

This sample document was designed to be of assistance to attorneys who may be called upon to draft business arrangements involving disability buy-out insurance. It is not intended for direct use by an insurance representative. Clients need to be aware that the advice of their own tax attorneys and/or accountants is vital. This sample document is provided solely for informational referential purposes and does not constitute tax, legal or financial advice.

“ENTITY PURCHASE” AGREEMENT

(Drafting Note: Whenever the word “business” appears below, “partnership” or “corporation” should be substituted as is appropriate; similarly, when the word “business owner” or “owner” is encountered, “partner” or “stockholder” should be substituted; also, the words “business interest” shall refer to either a “partnership interest” or “corporate stock” as is appropriate.)

Introduction

This agreement is made and entered into effective January 1, 2003, between “Owner A” and “Owner B” (hereinafter referred to as the owners) and _____, a business organized and existing under the laws of the _____.

WHEREAS, “Owner A” and “Owner B” are owners of the business in the following amounts: Owner A holds 50%; Owner B holds 50%;

WHEREAS, the owners are actively involved in the management and operation of the business;

WHEREAS, the parties believe that it is in their mutual best interest to provide for continuity in the management of the business;

WHEREAS, the purpose of this agreement is to outline and control the transfer of ownership of the business by and between the parties at death, upon disability, upon retirement, or withdrawal of an owner from the business for any other reason.

NOW, THEREFORE, in consideration of the mutual promises of the parties and mutual benefits to be gained by the performance of these promises, the parties hereby agree as follows.

Article 1 - Death of an Owner

In the event of the death of an owner, the business shall buy, and the deceased’s estate shall be obligated to sell to the business, the decedent’s entire interest in the business.

The purchase price shall be determined in accordance with ARTICLE 4 and the method of payment described in ARTICLE 5.

(if appropriate)

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Article 2 - Disability of an Owner

In the event an owner becomes totally disabled under the terms of the disability buy-out insurance policy(ies) issued by Berkshire Life Insurance Company of America on his life specified in ARTICLE 5 and listed in Schedule B, whether or not said policy(ies) is (are) in effect or shall have lapsed, and remains so disabled for a period of _____ months, disabled owner shall sell to the business, and the business shall buy, the disabled owner's entire interest in the business. The effective date of the sale will be the date on which the first benefit payment is due, or would have been due, under such disability buy-out policy(ies) whether or not said policy(ies) is in effect or has lapsed.

(if appropriate)

Article 3 - Withdrawal of an Owner

In the event that an owner desires to withdraw or retire from the business for reasons other than total disability, he shall submit to the business and the other owner(s) written notice of his intention to withdraw or retire and offer to sell his interest at a price not greater than the value determined for such interest in accordance with ARTICLE 4, below. Upon receipt of such notice, the business shall have thirty (30) days to accept such offer in writing. If such offer is not accepted as herein provided, the withdrawing owner shall be free to dispose of his interest without reference to this agreement; provided, however, that the withdrawing owner shall not dispose of his interest at a price less than that determined in accordance with ARTICLE 4, below, without offering in writing to sell his interest to the business at such lesser price, in which case such offer, if it is to be accepted, must be accepted in writing within five (5) days of its receipt.

Article 4 - Business Value

The value of each owner's respective interest in said business (including not only physical assets but also good will, all intangible assets, use of the firm name, and all profits earned to the date of sale) for the purpose of sale on the withdrawal or retirement, the disability or the death of an owner shall be the value set forth in Schedule A attached to this agreement and made a part hereof.

Each year the owners shall establish a value for the business and their respective interests (either by affirmation of the immediately preceding value or by establishment of a new value) and such valuation shall be endorsed on Schedule A and signed by each owner and shall be the sale price for their respective interests. If the parties fail in any year to establish a value, the immediately preceding established value shall control; provided, however, that if no value shall have been affirmed or established within two years prior to

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the withdrawal or death of an owner, the value of an owner's interest shall be established by the independent accountant usually retained to audit the books of the business. If no such accountant is regularly retained, the valuation shall be established by a certified public accountant acceptable to the business and the executor or administrator of the deceased owner.

Article 5 - Funding

In order to fund the obligation(s) under this agreement, the business will apply for the following coverage on the lives of the owners and the owners agree to assist the business in procuring the following coverages:

- a. Life insurance policies from the Berkshire Life Insurance Company of America to be carried on the life of each owner in the amounts set forth in Schedule B attached hereto and made a part of this agreement.

All right, title and interest in said policies shall vest solely in the business.

- b. Disability buy-out insurance policies from the Berkshire Life Insurance Company of America on each owner. The amounts and other details of such insurance policies shall be listed on Schedule B attached to this Agreement and made a part hereof. Any substitution or withdrawal of policies shall be endorsed on Schedule B and such change must be assented to by the owner in writing on the Schedule. The parties agree to execute and deliver to the insurer all documents which are necessary to ensure that the ownership and beneficiary or loss payee provisions are the same as those listed on Schedule B.

The business shall pay all premiums necessary to keep the policies in force under which it is designated as the policyowner.

Article 6 - Purchase at Death, Disability, or Withdrawal

- a. In the event of the death of an owner, the business shall immediately proceed to collect the proceeds of insurance upon the life of the deceased owner. If the proceeds so collected equal or exceed the purchase price for the decedent's interest as determined under ARTICLE 4, above, the business shall turn over to the executor or administrator of the deceased owner so much of the insurance proceeds as equal said purchase price. If the proceeds so collected by the business shall be less than said purchase price, the business shall turn over the entire proceeds to the executor or administrator of the deceased owner as a part payment, and shall pay the balance of said purchase price in cash, or at its option may pay said balance by promissory notes

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made payable to the executor or administrator of the deceased owner -- said notes to bear interest at the rate of _____% per annum, principal and interest to be payable monthly beginning three (3) months after, and the final payment to be made no later than thirty-six (36) months after, the death of the deceased owner. The business may anticipate any or all of said notes.

- b. In the event of the total disability of an owner, defined herein, the business will pay the disabled owner a down payment of \$_____, a portion of the purchase price obligation, and execute a series of promissory notes for the balance. Payments for the balance will be made monthly over a period no greater than _____ years. Notes issued will bear interest at the rate of _____% per year. The business may anticipate any or all of the payments.

Notwithstanding the above, if disability buy-out coverage has been purchased to fund this agreement, payments will not be less frequent nor smaller in amount than the payments from these contracts.

- c. In the event of the withdrawal or retirement of an owner, and the business elects to redeem the interest of the withdrawing owner, then the purchase payments will be as follows: the business will pay to the departing owner a down payment of 10% of the purchase price and execute a series of promissory notes for the balance. Payments for the balance will be made monthly over a period no greater than three years. Notes issued will bear interest at the rate of _____% per year. The business may anticipate any or all of the payments.

Article 7 - Transfer of Interest

- a. In the event of the death of an owner, and upon payment of said cash and the execution and delivery of any promissory notes required under ARTICLE 6, above, the executor or administrator of the deceased owner shall execute all instruments and perform any acts necessary to transfer the deceased owner's interest in the business to the business, and the business shall assume all debts and obligations of the deceased owner and shall save the estate of the deceased owner free from any and all liability to any creditors of the business;
- b. In the event of the total disability of an owner, and upon payment of said cash and the execution and delivery of any promissory notes required in ARTICLE 6, above, the business shall execute all instruments and perform any acts necessary to transfer his interest to the business. When the interest purchased has been so transferred, evidence of its obligation shall be delivered by the business to the disabled owner to be held as collateral security for the payment of said promissory notes;

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- c. In the event of the withdrawal or retirement of an owner, and upon payment of said cash and the execution and delivery of any promissory notes required in ARTICLE 6, above, the selling owner shall execute all instruments and perform any acts necessary to transfer his interest to the purchasing owner(s). When the interest purchased has been so transferred, evidence of its obligation shall be delivered by the business to the disabled owner to be held as collateral security for the payment of said promissory notes;

Article 8 - Distribution of Insurance

- a. In the event of the total disability of an owner, the disabled owner shall have the right to purchase the life insurance policy(ies) on his life owned by the business within ninety (90) days following the payment of the full purchase price in cash for his interest by paying to the business an amount equal to the cash surrender value thereof as of the date of the purchase of the life insurance policy(ies).

If such policy has no cash surrender value, the disabled owner shall be entitled to a transfer of same without cost. This right to purchase must be exercised within ninety (90) days.

In the event the disabled owner purchases a life insurance policy or policies pursuant to this section, the business shall deliver the policy or policies to the disabled owner together with all instruments necessary to transfer full ownership.

If the disabled owner shall fail or refuse the purchase such life insurance policy or policies within such ninety (90) day period, the business may dispose of or deal with them in any manner they desire.

- b. In the event of withdrawal or retirement of an owner from the business, each such owner shall have the right to purchase the policy owned upon his life by paying the cash surrender value of said policy as of the date of purchase to the business, and the business shall thereupon assign said policy to the purchaser thereof. The remaining owner(s) shall have a similar right. If such a policy does not have a cash surrender value, the insured owner shall be entitled to a transfer of same without cost. This right to purchase must be exercised within thirty (30) days after withdrawal from the business. If at the expiration of said period this right shall not have been exercised, the business may surrender same for its cash surrender value or otherwise dispose of it in any lawful manner.

(Articles 9, 10 and 11 pertain only to disability buy-out.)

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Article 9 - Recovery

If within six months after the first monthly installment has been paid under this agreement the disabled owner recovers from his disability so he is no longer "totally disabled" as defined in the disability buy-out policy(ies), such owner may elect to retain ownership of his interest by reimbursing the business for the amount received by him toward the purchase price.

Article 10 - Life Insurance Continued During Disability

(if installment payments are to be made)

The life insurance policy(ies) used to fund the death buy and sell agreement shall be continued in full force and effect during the period that installment purchase payments are being made under this agreement. In the event that the disabled owner shall die before the full purchase price has been paid in cash as required by this Agreement, the business shall use the proceeds of such life insurance policy(ies) to prepay any remaining installments.

If the proceeds of the life insurance policy(ies) exceed the amount required to prepay the remaining installments, such excess shall be the sole property of the business or other named beneficiaries of the life insurance policy(ies).

Article 11 - Disability Defined

The definition of disability contained in disability buy-out policies funding this agreement is hereby incorporated in this agreement by reference. In the event there is not an in-force disability buy-out policy covering an owner, then any determination required hereunder that such owner is or is not disabled shall be made by a duly licensed physician acceptable to all owners. In making such determination the physician shall use and be guided by the definition of total disability in the lapsed disability buy-out policy(ies) acquired pursuant to this Agreement. This determination shall be binding on the business and all owners.

Article 12 - Termination

This agreement shall automatically terminate upon the happening of any of the following:

- a. Termination of the business other than by death, disability, or withdrawal or retirement of an owner.
- b. The sale of any part of the interest of an owner in the business.

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This agreement may also be terminated as follows:

- d. By mutual agreement of the owners.
- e. At the option of any owner, if another owner without written consent fails to maintain the business in obtaining or maintaining the amount of insurance required in ARTICLE 5.

Article 13 - Purchase of Insurance at Termination

If this agreement shall terminate for any reason set forth in ARTICLE 12, above, each insured owner shall have the right, within thirty (30) days following such termination, of purchasing the policy issued on his life under the terms and conditions of ARTICLE 7, above.

Article 14

This agreement shall likewise apply to all insurance policies hereafter issued pursuant hereto.

Article 15 - Singular and Plural

Wherever required by the context of this agreement the use of the singular shall include the plural.

Article 16 - Insurer's Obligations

No insurance company shall be required to make cognizance of this agreement, and payment by any such company in accordance with its policy contract shall be a complete discharge from the claims, suits and demands of all parties whatsoever.

Article 17 - Binding Agreement

This agreement shall be binding not only on the parties hereto, but also on their heirs, executors or administrators, and the parties hereto agree for themselves and their heirs, executors or administrators, to execute any instruments and to perform any acts which may be necessary to carry out the purposes and intent of this agreement.

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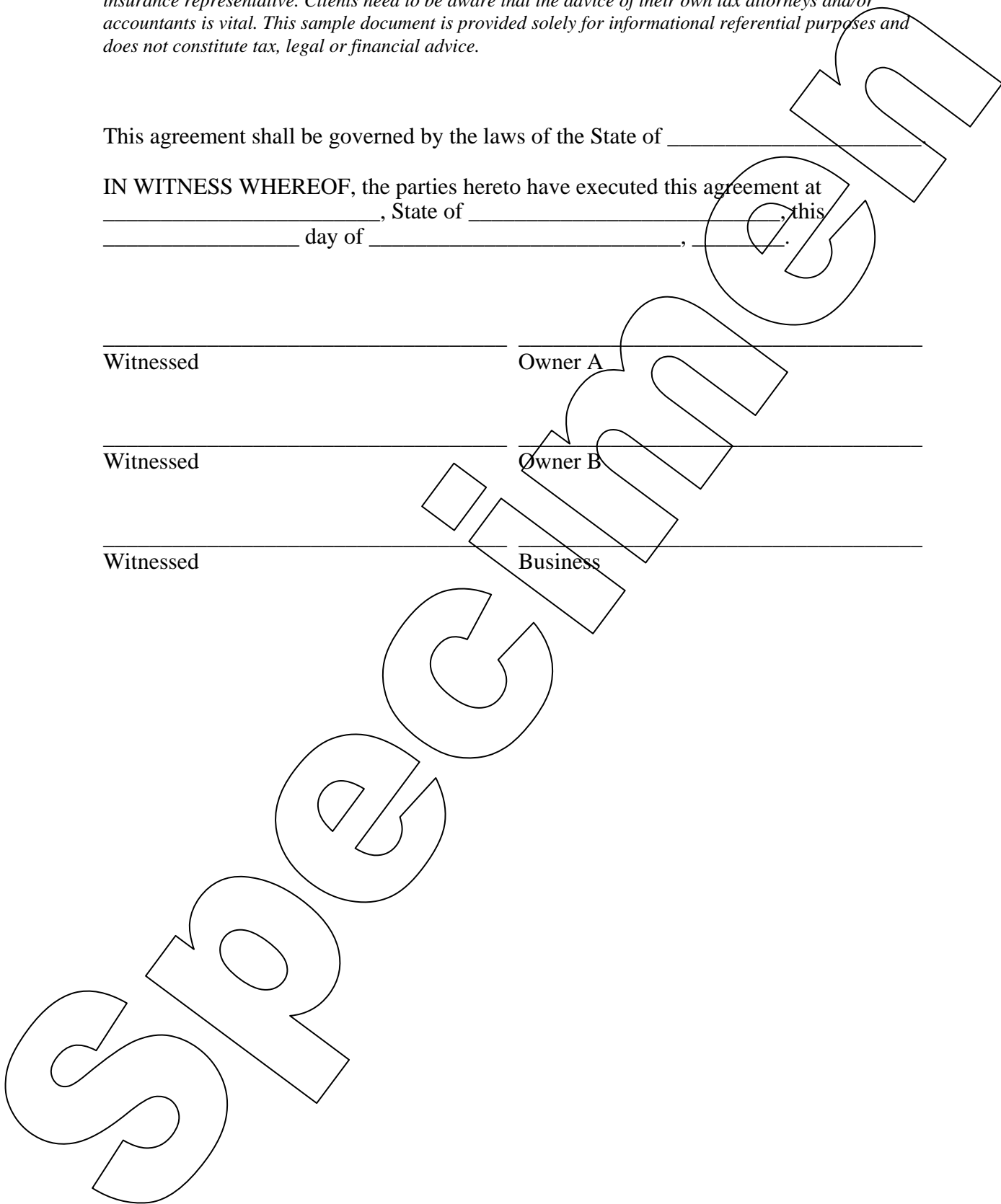
This agreement shall be governed by the laws of the State of _____

IN WITNESS WHEREOF, the parties hereto have executed this agreement at _____, State of _____, this _____ day of _____.

Witnessed Owner A

Witnessed Owner B

Witnessed Business



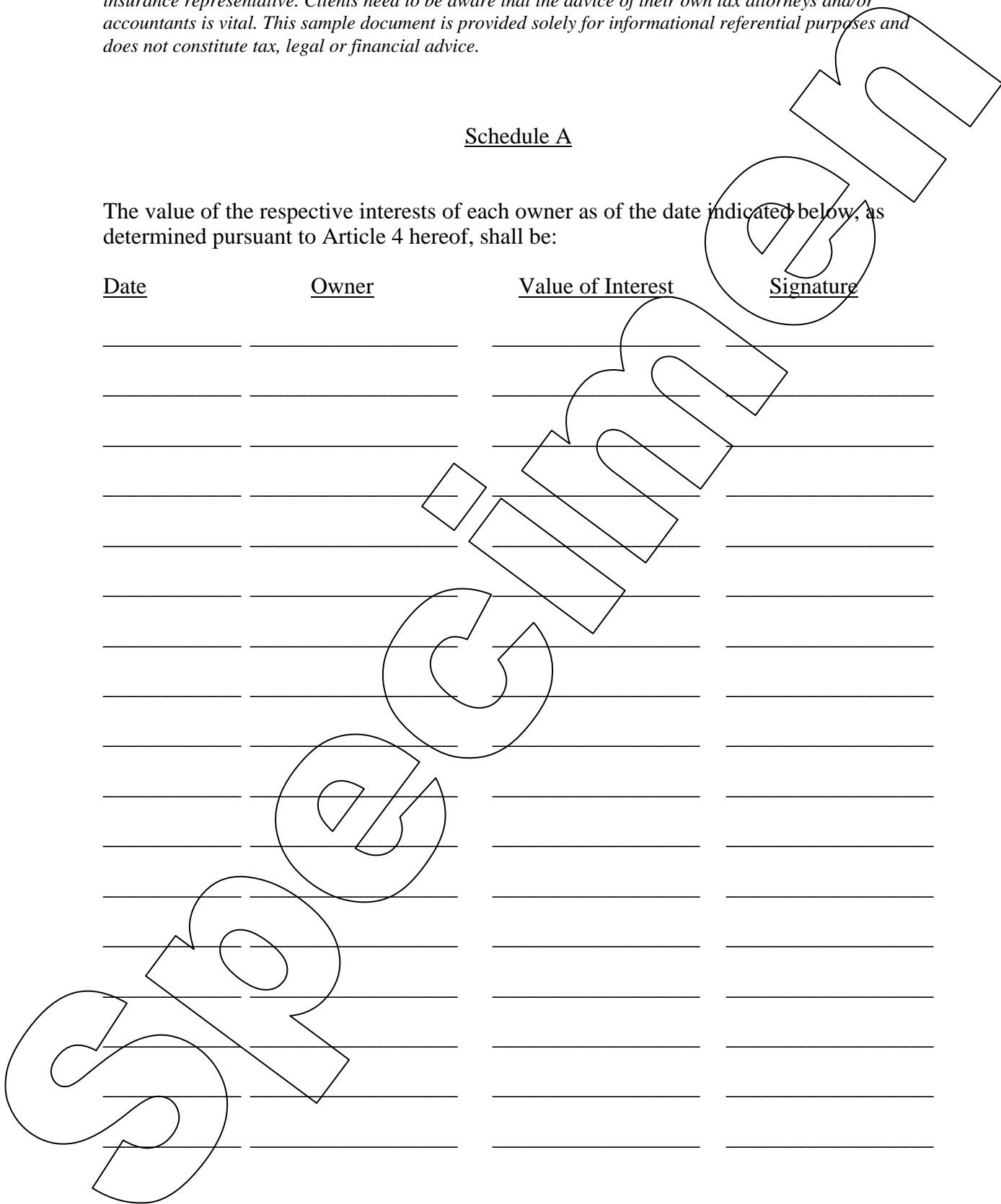
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Schedule A

The value of the respective interests of each owner as of the date indicated below, as determined pursuant to Article 4 hereof, shall be:

<u>Date</u>	<u>Owner</u>	<u>Value of Interest</u>	<u>Signature</u>
_____	_____	_____	_____
_____	_____	_____	_____
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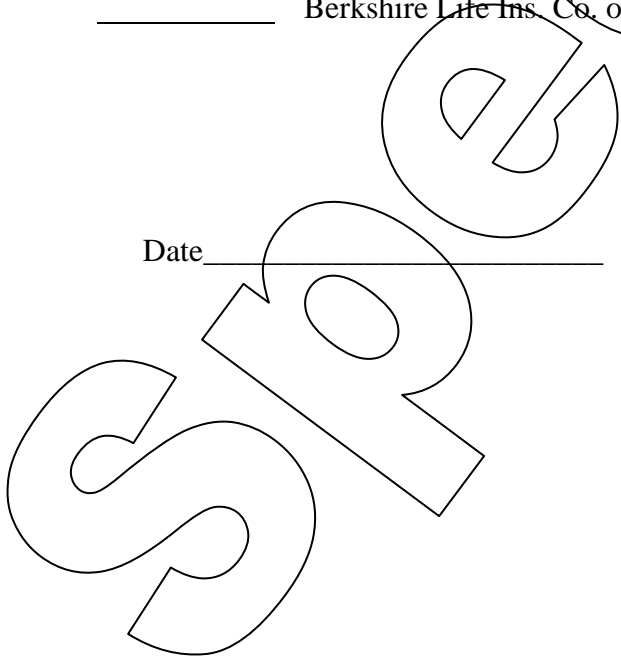
Schedule B

I. Schedule of life insurance policies subject to this agreement pursuant to Article 3 hereof.

<u>Insured</u>	<u>Name of Company</u>	<u>Policy No.</u>	<u>Face Amount</u>	<u>Owner and Beneficiary</u>
_____	Berkshire Life Ins. Co. of America	_____	_____	_____
_____	Berkshire Life Ins. Co. of America	_____	_____	_____
_____	Berkshire Life Ins. Co. of America	_____	_____	_____
_____	Berkshire Life Ins. Co. of America	_____	_____	_____
_____	Berkshire Life Ins. Co. of America	_____	_____	_____
_____	Berkshire Life Ins. Co. of America	_____	_____	_____
_____	Berkshire Life Ins. Co. of America	_____	_____	_____
_____	Berkshire Life Ins. Co. of America	_____	_____	_____

Date _____

Signatures _____



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Schedule B (continued)

II. Schedule of disability buy-out policies subject to disability buy-out agreement

<u>Insured</u>	<u>Name of Company</u>	<u>Policy No.</u>	<u>Maximum Benefit</u>	<u>Owner and Loss Payee</u>
_____	Berkshire Life Ins. Co. of America	_____	_____	_____
_____	Berkshire Life Ins. Co. of America	_____	_____	_____
_____	Berkshire Life Ins. Co. of America	_____	_____	_____
_____	Berkshire Life Ins. Co. of America	_____	_____	_____
_____	Berkshire Life Ins. Co. of America	_____	_____	_____
_____	Berkshire Life Ins. Co. of America	_____	_____	_____

Date _____ Signatures _____

Specimen