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**S CORPORATION STOCK REDEMPTION BUY-SELL  
(INCLUDING DISABILITY)  
(INCORPORATING THE SHORT TAX YEAR TECHNIQUE)**

**AGREEMENT**

[STOCKHOLDER], [STOCKHOLDER], and [STOCKHOLDER], hereinafter referred to as "Stockholders" or, individually, as "Stockholder", and \_\_\_\_\_, hereinafter referred to as "Corporation", agree for themselves, their heirs, successors and personal representatives, as follows, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**I. PURPOSE**

The purpose of this Agreement is to provide for the purchase by the Corporation of a Stockholder's Corporate interest (as reflected in this Agreement or, alternatively, in the Schedule of Value attached hereto). Corporation and the Stockholders agree that such purchase and sale shall occur upon the death, disability, retirement or withdrawal of any Stockholder. Further, each Stockholder agrees to establish or modify his or her will to direct the personal representative to continue S corporation status for the Corporation and to follow the terms of this Agreement.

**II. AGREEMENT TO BUY AND SELL UPON THE DEATH OF THE STOCKHOLDER**

Upon the death of a Stockholder, that Stockholder's personal representative shall sell, and the Corporation shall buy, all of the deceased Stockholder's corporate stock. The price will equal the value as provided in this Agreement. Each Stockholder agrees to endorse his stock certificates to reflect they are subject to this Agreement. The deceased Stockholder's estate and the Corporation shall provide such instruments as may be necessary to complete the sale and purchase hereunder. Any stock subsequently acquired by a Stockholder shall likewise be subject to purchase and sale under the terms of this Agreement.

**III. VALUATION AND PURCHASE PRICE**

The outstanding capital stock of Corporation consists of \_\_\_\_\_ shares which are held and owned by Stockholders, as follows:

\_\_\_\_\_ : \$ \_\_\_\_\_ ; (\_\_\_\_%)  
(NAME) (VALUE) (PERCENTAGE INTEREST)

\_\_\_\_\_ : \$ \_\_\_\_\_ ; (\_\_\_\_%)  
(NAME) (VALUE) (PERCENTAGE INTEREST)

\_\_\_\_\_ : \$ \_\_\_\_\_ ; (\_\_\_\_%)  
(NAME) (VALUE) (PERCENTAGE INTEREST)

In arriving at the stock values above, the Corporation's Independent Appraiser has determined the current market value of all Corporation assets, making such adjustments for tax-depreciated assets and undervalued or overvalued assets as is required to reflect more clearly current market values, and adding thereto a value, ascribed and mutually-agreed-to by the parties, for Earning Capacity and Goodwill. Such value may be changed from time to time by the parties hereto by endorsement opposite their signatures in the "Schedule Of Value" attached, provided, however, that if the parties neglect to re-evaluate the Corporation for a period in excess of (one/two, etc.) years, the Corporation's Independent Appraiser is directed to apply the same valuation procedure, measuring adjusted asset values and Earning Capacity and Goodwill as of the last day of the month preceding the death, retirement or withdrawal of a Stockholder.

The retiring or withdrawing Stockholder (or, in the event of death, the Stockholder's personal representative) and the Corporation may, nevertheless, mutually-elect to accept the last valuation made as controlling for purchase and sale purposes. Disability purchase and sale value shall be determined as provided in Article VIII.

#### **IV. INSURANCE FUNDING**

The Corporation shall apply, as owner and beneficiary, for a life insurance policy upon the life of each Stockholder in an amount equal to the reasonably-expected key employee loss the Corporation might suffer in the event of death of each Stockholder. Such policies purchased to date, or any policies hereafter acquired, shall be listed on the attached Schedule Of Life Insurance. The Corporation shall not be bound to apply the proceeds of insurance to the purchase obligation hereunder.

The Corporation shall pay all premiums necessary to maintain such policy or policies in force and shall provide the Stockholders evidence of such payments within 30 days of a policy anniversary. In the event the Corporation fails to pay such premiums within such period, the non-insured Stockholders may pay the premium to the Insurer and such premium advances shall be reimbursed to such Stockholders. While this Agreement remains in force, the Corporation shall provide written notice to the Stockholders of its intent to exercise any of the policy rights, options or privileges.

#### **V. TERMS OF PAYMENT UPON DEATH**

All Stockholders, who are party to this Agreement (and any individual or qualifying trust who may hereafter become a Stockholder), hereby agree and consent to the following redemption and purchase procedure, upon the death of any Stockholder:

#### **A. REDEMPTION BY NOTE**

For a 30-day period following the election below-described, Corporation shall defer making claim to \_\_\_\_\_, hereinafter referred to as "LIC", for the proceeds of insurance due upon the death of the Stockholder. Corporation shall, nevertheless, immediately deliver-over to the deceased's personal representative an interest-bearing note (interest for which shall be no less than imputed interest under IRC Sec. 483) in an amount equal to the "valuation price" established under Article III. Deceased Stockholder's personal representative shall thereupon deliver to the Corporation any assignments, bill of sale or other necessary legal evidence of title as required to transfer all the deceased's Stockholder's right, title and interest to the stock of Corporation.

(Alternatively, the Agreement might provide that Corporation obtain a short term bank loan and immediately pay deceased Stockholder's personal representative.)

Corporation shall thereafter, take whatever steps are required in redemption to retire the deceased's stock interest.

#### **B. SHORT TAX YEAR ELECTION**

Each Stockholder, individually, and on behalf of his/her personal representative and heirs, irrevocably consents to a "books and records allocation" election under IRC Sec. 1377(a)(2), to thereby allocate income and basis upon the death of any Stockholder as if the taxable year consisted of two taxable years, rather than on a pro rata basis.

#### **C. CORPORATION'S RECEIPT OF PROCEEDS & PAYMENT OF NOTE**

Following receipt of the death proceeds from LIC, Corporation shall immediately thereafter pay deceased's personal representative the note and accrued interest in full, as earlier-described.

### **VI. MODIFICATION OF STOCKHOLDER WILLS**

Each Stockholder agrees to prepare and execute a Will, (or adopt a Codicil to any existing Will), incorporating the two provisions below-defined:

"If at the time of my death, I own an interest in stock of the \_\_\_\_\_ Company, and such Corporation has in force a valid election under Subchapter S of the Internal Revenue Code Sections 1361-1379, as amended, it is my desire that such Subchapter S election continue following my death. Therefore, I direct that my personal

representative not file a consent to revocation of such election and that he take such other steps as may be required by the Internal Revenue Code or Regulations promulgated thereunder to continue said Subchapter-S election.”

“In addition, if life insurance is payable to the Corporation as a result of my death, then I direct my personal representative to consent to any request from the remaining Stockholders to take a Short Tax Year Election under Article V of a Stock Redemption Agreement dated \_\_\_\_\_, and to accept an interest-bearing note from the Corporation until such time as the insurance proceeds payable upon my death are received by the Corporation and remitted in full payment of such note and accrued interest.”

## **VII. LIFETIME OR RETIREMENT SALE; RESTRICTIONS ON ENCUMBRANCE**

In the event a Stockholder desires to sell his/her Corporate interest during his/her lifetime or upon retirement, he/she shall be precluded from selling or offering to sell such stock to any other person or institution until he has offered to sell to the Corporation at the price determined under this Agreement. The Corporation shall have \_\_\_\_\_ days within which to accept this offer to sell and, if not exercised within such period, the withdrawing or retiring Stockholder may sell to such other person or institution as he/she so desires provided, however, that he/she shall not sell such interest without first offering it to the Corporation at the price and terms offered to such other parties.

In the event the Corporation elects to purchase the retiring or withdrawing Stockholder’s interest, such purchase shall be made on an Installment Sale basis. The Corporation shall make an initial down payment in cash of \_\_\_\_\_ ( )% of the purchase price as determined under Article III. The remaining balance shall be paid in \_\_\_\_\_ ( ) equal annual installments commencing with the annual anniversary of the initial down payment earlier-described.

The installment amounts due under the unpaid balance shall be evidenced by promissory notes with provision for annual payments on principal, as above-described, for a \_\_\_\_\_ ( ) year term with interest at the rate of \_\_\_\_% per annum. The note(s) shall provide for optional acceleration of maturity in the event of a default in payment of principal or interest and, at the option of the retiring or withdrawing Stockholder, such notes may be additionally secured by a pledge of all or a portion of his Corporation stock.

## **VIII. DISABILITY BUY-SELL**

In the event a Stockholder becomes “totally and permanently disabled” before attaining the age of sixty (60)\* and remains so for a period of \_\_\_\_\_ ( ) months from the onset of such disability, the disabled Stockholder (or his/her attorney in fact) shall sell, and the Corporation shall buy, the disabled Stockholder’s interest under the terms hereinafter set forth. The term “total and permanent disability”, for purposes of this Agreement, shall be considered that disability of the Insured Stockholder as that term is defined under the “Disability Waiver Of Premium Rider” included in the life insurance

policy(s) insuring the life of that Stockholder. In the event the Corporation has also obtained additional individual disability protection on such Stockholder, then the definitive provision thereunder shall control with respect thereto.

\* The selected age here should coincide with the expiration date of the “disability waiver of premium” protection in the life insurance policy. On the other hand, if individual disability income policies are purchased to fully-fund the disability buy-out, the selected age should coincide with the expiration date of protection in those policies.

(Alternate Language For Individual Disability Policy Funding: Replace the disability definition in the preceding paragraph, as follows):

“The term “total and permanent disability”, for purposes of this Agreement, shall be considered that disability of an Insured Stockholder which is described and defined in the separate individual disability policies listed in the “Schedule Of Disability Insurance Policies” attached hereto. No Insurer shall be subject to any liability other than its contractual limits and liability under such policies.”

The purchase price shall be determined by the Corporation’s CPA at the expiration of the disability waiting period elected in the preceding paragraph and after applying the valuation method described at Article III.

Such Disability Purchase shall be made on an Installment Sale basis. The Corporation shall make an initial down payment in cash of \_\_\_\_\_ ( )% of the purchase price as finally-determined. The remaining balance shall be paid in \_\_\_\_\_ ( ) equal annual installments commencing with the annual anniversary of the initial down payment earlier-described.

The installment amounts due under the unpaid balance shall be evidenced by promissory notes with provision for annual payments on principal for a \_\_\_\_\_ ( ) year term with interest at the rate of \_\_\_% per annum. The note(s) shall provide for optional acceleration of maturity in the event of a default in payment of principal or interest and, at the option of the disabled Stockholder, such notes may be additionally-secured by a pledge of all or a portion of his Corporation stock.

The disabled Stockholder, his guardian or attorney in fact, shall, upon receipt of the initial down payment, the promissory notes and additional security as desired, deliver to the Corporation any assignments, bill of sale or other necessary legal evidence of title as required to transfer all right, title and interest to his corporate stock.

If the disabled Stockholder dies during the installment payout period, the Corporation may, at its sole discretion, apply the net life insurance proceeds to prepay all remaining and unpaid installments in a single lump sum to that Stockholder’s estate.

## **IX. DISPOSITION OF LIFE OR DISABILITY POLICIES ON TERMINATION OF AGREEMENT**

In the event this Agreement is terminated under any of the provisions of Article XIII, the Insured Stockholder shall have the option, exercisable within thirty (30) days of such event, to purchase the life insurance policy insuring his/her life for a price equal to the Policy's interpolated terminal reserve value (plus unearned premium and dividends or cash accumulations, if any, less any policy indebtedness or cash withdrawals) by giving written notice within such period to the Corporation.

In a similar fashion and upon the same conditions as above, each Stockholder may purchase any disability policies insuring his life from the Corporation for a price equal to the unearned premiums thereunder.

If a Stockholder fails to exercise these policy purchase options within the prescribed thirty-day period, the Corporation shall be free to retain or surrender the policies for cash to the Insurer thereof.

#### **X. INSURER'S DUTIES**

An Insurer's duties, liabilities and rights under any policy subject to this Agreement shall be governed solely by the policy itself without any regard whatsoever to the terms and provisions of this Agreement.

#### **XI. REMEDIES FOR FAILURE TO PERFORM**

If either party to this Agreement defaults or fails to complete his/her obligations under this contract, then such offended party may, at his/her option, seek damages for such default or breach or obtain specific performance of the Agreement from a court of competent jurisdiction.

If any action is brought to enforce this contract or any provision thereof, the prevailing party, whether Plaintiff or Defendant, shall be entitled to an allowance for reasonable attorney fees plus costs of suit.

#### **XII. NOTICE**

All notices, including offers or acceptances, shall be deemed received if provided in writing and delivered in person to the other party or mailed by certified or registered mail to the last known address of that party.

#### **XIII. AMENDMENT OR ALTERATION**

This Agreement may be altered or amended in whole or in part at any time by filing with this Agreement a written instrument setting forth such changes signed by the parties to this Agreement and witnessed by disinterested parties.

#### **XIV. TERMINATION**

This Agreement shall terminate upon the occurrence of any of the following events:

- A. Cessation of the business;
- B. Bankruptcy or receivership of any Stockholder;
- C. Mutual agreement of the Stockholders;
- D. The death of all Stockholders as a result of a common disaster.

**XV. EFFECT ON AN INSURED STOCKHOLDER'S SUICIDE**

In the event an Insured Stockholder's death occurs within two (2) years of the execution of this Buy-Sell Agreement, and the Insured Stockholder's death is determined to have been caused by self-inflicted suicide, then, in such event, the purchase obligations of the Corporation shall terminate, and this Agreement shall be deemed rescinded, null and void, with respect to that Stockholder, his heirs and personal representatives.

(Counsel and the parties may wish to consider what alternatives they would seek in this unlikely event.)

**XVI. GOVERNING LAW; EFFECT OF HEADINGS**

- A. This Agreement shall be governed by the laws of the State of \_\_\_\_\_.
- B. All Article headings set forth in this Agreement are intended for convenience only and shall not control or affect the meaning, construction or intent of this Agreement or any of provision thereof.

**IN WITNESS WHEREOF**, the Stockholders and a duly authorized officer of the Corporation have read and signed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_.

\_\_\_\_\_  
(WITNESS)

\_\_\_\_\_  
(STOCKHOLDER)

\_\_\_\_\_  
(WITNESS)

\_\_\_\_\_  
(STOCKHOLDER)

\_\_\_\_\_  
(STOCKHOLDER)

\_\_\_\_\_  
(CORPORATION)

**CONSENT OF SPOUSE**

If a Stockholder's spouse is a co-owner (i.e., joint tenant or holds a Community interest), he/she should join in the Agreement, as follows:

I, the undersigned spouse of Stockholder \_\_\_\_\_, of \_\_\_\_\_, hereby certify that I have read the foregoing Buy-Sell Agreement; that I understand the terms thereof; that I have been advised of my property rights therein; and that I agree to be bound and to sell any interest I may have under the provisions thereof.

\_\_\_\_\_  
(WITNESS)

\_\_\_\_\_  
(SPOUSE OF STOCKHOLDER)

SCHEDULE OF VALUE

The revised value of the Corporation, as provided in Article III is as follows:

<u>EFFECTIVE DATE</u>	<u>AGREED VALUE</u>	<u>PARTIES' SIGNATURES</u>
_____	\$ _____	_____ (STOCKHOLDER)
		_____ (STOCKHOLDER)
		_____ (STOCKHOLDER)

SCHEDULE OF LIFE INSURANCE POLICIES

<u>INSURANCE COMPANY</u>	<u>POLICY DATE</u>	<u>POLICY NO.</u>	<u>FACE AMOUNT</u>
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

SCHEDULE OF DISABILITY INSURANCE POLICIES

<u>INSURANCE COMPANY</u>	<u>POLICY DATE</u>	<u>POLICY NO.</u>	<u>MONTHLY BENEFIT</u>
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____