

## ***SAMPLE BUY-SELL AGREEMENT***

***Should be reviewed by an attorney familiar with the laws in your state  
before using for your business.***

This Buy-Sell Agreement (this "Agreement") is made effective as of \_\_\_\_\_, between and among \_\_\_\_\_ (the "Company") and each of the individuals listed on the attached Schedule A (each an "Owner," and collectively, the "Owners").

The Owners own all of the outstanding common stock of the Company (the "Units"), and desire to promote and protect their mutual interests and the interests of the Company. Therefore, the parties hereby agree as follows.

### **Article I - Sales and Transfers**

1. **General Transfer Restriction** No Owner (or any party acting on behalf of an Owner) may sell or transfer any of such Owner's Units, whether now owned or later acquired, except in accordance with the terms of this Agreement or by the written consent of the Company and all of the other Owners. Any attempted sale or transfer of any Units (or any interest in any Units) that violates the terms of this Agreement shall be void and shall not be binding upon, or recognized by, the Company or the Owners.

a. **Sale or Transfer Defined**. The phrase "sale or transfer" includes any sale, pledge, encumbrance, gift, bequest, or other transfer of any Units, whether or not the transfer would be made (i) for value, or (ii) to another Owner, or (iii) voluntarily or involuntarily or by operation of law, or (iv) during an Owner's lifetime or upon an Owner's death.

b. **Exception** A sale or transfer of an Owner's Units to a trust that is wholly revocable by that Owner and for which that Owner is the sole trustee is not a prohibited sale or transfer. However, any subsequent attempted sale or transfer by the trustee of such trust shall be subject to all of the terms of this Agreement with the Owner (and not the trust) deemed as the owner of such Units.

2. **Permitted Voluntary Sale or Transfer During Lifetime**. Any Owner who wishes to sell or transfer such Owner's Units must first provide written notice of such intent to each of the other Owners. Such Owner (a "Seller") shall be deemed to have offered to sell his/her Units (the "Offered Units") to the other Owners. The notice must state the name of the party (the "Third Party Purchaser") to whom the Seller wishes to sell or transfer the Offered Units and the terms of the proposed sale or transfer.

a. **First Option to Other Owners**. Each of the other Owners shall have thirty (30) days from the effective date of the notice during which such other Owners may elect to buy the Offered Units in proportion to their respective ownership of all outstanding

Units (excluding the Offered Units) or in such other proportion upon which the other Owners may agree. During this 30-day period, the other Owners must collectively agree to buy all or none of the Offered Units. If the other Owners exercise their option to buy, then they shall acquire the Offered Units on the same terms and conditions as contained in the notice of the proposed sale or transfer. These terms shall be supplemented as necessary by the payment terms described in Article III below.

b. Permitted Sale or Transfer to Third Party Purchaser. If the other Owners do not validly exercise their option to buy all of the Offered Units within the 30-day period, then the Seller may complete the sale or transfer to the Third Party Purchaser. However, the sale or transfer must be made on the same terms and conditions as those contained in the notice to the other Owners. Further, the Third Party Purchaser must agree in writing to be bound by the terms of this Agreement before or at the time of the sale or transfer. If the sale or transfer to the Third Party Purchaser is not completed within sixty (60) days after the expiration of the other Owners' 30-day option period, then the authorization under this Agreement for such sale or transfer shall be deemed withdrawn as if no such sale or transfer had been contemplated and no notice had been given.

3. Involuntary Lifetime Sale or Transfer. Any Owner who has any information that would reasonably lead that Owner to expect that an Involuntary Lifetime Disposition (*defined below*) may occur with respect to that Owner's Units, and any person or entity who has acquired or may acquire an interest in such Units, must promptly provide written notice to each of the other Owners. The notice must describe the nature and details of the Involuntary Lifetime Disposition, and must state the name of the party (the "**Third Party Transferee**"). The Owner shall be deemed to have offered to sell such Owner's Units (the "**Offered Units**") to the other Owners.

a. First Option to Other Owners. Each of the other Owners shall have thirty (30) days from the effective date of such notice during which such other Owners may elect to buy the Offered Units in proportion to their respective ownership of all outstanding Units (excluding the Offered Units) or in such other proportion upon which the other Owners agree. If the other Owners exercise their option to buy some or all of the Offered Units, then they shall acquire such Units at the purchase price and on the payment terms described in Articles II and III below.

b. Permitted Sale or Transfer to Third Party Transferee. If the other Owners do not validly exercise their option to buy all of the Offered Units within the 30-day period, then any remaining Offered Units may be transferred to the Third Party Transferee. However, the transfer must be made on the same terms and conditions as those contained in the notice to the other Owners. Further, the Third Party Transferee must agree in writing to be bound by the terms of this Agreement before or at the time of the transfer. If the transfer to the Third Party Transferee is not completed within sixty (60) days after the expiration of the other Owners' 30-day option period, then the

authorization under this Agreement for such transfer shall be deemed withdrawn as if no such transfer had been contemplated and no notice had been given.

c. Involuntary Lifetime Disposition An "**Involuntary Lifetime Disposition**" occurs when an Owner's Units, or any portion or interest in them, are involuntarily sold, transferred or otherwise disposed of, or an involuntary sale, transfer or disposal is threatened by any third person, whether by

- (i) sale upon the execution or in foreclosure of any pledge, hypothecation, lien or charge,
- (i) acquisition of an interest in such Units by a trustee in bankruptcy or a receiver, or
- (iii) any other means (but not including the death of the Owner or any purchase by the Other Owners pursuant to the other sections of this Agreement).

An "**Involuntary Lifetime Disposition**" also occurs when (i) an Owner is adjudicated incompetent by any court, or (ii) a guardian or conservator is appointed for an Owner (unless the Owner is a Disabled Employee, as defined below in Section I(5)(c)). An "**Involuntary Lifetime Disposition**" also occurs when a court order does not grant the Owner sole ownership of the Owner's Units in connection with a property division in a divorce proceeding.

4. Death of an Owner. Upon the death of an Owner, his or her Personal Representative (*see paragraph 4.a below*) will immediately be deemed to have offered to sell to the other Owners all of the deceased Owner's Units (the "**Offered Units**") at the Purchase Price and on the Payment Terms described in Articles II and III below. Each such other Owner shall accept such offer and agree to buy such Offered Units in proportion to his or her respective ownership of all outstanding Units (excluding the Offered Units), or in such other proportion upon which the other Owners may agree. Notwithstanding the actual closing date specified in Section III(2), the transfer of the Units shall be deemed effective as of the close of business on the date of the deceased Owner's death. The other Owners and the Personal Representative shall promptly do all things necessary to cause such transfer in accordance with this Agreement.

a. Personal Representative. A Seller's "**Personal Representative**" includes any administrator, personal representative, executor or trustee who has legal responsibility for managing and disposing of the Seller's Units. It also includes any person who succeeds in interest to such Units, if no such fiduciary has control over such Units.

5. Termination of Employment. If any Owner is employed by the Company (an "**Employee-Owner**") and ceases to be an employee of the Company because the Employee-Owner is a Disabled Employee (*see paragraph 5.c below*), or for any other reason, then such Owner shall be deemed to have offered to sell all of his or her Units (the "**Offered Units**") to the Other Owners for the Purchase Price and on the Payment

Terms described in Articles II and III below. Such offer shall be deemed made on the date such Employee-Owner ceased to be an employee of the Company. This provision does not apply to early retirement or the Employee-Owner's death as discussed below.

a. Early Retirement. If the Employee-Owner voluntarily retires prior to age \_\_\_\_\_ years, or if the Employee-Owner has not given the Company at least five (5) years' prior written notice of his or her intention to leave the Company's employ, the Purchase Price shall be reduced by 0.00 percent from the amount otherwise determined in Article II below.

b. Death of the Employee-Owner. If the Employee-Owner ceases to be an employee of the Company because of death, the provisions of Section I(4) shall govern.

c. Disabled Employee. An Employee-Owner is a "**Disabled Employee**" when such person is

- (i) under a legal decree of incompetency, or
- (ii) eligible for benefits for more than 50% disability under any group or individual disability insurance policy (as confirmed by an insurance company), or
- (iii) unable to perform substantially all of his or her regular duties for a period which is reasonably expected to last at least 180 substantially consecutive days, as determined by an examining physician, to which examination each Employee-Owner hereby consents.

d. Other Owners Must Buy. Each other Owner shall agree to buy all of the Offered Units of the selling Employee-Owner in proportion to his or her respective ownership of all outstanding Units (excluding the Offered Units), or in such other proportion upon which the Other Owners may agree.

e. No Obligation to Employ. Nothing in this Agreement imposes any obligation on the Company to employ any Owner.

6. Option of the Company. The other Owners shall have the option to transfer their collective purchase rights under sections 2, 3, 4, and 5 of this Article II to the Company. The effect shall be that the Company may purchase the Offered Units in lieu of the purchase of such Units by the other Owners. The Company shall be bound by the time periods set forth above, the purchase price provisions of Article II, and the payment provisions of Article III. The Company may acquire such amounts of life insurance on the lives of the Owners as it deems appropriate to enable it to purchase Offered Units. The option created under this paragraph may be exercised by a consent to transfer signed by Owners who hold at least 0.00 percent of the outstanding Units.

## Article II - Purchase Price

The "**Purchase Price**" shall be determined in accordance with the provisions of this Article II, and the payment terms are set forth in Article III.

1. Book Value / Purchase Price. The "**Purchase Price**" shall be one times the "book value" of the Offered Units on the last day of the month most recently ended prior to the date of any deemed offer.
2. Calculation by CPA. The book value of the Offered Units shall be calculated by the independent certified public accountant ("**CPA**") regularly employed by the Company. If the Company does not have a regularly employed independent CPA, the determination shall be made by an independent CPA selected by the Company for this purpose. The book value shall be calculated in a manner consistent with the Company's regular financial statements and in accordance with generally accepted accounting principles, consistently applied. The Company shall provide such data as the CPA deems necessary or useful to make such determination.
3. Costs. The fees and reimbursed expenses charged by the CPA for the valuation shall be the Company's obligation.

### **Article III - Payment Terms**

1. Type of Payment. The Purchase Price paid for the Offered Units of a deceased Owner shall be paid in cash to the extent of the face amount of the life insurance policies that any Owner buying such Units has maintained under Article V of this Agreement. The remaining portion of the Purchase Price shall be paid in cash. However, at the option of each other Owner, the remaining portion may be paid in sixty (60) equal monthly installments of principal and interest. Such installment payments shall begin on the date of the closing and shall include interest compounded annually at the prime rate as listed in the Wall Street Journal on such closing date. Each other Owner shall give the Seller a negotiable promissory note as evidence of this debt. Such note shall permit the other Owner to prepay all or any part of the principal balance of the note at any time without penalty or premium. Payments shall first be applied to interest.
2. The Closing. The purchase of the Offered Units will take place at a closing at the Company's primary place of business or at any other place and time to which the parties agree. In the case of the death or voluntary retirement of the Seller, the closing shall be held 180 days after the date of the Owner's death or the effective date of retirement. In all other cases, the closing shall be held within thirty days after the date on which (i) the last option to buy is exercised or lapses, or (ii) the other Owners last become obligated to buy.
  - a. Delivery of Certificates. At the closing, the other Owners will pay for the Offered Units. The Seller will deliver certificates (if any have been issued) representing all of the Offered Units, duly endorsed, free and clear of all encumbrances, and with evidence of payment of all necessary transfer taxes and fees.

b. Power of Attorney. Each Owner hereby appoints the Company, through its Secretary, as his or her agent and attorney-in-fact to execute and deliver all documents needed to convey his or her Units, if such selling Owner is not present at the closing. This power of attorney is coupled with an interest and does not terminate on the Owner's disability or death, and continues for as long as this Agreement is in effect.

c. Death-Tax Liability. In the case of a sale because of the Seller's death, then notwithstanding any other provision of this Agreement to the contrary, payment for the Offered Units shall not be required until the Personal Representative of the Seller provides a release or other assurances to the reasonable satisfaction of the other Owners that the other Owners are protected from any liability for death taxes related to the Offered Units.

d. Escrow of Units. If any portion of the Purchase Price is evidenced by a promissory note, the certificate(s), if any, for such portion or all of the Offered Units shall be endorsed in blank, or accompanied by a duly executed, blank stock power, and delivered, in escrow, to an entity which customarily acts as an escrow agent. The escrow agent shall hold such documents as security for repayment of the promissory note. The other Owners shall execute a stock pledge agreement which is reasonably acceptable to the Seller (or Personal Representative) and the other Owners that grants the Seller (or Personal Representative) a security interest in such Units. Upon receipt of notice from the other Owners that the promissory note has been paid in full, the escrow agent shall deliver all deposited certificates and related stock powers, if any, to the appropriate other Owners. As long as the other Owners are not in default under the payment of any promissory note given for the purchase of the Units, the other Owners will enjoy all of the rights accruing from the ownership of such Units.

#### **Article IV - Endorsement of Certificates**

1. Endorsement. If the Company uses certificates to evidence ownership, then promptly after the date on which each Owner becomes a party to this Agreement, each Owner shall deliver to the Company's secretary all of his or her certificates. The Company's Secretary shall endorse them as follows:

The sale, assignment, transfer, pledge, or other disposition of the Units represented by this Certificate is restricted by the provisions of an Agreement dated \_\_\_\_\_, as amended from time to time, by and among the Owners of \_\_\_\_\_ (the "Company"), and with the Company's consent, a copy of which is on file in the Company's office.

2. Return of Shares. After this endorsement has been placed on the certificates, the Company shall return them to the Owners.

3. New Units. All certificates for Units issued by the Company to any Owner while this Agreement is in effect must also bear the above endorsement.

## **Article V - Life Insurance**

1. **Required Policies.** Each Owner will apply for, own, and be the beneficiary of one or more life insurance policies, one policy on the life of each other Owner. Each policy shall have death proceeds payable in an amount that is the greater of (i) the amount reasonably calculated to fully pay for such beneficiary-Owner's prorata share of the insured-Owner's Units at the Purchase Price, as if the insured-Owner died, or (ii) the amount listed on Schedule B. Each Owner will take any actions required to maintain in force all of the insurance policies that he or she is required to maintain under this Article, and will not cancel them or allow them to lapse without the prior written consent of each other Owner.
2. **Added Policies.** Each Owner may acquire any additional policies of life insurance that he or she reasonably deems appropriate to carry out this Agreement. Each insured-Owner will cooperate fully in any such acquisitions, including submitting to any physical examinations and providing any medical information required by the insurance company. All additional policies will be listed on Schedule C.
3. **Premiums.** Each Owner will pay every premium on any life insurance policies that he or she is required to maintain under this Article. Further, each Owner will give each other Owner proof of such payment within fifteen days after the date the premium was due. If any Owner fails to provide such proof, any other Owner may pay the premium and be reimbursed for his or her payment by the Owner who failed to provide such proof. All dividends on such policies shall be applied to the payment of premiums.

## **Article VI - Terminating or Amending the Agreement**

1. **Termination.** This Agreement will terminate if the Company is dissolved, put into receivership, or becomes bankrupt. Further, Owners who hold at least 0.00 percent of the outstanding Units may agree in writing to terminate this Agreement. However, the Owners may not voluntarily terminate this Agreement to the disadvantage of any Owner whose Units have been offered (or deemed offered) for sale, but for which the closing date has not yet occurred. Any Owner who sells or otherwise disposes of his or her Units pursuant to the terms of this Agreement shall no longer be a party to this Agreement. Such Owner shall then have no further rights or obligations under this Agreement.
2. **Amendment.** This Agreement may be amended upon the written consent of Owners who hold at least 0.00 percent of the outstanding Units. However, the Owners may not amend this Agreement to the disadvantage of any Owner whose Units have been offered (or deemed offered) for sale, but for which the closing date has not yet occurred.
3. **Return of Certificates.** When this Agreement terminates, the Owners may return their certificates for the Units to the Company's Secretary who will issue new certificates for an equal number of Units without the restrictive endorsement required by Article IV.

## **Article VII - Continuation of Restrictions**

This Agreement shall continue to apply to the Units which are the subject of a sale or transfer and to new Units issued by the Company. The transferee shall execute a counterpart signature page to this Agreement. Such signature shall be binding on all Owners and the Company as if the transferee was an original signor.

#### **Article VIII - Miscellaneous**

1. **Tax Status.** If at any time the Company has elected a status for tax purposes that is valid only if the owners are individuals or other types of specified entities, then in order to protect such election, no Owner may sell or transfer any of his or her Units to any person if such sale or transfer might reasonably be expected to result in a termination of such election. No attempted sale or transfer in violation of this paragraph will be valid or recognized by the Company.
2. **Binding Effect.** This Agreement is binding on and enforceable by and against the parties, their successors, legal representatives, and assigns.
3. **Governing Law.** This Agreement will be governed by and construed according to the laws of the State of \_\_\_\_\_.
4. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
5. **Notices.** All notices required or permitted to be given under this Agreement must be given in writing, and will be deemed given when personally delivered or on the third day after mailing by U.S. registered or certified mail, postage prepaid, with return receipt requested. Notice to any Owner is valid if sent to him or her at such Owner's address as it appears in the Company's records.
6. **Specific Performance.** The Owners agree that the Units are unique and that the failure to perform the obligations under this Agreement will result in irreparable damage to the other parties. Further, the Owners agree that specific performance of these obligations may be obtained by a lawsuit in equity.
7. **Waiver.** Any party's failure to insist on compliance or enforcement of any provision of this Agreement shall not affect its validity or enforceability or constitute a waiver of future enforcement of that provision or of any other provision of this Agreement.
8. **Copies.** More than one copy of this Agreement may be executed. Each executed copy shall be deemed a duplicate original.



9. Entire Agreement. This Agreement constitutes the entire agreement of the Owners among themselves or with the Company regarding the subject matter of this Agreement and supersedes all prior agreements regarding such subject matter.

10. Effectiveness. This Agreement shall become effective when signed by all of the Owners listed on Schedule A.

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SCHEDULE A**

List of Owners

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **Final Checklist for Buy-Sell Agreement**

### **Make It Legal**

\_\_\_\_\_ The Buy-Sell Agreement should be signed by a representative of the Company, perhaps the President or other primary officer. It should also be signed by each Owner. It is not necessary that the signatures be witnessed or notarized.

\_\_\_\_\_ It is advisable to have the spouse of each married Owner sign the Buy-Sell Agreement. In the case of divorce, a spouse may have rights under state law that allow the spouse to become an Owner of the Company. Therefore, it is important to have the spouses sign the Buy-Sell Agreement, and it is important to make sure that the spouses understand the terms of the agreement.

### **Attachments**

\_\_\_\_\_ The Owners should prepare a list of the applicable insurance policies to attach as Schedule B (*see paragraph V.1*) and Schedule C (*see paragraph V.2*). If no insurance policies will be obtained under paragraph V.2, simply write "none" on Schedule C.

### **Copies**

- \* A copy of the Buy-Sell Agreement should be provided to each Owner and a signed original copy should be retained by the Company.

### **When to Consult a Lawyer**

- \* A lawyer should be consulted regarding any legal questions and about the effect of the Company's state laws on the terms of the Buy-Sell Agreement.

### **Other Information**

- \* The Buy-Sell Agreement will terminate in accordance with the provisions of Article VI or by the mutual agreement of the Owners and the Company.

### **Reasons to Update**

- \* Change the terms of the Buy-Sell Agreement, such as the price, payment terms, method of funding, or events which trigger application of the agreement.