

## LIFE ADVANCED MARKETS

# Buy-sell agreement sample document

This is an example of the issues a typical buy-sell agreement should consider. This specimen document can be shared with your attorney to begin the process of creating a buy-sell agreement appropriate for your needs. All legal documents must be prepared by a licensed attorney, observing all formalities required under the relevant jurisdiction.

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# BUY-SELL AGREEMENT

This Agreement is entered into on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between (1), a corporation under the laws of the state of [insert State of incorporation] (hereinafter the "Corporation"), and (2) and (3) and (4) (collectively referred to in this Agreement as the "Shareholders").

**WHEREAS**, the Shareholders each own stock in the Corporation. Each Shareholder wishes to make all of his, her or their stock subject to the terms of this Agreement.

**WHEREAS**, the Shareholders desire to ensure the continuity of management of the Corporation by providing for the purchase of a Shareholder's stock in the event of death, retirement, or in the event of a transfer or sale of any shares during a Shareholder's lifetime.

## OPTIONAL

**WHEREAS**, the Shareholders created, and became partners in, the partnership known as \_\_\_\_\_ under the Partnership Agreement dated \_\_\_\_\_, 20\_\_\_\_, to assure that the funds necessary to fulfill the obligations under this Agreement will be available. It is the intent of the parties that this Buy-Sell Agreement and the Partnership Agreement shall work in conjunction to accomplish the elements of those Agreements.

**WHEREAS**, the partnership will own and be named as the beneficiary of life insurance on the lives of each Shareholder, said life insurance is intended to be in an amount sufficient to provide the funds necessary to purchase a deceased Shareholder's shares of stock in the Corporation and interest in the partnership.

In consideration of the promises in this Agreement, the Shareholders agree as follows:

## ARTICLE 1 | RESTRICTIONS ON TRANSFER OF STOCK

**Restrictions on Transfer of Stock.** No Shareholder shall encumber or dispose of his or her stock in the Corporation, now owned or hereafter acquired, except in accordance with the terms of this Agreement, nor shall any Shareholder put such stock in joint names with the right of survivorship with any other person. A Shareholder may transfer stock to a revocable living trust established by a Shareholder for estate planning purposes; provided however, that the stock shall at all times remain subject to this Agreement.

## ARTICLE 2 | MANDATORY SALE OF STOCK UPON SHAREHOLDER'S DEATH

**Sale of Stock Upon Death.** Upon the death of a Shareholder, the surviving Shareholders may purchase, and the estate of deceased Shareholder must sell, all the shares of stock of the Corporation now owned or later acquired by the deceased Shareholder (including, but not limited to any shares held in any revocable living trust the deceased Shareholder may have created during the deceased Shareholder's lifetime). The surviving Shareholders shall have sixty (60) days after the appointment of a legal representative of the decedent's estate to purchase shares of the decedent's stock in the Corporation from the deceased Shareholder's estate. Each surviving Shareholder may purchase the percentage of the decedent's shares equal to the ratio of the shares owned by the surviving Shareholder divided by total shares owned by all surviving Shareholders. If, or to the extent that, the surviving Shareholders do not purchase all of the shares then owned by the deceased Shareholder's estate, the Corporation shall redeem such stock within ninety (90) days after the appointment of a legal representative of the decedent's estate, or within thirty (30) days after the receipt of written notice from all surviving Shareholders that they do not intend to purchase such shares, if earlier. The sale price shall be determined in accordance with Article 4. The purchase or redemption of shares shall be done in accordance with the conditions set forth in Article 5. Upon receipt of the purchase price, as provided in this Agreement, the legal representative shall transfer the deceased Shareholder's shares to the surviving Shareholders or the Corporation, as the case may be.

## ARTICLE 3 | SALE OF STOCK DURING SHAREHOLDER'S LIFETIME

**Sale of Stock During Lifetime.** If a Shareholder desires to sell part or all of Shareholder's shares of stock at any time during Shareholder's lifetime, that Shareholder shall first give written notice to the Corporation and the other Shareholders. Such notice shall describe the type of proposed transfer, the name, address and the business or occupation of the proposed transferee. Upon receipt of the notice, the other Shareholders shall

first have thirty (30) days to exercise their option to purchase such shares of stock at the price established in accordance with Article 4. Each other Shareholder's option to purchase shall be for the percentage of the shares equal to the ratio of the shares owned by the individual Shareholder divided by the total shares owned by all other Shareholders, or in such other proportion as the Shareholders and the Company may agree upon. If, or to the extent that, the other Shareholders do not purchase all of the shares then owned by the Shareholder desiring to sell, then Corporation shall have thirty (30) additional days to redeem all, but not less than all, of such stock at the price established in accordance with Article 4. If all of said shares of stock are not purchased or redeemed within such period of time, the Shareholder desiring to sell the shares may dispose of them in any lawful manner available, but not at a price less than that established in accordance with Article 4, without first offering to sell the shares to the other Shareholders and then to the Corporation at the lesser price. The shares of stock shall not be transferred until the purchaser agrees in writing to be bound by the terms of this Agreement.

In the event that a Shareholder is disabled or a Shareholder's employment with the Corporation is terminated, the Corporation shall have a continuing right at any time to require the Shareholder to sell to it all of Shareholder's stock at the Agreement price. This right shall be known as the Corporation's right to call stock. The Shareholder whose stock is to be purchased under this provision shall within ten (10) days from the date of written notice deliver to the secretary of the Corporation the certificates representing Shareholder's shares of stock, duly endorsed and free and clear of all liens, claims, and encumbrances. The Corporation's secretary shall then pay the Agreement price and shall cancel such shares.

#### **ARTICLE 4 | VALUATION OF STOCK**

**Value of Stock.** The value of stock, as determined by the Shareholders, is as set forth in Schedule "A", attached hereto. At the end of each fiscal year, or within sixty (60) days thereafter, the Shareholders shall redetermine the value of their stock. The new stock value shall be attached to this Agreement on Schedule "A" and shall be signed by and be binding on all the parties to this Agreement.

If a Shareholder dies within twelve (12) months of the last redetermination of value, or a Shareholder retires, or desires to withdraw from the Corporation, or the Corporation exercises its right to "call" a Shareholder's stock within twelve (12) months of the last redetermination of value, the last redetermination shall be used. If more than twelve (12) months have passed since the last redetermination, however, then qualified appraisers shall be appointed to determine the value, as follows:

The Shareholders or the Corporation, if exercising their or its right to purchase or redeem the offered stock, and the offering Shareholder, or the legal representative of a deceased Shareholder's estate in the event of a transfer at a Shareholder's death, shall each have the opportunity to appoint, at their own cost, a qualified appraiser within forty-five (45) days of the event giving rise to the proposed transfer. Each shall then together appoint a third qualified appraiser within the forty-five (45) day period. The written appraisals from the two qualified appraisers whose appraised values are closest to each other shall be averaged and the averaged value shall be the appraised value of the stock. The cost for the third appraisal shall be borne by the Corporation.

If only one qualified appraiser is appointed within the forty-five (45) days, that qualified appraiser shall unilaterally establish the value for the stock by a written opinion.

For purposes of this section, a "qualified appraiser" is a professional appraiser or certified public accountant who is qualified by experience and ability to appraise such shares of stock. The appointment of a qualified appraiser shall be made by notifying the other party in writing of the appointment.

It is the intent of the parties hereto that the value of the Corporation as determined does include goodwill and other intangible assets.

## ARTICLE 5 | PAYMENT OF PURCHASE PRICE

**Payment of Purchase Price.** The Agreement price paid for the offered stock shall be paid first from the proceeds of the life insurance policies that any party buying such shares of the stock has maintained, and shall be paid in cash or by good personal check. All other portions of the Agreement price, to the extent the price exceeds the proceeds of the life insurance policies, or cannot be paid from the proceeds of any life insurance policy that any party buying such shares of the stock has maintained, shall be paid as follows: twenty-five percent (25%) thereof in cash and the balance in forty (40) equal quarterly-annual payments of principal and interest. Such payments shall include interest compounded annually at the applicable federal rate established under Section 1274(d) of the Internal Revenue Code of 1986, as amended, added to each installment after the first installment. Each purchaser will prepare and give the offering Shareholder a negotiable promissory note, in the form attached hereto as Schedule C, as evidence of this debt. Such note shall permit the purchaser to prepay all or any part of the principal balance of the note at any time without penalty or premium.

**Security for Payment of the Purchase Price.** To secure the payment of each note, each purchaser shall grant to the offering Shareholder a security interest in the stock being purchased. To further secure the payment of any note issued by the Corporation, each other Shareholder shall guarantee payment of the note by executing a written guaranty in the form attached hereto as Schedule E. To further secure the payment of any note issued by a Shareholder, the Corporation shall guarantee payment of the note by executing a written guaranty in the form attached hereto as Schedule D and by granting to the offering Shareholder a security interest in all assets of the Corporation; provided however, that the offering Shareholder agrees in writing to subordinate said security interest as required in connection with the reasonable financing needs of the Corporation. Each purchaser of the offered stock also agrees to pledge to the offering Shareholder the purchaser's shares of stock, accompanied by stock powers duly executed in blank by each purchaser of the offered stock.

To the extent that the amount of life insurance on a deceased Shareholder's life which is available to pay the Agreement price exceeds the Agreement price, then the excess life insurance proceeds shall be retained by the beneficiary.

## ARTICLE 6 | CLOSING OF SALE

**Closing.** The purchase of the offered stock pursuant to this Agreement will take place at a closing, held at 1:00 P.M. on the thirtieth (30<sup>th</sup>) day after the date on which the last option to purchase or redeem is exercised or lapses, or after the date on which a purchaser last becomes obligated to buy, at Corporation's primary place of business, or at any other place to which the parties agree. At the closing, the purchaser or purchasers will pay for the offered stock and the seller will deliver certificates representing all of the shares of the offered stock, duly endorsed, free and clear of all encumbrances, and with evidence of payment of all necessary transfer taxes and fees.

## ARTICLE 7 | LIFE INSURANCE

**Life Insurance.** In order to assure funds are available to purchase the shares of a deceased Shareholder, the Shareholders, or a partnership created by the Shareholders, has purchased (or will purchase) life insurance on the lives of the Shareholders. In order to facilitate the performance of this Agreement, the Shareholders agree to take any physical examinations and sign such applications as shall be necessary in connection therewith from time to time. Any policies purchased shall be subject to this Agreement, and any addition or substitution of policies shall be subject to all the terms and conditions of this Agreement. All such policies shall be listed on Schedule "B" attached hereto and made a part hereof.

## OPTIONAL

A partnership, if created between the Shareholders, may be the beneficiary and absolute owner of all policies purchased by the partnership on the lives of the Shareholders for purposes of this Agreement, and may retain possession of such policies and dispose of them and the proceeds thereof only as provided in this Agreement. The partnership shall pay all premiums due on all such life insurance policies taken out by the partnership and the partnership shall provide each insured Shareholder with proof of payment within fifteen (15) days after the due date of each premium.

Until termination of this Agreement, neither a partnership owning the policies purchased pursuant to this Agreement, nor any partner or Shareholder shall do any of the following to policies purchased pursuant to this Agreement: (i) surrender the policies for the cash value, (ii) borrow upon the policies, (iii) receive cash dividends, (iv) pledge or assign them as security for any loan or indebtedness, or (v) otherwise modify or impair any of the rights or values of the policies, except with written approval of all Shareholders.

In the event of a termination of this Agreement, either as a whole or with respect to any Shareholder, then each Shareholder with respect to whom the Agreement has terminated shall have the right to purchase from the Corporation and the other Shareholders any and all policies of insurance on his or her own life. Such right shall be exercisable only by a written notice of intent to purchase, delivered to the Corporation and the other Shareholders within 60 days following the date of such termination and accompanied by the full purchase price.

In the event of the death of a Shareholder, all policies of insurance owned by the decedent on the lives of the surviving Shareholders shall be sold to each insured Shareholder, respectively.

The purchase price of each policy to be sold pursuant to this Section shall be its interpolated terminal reserve, increased by the amount of unearned premiums and reduced by the amount of any loans secured by it.

## ARTICLE 8 | RESTRICTIVE LEGEND ON STOCK CERTIFICATES

**Restrictive Legend.** Upon the execution of this Agreement, the share certificates subject hereto shall be surrendered to the Corporation and endorsed as follows:

The transfer of the shares represented by this certificate is restricted under the terms of the Buy-Sell Agreement dated \_\_\_\_\_, 20\_\_\_\_, a copy of which is on file in the records of the Corporation.

After endorsement, the certificates shall be returned to the Shareholders, or maintained in the Corporation's record book, and Shareholders shall be entitled to exercise all rights of ownership concerning their shares subject to the terms of this Agreement. All shares hereafter issued shall bear the same restrictive legend.

## ARTICLE 9 | RESTRICTIVE COVENANTS

**Non-Solicitation Covenant.** Shareholder further agrees that, To the extent the Corporation is allowed by law to restrict Shareholder from and after the date of this Agreement, and for the same period, Shareholder will not willfully, whether for Shareholder's own account or for the account of any other person, or organization endeavor to, directly or indirectly, divert or entice away from the Corporation any person who is or which at any time during the term of the Shareholder's relationship with the Corporation, was employed by or contracted to do business with the Corporation.

**Non-Disclosure Covenant.** Shareholder acknowledges that Shareholder agrees to hold and safeguard all trade secrets, proprietary information, and confidential information in trust and confidence for Corporation.



Shareholder agrees that Shareholder shall not misappropriate, disclose, or make available to any person or any entity for use outside Corporation's organization at any time, either during Shareholder's employment with Corporation or subsequent to resignation from her employment with Corporation, for any reason, any of the said information, whether or not it was developed by Shareholder. Shareholder agrees not to use this information to Shareholder's own advantage or to the advantage of others.

Shareholder agrees that all records, drawings, data, samples, models, correspondence, manuals, computer disks, notes, reports, notebooks, proposals, and any other documents concerning Corporation's customers or products or other technical information or business information used by Corporation and any other tangible materials or copies or extracts of tangible materials regarding Corporation's operations or business, testings, formulations or product development received by Shareholder during Shareholder's employment with Corporation are, and shall be, property of Corporation exclusively. Shareholder agrees to immediately return to Corporation all of the material mentioned above, including written notes, memorandums, or notes taken by Shareholder and all tangible materials, including, without limitation, correspondence, drawings, blueprints, manuals, computer disks, letters, notebooks, reports, flow charts, programs, and proposals. No copies will be made by Shareholder, or retained by Shareholder, of any written information obtained, whether or not developed by Shareholder.

**Remedies for Breach of Covenants.** Shareholder agrees that, in the event of a breach of any covenant contained herein, the remedies available at law for such breach will be inadequate and that the Corporation shall be entitled to injunctive or other equitable relief in any action or proceeding to enforce any such covenant. The Shareholder hereby authorizes and directs the Corporation, to the extent permitted by applicable law, to offset, in the event of any such breach, the amount of any monetary damages against any amounts that may be due and owing from the Corporation to the Shareholder. Furthermore, the parties agree that all expenses (including reasonable attorney's fees and disbursements) of the prevailing party in any such action or proceeding shall, on demand of the prevailing party, be paid by the non-prevailing party.

## ARTICLE 10

**Amendment and Termination.** This Agreement may be amended or terminated by a written agreement signed by all parties. This Agreement shall terminate should any of the following events occur:

- (a) Bankruptcy, receivership or dissolution of the Corporation.
- (b) Death of all Shareholders simultaneously or within a period of thirty (30) days.
- (c) Execution of a written instrument by the parties hereto agreeing to the termination of this Agreement.

## ARTICLE 11

**Valid Provision.** The invalidity or unenforceability of any particular provisions under this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

## ARTICLE 12

**Remedies Upon Default.** The shares owned by the parties are unique and the parties hereto understand and agree that irreparable injury would be caused to the Shareholders and the Corporation by failure to comply with the terms of this Agreement. In the event of any actual or threatened default in or breach of any of the provisions in this Agreement each party to this agreement shall have available to them all remedies for breach provided by law or equity. Without limiting the generality of the foregoing, the parties agree that in addition to all other rights and remedies available at law or in equity, the parties shall be entitled to obtain specific performance of the obligations of each party to this Agreement and immediate injunctive relief and that in the event any action or proceeding is brought in equity to enforce the same, no Shareholder will urge, as a defense, that there is an adequate remedy at law.

**Attorneys' Fees.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs, and necessary disbursements, in addition to any other relief to which such party may be entitled.

#### ARTICLE 13

**Notice.** All notices required to be sent under this Agreement or in connection with this Agreement shall be in writing and shall be deemed given when personally delivered or mailed, postage prepaid, by certified mail, return receipt requested, addressed in the case of the Corporation, to it at its principal office, and in the case of a Shareholder, to Shareholder's most recent address as shown on the books of the Corporation.

#### ARTICLE 14

**Attorney's Representations.** The parties all acknowledge that the Corporation's counsel, [insert name and address of attorney representing the Corporation] prepared this Agreement on behalf of and in the course of its representation of the Corporation only. Each Shareholder has had an adequate opportunity to consult with legal counsel of his, her or its choice and to be fully advised of the rights and obligations he, she, or it would have under this Agreement.

#### ARTICLE 15

**Amendment or Alteration.** Any amendment or alteration of the terms of this Agreement shall not be valid unless made in writing and signed by the parties hereto.

#### ARTICLE 16

**Choice of Law.** This Agreement shall be construed in accordance with the laws of the state of [insert name of applicable state].

#### ARTICLE 17

**Heirs, Executors and Administrators.** This Agreement shall be binding upon the Shareholders, their heirs, legal representatives, successors and assigns.

#### ARTICLE 18

**Non-Waiver.** No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

#### ARTICLE 19

**Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

#### ARTICLE 20

**Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall be one and the same instrument.

## ARTICLE 21 (OPTIONAL, SUB-S CORPORATION)

**S Corporation Issues.** The provisions of this Section apply whenever the Corporation makes an S election to operate as an "S Corporation" under Sections 1361-79 of the Internal Revenue Code of 1986, as amended.

19.1. Protection of Election. In addition to any other restrictions contained in this Agreement, Corporation's bylaws, or elsewhere, the following additional restrictions shall apply in order to protect Corporation's S election:

19.1.1. No Shareholder may transfer any of Shareholder's shares of the Stock to any person if such transfer may reasonably be expected to result in a termination of Corporation's S election.

19.1.2. Any Shareholder who believes that an attempted transfer or encumbrance of any shares of Corporation's Stock is invalid under this Section may request from Corporation an opinion on the application of this Section. Such request shall be made by a written notice to Corporation's president, setting forth the details of the proposed transfer or encumbrance and the reasons why the Shareholder believes it to be invalid. Corporation's president shall promptly thereafter request a written opinion from Corporation's counsel (who may be an employee of Corporation or independent outside counsel), and such written opinion shall be binding on Corporation and on all Shareholders.

19.1.3. Corporation may assess against any Shareholder who attempts any such invalid transfer or encumbrance a fee to cover its expenses plus Two Thousand Dollars (\$2,000.00) in evaluating whether or not a transfer or encumbrance is invalid under this Section.

19.1.4. If, notwithstanding the provisions of this Section, any Shareholder's encumbrance, transfer, vote as a director or officer, or other action results in or contributes to the termination of the Corporation's S election, such Shareholder shall be liable to Corporation for liquidated damages.

19.1.4.1. Such liability for liquidated damages shall exist on a "no fault" basis, regardless of whether such Shareholder's termination of Corporation's S election was caused by acts which were intentional, unintentional, with or without malice or bad motives.

19.1.4.2. The liquidated damages shall be an amount equal to fifty thousand dollars (\$50,000). Neither Corporation nor any of its Shareholders shall have any duty to mitigate damages with respect to the termination of Corporation's S election by the act of one or more of the other Shareholders.

19.2. Dividends. To minimize the hardship that might be caused by the direct taxation of Corporation's net profits to its Shareholders, Corporation's board of directors shall be deemed to have voted annually to have Corporation pay to the Shareholders as dividends for each of Corporation's taxable years the percentage of the increase in Corporation's accumulated adjustments account for any such year (as determined for federal income tax purposes) that is five percentage points (5%) above the highest federal income tax rate bracket imposed on ordinary dividend income.

## ARTICLE 22 (OPTIONAL, COMMUNITY PROPERTY)

**Acknowledgment.** Each Shareholder and his or her spouse declares that he or she, respectively; is completely informed as to the facts relating to the subject matter of this Agreement and as to their rights and liabilities; enters into this Agreement voluntarily after receiving advice (or having had the opportunity to receive advice) of independent counsel of his or her own choosing, has given mature thought to making this Agreement; has carefully read each provision of this Agreement; and fully and completely understands each provision of this Agreement, both as to subject matter and legal effect.



**IN WITNESS WHEREOF**, the parties have executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SHAREHOLDERS:**

\_\_\_\_\_  
(2)

\_\_\_\_\_  
(3)

\_\_\_\_\_  
(4)

**CORPORATION:**

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

Its: \_\_\_\_\_

**CONSENT OF SPOUSES**

I, the undersigned spouse of a Shareholder, hereby acknowledge that I have read the foregoing Agreement and consent to its terms, to the disposition made therein of any interest I have in the stock of the Corporation, or the life insurance policies described under Schedule B as community or separate property, and to the price now or hereafter determined by the Shareholders.

**SPOUSE:**

\_\_\_\_\_

**STATE OF** \_\_\_\_\_

**COUNTY OF** \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Notary Public**

\_\_\_\_\_

## SCHEDULE "A"

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (year one) the Shareholders have determined the value of the stock of the Corporation for purposes of this Agreement to be \$\_\_\_\_\_ per share.

### SHAREHOLDERS:

\_\_\_\_\_  
(2)

\_\_\_\_\_  
(3)

\_\_\_\_\_  
(4)

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (year two) the Shareholders have determined the value of the stock of the Corporation for purposes of this Agreement to be \$\_\_\_\_\_ per share.

### SHAREHOLDERS:

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

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (year three) the Shareholders have determined the value of the stock of the Corporation for purposes of this Agreement to be \$\_\_\_\_\_ per share.

### SHAREHOLDERS:

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

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (year four) the Shareholders have determined the value of the stock of the Corporation for purposes of this Agreement to be \$\_\_\_\_\_ per share.

### SHAREHOLDERS:

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

SCHEDULE "B"

Name Beneficiary	Policy Number	Insurance Company	Face Amount
(2)			
(3)			
(4)			

## SCHEDULE C

### NOTE

\$ \_\_\_\_\_, [insert applicable state name]

FOR VALUE RECEIVED, the undersigned ("Borrower"), promises to pay \_\_\_\_\_, or, order, the principal sum of \_\_\_\_\_ Dollars, with interest on the unpaid balance from the date of this Note, until paid, at the rate of \_\_\_\_\_ percent per annum. Principal and interest shall be payable at \_\_\_\_\_, or at such other place as the Note holder may designate, in \_\_\_\_\_ (\_\_\_\_\_) consecutive monthly installments of \_\_\_\_\_ Dollars (US\$ \_\_\_\_\_), on the \_\_\_\_\_ day of each month beginning \_\_\_\_\_, 20\_\_\_\_. The monthly installments shall continue until the entire indebtedness evidenced by this Note is fully paid, except that any remaining indebtedness, if not sooner paid, shall be due and payable on \_\_\_\_\_.

Notwithstanding the foregoing, if (1) is sold (either by a sale or transfer of all of its stock or a sale of substantially all of its assets), payment of this Note shall be accelerated so that the payment term is the same as the payment term of the purchase price for the sale of the Corporation.

If any monthly installment under this Note is not paid when due and remains unpaid after a date specified by a notice to Borrower, the entire principal amount outstanding and accrued interest thereon shall at one become due and payable at the option of the Note holder. The date specified shall not be less than fourteen days from the date the notice is mailed. The Note holder may exercise this option to accelerate during any default by Borrower regardless of any prior forbearance. In the event of default, Borrower agrees to pay to the Note holder all costs and expenses of collection including, but not limited to, attorneys' fees.

Borrower may prepay the principal amount outstanding in whole or in part. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date of any subsequent monthly installments or change the amount of the installments, unless the Note holder otherwise agrees in writing.

Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors and endorsers hereof. This Note shall be the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

Any notice to Borrower provided for in this Note shall be given by mailing the notice by certified mail addressed to Borrower to the address that Borrower designates by notice to the Note holder. Any notice to the Note holder shall be given by mailing the notice by certified mail, return receipt requested, to the Note holder at the address that was designated by notice to Borrower.

This Note is being issued in payment for stock of (1) (the "Corporation") pursuant to a Buy Sell Agreement dated \_\_\_\_\_.

The indebtedness evidenced by this Note is secured by a pledge of the stock being purchased by Borrower and, if the Corporation is the Borrower, a guaranty by the Corporation's remaining Shareholders.

Dated: \_\_\_\_\_

## SCHEDULE D

### GUARANTY (By Corporation)

Contemporaneously herewith, \_\_\_\_\_ (the "Purchaser") is purchasing capital common stock of (1). (the "Corporation") owned by \_\_\_\_\_ ("Shareholder") consisting of \_\_\_\_\_ (\_\_\_\_\_) shares evidenced by Certificate No. \_\_\_\_\_ and Shareholder is accepting a promissory note of even date herewith in payment for the shares. In order to induce Shareholder to accept payment by a promissory note, the Corporation ("Guarantor"), does hereby, absolutely and unconditionally, guarantee the payment of the \$\_\_\_\_\_ promissory note. The Guarantor acknowledges that its obligation hereunder shall remain unaffected by any deferrals, renewals, extensions or modifications with respect to the promissory note, and further agree to pay all costs, expenses and attorneys' fees paid or incurred in enforcing payment of the promissory note or in enforcing this Guaranty.

No act or thing, except payment of the obligations guaranteed hereunder shall in any way affect or impair this Guaranty. The Guarantor hereby waives any and all defenses of illegality, unenforceability or other complete or partial voidability or invalidity of this Guaranty, as well as any and all other defenses pertaining to the obligations guaranteed hereunder, the party to whom payment or performance is due shall not be first required to resort to demand for payment of the obligations by Purchaser, their properties, or estate, or to any collateral property, liens, or other rights or remedies whatsoever, and this Guaranty shall be considered primary.

This Guaranty constitutes the entire agreement with respect to the subject matter herein contained.

**IN WITNESS WHEREOF**, this Guaranty has been executed by the Guarantor on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

(1).

By \_\_\_\_\_

Its: \_\_\_\_\_

## SCHEDULE E

### GUARANTY (By Shareholder)

Contemporaneously herewith, (1), a corporation under the laws of the state of [insert State of incorporation] ("Corporation") is purchasing and redeeming all of its capital common stock owned by \_\_\_\_\_ ("Shareholder") consisting of \_\_\_\_\_ shares evidenced by Certificate No. \_\_\_\_\_ and is accepting a promissory note of even date herewith in payment for the shares. In order to induce the Shareholder to accept payment by a promissory note, \_\_\_\_\_, the owner of the remaining shares of capital common stock of the Corporation ("Guarantor"), does hereby, absolutely and unconditionally, guarantee the payment of the \$\_\_\_\_\_ promissory note. Guarantor acknowledges that his obligation hereunder shall remain unaffected by any deferrals, renewals, extensions or modifications with respect to the promissory note, and further agree to pay all costs, expenses and attorneys' fees paid or incurred in enforcing payment of the promissory note or in enforcing this Guaranty.

No act or thing, except payment of the obligations guaranteed hereunder shall in any way affect or impair this Guaranty. Guarantor hereby waives any and all defenses of illegality, unenforceability or other complete or partial voidability or invalidity of this Guaranty, as well as any and all other defenses pertaining to the obligations guaranteed hereunder, the party to whom payment or performance is due shall not be first required to resort to demand for payment of the obligations by the Corporation, its properties, or estate, or to any collateral property, liens, or other rights or remedies whatsoever, and this Guaranty shall be considered primary.

This Guaranty constitutes the entire agreement with respect to the subject matter herein contained.

**IN WITNESS WHEREOF**, this Guaranty has been executed by Guarantor on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_