

BUY-SELL AGREEMENT

This Buy-Sell Agreement ("Agreement") is made on this _____ by and among _____, a _____ organized under the laws of the State of _____ (the "Company"), and each of the undersigned owners of the Company (each an "Owner" and collectively, the "Owners"), whose ownership percentages and other information are set forth in the signature blocks below.

WHEREAS, the Owners collectively own all of the ownership interests of the Company described below (the "Interests") (check one):

☐ – **Corporation.** The Owners collectively own all of the issued and outstanding shares of capital stock of the Company (the "Interests"), and each holder of those shares is referred to in this Agreement as an "Owner";

☐ – **Limited Liability Company.** The Owners collectively own all of the issued and outstanding membership interests of the Company (the "Interests"), and each member of the Company is referred to in this Agreement as an "Owner";

☐ – **Partnership.** The Owners collectively own all of the partnership interests in the Company (the "Interests"), and each partner of the Company is referred to in this Agreement as an "Owner";

WHEREAS, the Company and the Owners desire to provide for the orderly continuation of the Company's ownership and management upon the occurrence of certain events affecting an Owner's ownership of the Interests; and

WHEREAS, the Company and the Owners desire to restrict the transfer of the Interests and to establish a method for determining the value of the Interests and the terms on which the Interests may be purchased and sold;

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Company and the Owners agree as follows:

1. **RESTRICTION ON TRANSFER.** No Owner may sell, assign, transfer, pledge, encumber, or otherwise dispose of all or any part of the Owner's Interest, whether voluntarily, involuntarily, or by operation of law, except in accordance with this Agreement. Any attempted transfer in violation of this Agreement shall be void and of no effect.

2. **TRIGGERING EVENTS.** Subject to the terms of this Agreement, an Owner's Interest shall become subject to purchase and sale under this Agreement upon the occurrence of any of the following events (each, a "Triggering Event"):

- a. **Death.** The death of an Owner.
- b. **Disability.** An Owner becoming Disabled, as defined in Section 6 below.

- c. **Voluntary Withdrawal.** An Owner's voluntary resignation, retirement, or withdrawal from the Company.
- d. **Involuntary Transfer.** Any attempted transfer of an Owner's Interest by operation of law, including as a result of bankruptcy, insolvency, an assignment for the benefit of creditors, divorce or dissolution of marriage, levy, garnishment, or court order.
- e. **Proposed Voluntary Transfer.** An Owner's receipt of a bona fide third-party offer to purchase all or part of the Owner's Interest, which the Owner desires to accept, subject to the right of first refusal in Section 3 below.
- f. **Termination for Cause.** The Company's termination of an Owner's employment or engagement with the Company for cause, as determined in good faith by the Company's remaining Owners.
- g. **Other.** _____.

3. **RIGHT OF FIRST REFUSAL.** Before transferring all or any part of an Interest under Section 2(e) above, the Owner shall first give the Company and the other Owners written notice of the proposed transfer, including the identity of the proposed transferee and the price and material terms of the proposed transfer. For a period of _____ days after receipt of that notice, the Company shall have the first option, and the other Owners shall have the second option (pro rata according to their relative ownership percentages), to purchase all, but not less than all, of the Interest proposed to be transferred, on the same price and terms as the proposed transfer. If neither the Company nor the other Owners elect to purchase the entire Interest within that period, the Owner may transfer the Interest to the proposed transferee on the same terms disclosed in the notice, within _____ days after the option period expires, subject to Section 13 below.

4. **PURCHASE STRUCTURE.** Upon a Triggering Event giving rise to a purchase of an Owner's Interest under this Agreement, the Interest shall be purchased according to the following structure (check one):

☐ – **Cross-Purchase.** The remaining Owners shall purchase the Interest directly, pro rata according to their relative ownership percentages immediately before the Triggering Event, unless the remaining Owners agree in writing to a different allocation.

☐ – **Entity Redemption.** The Company shall purchase and redeem the Interest, and the Interest shall thereafter be retired and cancelled.

☐ – **Hybrid (Company Option First).** The Company shall have the first option to purchase all or any portion of the Interest. Any portion the Company does not elect to purchase within _____ days after the Triggering Event shall be purchased by the remaining Owners, pro rata, as described above.

5. **PURCHASE PRICE.** The purchase price for an Owner's Interest under this Agreement shall be determined as follows (check one):

☐ – **Stipulated Value.** The purchase price shall be \$_____ for each share or unit of ownership interest, multiplied by the number of shares or units held by the selling Owner as of the date of the Triggering Event, as shown on the Company's ownership records. The Company and the Owners may change this stipulated value at any time by unanimous written consent, and the stipulated value most recently agreed in writing before the Triggering Event shall control.

☐ – **Fixed Agreed Value.** The purchase price shall be \$_____ per one percent (1%) of ownership, which value the Company and the Owners shall review and may redetermine by unanimous written consent at least once every _____ months. If the Company and the Owners fail to redetermine the value within _____ months before the Triggering Event, the most recently agreed value shall be adjusted by the same percentage change, if any, in the Company's book value over that period, or, if the parties cannot agree on that adjustment, the purchase price shall instead be determined by independent appraisal as described below.

☐ – **Formula Value.** The purchase price shall equal _____, calculated as of the last day of the month preceding the Triggering Event.

☐ – **Independent Appraisal.** The purchase price shall be the fair market value of the Interest as determined by a qualified, independent business appraiser mutually selected by the Company and the affected Owner (or the Owner's estate or legal representative). If the parties cannot agree on a single appraiser within _____ days after the Triggering Event, each side shall select its own appraiser, and the two appraisers so selected shall select a third; the average of the three appraisals shall be the purchase price.

6. **DETERMINATION OF DISABILITY.** An Owner shall be deemed "Disabled" for purposes of this Agreement if the Owner is unable, due to illness or injury, to perform the Owner's regular duties for the Company for a continuous period of _____ consecutive days, as certified in writing by a licensed physician mutually agreed upon by the Company and the Owner (or the Owner's legal representative). If the parties cannot agree on a physician, the Company shall select one physician and the Owner shall select another, and those two physicians shall select a third; the determination of a majority of the three physicians shall be conclusive.

7. **FUNDING WITH LIFE INSURANCE.** The purchase of an Owner's Interest upon that Owner's death may be pre-funded with life insurance as follows (check one):

☐ – **Policies Owned by the Other Owners.** Each Owner shall apply for, obtain, and maintain in force one or more life insurance policies insuring the life of each other Owner, in an amount reasonably intended to fund that Owner's pro rata share of the purchase price payable for the insured Owner's Interest upon death.

Each Owner shall be the owner and the named beneficiary of each policy that Owner purchases on the life of another Owner, and shall pay the premiums on those policies when due.

☐ – **Policies Owned by the Company.** The Company shall apply for, obtain, and maintain in force one or more life insurance policies insuring the life of each Owner, in an amount reasonably intended to fund the purchase price payable for that Owner's Interest upon death. The Company shall be the owner and the named beneficiary of each policy and shall pay the premiums on those policies when due.

☐ – **Policies Owned by the Company, with Owner Policies Permitted.** The Company shall apply for, obtain, and maintain in force one or more life insurance policies insuring the life of each Owner, in an amount reasonably intended to fund the purchase price payable for that Owner's Interest upon death, and shall be the owner and the named beneficiary of each policy. The remaining Owners may obtain and maintain additional policies on one another's lives to fund any portion of an Interest the Company does not elect to purchase under Section 4 above.

☐ – **No Insurance Funding.** The purchase of an Owner's Interest shall not be funded by life insurance, and the full purchase price shall be paid according to Section 8 below, whatever the Triggering Event.

If life insurance is required under this Section, each Owner shall cooperate with any application, underwriting, or medical examination reasonably required to obtain or maintain a policy under this Section. Upon an Owner's death, the proceeds of any policy insuring that Owner shall be applied first to the purchase price payable for that Owner's Interest under this Agreement. Any proceeds remaining after the purchase price is paid in full shall belong to the owner of the policy, and any shortfall between the proceeds and the purchase price shall be paid according to Section 8 below. Life insurance funds a purchase triggered by an Owner's death only; the purchase price for an Interest purchased upon any other Triggering Event shall be paid in full according to Section 8 below.

8. PAYMENT OF PURCHASE PRICE. The purchase price for an Owner's Interest — and, where the purchase follows an Owner's death, any portion of the purchase price not paid from life insurance proceeds under Section 7 above — shall be paid as follows (check one):

☐ – **Lump Sum.** The full purchase price shall be paid in cash or immediately available funds at Closing.

☐ – _____% Down; **Installments.** _____% of the purchase price shall be paid in cash at Closing, and the balance shall be paid in _____ equal installments of principal, together with interest at the rate of _____% per annum, or the maximum rate permitted by applicable law, whichever is less,

evidenced by a promissory note executed by the purchasing party in favor of the selling Owner or the Owner's estate. The note shall be secured by the Interest being purchased until paid in full, and shall become immediately due and payable if the purchasing party defaults on any installment and does not cure the default within the period required by applicable state law, and in no event later than _____ days after written notice.

9. **CLOSING.** The closing of any purchase and sale under this Agreement ("Closing") shall take place at the Company's principal office, or such other location as the parties agree, within _____ days after the purchase price is determined under Section 5 above, or such later date as the parties agree in writing. At Closing, the selling Owner (or the Owner's estate or legal representative) shall deliver all documents reasonably necessary to transfer the Interest free and clear of all liens and encumbrances, and the purchasing party shall deliver the payment required under Section 8 above.

10. **ENDORSEMENT OF OWNERSHIP RECORDS.** The Interests shall be marked as subject to this Agreement as follows (check one):

☐ – **Corporation.** Each certificate representing shares of the Company shall bear a conspicuous legend, and the Company's stock transfer records shall reflect a corresponding notation, stating that the shares are subject to the restrictions on transfer and purchase set forth in this Agreement. The Company shall place the same legend on any certificate issued in exchange for or in substitution of a legended certificate.

☐ – **Limited Liability Company.** The Company's membership ledger shall reflect a notation, and any certificate representing membership interests shall bear a conspicuous legend, stating that the membership interests are subject to the restrictions on transfer and purchase set forth in this Agreement. The Owners shall cause the Company's operating agreement to be amended or supplemented as necessary so that it is consistent with this Agreement.

☐ – **Partnership.** The Company's partnership records shall reflect a notation, and any certificate or instrument representing a partnership interest shall bear a conspicuous legend, stating that the partnership interests are subject to the restrictions on transfer and purchase set forth in this Agreement. The Owners shall cause the Company's partnership agreement to be amended or supplemented as necessary so that it is consistent with this Agreement.

No transfer of any Interest in violation of this Agreement shall be recognized by the Company or be valid or effective for any purpose.

11. **SPOUSAL CONSENT.** If an Owner is married, the following provisions apply. If an Owner resides in a community property or marital property state, that Owner's spouse

may hold a present interest in the Owner's Interest, and the spouse's consent may be necessary for this Agreement to be enforceable against that interest. (check one):

☐ – **Required.** As a condition to this Agreement, the spouse of each married Owner shall execute the Consent of Spouse included in the signature pages below, acknowledging and agreeing to be bound by this Agreement to the extent of any interest the spouse may have in the Owner's Interest.

☐ – **Not Required.** No spousal consent is required under this Agreement.

12. REPRESENTATIONS AND WARRANTIES. Each Owner represents and warrants that the Owner holds the Owner's Interest free and clear of all liens, encumbrances, and adverse claims, except as disclosed in writing to the Company and the other Owners, and that the Owner has full power and authority to enter into this Agreement and to perform the Owner's obligations under it.

13. NEW OWNERS; JOINDER. No person may acquire an Interest, whether by purchase, gift, or otherwise, unless that person first executes a joinder to this Agreement agreeing to be bound by its terms as an Owner. The Company shall not recognize any purported transfer of an Interest to a person who has not executed such a joinder.

14. DEFAULT. If any party fails to perform any obligation under this Agreement and does not cure that failure within the period required by applicable state law, and in no event later than _____ days after written notice of the failure, the non-defaulting party or parties may pursue any remedy available at law or in equity, including specific performance, in addition to any remedy expressly provided in this Agreement.

15. TERM AND TERMINATION. This Agreement shall remain in effect until terminated by (a) the unanimous written consent of the Company and all Owners, (b) the dissolution or bankruptcy of the Company, or (c) the point at which only one Owner remains. Termination of this Agreement shall not relieve any party of any obligation that arose, or any purchase and sale that was triggered, before the effective date of termination.

16. DISPUTE RESOLUTION. Any dispute arising out of or relating to this Agreement shall be resolved as follows (check one):

☐ – **Mediation and Litigation.** The parties shall first attempt in good faith to resolve the dispute through mediation before a mutually agreed mediator. If mediation does not resolve the dispute within _____ days, either party may pursue any remedy available in a court of competent jurisdiction.

☐ – **Binding Arbitration.** The dispute shall be resolved by binding arbitration administered by a mutually agreed arbitration organization, in accordance with its rules then in effect. Judgment on the arbitration award may be entered in any court having jurisdiction.

17. **NOTICES.** Any notice required or permitted under this Agreement shall be in writing and delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by a nationally recognized overnight courier that provides a delivery receipt, to the parties at the addresses set forth in the signature blocks below, or such other address as a party designates in writing.

18. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior negotiations, understandings, and agreements, whether written or oral.

19. **AMENDMENT.** This Agreement may be amended only by a written instrument signed by the Company and all Owners then subject to this Agreement.

20. **SEVERABILITY.** If any provision of this Agreement is held invalid or unenforceable, that provision shall be enforced to the maximum extent permissible, and the remaining provisions shall remain in full force and effect.

21. **WAIVER.** No failure or delay by any party in exercising any right under this Agreement shall operate as a waiver of that right, nor shall any single or partial exercise of a right preclude any other or further exercise of that right.

22. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of _____, without regard to its conflict of laws principles.

23. **COUNTERPARTS; BINDING EFFECT.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, and permitted assigns.

IN WITNESS WHEREOF, the Company and the undersigned Owners have executed this Agreement as of the date(s) set forth below.

COMPANY:

By: _____ Date: _____
Print Name: _____
Title: _____

OWNER 1:

Signature: _____ Date: _____
Print Name: _____
Mailing Address: _____
Ownership Percentage: _____%

CONSENT OF SPOUSE (Owner 1)

The undersigned, spouse of Owner 1 named above, has read this Agreement and, if spousal consent is required under Section 11 above, consents to its terms and agrees to be bound by this Agreement to the extent of any interest the spouse may have in Owner 1's Interest.

Signature: _____ Date: _____
Print Name: _____

OWNER 2:

Signature: _____ Date: _____
Print Name: _____
Mailing Address: _____
Ownership Percentage: _____%

CONSENT OF SPOUSE (Owner 2)

The undersigned, spouse of Owner 2 named above, has read this Agreement and, if spousal consent is required under Section 11 above, consents to its terms and agrees to be bound by this Agreement to the extent of any interest the spouse may have in Owner 2's Interest.

Signature: _____ Date: _____
Print Name: _____

OWNER 3:

Signature: _____ Date: _____
Print Name: _____
Mailing Address: _____
Ownership Percentage: _____%

CONSENT OF SPOUSE (Owner 3)

The undersigned, spouse of Owner 3 named above, has read this Agreement and, if spousal consent is required under Section 11 above, consents to its terms and agrees to be bound by this Agreement to the extent of any interest the spouse may have in Owner 3's Interest.

Signature: _____ Date: _____
Print Name: _____

OWNER 4:

Signature: _____ Date: _____
Print Name: _____
Mailing Address: _____
Ownership Percentage: _____%

CONSENT OF SPOUSE (Owner 4)

The undersigned, spouse of Owner 4 named above, has read this Agreement and, if spousal consent is required under Section 11 above, consents to its terms and agrees to be bound by this Agreement to the extent of any interest the spouse may have in Owner 4's Interest.

Signature: _____ Date: _____
Print Name: _____

If this Agreement has more than four (4) Owners, attach an additional signature page in the same form for each additional Owner.