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PARTNERSHIP PURCHASE AGREEMENT - CROSS-PURCHASE AGREEMENT

Unless agreed to the contrary, a partnership dissolves at the death of any partner. A business continuation agreement permits the business to continue.

– Sample for the use of legal counsel only –

This is an Agreement between [Names of Partners] (the “Partners”, or individually, the “Partner”) and [Name of Partnership] Partnership (the “Partnership”), a Partnership organized under the laws of [Name of State]. The Partners (including any persons who later become a party hereto) and the Partnership are sometimes referred to as the Parties. This Agreement is effective as of the date when all of the Parties have signed it.

BACKGROUND INFORMATION

- A. The following are all of the partners of the Partnership. Each Partner owns an interest in the Partnership as set forth below.

<u>Name of Partner</u>	<u>Percentage Interest</u>
_____	_____ %
_____	_____ %
_____	_____ %

- B. The Partnership is now engaged in the business of [Description of Nature of Business], and is trading under the name of [Trade Name, if any].
- C. The Parties agree that it is in their best interests to restrict the ownership in the Partnership.
- D. The Partners believe that it is in their best interests if a deceased Partner’s interest in the Partnership is purchased by the surviving Partners.
- E. The Partners want to avoid liquidation of the Partnership business upon the death or disability of a Partner.
- F. The Partners entered into a partnership agreement with respect to their rights and duties as partners (the “Partnership Agreement”) on [Date of Partnership Agreement].

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Comment: *The drafter may also add other triggering events for a mandatory purchase and sale, such as retirement and/or other termination from employment.*

Therefore, the Parties agree as follows:

1. **General Restriction.** No Partner shall transfer, assign, pledge, sell or convey any interest in the Partnership, now owned or later acquired by him, except in accordance with this Agreement.
2. **Disposition of Partnership Interest During Lifetime.**
 - (a) **Restriction on Transfer.** No Partner may transfer, assign, pledge, sell or convey his interest in the Partnership during his lifetime to any third party without first providing written notice of such intended transaction (“Transfer Notice”) to the other Partners, including the identity of the proposed transferee and the price and terms upon which the transferor Partner proposes to transfer such Partnership interest.
 - (b) **Partners’ Option to Purchase.** Within thirty (30) days following the receipt of the Transfer Notice, the other Partners shall have the option to purchase all (but not less than all) of the Partnership interest of the transferor Partner for the lesser of (i) the price disclosed in the Transfer Notice or (ii) the price set forth in paragraph 5 of this Agreement. Each Partner who exercises his option shall purchase his pro rata part of the Partnership interest of the transferor Partner in the same proportion which his Partnership interest bears to all the Partnership interests owned by all Partners electing to purchase hereunder.
 - (c) **Terms.** If the other Partners elect to exercise their options, the payment of the purchase price shall be pursuant to the provisions set forth in the Transfer Notice or the provisions of paragraph 5 of this Agreement, at the option of the purchaser.
 - (d) **Expiration of Option.** If the other Partners fail to exercise their options as provided in paragraph 1(b), then the transferor Partner shall be free to transfer ownership of his Partnership interest in strict accordance with the Transfer Notice given to the other Partners; provided that the purchaser of such Partnership interest shall take it subject to the terms and restrictions imposed by this Agreement and shall become a party hereto.

Comment: *Some restriction on inter vivos sale is necessary if the agreement is to establish the value of a partner’s partnership interest for federal estate tax purposes. To establish the value of a deceased partner’s partnership interest for federal estate tax purposes, the sale price upon a partner’s death should not be less than the sale price while a partner is living. While an option meeting this requirement might establish the value of the business interest for estate tax purposes, it may also restrict the right of a partner to extract the maximum price for his partnership interest while he is alive. The Parties should decide whether estate tax certainty or the ability to extract the maximum price is more important.*

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3. Disposition of Partnership Interest Upon Death of a Partner.

- (a) Purchase by Surviving Partners. At the death of any Partner, each surviving Partner shall purchase a portion of the entire Partnership interest owned by the deceased Partner. Such portion for each surviving Partner shall be the product of: (i) the Partnership interest owned by the deceased Partner at the time of his death, and (ii) a fraction, the numerator of which is the Partnership interest owned by such surviving Partner as of the date of the deceased Partner's death, and the denominator of which is equal to the total Partnership interests owned by all of the surviving Partners as of the date of the deceased Partner's death.
- (b) Price and Terms. The Partnership interest of any deceased Partner purchased and sold under this paragraph shall be purchased and sold in accordance with the provisions of paragraph 5 of this Agreement. The estate of any deceased Partner (and/or any successor in interest) shall be bound to sell the entire Partnership interest owned by the deceased Partner, pursuant to this paragraph.

4. Disability of a Partner. If a Partner becomes Totally Disabled, the following provisions shall apply to the disposition of his interest in the Partnership.

- (a) Definition. A Partner shall be conclusively deemed to be Totally Disabled or have a Total Disability if (i) with respect to any policy of disability insurance issued by a commercial insurer insuring such Partner, such policy's payee is determined eligible to receive benefits, (ii) a waiver of premium benefit upon total disability forming a part of any policy of life insurance insuring such Partner pays such benefit, or (iii) he is determined eligible to receive disability benefits from Social Security. In the absence of any such determinations by a commercial carrier or by Social Security, the term Total Disability or Totally Disabled means the inability of a Partner to perform substantially all the regular duties of his position with the Partnership due to sickness or injury. If there is a dispute regarding the existence or continuation of a Total Disability, the Partner shall submit to an examination by a medical doctor licensed to practice medicine in [Name of State] no more frequently than once in any 90 day period. Any period of Total Disability shall be deemed to be continuing until the disabled person has either died or failed to meet the definition set forth above for a period of three (3) consecutive months.

***Comment:** In the case of requiring medical examinations, the drafter should address how the doctor will be selected, any necessary qualifications of such doctor and who will pay the medical fees.*

NOTE: OPTION 1 PRESCRIBES A MANDATORY BUYOUT. OPTION 2 PRESCRIBES AN OPTION TO PURCHASE.

[OPTION 1]

- (b) Purchase by Other Partners. After a Partner has been Totally Disabled for a continuous period of eighteen (18) months, (in the case of Total Disability being determined by a commercial insurer or the Social Security Administration, this eighteen month period commences on the

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date of the disability and not on the expiration of any elimination period), each of the other Partners shall purchase a portion of the entire Partnership interest owned by the disabled Partner, upon the price and terms set forth in paragraph 5 of this Agreement. Such portion for each of the other Partners shall be the product of: (i) the Partnership interest owned by the disabled Partner at the time of his death, and (ii) a fraction, the numerator of which is the Partnership interest owned by such other Partner as of the date of the disabled Partner's disability, and the denominator of which is equal to the total Partnership interests owned by all of the other Partners as of the date of the disabled Partner's disability.

Comment: *If funded with disability buyout insurance, the buyout should be triggered upon the occurrence of: the Insurer's determination that the insured is Totally Disabled; that the Beginning Date has been reached; and that there are no remaining conditions to payment on the policy other than actually incurring the buyout expense. Consider whether the above provision should apply, if at all, only to partners who regularly provide necessary services to the partnership and not to passive investors.*

[OPTION 2]

(b) Partners' Option to Purchase. After a Partner has been Totally Disabled for a continuous period of eighteen (18) months (in the case of Total Disability being determined by a commercial insurer or the Social Security Administration, this eighteen month period commences on the date of the disability and not on the expiration of any elimination period), the other Partners shall have the option to purchase all (but not less than all) of the Partnership interest of the disabled Partner, upon the price and terms set forth in paragraph 5 of this Agreement. Such option shall be exercisable by written notice from the other Partners to the disabled Partner (or his guardian or attorney-in-fact, if applicable). Each Partner who exercises his option shall purchase his pro rata part of the Partnership interest of the disabled Partner in the same proportion which his Partnership interest bear to all the Partnership interests owned by all Partners electing to purchase hereunder. This option shall be exercisable until the first to occur of (i) the termination of the disability by recovery or death, or (ii) the other conveyance of the entire Partnership interest of the disabled Partner in accordance with the terms of this Agreement.

Comment: *If funded with disability buyout insurance, the buyout should be triggered upon the occurrence of: the Insurer's determination that the insured is Totally Disabled; that the Beginning Date has been reached; and that there are no remaining conditions to payment on the policy other than actually incurring the buyout expense. Consider whether the above provision should apply, if at all, only to partners who regularly provide necessary services to the partnership and not to passive investors.*

Comment: *The above provision grants the Partners an option to buy the interest of a disabled Partner. If the agreement is funded with disability insurance, make sure that the disability buyout policy will pay a benefit where there is not an obligation, but only an option, to carry out the sale. If funded with disability buyout insurance, the buyout should*

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be triggered upon the occurrence of: the Insurer's determination that the insured is Totally Disabled; that the Beginning Date has been reached; and that there are no remaining conditions to payment on the policy other than actually incurring the buyout expense. Consider whether the above provision should apply, if at all, only to partners who regularly provide necessary services to the partnership and not to passive investors.

5. Price and Terms for Purchase and Sale of Partnership Interest.

NOTE: OPTION 1 PRESCRIBES A PURCHASE PRICE THAT IS BASED ON BOOK VALUE. OPTION 2 PRESCRIBES A FIXED PRICE.

[OPTION 1]

- (a) Price. Unless modified according to this Agreement, and except as expressly provided otherwise, the price to be paid upon the purchase and sale of Partnership interest pursuant to the provisions of this Agreement shall be the selling Partner's percentage interest in the Partnership times the Book Value of the Partnership determined from the Partnership's regularly prepared financial statements using generally accepted accounting principles as of the fiscal year end last occurring before the Sale Event Date. The Sale Event Date shall be: (i) in the case of a purchase and sale under paragraph 2, the date of the Transfer Notice; (ii) in the case of a purchase and sale under paragraph 3, the date of the Partner's death; and (iii) in the case of a purchase and sale under paragraph 4, the date which is eighteen months after the beginning of a Partner's Total Disability.

Comment: *In the case of an option to buy under Total Disability, rather than a mandatory buyout, change (iii) to: in the case of a purchase and sale under paragraph 4, the date of the written notice exercising the option.*

[OPTION 2]

- (a) Price. Unless modified according to this Agreement, and except as expressly provided otherwise, the price to be paid upon the purchase and sale of a Partnership interest in the Partnership pursuant to the provisions of this Agreement shall be \$_____ [Value of Partnership] times the selling Partner's percentage interest in the Partnership as of the date of the Sale Event Date. The Sale Event Date shall be: (i) in the case of a purchase and sale under paragraph 2, the date of the Transfer Notice; (ii) in the case of a purchase and sale under paragraph 3, the date of the Partner's death; and (iii) in the case of a purchase and sale under paragraph 4, the date which is eighteen months after the beginning of a Partner's Total Disability.

Comment: *In the case of an option to buy under Total Disability, rather than a mandatory buyout, change (iii) to: in the case of a purchase and sale under paragraph 4, the date of the written notice exercising the option.*

Comment: *In the case of a specific dollar amount as the value of the partnership, consider requiring a periodic update of that value.*

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Comment: In some cases, the Partners might want to have the value of their interests determined by an appraisal. If this approach is to be used, the drafter should address how the appraiser(s) will be selected, the necessary qualifications of such appraiser(s), the standard to be used by the appraiser(s) to determine value, whether valuation discounts should be applied (e.g., minority discount, lack of marketability), and who will pay appraisal fees.

NOTE: OPTION 1 PRESCRIBES A LUMP SUM CASH SALE. OPTION 2 PRESCRIBES SELLER FINANCING TO BE PAID OVER TIME.

[OPTION 1]

(b) Terms. The purchase price to be paid for any purchase and sale of a Partnership interest pursuant to this Agreement shall, except as expressly provided otherwise, be paid by the purchaser to the seller in cash or by certified check at closing.

[OPTION 2]

(b) Terms. The purchase price to be paid for any purchase and sale of a Partnership interest pursuant to this Agreement shall, except as expressly provided otherwise, be paid by the purchaser to the seller at closing as follows:

- (i) Cash Portion. The purchaser shall deliver to the seller at closing an amount of cash or a certified check equal to the greater of ____% of the total purchase price, or the amount of life insurance proceeds received by the purchaser on account of the death of a Partner (if the purchase and sale is made pursuant to the death of a Partner), but not more than the total amount of the purchase price.
- (ii) Promissory Note. Any balance of the purchase price not paid in cash at closing shall be paid by the purchaser's delivery of a signed negotiable promissory note (the "Note") in the original principal amount of the balance. The Note shall require payment of the principal amount in ____ [insert number of quarterly installments] equal consecutive quarterly installments together with interest at a rate per annum equal to the minimum rate necessary to avoid additional interest being imputed to this transaction for federal income tax purposes. The Note shall allow the prepayment of all or any part of the principal amount at any time without penalty. As security for the Note, the purchaser shall execute a pledge of the Partnership interest being purchased and sold in favor of any holder of the Note. The Note shall be executed by all purchasers as makers, and all purchasers shall be jointly and severally liable for full payment according to its terms.

Comment: The above clause requires the Partnership interest subject to the sale to be pledged as collateral. This might not give the seller enough protection. The main reason why the buyer might default is that the partnership is not profitable. If this is a concern, it might be wise to require the buyer to pledge personal assets or unencumbered partnership property as collateral.

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Comment: *The above clause provides for a rate of interest necessary to avoid imputation of interest under federal tax provisions relating to below market loans (generally found in I.R.C. § 7872). Of course, the parties are free to provide for a higher interest rate if they so wish.*

- (c) Closing. The closing of the purchase and sale prescribed in this paragraph shall take place as soon as practicable after the Sale Event Date, but in no event shall it take place later than the date which is six (6) months after the Sale Event Date, unless agreed to otherwise by the seller and all purchasers. The Sale Event Date shall be as defined in paragraph 5(a) of this Agreement.
- (d) Liens. The selling party shall transfer and convey the interest in the Partnership to the purchasing party at closing free and clear of all encumbrances except those arising out of this Agreement.
- (e) Death Following Sale of Partnership Interest. If a living Partner sells his interest in the Partnership pursuant to this Agreement, and if such selling Partner dies before receiving the entire purchase price, then the purchaser shall pay to the estate of such Partner (or other successor in interest) an amount equal to the lesser of: (i) the amount of life insurance proceeds received by the purchaser on account of the death of such Partner, or (ii) the remaining principal amount owed by the purchaser to the Partner as a result of the purchase of such interest in the Partnership. Such payment shall be credited as a principal prepayment of any note given by the purchaser pursuant to this paragraph 5. Any remaining principal balance of such note shall continue in effect according to its terms.

Comment: *The drafter may wish to alter the above clause if this buy-sell arrangement is not funded with life insurance because there may be difficulty in paying the promissory note in full upon the seller's death.*

6. Insurance Policies.

- (a) Purchase of Insurance. Any Partner under this Agreement may (but is not required to) purchase and maintain policies of disability and life insurance on the life of each of the other Partners to provide for the obligations under this Agreement. The policies shall be the sole property of the owner. Nothing in this Agreement shall be construed as giving a Partner any incidents of ownership in any such policy insuring his life. No Partner nor any successor, transferee, assignee, or personal representative of any Partner shall have any interest (collateral or otherwise) in any such policy insuring his own life.

Comment: *In some instances, the parties might arrange policy ownership by having the insured own a policy on his own life and endorse death benefit to the purchasing/surviving Partner. In this case, the last two sentences of the above paragraph could be deleted.*

- (b) Purchase by Insured. If the entire Partnership interest of any living Partner is transferred pursuant to this Agreement, and if all the obligations of the purchaser for payment of the purchase price have been fully satisfied, then such living Partner may purchase any policy of insurance insuring his life owned by any other Partner, for a price equal to the fair market value

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of such policy, as determined under Treas. Reg. § 1.83-3(e) (or any successor provision). Such living Partner may also purchase any disability policy insuring such living Partner. The fair market value of any disability policy shall be the unearned premium.

***Comment:** Some parties might want to exclude the above paragraph that provides a Partner with the right to purchase a policy on his own life, as some legal authorities suggest that an insured's right to do so, even if never exercised, could amount to an incident of ownership. See, e.g., Rev. Ruls. 79-46, 1979-1 C.B. 303 and 75-70, 1975-1 C.B. 301. On the other hand, other legal authorities have found no incident of ownership in similar situations. See, e.g., Smith, 73 T.C. 307 (1979); Morrow, 19 T.C. 1068 (1953); and Infante, T.C. Memo 1970-206 (1970).*

***Comment:** The above paragraph refers to an income tax treasury regulation to determine the policy's fair market value. This regulation technically applies to transfers of policies from employers to employees, not sales of policies, but it is nonetheless used here because it is the most recent treasury regulation addressing the valuation of life insurance, along with identical provisions in the regulations under §§ 79 and 402. Rev. Proc. 2005-25, 2005-1 C.B. 962, provides a safe harbor valuation formula, which many parties will likely want to use. As an alternative, parties could look to the older gift tax valuation formulas found under Treas. Reg. § 25.2512-6. Under either the gift tax or income tax formulas, with traditionally-valued permanent policies with no surrender charges, the fair market value will generally be close to net cash value.*

NOTE: OPTION 1 PRESCRIBES THAT EACH REMAINING PARTNER MAY PURCHASE THE POLICIES OWNED BY A TRANSFEROR PARTNER OR A DECEASED PARTNER. OPTION 2 OBLIGATES THE PARTNERSHIP TO BUY SUCH POLICIES.

[OPTION 1]

(c) Purchase by Partners. Upon the transfer of the entire Partnership interest of any living Partner pursuant to this Agreement or upon the death of any Partner, each remaining Partner shall have the option to purchase a pro rata portion of any policy of life insurance owned by such transferor Partner or such deceased Partner, as the case may be, insuring the life of any other remaining living Partner. Such option to purchase shall be in the same proportion that such Partner's right to purchase the Partnership interest from such insured bears to the rights of all remaining Partners to purchase the Partnership interest from such insured. The price for a policy so purchased shall be the fair market value of such policy, as determined under Treas. Reg. § 1.83-3(e) (or any successor provision), with each purchasing Partner paying his pro rata portion of the purchase price. The transferor Partner or the estate of any deceased Partner, as the case may be, shall be bound to sell any such policies owned by the transferor Partner or the deceased Partner, pursuant to this paragraph. This paragraph shall also apply similarly to any disability policy owned by such transferor Partner or such deceased Partner, as the case may be, insuring any other remaining living Partner. The fair market value of any disability policy shall be the unearned premium.

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***Comment:** The purchase of a life insurance policy by a Partner gives rise to the "transfer-for-value" rule; however, an exception to this rule exists – the parties are partners in a partnership.*

[OPTION 2]

(c) Purchase by Partnership. Upon the transfer of the entire Partnership interest of any living Partner pursuant to this Agreement or upon the death of any Partner, the Partnership shall purchase and the transferor Partner or the estate of the deceased Partner, as the case may be, shall sell any policy of life insurance owned by such transferor Partner or such deceased Partner insuring the life of any living Partner, for a price equal to the fair market value of such policy, as determined under Treas. Reg. § 1.83-3(e) (or any successor provision). The Partnership shall also purchase and the transferor Partner or the estate of the deceased Partner, as the case may be, shall sell any disability policy owned by such transferor Partner or such deceased Partner insuring any living Partner for a price equal to the fair market value of any disability policy, which shall be the unearned premium.

***Comment:** If the Parties have a cross-purchase arrangement, operation of paragraph 6(c) will place the funding mechanism in the corporation, and away from the purchasers. In this event, the drafter might want to provide that a portion of this agreement becomes an entity purchase or the agreement may be amended at that time to so provide.*

7. **Right of Remaining Partners to Continue Business.** It is the intent and purpose of this Agreement to permit any Partner who purchases another Partner's interest in the Partnership to, subject to payment of the purchase price as herein provided, continue the Partnership business. Any such purchasing Partner shall be under no duty to account to the deceased Partner's heirs or personal representative. He shall be free to conduct the Partnership business under the same name and at the same address. He shall assume all Partnership obligations and shall indemnify and save harmless the selling Partner and his successors in interest from such obligations.
8. **Specific Performance.** Interests in the Partnership cannot be readily purchased or sold on the open market and for that reason, among others, the Parties will be irreparably damaged if this Agreement is not specifically enforced. If any dispute arises concerning the sale or disposition of an interest in the Partnership pursuant to this Agreement, an injunction may be issued restraining any sale or disposition pending the determination of such controversy upon application to a court of competent jurisdiction by any Party to this Agreement. If any controversy arises concerning the purchase or sale of such interest in the Partnership, the same shall be enforceable in a court of equity by decree of specific performance. Such remedy shall, however, be cumulative and not exclusive, and shall be in addition to any other remedy which the Parties may have.
9. **Termination of Agreement.** This Agreement is the entire understanding among the Parties and shall terminate upon the first to occur of the following events:
 - (a) **Revocation of Agreement.** A written agreement to revoke this Agreement, signed by all the Parties Partnership (but such termination shall not extinguish the rights or obligations of the Parties arising out of any event occurring before such termination).

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- (b) **Termination of Partnership.** The bankruptcy, receivership, or dissolution of the Partnership (but such termination shall not extinguish the rights or obligations of the Parties arising out of any event occurring before such termination).
- (c) **Sole Ownership.** All outstanding Partnership interests owned by one Partner.
- (d) **Death.** The death of all the Partners within a ninety (90) day period, with the effective date of the termination of this Agreement being the date of death of the first of such Partners to die.
- 10. Amendment.** This Agreement is the entire understanding among the Parties and may be altered or amended only by subsequent written instrument signed by all the Parties.
- 11. Persons Bound.** This Agreement is binding upon the Partnership, the Partners, their heirs, legal representatives, transferees, successors and assigns, who shall execute all documents necessary to effectuate the purposes of this Agreement.
- 12. Benefit.** This Agreement is for the benefit of the Parties, their heirs, executors, administrators, successors, assigns and transferees.
- 13. Notices.** Each Partner and the Partnership, through its authorized representative, shall give prompt notice to the other Partners and the Partnership, as the case may be, of all offers, acceptances, refusals, and exercise of options made pursuant to this Agreement. All notices, writings, offers, acceptances, refusals, payments, or agreements given or required to be given under this Agreement shall be made in writing and sent by registered or certified mail, return receipt requested, to the principal business office of the Partnership and to the last known address of each Partner appearing on the books of the Partnership. Any such notice or other writing shall be deemed given and received upon the expiration of three days following such mailing with proper postage affixed.
- 14. Execution of Other Documents.** The Parties agree to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Agreement.
- 15. [Name of State] Law.** This Agreement shall be governed by and shall be construed and enforced in accordance with the laws of *[Name of State]*.
- 16. Headings and Gender Neutral.** Any headings are inserted solely for the convenience of reference and are not a part of this Agreement, nor shall they affect its meaning, construction or effect. Any pronoun reference to masculine or feminine shall be read as to accommodate the gender of the Parties.
- 17. Prior Agreement.** This Agreement revokes all previous agreements among the Parties to the extent they are inconsistent herewith, including the Partnership Agreement.

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the Partnership by its duly authorized representatives, on the day and year written opposite the signature.

[NAME OF PARTNERSHIP]

By: _____
Managing Partner

Date: _____

Attest: _____

Date: _____

PARTNERS

_____ (SEAL)

Date: _____

_____ (SEAL)

Date: _____

_____ (SEAL)

Date: _____