

SAMPLE DOCUMENT

SPLIT-DOLLAR LOAN AGREEMENT

(Below Market Loan Arrangement Under
Internal Revenue Code Section 7872)

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Background Information:

- The following sample agreement is a split dollar plan where an employee owns a life insurance policy, and the employer lends premium amounts to the policyowner employee.
- This agreement is intended to be treated as a loan under Internal Revenue Code § 7872, and in particular taxed under the “loan regime” of Treasury Regulation § 1.7872-15.

The Owner shall be the sole and exclusive owner of the Policy and have all rights under the Policy, subject to the rights of the Benefited Party(ies) to a portion of the death benefit as set forth above. The Owner’s share shall be reduced by any policy loans taken by Owner.

1. **Premium Payment.** The premium on the Policy shall be paid by Owner as it becomes due.
2. **Policy Dividends.** Policy dividends shall be applied to purchase paid-up additional insurance protection.

SPLIT DOLLAR LOAN AGREEMENT

THIS SPLIT DOLLAR LOAN AGREEMENT is made and entered into as of this _____ day of _____, 20____, by and between [*Name of Employer*], a [*Name of State*] [*Form of Entity*], with principal offices and place of business in [*Name of City*], [*Name of State*] (hereinafter referred to as the “Company”), and [*Name of Employee*], an individual residing in the state of [*Name of State*] (hereinafter referred to as the “Employee”).

Comment: *Regulations have not yet been promulgated to address split dollar arrangements involving partnerships – though Treas. Reg. § 1.61-22(c)(1)(iv) does appear to have a “Reserved” space for such regulations.*

Moreover, PLR 9639053 approved the notion of a partnership being a party to a split-dollar arrangement in which a general partner (a revocable trust) was the owner of the policy and the grantor/trustee of the general partner was the insured. However, such treatment would not seem

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automatically to follow with respect to “limited partners”—or, for that matter, to the members of limited liability companies (LLCs), whose treatment may depend on how active the member is in management (similar to the concepts under Section 1402(a)(13)).

RECITALS

Whereas, the Employee is a valuable employee of the Company and the Company wishes to continue the employment relationship and to retain the Employee in its employ; and

Whereas, the Company as an inducement to such continued employment, wishes to assist the Employee with the Employee’s personal life insurance program; and

Whereas, Employee is the owner of a life insurance policy (Policy # _____) issued by The Northwestern Mutual Life Insurance Company, of Milwaukee, Wisconsin (the “Insurer”), on the life of the Employee (the “Policy”); and

Whereas, the Company is willing to lend to the Employee amounts equal to all or part of the annual premium due on the Policy on the terms and conditions set forth in this Agreement as part of a compensation-related loan solely for the services provided by the Employee; and

Whereas, the Company intends to secure the repayment of the amounts lent to the Employee with a security interest in the Policy by using an Assignment; and

Whereas, the Company and the Employee intend that this Agreement shall be subject to Internal Revenue Code § 7872 and the split dollar treasury regulations (Treas. Reg. §1.7872-15).

AGREEMENT

Now, Therefore, in consideration of the premises and of the mutual promises contained herein, the parties agree as follows:

SECTION ONE

COMPANY ANNUAL LOANS AND EMPLOYEE PAYMENTS

A. Amount of Company Annual Loan.

Except as provided in Subsections C and G of this SECTION ONE, below, on or before the due date of each Policy premium, or within the grace period provided therein, the Company shall lend to the Employee annually [*the full amount of the premium*] [(e.g., _____ percent (___%) of premium and Employee shall pay the remaining premium not paid by the Company.] This amount shall be referred to as the “Company Annual Loan” or “Company Annual Loan Amount.”

B. No Payment of Interest

A Company Annual Loan shall not require the payment of interest by the Employee to the Company.

C. Payment of Premium to Insurer Treated as a Loan to Employee

Unless the Employee notifies the Company otherwise, the Company shall be authorized to pay the amount specified in Subsection A of this SECTION ONE directly to the Insurer, and the Company shall, upon Employee's request, promptly furnish Employee evidence of timely payment of such premium. Any payment to the Insurer by the Company shall be considered a loan from the Company to Employee for all purposes under this Agreement.

D. Documentation of Annual Loans

Each Company premium payment under Subsection A of this SECTION ONE shall constitute a new Company Annual Loan and shall not be evidenced by a promissory note. The only additional documentation required to evidence the Company Annual Loan Amount under this Agreement shall be the Company payment of premium and the recording of the loan on Exhibit A.

E. Type of Loans and Repayment of Loans

SECTION THREE of this Agreement shall control the characterization of the Company Annual Loans for tax purposes and their repayment terms.

F. Total Split Dollar Annual Loan Balance

The total of all Company Annual Loans during the term of this Agreement (reduced by any amount that has been repaid by the Employee to the Company) shall be referred to herein as the "Total Split Dollar Annual Loan Balance."

G. Additional Employee Payment of Premium

On or before the due date of each Policy Premium, Employee may orally or in writing notify the Company that the Employee will pay all or a part of the annual premium that the Company otherwise agreed to lend to the Employee under Subsection A of this SECTION ONE.

H. Method of Employee Payment of Premium

The Employee may make any payment of premiums as required under this Agreement (and any additional payment of premiums as described in the preceding Subsection G) to the Company and the Company shall pay such amount with its portion of the annual premium to the Insurer. All employee premium payments shall be recorded on Exhibit A.

I. Waiver of Premium Due to Disability

1. Payment of Waiver Premium by Employee.

If the Policy provides a waiver of premium for disability benefit, the cost shall be borne by the Employee and the Employee shall pay that amount.

2. Company Annual Loans Suspended.

If the annual premium under the Policy is paid under the terms of the disability waiver of premium benefit, the Company is not obligated under Subsection A of this SECTION ONE to lend any additional annual premiums during such disability payment period.

SECTION TWO

TOTAL REPAYMENT AMOUNT

A. Definition of Total Repayment Amount

The Total Repayment Amount shall equal the sum of 1) the Total Split Dollar Annual Loan Balance as defined in SECTION ONE and 2) the total of the Renegotiated Loans as defined in SECTION THREE, Subsection E. In no event shall any Company Loan amount provided under this Agreement be counted more than once.

B. Employee's Obligation for Repayment

The Employee shall be personally obligated to repay the Total Repayment Amount.

SECTION THREE

TYPE OF LOANS, PAYMENT TERMS, AND
RENEGOTIATION OF LOANS

Comment: The Agreement provides three loan options. Option I or II or III. The term loans are designed to be "term loans treated as demand loans" for income tax purposes. The three options are:

- *Option I – all loans are term loans treated as demand loans*
- *Option II – all loans are demand loans.*
- *Option III – the parties shall determine annually the type of loan (demand, or term loan treated as a demand loan).*

Option I – Subsections A and B that follow apply to Option I, under which all loans are “term loans treated as demand loans”

A. Type of Loans – Term Loans Treated as Demand Loans

Each Company Annual Loan in SECTION ONE shall be a term loan and shall be characterized as a term loan treated as a demand loan for income tax purposes within the meaning of IRC Section 7872 and Treas. Reg. §1.7872-15(e).

B. Repayment of Loans

The Employee shall repay the Total Split Dollar Annual Loan Balance to the Company on _____, 20___. Any Company Annual Loan may have an earlier termination date than the Total Split Dollar Annual Loan Balance and the Parties shall identify those termination dates on Exhibit A. The Parties may renegotiate any loan under Subsection E of this SECTION THREE.

If the Employee is still employed by the Company on any specified loan termination date, such loan shall be treated as a non-interest-bearing demand loan by the Parties and the repayment shall be made as described in Subsection E, Paragraph 4 of this SECTION THREE regarding demand loans.

If the Employee terminates employment before any loan termination date, the Total Repayment Amount shall be due and owing within 30 days of the date of termination of employment. [The termination of Employee’s employment due to retirement at age ___ or Disability of the Employee shall not constitute a termination of employment. For purposes of this Agreement, “Disability of the Employee” shall exist only upon the actual payment of premiums by the Insurer under a waiver of premium benefit for the Policy due to the Employee’s disability.]

Option II – Subsections A and B that follow apply to Option II, under which all loans are demand loans

A. Type of Loans – Demand Loans

Each Company Annual Loan in SECTION ONE shall be a demand loan.

B. Repayment of Loans

The Total Split Dollar Annual Loan Balance shall be payable to the Company in full by the Employee at any time on the demand of the Company. The Company may demand from the Employee repayment of all or any specific annual loans of the Total Split Dollar Annual Loan Balance at any time. If a demand for repayment is made by the Company to the Employee, the loan amount shall be due and owing by the Employee within 30 days of that demand.

If the Employee terminates employment before the Total Repayment Amount is demanded by the Company, the termination of employment shall constitute a demand by the Company of all loans to be repaid by the Employee. The Total Repayment Amount shall be due and owing within 30 days of the date of termination of employment of the Employee unless the Company notifies the Employee otherwise in writing.

Option III – Subsections A and B that follow apply to Option III, under which the parties shall determine annually the type of loan (demand, or “term loan treated as a demand loan”)

A. Type of Loans

The Parties shall determine yearly whether the Company Annual Loan in SECTION ONE is a term loan or a demand loan and shall identify the loan on Exhibit A. If the Parties fail to determine the type of loan as required under this paragraph, the Company Annual Loan shall be a demand loan.

All identified term loans shall be characterized under this Agreement as term loans treated as demand loans for income tax purposes within the meaning of IRC Section 7872 and Treas. Reg. §1.7872-15(e).

B. Repayment of Loans

1. For Term Loans

If a Company Annual Loan is identified as a term loan, the Parties shall specify the termination date of the loan on Exhibit A and the specified termination date shall be no later than _____, 20____.

If the Employee does not repay the Company Annual Loan on a specified termination date and the Employee is still employed by the Company, the Company Annual Loan shall be treated as a non-interest-bearing demand loan by the Parties and repayment shall be made as described under this Subsection B, Paragraph 2 of this SECTION THREE regarding demand loans.

If the Employee terminates employment before any loan termination date for the term loans identified in Exhibit A, the Total Repayment Amount attributable to the term loans shall be due and owing within 30 days of the date of termination of employment of the Employee. [The termination of Employee’s employment due to retirement at age ___ or Disability of the Employee shall not constitute a termination of employment. For purposes of this Agreement, “Disability of the Employee” shall exist only upon the actual payment of premiums under a disability waiver of premium benefit for the Policy due to the Employee’s disability.]

2. For Demand Loans

If a Company Annual Loan is identified as a demand loan on Exhibit A, the loan shall be due and payable to the Company in full by the Employee at any time on the demand of the Company. If a

demand for repayment is made by the Company to the Employee, the loan amount shall be due and owing within 30 days of that demand.

If the Employee terminates employment before the Total Repayment Amount attributable to demand loans is demanded by the Company, the termination of employment of the Employee shall constitute a demand by the Company of all demand loans to be repaid by the Employee. The Total Repayment Amount attributable to any demand loan shall be due and owing within 30 days of the date of termination of employment of the Employee unless the Company notifies the Employee otherwise in writing.

Comment: Subsections C and D, below, apply to Option I, II, and III.

C. Prepayment of Principal

The Employee may prepay any or all Company Annual Loans that are demand loans to the Company. The repayment of a demand loan shall be identified and recorded on Exhibit B. There shall be no penalty for a prepayment of principal.

D. Payment Ordering Rule

Unless otherwise specified by the Employee or unless the parties agree otherwise, all principal payments by the Employee shall be made in the order in which the loan or loans were made.

Comment: Subsection E, below, provides additional flexibility to Option I, II, and III.

E. Renegotiation of Loans

Notwithstanding any other provision in this SECTION THREE, the parties may mutually agree to renegotiate any loan (each a "Renegotiated Loan"). A Renegotiated Loan may be renegotiated more than once.

If the parties agree to renegotiate a loan, then the parties are subject to the following conditions:

1. No Payment of Interest.

Each amount lent by the Company to the Employee under this Subsection E shall require no payment of interest.

2. Documentation of Loans.

A loan under this Subsection E shall not be evidenced by a promissory note. The only additional documentation required to evidence these loans shall be recording on Exhibit C and/or such other

acknowledgments or affirmations of the Total Split Dollar Annual Loan Balance as Company shall require in order preserve the collectability thereof. [See Comment at end of SECTION THREE.]

If the parties renegotiate a loan, the renegotiated loan shall be first treated as a retired loan and then an immediate issuance of a new loan from the Company to the Employee. The retirement of a loan shall be recorded on Exhibit D and the issuance of the new loan shall be recorded on Exhibit C.

3. Type of Loans.

The Parties shall identify the renegotiated loan as a term loan or a demand loan on Exhibit C. All term loans shall be characterized as “term loans treated as demand loans” for income tax purposes within the meaning of IRC Section 7872 and Treas. Reg. §1.7872-15(e).

4. Repayment of Loans.

a. For Term Loans

If a loan is identified as a term loan, the Parties shall specify the termination date of the loan to the Company on Exhibit C.

If the Employee does not repay the Renegotiated Loan on the specified termination date and the Employee is still employed by the Company, the loan shall be treated as a demand loan by the Parties and the repayment shall be made as described under this Subsection E, Paragraph 4 regarding demand loans.

If the Employee terminates employment before the termination dates of the term loans identified in Exhibit C, the Total Repayment Amount attributable to the Renegotiated Loans that are term loans shall be due and owing within 30 days of the date of termination of employment of the Employee. [However, the termination of Employee’s employment due to retirement at age ___ or Disability of the Employee shall not constitute a termination of employment. For purposes of this Agreement, “Disability of the Employee” shall exist only upon the actual payment of premiums for the Policy under a disability waiver of premium benefit due to the Employee’s disability.]

b. For Demand Loans

If a loan is identified as a demand loan on Exhibit C, the loan shall be due and payable to the Company in full by the Employee at any time on the demand of the Company. If a demand for repayment is made by the Company to the Employee, the loan amount shall be due and owing within 30 days of that demand.

If the Employee terminates employment before the Total Repayment Amount is repaid to the Company, the termination of employment of the Employee shall constitute a demand by the Company of all demand loans to be repaid by the Employee. The Total Repayment Amount attributable to any demand loan that is a Renegotiated Loan shall be due and owing within 30 days of the date of termination of employment of the Employee unless the Company notifies the Employee otherwise in writing.

5. Prepayment of Principal.

The Employee may prepay all or any loan to the Company that is a Renegotiated Loan that is a demand loan. The repayment of the loan shall be identified and recorded on Exhibit B. There shall be no penalty for a prepayment of principal.

6. Payment Ordering Rule.

The payment ordering rule shall be the same as provided in Subsection D of this SECTION THREE.

7. Impact on Total Repayment Amount.

Any Renegotiated Loan shall be appropriately taken into account to calculate the Total Repayment Amount under SECTION TWO.

Comment: Subsection F, below, can be used if Option I, II, or III and if this Subsection E is used.

F. Acceleration of Repayment

Notwithstanding any other provision of this Agreement, if the Company becomes bankrupt or insolvent, the Total Repayment Amount shall be due and owing by the Employee after receiving written notification from the Company that the Company is bankrupt or insolvent and the Employee shall repay the Total Repayment Amount within 30 days.

Comment: The Company should identify the applicable statute of limitations for contract claims under the governing law that will apply to this Agreement. In most jurisdictions, the general statute of limitations for contract claims will govern a demand loan. If the demand obligation is not satisfied within the applicable statute of limitations – or extended, as by a subsequent affirmation of the obligation by the Employee – then the debt could be deemed uncollectible and, by extension, result in cancellation of debt income to the Employee. An annual “affirmation” of the outstanding demand obligation by the Employee should serve to extend the date from which the statute of limitations runs. Such affirmation should be expressed as an affirmative “promise to pay” – not merely an acknowledgment of the then current outstanding balance.

SECTION FOUR

ASSIGNMENT OF POLICY TO COMPANY AS SECURITY FOR LOAN

The Total Repayment Amount shall be secured by the Policy as evidenced by an Assignment in substantially the form attached hereto as Exhibit E filed with the Insurer regarding the Policy. If the Employee fails to repay the Total Repayment Amount as required under this Agreement within 30 days from the date that the loan becomes due and owing (other than as a result of the death of the Employee), the Company may borrow from the policy's cash value, or surrender policy additions from the Policy or surrender the Policy to repay the Total Repayment Amount. If the cash values are insufficient to repay the Company the Total Repayment Amount, the Employee shall be personally obligated to repay the remaining indebtedness.

Except as expressly provided in the prior paragraph, the Company shall not borrow from the Policy's cash value, surrender policy additions, or surrender the Policy. Notwithstanding any provision in the Assignment granted to the Company by the Employee with respect to the Policy or any other assignment regarding the payment of interest, the terms of this Agreement shall, in all cases, control any such provision or provisions to the extent of any conflict.

SECTION FIVE

CHANGE OF BENEFICIARIES AND USE OF DIVIDENDS

The Employee shall have the right to change the beneficiary of the Policy at any time and shall have the right to change the dividend option.

SECTION SIX

DEATH OF EMPLOYEE

If the Employee dies before repaying the Total Repayment Amount, the Company shall be paid, out of the proceeds of the Policy, an amount equal to the Total Repayment Amount. The balance, if any, of the proceeds of the Policy shall be paid directly by the Insurer to the beneficiary designated by the Employee. If the death proceeds are insufficient to repay the Company the Total Repayment Amount, the Employee's obligation to repay the remaining indebtedness is still binding under the Agreement.

SECTION SEVEN

AMENDMENT

This Agreement may not be amended, altered or modified, except by a written instrument signed by the parties hereto, or their respective successors or assigns, and may not be otherwise terminated except as provided herein.

If any provision of this Agreement is subject to and is found to be in conflict with any applicable state or federal law, the parties agree to modify the Agreement so that the Agreement is in compliance with those laws.

SECTION EIGHT

BINDING EFFECT

This Agreement shall bind Company and its successors and assigns, Employee and his or heirs, executors, administrators and assigns, and any Policy beneficiary.

SECTION NINE

NOTICES

Unless the parties agree otherwise, or unless otherwise provided herein, any notice, consent or demand required or permitted to be given under the provisions of this Agreement shall be in writing, and shall be signed by the party giving or making the same. If such notice, consent or demand is mailed to a party hereto, it shall be sent by United States certified mail, postage prepaid, addressed to such party's last known address as shown on the records of the Company. The date of such mailing shall be deemed the date of notice, consent or demand.

SECTION TEN

INSURANCE COMPANY NOT LIABLE

The Insurer shall be bound only by the provisions of and endorsements on the Policy, and any payments made or action taken by it in accordance therewith shall fully discharge it from all claims, suits and demands of all persons whatsoever. The Insurer shall in no way be bound by or be deemed to have notice of the provisions of this Agreement.

SECTION ELEVEN

EMPLOYEE'S RIGHT TO TRANSFER

Unless the Company agrees in writing, the Employee shall not have the right to transfer or assign any part of or all the Employee's interest in the Policy or this Agreement.

SECTION TWELVE

TERMINATION OF AGREEMENT

Upon the repayment of the Total Repayment Amount, this Loan Agreement shall terminate.

SECTION THIRTEEN

GOVERNING STATE LAW AND INTERPRETATION

A. Governing State Law

This Agreement is being delivered and is intended to be performed in [*Name of State*] and shall be construed and enforced in accordance with the laws of [*Name of State*].

B. Interpretation – In General

Notwithstanding any provision to the contrary, this Agreement shall be interpreted and construed to comply with IRC Section 7872 and Treas. Reg. §1.7872-15 so that this arrangement is treated as a loan transaction for tax purposes.

C. Titles and Headings

The titles and headings in the Agreement are inserted for convenience and do not constitute a part of the Agreement and shall not be considered in the construction hereof.

D. Number

Wherever applicable, the singular shall include the plural and the plural shall include the singular.

E. Waiver of Rights

If the Company does not enforce or if it waives any rights it may have under this Agreement, such non-enforcement or waiver does not preclude the Company from subsequently enforcing its rights.

F. Employee’s Right to Employment

Nothing contained in this Agreement shall be construed to give the Employee any rights to employment or to continued employment with the Company.

SECTION FOURTEEN

FURTHER ASSURANCE

Each of the parties hereto shall execute and deliver such documents (including, without limitation, such acknowledgments and affirmations of the Total Split Dollar Annual Loan Balance) and take such other actions as may be reasonably requested by any other party hereto to carry out the provisions or purposes of this Agreement.

SECTION FIFTEEN

INTEGRATION

This Agreement, together with the Exhibits attached hereto, embodies the entire understanding and agreement among the parties concerning the subject matter hereof and supersedes any and all prior written or oral negotiations, understandings, or agreements in regard thereto.

Owner:

Benefited Party 1:

Benefited Party 2:

Benefited Party 3:

Benefited Party 4:

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