



SUCCESSION PLANNING CONSULTANTS

***SAMPLE BUY/SELL AGREEMENT FOR PURCHASE OF BUSINESS ASSETS
FROM A SOLE ENTITY OWNER OR A SOLE PROPRIETOR***

IMPORTANT INFORMATION

THIS *SAMPLE BUY/SELL AGREEMENT FOR PURCHASE OF BUSINESS ASSETS FROM A SOLE ENTITY OWNER OR A SOLE PROPRIETOR* IS TO BE CONSIDERED AN EXAMPLE IN DRAFT FORM AND IS INTENDED FOR DISCUSSION AND EDUCATIONAL PURPOSES ONLY. THE PARTIES' BEST USE OF THIS TOOL IS TO USE IT AS A GUIDE TO EDUCATE THEMSELVES ON THE PROFESSION SPECIFIC CATEGORIES USUALLY INCLUDED IN A FINANCIAL ADVISOR BUY/SELL AGREEMENT. ADDITIONALLY, IT SHOULD BE USED ONLY AS AN OUTLINE TO PREPARE THE NECESSARY INFORMATION TO BE PROVIDED TO A LAWYER FOR THEIR ASSISTANCE IN DETERMINING THE REQUIRED SPECIFIC LEGAL LANGUAGE FOR INCLUSION IN THE FINAL DOCUMENT. THIS SAMPLE AGREEMENT IS NOT TO BE USED VERBATIM FOR YOUR INDIVIDUAL CIRCUMSTANCES AS THE TERMS AND CONDITIONS WILL CHANGE DEPENDING ON NEGOTIATIONS AND APPLICABLE STATE LAW. IT IS CRITICAL FOR ALL ADVISORS SEEKING ANY LEGAL BUSINESS DOCUMENT GOVERNING THE SALE OF A BUSINESS OR BUSINESS ASSETS TO ENGAGE A STATE-SPECIFIC LEGAL AND TAX PROFESSIONAL FOR GUIDANCE.

THIS SAMPLE DOCUMENT IS PROVIDED AND TO BE USED ONLY WITH THE UNDERSTANDING THAT NEITHER THE AUTHOR(S) NOR SUCCESSION PLANNING CONSULTANTS, INC. ARE ENGAGED IN RENDERING LEGAL, ACCOUNTING, OR TAX ADVICE. NO REPRESENTATION OR WARRANTY IS MADE CONCERNING THE ACCURACY OF THE MATERIAL PRESENTED OR THE APPLICABILITY OF THE MATERIAL TO ANY SPECIFIC FACT SITUATION.

INSTRUCTIONS

Please note that this form is GENERAL in nature; that it is drafted to meet the most common situations or circumstances where this form is required. ***This Sample Buy/Sell Agreement For Purchase of Business Assets From A Sole Entity Owner or A Sole Proprietor* is to be used to create a customized agreement that controls how owners of a business can sell their asset interest in their business at the occurrence of unexpected events such as death or disability.** The Agreement addresses to whom the business' assets will be sold, how much will be sold, at what price and under what terms and conditions. Furthermore, the Agreement includes numerous optional provisions specifically addressing an asset purchase of a financial services firm. This outline is designed for the user to consider each provision in the sample agreement as to its applicability and potential inclusion in his or her final document. Additionally, where the user has been given multiple choices within a given provision, you will notice those choices denoted by boxes (☐). It is suggested the user check (☒) those applicable boxes and then take the outline to his or her legal and tax professional as a support document for discussion and advice.



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SAMPLE BUY/SELL AGREEMENT FOR PURCHASE OF BUSINESS ASSETS FROM A SOLE ENTITY OWNER OR A SOLE PROPRIETOR

Note 1: This sample buy/sell agreement addresses the Buyer having *Rights of First Refusal* to acquire certain assets of the Seller's business at the occurrence of two specific events: the death and/or disability of the Seller. A Right of First Refusal is offered by a business owner who wants to sell his or her business interest to a third party purchaser at death or disability for the purposes of continuity in client services and to liquidate the value of the business' assets. Rights of First Refusal are typically written to require the Buyer to the agreement to consummate these rights within a specified time. If the Buyer does not complete the purchase of the business interest within the time period agreed to, the agreement between the Parties ends and the business interest can then be sold to a third party by the seller, or his or her Personal Representative(s).

Note 2: A "continuity buy/sell agreement," such as this sample agreement, is a contract where the Buyer may hold life insurance and/or disability insurance on the Seller. Upon the Seller's death or disability, his or her interest is purchased by the Buyer with the benefit of the disability or life insurance. Any buy/sell agreement, and particularly where disability or life insurance is utilized, may have unintended tax consequences on each individual's estate plan. Therefore, any buy/sell agreement should be carefully considered and the Parties to such an agreement should seek the guidance of a tax or legal professional competent in such matters.

This Buy/Sell Agreement for Purchase of Business Assets From a Sole Entity Owner or a Sole Proprietor (the "Agreement") is entered into **DATE:** _____ (the "Effective Date"), by and between

the PARTIES:

("SELLER"): _____

("BUYER"): _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

E-mail: _____

E-mail: _____

SSN/EIN: _____

SSN/EIN: _____

Business Type: () Sole Proprietorship
() Partnership
() Corporation
() Limited Liability Company
() Other: _____

Business Type: () Sole Proprietorship
() Partnership
() Corporation
() Limited Liability Company
() Other: _____

State of organization/incorporation: _____

State of organization/incorporation: _____

(each a “Party” and hereinafter referred to collectively as the “Parties”).

RECITALS

WHEREAS, Seller operates a financial services firm (the “Business”), known to the Buyer as:

_____ in the State of _____; and

WHEREAS, Seller owns certain client lists, contract rights, and assets used in connection with the operation of the Business; and

WHEREAS, Buyer desires to purchase from Seller certain assets and specified obligations, if any, of Seller related to the Business, subject to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations and warranties and in exchange for good and valuable consideration, the Parties agree as follows:

ARTICLE 1. PURCHASE AND SALE OF ASSETS

(Check all applicable boxes and provide a Schedule, Exhibit or Addendum number where appropriate):

1.1 Purchase of Seller’s Business Assets

- ☐ **1) Purchase on Seller’s Death.** Upon the death of the Seller, his or her Personal Representative (*as defined in Section 1.2 below*) will immediately be deemed to have offered to sell to the Buyer, the deceased Owner’s lawfully owned business assets as set forth in **Article 1. Section 1.3 Purchase Price and Terms of Sale**, and **Schedule** _____ [enter letter #], and **Exhibit** _____ [enter letter #]. The Parties agree that the Buyer will have Rights of First Refusal to acquire said assets within the specified period of time of **30 (thirty) days** as described in **Addendum A-Winding Up of Rights of First Refusal**. At the option of the Buyer, the transfer of the Assets and forthright legal ownership to the Buyer shall be deemed effective as of the close of business on the Commencement Date executed by the Buyer on the Addendum A-Winding Up of Rights of First Refusal. The Seller and/or their Personal Representative shall promptly do all things necessary to cause such transfer in accordance with this Agreement.
- ☐ **2) Purchase on Seller’s Involuntary Disability or Incompetency.** Upon the disability of the Seller as defined below in this Section 1.1.2.a) immediately below, the Seller and/or his or her Personal Representative (*as defined in Section 1.2 below*) will immediately be deemed to have offered to sell to the Buyer, the disabled Owner’s lawfully owned business assets as set forth in **Article 1. Section 1.3 Purchase Price and Terms of Sale**, and **Schedule** _____ [enter letter #], and **Exhibit** _____ [enter letter #]. The Parties agree that the Buyer will have Rights of First Refusal to acquire said assets within a specified period of time of **30 (thirty) days** as described in **Addendum A-Winding Up of Rights of First Refusal**. At the option of the Buyer, the transfer of the Assets and forthright legal ownership to the Buyer shall be deemed effective as of the close of business on the *Commencement Date* executed by the Buyer on the Addendum A-Winding Up Rights of First Refusal. The Seller and/or their Personal Representative shall promptly do all things necessary to cause such transfer in accordance with this Agreement.

a) **“Involuntary Disability, or Incompetency”** means, with respect to the Seller, the first to occur of: *(choose all that apply)*

- ☐ The Seller is adjudicated incompetent by any court;
- ☐ A guardian or conservator is appointed for the Seller;
- ☐ The Seller suffers from bodily infirmities or disorders, diseases, injuries, addiction to substances hazardous to health (including addiction to narcotics and alcoholism), or mental illness; **and if one of the following conditions is satisfied:**

(choose one option below)

- ☐ Under the terms of a bona fide disability income insurance policy which insures the Seller, the insurance company that underwrites such insurance policy determines that the Seller is totally disabled for purposes of such insurance policy;
- ☐ A physician licensed to practice medicine in the State of _____, who has been jointly selected and agreed to by the Seller (or the conservator of the Seller's estate) and the Buyer, certifies that the Seller is partially or totally disabled so that the Seller will be unable to be employed gainfully on a full-time basis for more than a six-month period in the position that the Seller occupied prior to such disability. The costs and expenses of such physician shall be borne by the Seller;
- ☐ The Seller and the Buyer agree in writing that the Seller is partially or totally disabled so that the Seller will be unable to be employed gainfully on a full-time basis in the position which the Seller occupied prior to such disability.

1.2 **Personal Representative.** A Seller's "**Personal Representative**" includes any administrator, personal representative, executor or trustee who has legal responsibility for managing and disposing of the Seller's business assets. It also includes any person who succeeds in interest to such business assets, if no such fiduciary has control over such business assets.

1.3 **Passage of Rights; Power of Attorney.** Notwithstanding the provisions of this or any other paragraph of this Agreement, all rights of the Seller with respect to Assets purchased pursuant to this Agreement, shall pass to the Buyer at the time of exercise of the Buyer's Rights of First Refusal option as set forth in Addendum A-Winding Up of Rights of First Refusal.

In the event of Death, the Seller hereby appoints his or her Personal Representative(s) and attorneys-in-fact to execute and deliver to the Buyer all documents needed to convey his or her rights to the Assets purchased. This power of attorney continues for so long as this Agreement remains in effect.

- 1.4 **Purchase and Sale of Assets.** On the *Commencement Date* as set forth in Addendum A-Winding Up of Rights of First Refusal, Seller shall sell, transfer, convey, assign, and deliver to Buyer, and Buyer shall purchase and accept, Seller's rights, title, and interest in and to the assets used by Seller in connection with the operation of the Seller's business (the "Assets"), including the following:

(choose all that apply)

- ☐ 1) The existing client lists, files and pertinent information for such clients including, but not limited to, names, addresses, Social Security numbers, phone numbers, account numbers, and copies of any correspondence with such clients ("Client Accounts") as set forth in detail on **Schedule** _____.

Important Note to the Above: FINRA Regulation S-P forbids the sharing of private and confidential client information without first obtaining the client's permission. For the purposes of implementing a buy/sell agreement, it is important that the Parties to any such agreement contact your compliance department for guidance on Regulation S-P. This is of critical importance when either the Buyer or Seller have different broker/dealers or custodial relationships.

- ☐ 2) Seller's name and goodwill.
- ☐ 3) Certain patents, trademarks, service marks, trade names, or, together with all related applications or registrations as set forth in detail on **Schedule** _____.
- ☐ 4) Certain commissions, trail commissions and other revenue derived from the Assets and Client Accounts after Commencement Date, as set forth in detail on **Schedule** _____.
- ☐ 5) Certain cash and cash accounts as set forth in detail on **Schedule** _____.
- ☐ 6) Certain accounts receivable as set forth in detail on **Schedule** _____.
- ☐ 7) Certain equipment, furniture, fixtures and hardware listed on **Schedule** _____.
- ☐ 8) Certain inventories of office supplies owned by Seller listed on **Schedule** _____.
- ☐ 9) Certain equipment leases, real property leases, distributorship agreements, and other contracts listed on **Schedule** _____.
- ☐ 10) Certain marketing systems used or developed by Seller (i.e., seminars, direct mail, etc.), described on **Schedule** _____.
- ☐ 11) Certain real property and improvements as set forth in detail on **Schedule** _____.
- ☐ 12) Certain software and software systems as set forth in detail on **Schedule** _____.
- ☐ 13) Certain miscellaneous and any other assets as set forth in detail on **Schedule** _____.

1.5 **Excluded Assets.**

- ☐ 1) No assets will be specifically excluded.
- ☐ 2) Seller shall retain and shall not transfer, and Buyer shall not purchase the assets of Seller listed on **Schedule** _____ (the "Excluded Assets").
- ☐ 3) Seller's name and goodwill.

- 1.6 **Permitted Liens on Assets.** Seller shall convey title to the Assets to Buyer free and clear of all liens, security interests, and encumbrances of any kind or nature, except for those set forth on **Schedule _____** (the “Permitted Liens”).
- 1.7 **Risk of Loss of Assets.** Seller assumes all risk of loss or damage to the Assets prior to the Commencement Date. In the event there is any material loss or damage to all or any portion of the Assets prior to the Commencement Date, Buyer may either terminate this Agreement pursuant to **ARTICLE 23. TERMINATION**, or negotiate with Seller for a proportionate reduction in the Purchase Price to reflect the loss or damage. For the purposes of this provision, the term “Material Loss or Damage” shall mean any loss or damage to the Assets with an aggregate cost of
- \$_____ USD [*dollar amount of aggregate cost of loss or damage*].

ARTICLE 2. SELLER’S POST-COMMENCEMENT DATE ASSISTANCE AFTER DISABILITY

- ☐ 1) **Seller’s Assistance Post-Commencement Date.** In the event of Disability, the Seller will assist Buyer with adaptation to certain Business Processes and with the transition of the Client Relationships and Accounts to Buyer on a “best-efforts basis” for a period of months as defined and set forth in **Exhibit _____**.
- ☐ 2) **No Seller Assistance.** It is agreed between the Parties that in the event of Disability, the Seller will not assist Buyer with adaptation to any of Seller’s Business Processes or with the transition of Seller’s Client Relationships and Accounts to Buyer.

ARTICLE 3. ASSUMPTION AND EXCLUSION OF LIABILITIES

- ☐ 1) **Assumption of Liabilities and Obligations.** Effective as of the Commencement Date set forth in Addendum A-Winding Up of Rights of First Refusal, and in addition to any other liabilities expressly assumed by Buyer under this Agreement, Buyer shall assume responsibility for the performance and satisfaction of all of the executory obligations and liabilities of Seller listed on **Exhibit _____** (the “Buyer’s Assumed Liabilities”).
- ☐ 2) **Excluded Liabilities and Obligations.** Except as expressly provided in this Agreement and to the maximum extent provided by law, Buyer shall not assume or become liable for any obligations, commitments, or liabilities of Seller, whether known or unknown, absolute, contingent, or otherwise, and whether or not related to the Assets, including without limitation, any pending litigation, criminal claims, undisclosed liabilities, tort liabilities, or any employment, business, sales or use tax relating to Seller’s operation of the Business and use and ownership of the Assets prior to and after the Commencement Date.

ARTICLE 4. PURCHASE PRICE AND TERMS OF SALE**4.1 Cash Payment in Full for Purchase Price.**

- ☐ 1) Within _____ [enter #] days of the Commencement Date, Buyer shall pay to Seller the sum of \$_____ USD (the "The Full Payment of Purchase Price") in immediately available federal funds by:

- ☐ a) Cashier's check
☐ b) Certified check
☐ c) Wire transfer

4.2 Down Payment.

- ☐ 1) Within _____ [enter #] days of the Commencement Date, the Buyer will deposit down payment monies into a banking account suitable to the Seller or the Seller's Representatives in the amount of \$_____ USD.

☐ Buyer's down payment monies **will not be** refundable under any circumstances.

☐ Buyer's down payment monies **will be** refundable only under the following conditions:

 _____.

- ☐ 2) Buyer **will not** deposit any down payment monies into a banking account.

4.3 Payment Method(s) For Remaining Balance of Purchase Price (choose all that apply)

- ☐ Option #1) **Installment Payments.** The Remaining Balance of Purchase Price shall be paid in equal:

☐ monthly, ☒ quarterly, installments over a period of _____ years.

The first installment shall be due _____ days after the Commencement Date with subsequent installments due on the _____ (ex. 1st, 15th) day of each month thereafter until paid in full.

- ☐ a) This obligation shall be represented by a **Promissory Note** attached hereto incorporated herein as **Exhibit _____**, to be made by Buyer and delivered to the Seller or their Personal Representative at Commencement Date.

Such series of payments to be considered full payment of the Remaining Balance of Purchase Price.

- ☐ Option #2) **Balloon Payment.** The Remaining Balance of Purchase Price, to be paid in full, but with the entire amount due and payable as a balloon payment on _____ (Date), attached hereto and incorporated herein as **Exhibit _____**.

Note for #3 Option below:** As used in this Agreement, gross annual revenue (“GAR”) shall include all commissions, trail commissions, income from assets under management, insurance commissions, and income from third-party managed accounts, as well as all other sources of income to the business not expressly excluded by the Seller, for the most recent 12 months prior to Commencement Date. **Note: “Compensation Splits” to be paid by broker/dealer based on a percentage of GAR sources of income, after a Commencement Date involving the Seller’s Disability, would require both the Buyer and the Seller to be licensed with same broker/dealer. Contact your compliance department for guidance.

- ☐ Option #3) **Earn-Out.** The Remaining Balance of Purchase Price shall be paid over a period of _____ months / years:

- ☐ Buyer will receive _____% of the **GAR** for the first period of _____ months / years.
- ☐ Buyer will receive _____% of the **GAR** for the second period of _____ months / years.
- ☐ Buyer will receive _____% of the **GAR** for the third period of _____ months / years.
- ☐ Buyer will receive _____% of the **GAR** for the fourth period of _____ months / years.

Such series of payments to be considered full payment of the Remaining Balance of Purchase Price.

4.4 **Post-Commencement Date Adjustment of Purchase Price.**

- ☐ 1) There will be no adjustment of the Purchase Price after the Commencement Date.
- ☐ 2) The Purchase Price, including earnest money, any payments by Buyer at Commencement Date and all future payments owed by Buyer, shall be adjusted in the future, as set forth in **Exhibit _____**, to accurately reflect the retention of GAR by Buyer after Commencement Date.

ARTICLE 5. TAX ALLOCATION OF PURCHASE PRICE.

Important Note: The Parties to this agreement should agree in advance to the tax allocation of the Purchase Price to be paid by the Buyer. Generally, in the sale of financial firm assets, Buyers and Sellers allocate between 50% and 90% to capital gains tax allocation and between 10% and 50% to ordinary income tax allocation. The tax allocation chosen will affect the net proceeds of the Seller and the tax deductions of the Buyer. Additionally, both State and Federal taxing authorities have established guidelines for reporting the tax allocation of the sale of business assets. It is of critical importance that both Parties to the agreement consult their tax professional for guidance.

5.1 Tax Allocation of Purchase Price. The tax allocation percentages of the total Purchase Price paid by the Buyer for the Assets and for purposes of reporting to State and Federal taxing authorities are as follows:

(Check one or more applicable boxes and provide the requested information.)

	% Allocated to Ordinary Income	% Allocated to Capital Gains
<input type="checkbox"/> 1) Client Accounts, Commissions and Revenues	_____	_____
<input type="checkbox"/> 2) Seller's Name and Goodwill	_____	_____
<input type="checkbox"/> 3) Seller's Continued Assistance after Sale	_____	_____
<input type="checkbox"/> 4) Non-Compete Covenant	_____	_____
<input type="checkbox"/> 5) Equipment/Property Leases, other Contracts	_____	_____
<input type="checkbox"/> 6) Marketing Processes & Systems	_____	_____
<input type="checkbox"/> 7) Equipment, Furniture, Fixtures	_____	_____
<input type="checkbox"/> 8) Inventories of Office Supplies	_____	_____
<input type="checkbox"/> 9) Other: _____	_____	_____
Sub-Totals	_____	_____

Total = 100%

- 5.2 **Effect of Allocation.** The allocation set forth above has been independently bargained for at arms-length. The Parties shall abide to the allocation of the Purchase Price specified in Section 5.1 of this Agreement, and shall be reported by all Parties to the IRS and any other taxing authority in said amounts. ***The Parties agree to separately execute and deliver Internal Revenue Service Form 8594 reflecting this allocation in the applicable tax reporting year.***

ARTICLE 6. SECURITY AND COLLATERAL

- 6.1 **Seller's Security Interest.** The **Remaining Balance of Purchase Price** due from Buyer will be secured by:

- ☐ 1) A mortgage on real estate attached hereto and incorporated herein as **Exhibit** _____.
- ☐ 2) A Security Agreement and related notice instruments on the personal property attached hereto and incorporated herein as **Exhibit** _____.
- ☐ 3) Other Security and Collateral Provisions: _____

_____.
- ☐ 4) The Purchase Price **will not** be evidenced by a Security Agreement.
- ☐ 5) The Purchase Price **will** be evidenced by a promissory note attached hereto and incorporated herein as **Exhibit** _____.
- ☐ 6) The Purchase Price **will not** be evidenced by a promissory note.

ARTICLE 7. EMPLOYEES

- 7.1 **Buyer's Obligation to Employees.**

- ☐ 1) **No Obligation by Buyer.** Prior to and after the Commencement Date, Buyer shall not assume or in any way become responsible or liable for any compensation, taxes, insurance, or other benefits and amounts payable by Seller on account of any of its employees. Seller shall indemnify and hold Buyer harmless from any claims made against Seller with respect to the obligations.
- ☐ 2) **Voluntary Obligation by Buyer.** Buyer shall not assume or in any way become responsible or liable for any compensation, taxes, insurance, or other benefits and amounts payable by Seller on account of any of its employees prior to Commencement Date, **but may do so on an at-will basis after the Commencement Date of this Agreement.**
- ☐ 3) **Other Buyer's Obligation to Employees:** _____

_____.

ARTICLE 8. ANNOUNCEMENTS

8.1 Announcements.

- ☐ In the event of Disability, the Seller **shall not** cooperate with Buyer in notifying key customers and vendors.
- ☐ In the event of Disability, the Seller **shall** cooperate with Buyer in notifying key customers and vendors.
 - ☐ 1) In person.
 - ☐ 2) Through written correspondence as evidenced in **Exhibit** _____.
 - ☐ 3) Other: _____.

ARTICLE 9. NON-COMPETE COVENANT AFTER DISABILITY

9.1 **Seller Prohibited Activities After Disability.** In the event of Disability by the Seller and purchase of the Assets as set forth in this agreement by the Buyer, the Seller is bound by a Non-Compete Covenant, as set forth in below and **will not** directly, or indirectly:

- ☐ 1) Engage in **any** business similar to the type of business involved in this transaction.
- ☐ 2) Other: _____

 _____.

9.2 **Duration.** For a period beginning on the Commencement Date and continuing for a period of _____ years, _____ months, and _____ days.

9.3 **Scope.** Within a _____-mile radius of:

- ☐ The Business.
- ☐ Anywhere within _____.
- ☐ Other: _____.

ARTICLE 10. COMPENSATION TO SELLER FOR REFERRALS AFTER DISABILITY AND COMMENCEMENT DATE

10.1 Referrer Parties. (Hereinafter referenced to as "Referrer(s)")

- ☐ 1) Buyer will not enter into a Client Referral Agreement with Seller or Seller's employees.
- ☐ 2) Buyer will enter into a Client Referral Agreement with:
- ☐ a) Seller;
- ☐ b) and _____ (name of key employee(s)).

10.2 Compensation:

- ☐ 1) Referrer's compensation is included in the Purchase Price described above in **Article 4. Purchase Price and Terms of Sale**
- ☐ 2) Referrer is to be compensated at a rate of \$ _____ per _____ Client Referral.
- ☐ 3) Other. Referrer is to be compensated as: _____

 _____.

10.3 Duration. For a period beginning on the Commencement Date and continuing for a period of _____ years, _____ months, and _____ days.

ARTICLE 11. CHANGE OF BROKER/DEALER / INVESTMENT ADVISORY CUSTODIAL

11.1 Buyer:

- ☐ 1) Buyer will change **Broker/Dealer** as required by Seller to:
 _____.
- ☐ 2) Buyer will change **Investment Advisory Custodial** as required by Seller to:
 _____.

- ☐ Prior to Commencement Date.
- ☐ Within no more than 90 Days after Commencement Date.
- ☐ Other:

ARTICLE 12. REPRESENTATIONS AND WARRANTIES OF SELLER

12.1 **Seller's Representations and Warranties.** Seller makes the following representations and warranties to Buyer, each of which is true and correct as of the date of this Agreement, and will be true and correct as of the Commencement Date.

1) **Entity Status and Good Standing.** Seller is a _____ [legal business status of Seller, i.e. sole proprietor, S corporation, LLC], duly organized, validly existing, and in good standing under the laws of the State of its organization, and is qualified to transact business in the State of _____.

2) **Authorization and Capacity to Enter Agreement.** Seller has full legal power and authority to enter into and perform this Agreement, and this Agreement constitutes the valid and binding obligation of Seller enforceable in accordance with its terms.

3) **Non-Contravention.** Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated by this Agreement conflicts with, violates, or constitutes a default under the terms, conditions, or provisions of any agreement or instrument to which Seller is a party, or any law, judgment, or order of which Seller is aware, and will not result in the creation of any lien, security interest, or encumbrance on any of the Assets.

4) **Litigation.** There are no actions, suits, proceedings, or claims now pending, or, to the best of Seller's knowledge, threatened against Seller or the Assets that would affect Seller's ability to fulfill its obligations under this Agreement or that would impair the value of the Assets.

5) **Marketable Title and Absence of Liens.** Seller has, and will have at Commencement Date, good and marketable title of, or a valid leasehold interest in, the properties and the Assets used by Seller, free and clear of all liens, charges, and encumbrances other than the Permitted Liens as set forth in **Article** _____.

6) **Copies of Contracts.** Seller has provided Buyer with true and correct copies of all Contracts with the transactions contemplated by this Agreement to Seller's knowledge, all of the Contracts are in full force and effect, have been duly executed by the Parties, and neither Seller nor any other party is in default under any Contract.

7) **Copies of Real Property Leases.** Seller has provided Buyer with true and correct copies of all Real Property Leases in connection with the transactions contemplated by this Agreement. To Seller's knowledge, each Real Property Lease is in full force and effect, and neither Seller nor any other party is in default under any Real Property Lease.

8) **Documents Evidencing Intangible Rights.** Seller has provided Buyer with true and correct copies of all documents in connection with the transactions contemplated by this Agreement, evidencing Seller's rights in the Intangible Property. To Seller's knowledge, each agreement, instrument, or license with respect to the Intangible Property is in full force and effect, and neither Seller nor any other party is in default under any such agreements.

9) **Labor Agreements and Pension Funds.** Seller is not a party to, or otherwise bound by, any collective bargaining agreement, multi-employer pension fund, or other labor union agreement with respect to any persons employed by Seller in connection with its operation of the Business.

10) **No Other Agreements or Powers of Attorney.** No Person has any agreement, option, understanding or commitment, or any right or privilege (whether by law or contractual) capable of becoming an agreement, option or commitment for the purchase, assignment, license or exercise of any of the rights, benefits or use of any of the Assets. There are no outstanding powers of attorney executed on behalf of Seller or its Subsidiaries.

11) **Taxes.** There are no Federal, State or local Tax Liens filed against Seller or encumbering any of the Assets. Each Seller and its Subsidiaries has filed all Tax Returns that it was required to file. All such Tax Returns were correct and complete in all respects.

12) **Broker's or Finder's Fees.** Seller has no Liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement for which Buyer could become liable or obligated, except for this set forth in **Article** _____.

13) **Bankruptcy or Insolvency.** Seller has not committed an act of bankruptcy, is not insolvent, nor has proposed a compromise or arrangement to any creditor without fully disclosing in writing to Buyer all material facts related to such Bankruptcy or Insolvency.

14) **Financial Statements.** Any Financial Statements presented to Buyer and Buyer's Representatives are true and correct and have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby presenting fairly, the financial condition of Seller.

15) **Compliance with Laws.** Neither Seller nor the business of Seller relating to the Assets represented in this Agreement is in violation of or in default with respect to, or in alleged violation of or alleged default with respect to, any applicable law or any applicable rule, regulation, permit or order of any Governmental Body, or any ordinances.

ARTICLE 13. REPRESENTATIONS AND WARRANTIES OF BUYER

13.1 **Buyer's Representations and Warranties.** Buyer makes the following representations and warranties to Seller, each of which is true and correct as of the date of this Agreement and shall be true and correct as of the Commencement Date:

1) **Entity Status and Good Standing.** Buyer is _____ [legal business status of Buyer, i.e. sole proprietor, S corporation, LLC], duly organized, validly existing, and in good standing under the laws of the State of its organization, and is qualified to transact business in the State of _____.

2) **Authorization and Capacity to Enter Agreement.** Buyer has full legal power and authority to enter into and perform this Agreement, and this Agreement constitutes the valid and binding obligation of Seller, enforceable in accordance with its terms.

3) **Non-Contravention.** Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated by this Agreement conflicts with, violates, or constitutes a default under the terms, conditions, or provisions of any agreement or instrument to which Buyer is a party, or any law, judgment, or order of which Buyer is aware, and will not result in the creation of any lien, security interest, or encumbrance on any of the Assets.

4) **Litigation.** There are no actions, suits, proceedings, or claims now pending, or, to the best of Buyer's knowledge, threatened against Buyer or the Assets that would affect Buyer's ability to fulfill its obligations under this Agreement or that would impair the value of the Assets.

5) **Broker's or Finder's Fees.** Buyer has no Liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement for which Seller could become liable or obligated, except for this set forth in **Article** _____.

6) **Bankruptcy or Insolvency.** Buyer has not committed an act of bankruptcy, is not insolvent, nor has proposed a compromise or arrangement to any creditor without fully disclosing in writing to Seller all material facts related to such Bankruptcy or Insolvency.

7) **Compliance with Laws.** Neither Buyer nor the business of Buyer is in violation of or in default with respect to, or in alleged violation of or alleged default with respect to, any applicable law or any applicable rule, regulation, permit or order of any Governmental Body, or any ordinances.

ARTICLE 14. EXPENSES OF THE SALE AND PURCHASE OF ASSETS

14.1 **Closing Expenses.** The expenses incurred by the Parties due to the sale and purchase of Assets described in this agreement (the "Sale") shall be paid as follows:

1) **Legal Fees, Accounting Fees, Consulting Fees, and Other Incidental Expenses.**

- ☐ Except as otherwise expressly provided in this Agreement, all other Closing fees and costs, including, but not limited to, legal fees, accounting fees, consulting fees, and other incidental expenses in connection with the transactions contemplated by this Agreement shall be borne by the Party that incurs the expenses.

2) **Sales Taxes and Use Taxes.**

- ☐ a) Buyer shall pay all sales and use taxes arising out of the transfer of the Assets, if any.
- ☐ b) Seller shall pay all sales and use taxes arising out of the transfer of the Assets, if any.

3) **Broker's or Finder's Fees.**

- ☐ a) Seller has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement.
- ☐ b) Seller shall pay any fees or commissions to any broker, finder, or agent as described in **Schedule** _____.

- ☐ c) Buyer has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement.
- ☐ d) Buyer shall pay any fees or commissions to any broker, finder, or agent as described in Schedule ____.

14.2 Proration of Business and Operational Expenses.

- ☐ 1) Except as otherwise expressly provided in this Agreement, all expenses associated with the Assets being conveyed to Buyer, including, but not limited to, taxes, rent, insurance premiums, and utility charges, shall be apportioned ratably between the Parties as of the Commencement Date on the basis of a 30-day month. This obligation to make apportionments shall survive Closing.
- ☐ 2) **Other Proration of Business and Operational Expenses:** _____
- _____
- _____
- _____

ARTICLE 15. PRE-COMMENCEMENT DATE COVENANTS

15.1 Pre-Commencement Date Covenants of Seller.

Further Assurances. Seller shall take all action and do all things necessary in order to consummate and make effective the transactions contemplated by this Agreement, including satisfaction, but not waiver, of the Pre-Commencement Date conditions set forth below:

1) **Notices and Consents.** Seller will give any notices to, make any filings with, to obtain any authorizations, consents, and approvals of broker-dealers, custodians, vendors, governments and governmental agencies and regulatory bodies in connection with the transactions contemplated by this Agreement set forth in **Exhibit** _____.

2) **Operation of Business.** Seller will not take any action, or enter into any transaction outside the Ordinary Course of Business without the full knowledge, disclosure and written approval of Buyer.

3) **Preservation of Business.** Seller shall keep its business and properties substantially intact, including their present operations, physical facilities, working conditions, insurance policies, and relationships with lessors, licensors, clients, and employees.

4) **Full Access.** Seller shall permit representatives of Buyer (including legal counsel and accountants) to have full access at all reasonable times, and in a manner so as not to interfere with the normal business operations of the Business, to all premises, properties, personnel, books, records (including tax records), contracts, and documents.

5) **Confidentiality and Non-Disclosure.** All confidential information which shall have been furnished or disclosed by Buyer to Seller pursuant to this Agreement shall be held in confidence pursuant to the Confidential and Nondisclosure Agreement between Buyer and Seller dated _____ and shall not be disclosed to any person other than their respective employees, directors, legal counsel, accountants or financial advisors, with a need to have access to such information.

6) **Notification of Changed Circumstances.** If at any time after the Effective Date and prior to the Commencement Date, Seller becomes aware of any fact or circumstance that would cause a breach of any representation or warranty made under this Agreement, Seller shall notify Buyer in writing as soon as is reasonably possible after the discovery of the changed circumstances.

7) **Exclusivity.** Seller will not (i) solicit, initiate, or encourage the submission of any proposal or offer from any Person relating to the acquisition of any capital stock or other voting securities, or any portion of the assets; or (ii) participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in, or facilitate in any other manner, any effort or attempt by any Person to do or seek any of the foregoing.

8) **Other Pre-Commencement Date Covenants of Seller:** _____

 _____.

15.2 Pre-Commencement Date Covenants of Buyer.

Further Assurances. Buyer shall take all action and do all things necessary in order to consummate and make effective the transactions contemplated by this Agreement, including satisfaction, but not waiver, of the Pre-Commencement Date conditions set forth below:

1) **Confidentiality and Non-Disclosure.** All confidential information which shall have been furnished or disclosed by Seller to Buyer pursuant to this Agreement shall be held in confidence pursuant to the Confidential Nondisclosure Agreement between Buyer and Seller dated _____ and shall not be disclosed to any person other than their respective employees, directors, legal counsel, accountants or financial advisors, with a need to have access to such information.

2) **Notification of Changed Circumstances.** If at any time after the Effective Date and prior to the Commencement Date, Buyer becomes aware of any fact or circumstance that would cause a breach of any representation or warranty made under this Agreement, Buyer shall notify Seller in writing as soon as is reasonably possible after the discovery of the changed circumstances.

3) **Other Pre-Commencement Date Covenants of Buyer:** _____

 _____.

ARTICLE 16. CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

16.1 Seller's Conditions. The obligation of Seller to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, on or before the Commencement Date, of each of the following conditions:

- 1) Seller shall have received the amount of the Purchase Price due in cash or immediately available funds on or before the Commencement Date.
- 2) The representations and warranties of Buyer set forth in the execution of this Agreement or in any Exhibit or Schedule hereto shall be true and correct at and as of the Commencement Date.
- 3) Buyer shall have performed and complied with all of the agreements, covenants, and conditions required of Buyer by this Agreement on or before the Commencement Date.

16.2 Waiver of Conditions Precedent to Obligations of Seller.

- ☐ 1) Seller may waive any of the conditions precedent to under this Section in whole, or in part, in writing at any time on or before the Commencement Date.
- ☐ 2) Seller may not waive any of the conditions precedent to under this Section.

16.3 Failure to Satisfy Conditions Precedent to Obligations of Seller.

- ☐ 1) In the event all Seller's conditions precedent have not been waived by Buyer or satisfied in full, on or before the Commencement Date, Seller may elect to terminate this Agreement as provided in **Article 23**.

ARTICLE 17. CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER

17.1 Buyer's Conditions. The obligation of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions:

- 1) The representations and warranties of Seller set forth in the execution of this Agreement or in any Exhibit or Schedule hereto shall be true and correct at and as of the Commencement Date.
- 2) Seller shall have performed and complied with all of the agreements, covenants, and conditions required of Seller by this Agreement on or before the Commencement Date.

17.2 Waiver of Conditions Precedent to Obligations of Buyer.

- ☐ 1) Buyer may waive any of the conditions precedent to under this Section in whole, or in part, in writing at any time on or before the Commencement Date.
- ☐ 2) Buyer may not waive any of the conditions precedent to under this Section.

17.3 Failure to Satisfy Conditions Precedent to Obligations of Buyer.

- ☐ 1) In the event all Buyer's conditions precedent have not been waived by Seller or satisfied in full, on or before the Commencement Date, Buyer may elect to terminate this Agreement as provided in **Article 23**.

ARTICLE 18. TERMINATION

18.1 **Termination.** This Agreement may be terminated as follows:

- ☐ 1) By the mutual consent of Buyer and Seller at any time prior to the Commencement Date.
- ☐ 2) By Buyer at any time prior to the Commencement Date as expressly provided in this Agreement, or if any condition precedent to Buyer's obligations has not been satisfied in full or previously waived by Buyer in writing, at or prior to the Commencement Date.
- ☐ 3) By Seller at any time prior to the Commencement Date as expressly provided in this Agreement, or if any condition precedent to Seller's obligations has not been satisfied in full or previously waived by Seller in writing, at or prior to the Commencement Date.

18.2 **Effect of Termination.** In the event of the termination of this Agreement, this Agreement shall become void and have no effect, without any liability on the part of any of the Parties.

18.3 **Remedies Cumulative.** The remedies set forth in this Agreement are cumulative and not exclusive of any other legal or equitable remedy otherwise available to any Party.

ARTICLE 19. INDEMNIFICATIONS

19.1 **Indemnification.**

1) **Seller's Indemnification.** Seller shall indemnify and hold Buyer harmless from and against any and all loss, cost, damage, claim, liability, or expense, including reasonable attorney's fees and costs, in any way arising from or related to (a) Seller's ownership or use of the Assets, or Seller's operation of the Business, prior to the Commencement Date, (b) the failure or falsity of any representation or warranty of Seller contained in this Agreement, or (c) the failure by Seller to observe or perform any other covenant or agreement to be observed or performed by Seller under this Agreement.

2) **Buyer's Indemnification.** Buyer shall indemnify and hold Seller harmless from and against any and all loss, cost, damage, claim, liability, or expense, including reasonable attorney's fees and costs, in any way arising from or related to Buyer's ownership or use of the Assets from and after the Commencement Date.

3) **Survival of Indemnities.** The mutual agreements to indemnify set forth in this Article shall survive Commencement Date.

ARTICLE 20. RENEWAL OF BUY/SELL AGREEMENT

20.1 Annual, Biennial or Triennial Renewal Required.

- ☐ **Annual Option #1)** This Agreement will automatically end, effective December 31 of the **first full year** after the Agreement was originally signed. Should either Party to the Agreement not enter into a new Agreement, the Party choosing to terminate the relationship must give written notice at least 30 days, and not more than 60 days prior to December 31 of the first year of the effective term of the Agreement.
- ☐ **Biennial Option #2)** This Agreement will automatically end, effective December 31 of the **second full year** after the Agreement was originally signed. Should either Party to the Agreement not enter into a new Agreement, the Party choosing to terminate the relationship must give written notice at least 30 days, and not more than 60 days prior to December 31 of the second year of the effective term of the Agreement.
- ☐ **Triennial Option #3)** This Agreement will automatically end, effective December 31 of the **third full year** after the Agreement was originally signed. Should either Party to the Agreement not enter into a new Agreement, the Party choosing to terminate the relationship must give written notice at least 30 days, and not more than 60 days prior to December 31 of the third year of the effective term of the Agreement.

ARTICLE 21. MISCELLANEOUS PROVISIONS

- 21.1 **Assignment and Delegation.** The respective rights and obligations of the Parties to this Agreement may not be assigned nor delegated by either Party without the prior written consent of the other, which consent may not be unreasonably withheld or delayed.
- 21.2 **Successors and Assigns.** The terms and provisions of this Agreement shall be binding on and inure to the benefit of the successors and assigns of the Parties.
- 21.3 **Modification and Waiver.** This Agreement may not be amended, modified, or supplemented except by written agreement signed by the Party against which the enforcement of the amendment, modification, or supplement is sought. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision. No waiver shall be binding unless executed in writing by the Party making the waiver.
- 21.4 **Attorney's Fees.** If any legal action or other proceeding is brought to enforce the provisions of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney fees and other costs incurred in the action or proceeding, in addition to any other relief to which the prevailing Party may be entitled.
- 21.5 **Fees and Expenses.** Except as otherwise specifically provided in this Agreement, Seller and Buyer shall pay their own fees and expenses in connection with the negotiation and consummation of the transactions contemplated by this Agreement.
- 21.6 **Notices.** All notices, requests, demands, and other communications required by this Agreement shall be in writing and shall be (a) delivered in person or by courier, (b) mailed by first class registered or certified mail, or (c) delivered by facsimile transmission, as follows, or to such other address as a party may designate to the other in writing:

If to Seller: *[address of Seller], [name of city], [name of county], [name of State]*

If to Buyer: *[address of Buyer], [name of city], [name of county], [name of State]*

If delivered personally or by courier, the date on which the notice, request, instruction, or document is delivered shall be the date on which the delivery is made, and if delivered by facsimile transmission or mail as aforesaid, the date on which the notice, request, instruction, or document is received shall be the date of delivery.

- 21.7 **Headings.** All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement, and shall not affect in any way the meaning or interpretation of this Agreement.
- 21.8 **Counterparts.** This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one counterpart has been signed by each Party and delivered to the other Party hereto.
- 21.9 **Governing Law [Choice of Law].** This Agreement shall be governed by and construed under the laws of the State of _____ (State).
- 21.10 **Severability.** In the event any provision of this Agreement is deemed to be invalid, illegal, or unenforceable, all other provisions of the Agreement that are not affected by the invalidity, illegality, or unenforceability shall remain in full force and effect.
- 21.11 **Rights of Creditors and Third Parties under this Agreement.** This Agreement is entered into among the Parties for the exclusive benefit of the Parties, and their successors and assignees. This Agreement is expressly not intended for the benefit of any creditor of the Parties or any other Person. Except and only to the extent provided by applicable statute, no creditor or third party shall have any rights under this Agreement.
- 21.12 **Specific Performance.** The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, the Company and/or any party who may be injured (in addition to any other remedies which may be available to that party) shall be entitled to one or more preliminary or permanent orders (i) restraining and enjoining any act which would constitute a breach or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach.
- 20.11 **Entire Agreement / Integration Clause.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, oral and written, between the Parties hereto with respect to the subject matter of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of this Agreement.

Seller:

By: _____

Name: _____

Title: _____

Date: _____

Buyer:

By: _____

Name: _____

Title: _____

Date: _____

Witness:

By: _____

Name: _____

Title: _____

Date: _____

Witness:

By: _____

Name: _____

Title: _____

Date: _____

Schedule _____

Blank lined area for notes or schedule details.

EXHIBIT "B"

SPOUSAL CONSENT TO AGREEMENT

I am the spouse of _____, (Seller). I acknowledge that I have read the foregoing **Buy/Sell Agreement for Purchase of Business Assets** ("Agreement") and that I know and understand its contents. I am aware that by the provisions of the Agreement my spouse agrees to sell all, or substantially all of the assets of the business at death or disability, including any interest I may have in them, whether as community property or otherwise, on the conditions specified in the Agreement. I hereby consent to the sale, approve of the provisions of the Agreement, and agree that I will take no action to hinder the operation and legal standing of the agreement.

I ACKNOWLEDGE THAT I HAVE BEEN ADVISED TO HAVE THE AGREEMENT REVIEWED BY INDEPENDENT LEGAL COUNSEL AND TO CONSULT WITH SUCH COUNSEL REGARDING THE PROVISIONS AND RESTRICTIONS OF THE AGREEMENT AND THEIR IMPACT ON ME. I ACKNOWLEDGE THAT I HAVE HAD FULL AND ADEQUATE OPPORTUNITY TO HAVE THE AGREEMENT REVIEWED BY INDEPENDENT LEGAL COUNSEL AND TO DISCUSS THIS CONSENT TO AGREEMENT WITH SUCH COUNSEL.

Dated: _____

[Print name]

[Signature]

[Address]

Exhibit _____

20 horizontal lines for handwritten notes.

Addendum A: Winding Up of Buyer's Rights of First Refusal

At the Death or Disability of the Seller, as set forth in the **Buy/Sell Agreement for Purchase of Business Assets**, the Buyer is required to execute this Addendum A-Winding Up of Buyer's Rights of First Refusal, and deliver a signed copy to the Seller if at Disability as defined by the Agreement, and to his or her Personal Representative at Death as defined in **Article 1.2 Personal Representative**, in addition to all other third parties that would benefit from notice of Buyer's decision to Winding Up of Buyer's Rights of First Refusal.

Seller and Buyer agree that should Buyer not execute this Addendum A: Winding Up of Buyer's Rights of First Refusal within the required 30-day period of Seller's Death or Disability, then the authorization under this Agreement for Buyer's Rights of First Refusal shall be deemed withdrawn by the Buyer as if no such sale or transfer had been contemplated and no notice had been given.

I, the Buyer to this Agreement, hereby consent to the following:

As the Buyer to this Agreement, I shall have thirty (30) days from the date of either the Seller's Death or Disability, as defined in the Agreement, to give written notice of my election to buy the Assets defined in the Agreement from the Seller below, respective of the terms and conditions of the Agreement. Should I not elect to buy the Assets, as defined by the Agreement, I will likewise give written notice of said intent within the same thirty (30) day period below.

Seller's Name: _____

Seller's Date of Death: _____; or

Seller's Date of Disability as defined by the Agreement: _____

☐ **Option 1. Buyer's Election to Exercise Rights of First Refusal to Buy Seller's Assets**

I do hereby give notice to exercise my Rights of First Refusal and commit to acquire from Seller the Business Assets, as set forth in this Agreement, and by the terms and conditions as set forth in the Agreement. I make this election to claim the privileges extended to me by the Agreement without duress from third-party or circumstance. Furthermore, as defined in the Agreement, the effective date of my election to exercise Rights of First Refusal will be the Commencement Date as shown below. (Notary witness required below)

Buyer's Name: _____

Buyer's Signature: _____

Commencement Date: _____

☐ **Option 2. Buyer's Refusal to Exercise Rights of First Refusal to Buy Seller's Assets**

I do hereby give my intent not to validly exercise my option to buy any of the Business Assets offered by my Rights of First Refusal within the 30-day period after Seller's Death or Disability. I understand and agree that my decision not to buy the Business Assets, as defined in the Agreement, gives the Seller and/or his or her Personal Representative complete and irrevocable rights to sale, transfer, or dispose of the Assets without any consideration due me. I hereby consent to release any and all of my rights and claims to the Business Assets. Furthermore, I agree to release the Seller and his or her Personal Representatives from any further obligations to me and that I will take no action to hinder the disposition of the Business Assets.

(Notary witness required below)

Buyer's Name: _____

Buyer's Signature: _____

Date of Rejection to Exercise Rights of First Refusal: _____

Notary Witness Name: _____

Notary Witness Signature: _____

Date of Notary Witness: _____

Notary Witness Seal Below: