners
 - » How to redistribute shares?

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Important Considerations for a Founders' Agreement: Ownership & Equity

- Vesting schedule?
 - » Benefits of a vesting period
- Loans against equity permissible?
- Ownership of competing stock?
 - » Stock in publicly-held companies
 - » Interest in privately-held businesses
 - » If permissible, what's the limit?

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Important Considerations for a Founders' Agreement: Intellectual Property

- Is a founder bringing IP to the business?
 - » If so, will it be assigned or licensed to the business?
 - » May provide a basis for equity in the business
- What about IP developed during the course of the business?
 - » Definition for business-related IP
 - » Is business-related IP assigned to the business?
 - » What about other IP conceived or developed by a founder?

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Important Considerations for a Founders' Agreement: Intellectual Property

- Confidentiality agreement
 - » Non-disclosure of business-related IP
 - Patents are secret until published
 - Trade secrets remain secret so long as reasonable measures are taken
 - » Procedure for handling trade secrets
- Non-competition agreement
 - » Business-IP related scope
 - » What is your protectable geography?
 - » How long is protection necessary?

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Important Considerations for a Founders' Agreement: Compensation

- Distribution of profits
 - » If not equal distribution, then how shared?
 - Shares in the business?
 - Performance metrics?
 - » Back out all expenses and fringe benefits paid on founder's behalf before distributing profits
- Salaries for founders
 - » Which founder gets paid first?
 - » How much?
 - » When? Quarterly? Monthly?

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Important Considerations for a Founders' Agreement: Termination

- Removal of a founder
 - » Underperformance – what triggers removal?
 - » Or, founder wants to leave business
 - Stock buy-out?
 - What about shares that have not vested?
- Dissolution of the business
 - » Winding down of business – how long?
 - » Allocation of cash, assets, IP and other intangibles

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Important Considerations for a Founders' Agreement: Dispute Resolution

- Alternative Dispute Resolution versus Litigation
 - » Require mediation before founder can file suit?
 - » Binding arbitration that precludes litigation?
- Choice of law and forum
 - » What state law should apply?
 - Location of business or its activities?
 - Location of a majority of the founders?
 - » Stipulation on choice of forum?
 - Location of the business?
 - Neutral forum?

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Process for Implementing a Founders' Agreement

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Process for Implementing a Founders' Agreement

- Start with a template
 - » We have provided a topical template for you!
 - » Many sample forms available online for free or low cost
- Set up a founders' retreat and force the discussion
 - » Pre-cana or pre-marriage counseling
- Commit pen to paper
 - » Memorialize in writing details of agreed topics
 - » Identify topics of disagreement

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Process for Implementing a Founders' Agreement

- Consult a lawyer
 - » Where there is agreement, the founders may be able to take their draft to a lawyer for finalizing
 - Lawyer will transform your draft into a legal document, add various (but typical) contract provisions, and facilitate execution and safekeeping of final agreement
 - » Lawyer may provide incite into unsettled topics
 - Lawyer typically represents the business, not individual founders
 - » Process may flesh out critical issues up front

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**Other Important Considerations
for a Start-Up Business**

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**Other Important Considerations for a
Start-Up Business**

- “Gig Economy” – working with independent contractors
- Confidentiality agreement
 - » Have a form NDA ready
 - » Confidentiality and ownership of the work
- Non-competition agreement
 - » Safeguard against moles working for your competitors

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About Kaspar Law Co.

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Extracting Value from IP

- We are regularly involved in due diligence relating to the purchase, sale, and licensing of IP assets
- We have extensive experience structuring the allocation of IP rights to accommodate joint development agreements, customer relationships, university research, and numerous other situations
- Different types of transactions require different negotiation strategies
 - » University licensing
 - » Joint development agreements
 - » Research for hire / services agreements
 - » Software and IT licensing
- We are well positioned to assist in areas where IP is at issue

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Focus on Start-Up Technologies

- We are committed to the start-up ecosystem
 - » Participate at every stage of the start-up ecosystem
 - » Work with various Incubators/Accelerators
 - » Counselor to start-ups, incubators, and VCs
 - » Understand startup needs: practical and cost effective
- We have expertise in wide-ranging and diverse technologies
 - » Apps and computer software
 - » Mechanical and industrial applications
 - » Food processing and agriculture
 - » Home goods and housewares
 - » Music and entertainment
 - » Craft brewing, distillation, medicinal cannabis issues

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Full Life-Cycle of IP Services

- We take a holistic approach to IP
 - » Beginning with procurement, we work with inventors, authors, and small businesses to understand what is at stake and what should be protected
 - » We seek the broadest, most cost-effective IP protection, customized to your needs and budget
 - » With extensive experience in litigation, we identify potential conflicts and work to resolve issues before litigation arises
 - » We provide strategic counseling to help you monetize and grow your IP to achieve your business goals

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IP Litigation Experience

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- Our first response is to mitigate the risk of litigation
- But when litigation arises, we have extensive IP litigation experience involving all areas of IP, including patent, trademark, trade dress, copyright, and advertising-related issues and claims
- We have litigated in all of the hot IP forums, including E.D. Texas, N.D. California, N.D. Illinois, D. Delaware, the International Trade Commission, and the Patent Office's Patent Trials and Appeals Board
- We work to find the most cost-effective resolution to litigation

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- Counseled clients concerning IP matters with respect to a wide array of technologies, including: communications; control systems and electronic devices; banking and finance; consumer appliances and products; and software and computer-implemented methods
- Experience includes:
 - » Winning summary judgment of noninfringement based on patent exhaustion, which was affirmed on appeal before the Federal Circuit. *Keurig, Incorporated v. Sturm Foods, Inc.*, No. 10-cv-00841-SLR (D. Del. Sep. 13, 2012), *aff'd*, 732 F.3d 1370 (Fed. Cir. 2013).
 - » Defending dental implant manufacturer against overreaching patent dispute used by the market leader to spur an investigation by the U.S. International Trade Commission, resulting in both ITC and PTO determinations that the patent claims were invalid
- Bach. of Science, Mechanical Engineering (1998, Univ. of Illinois); J.D., Law (2003, Drake)

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Thank You!

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