

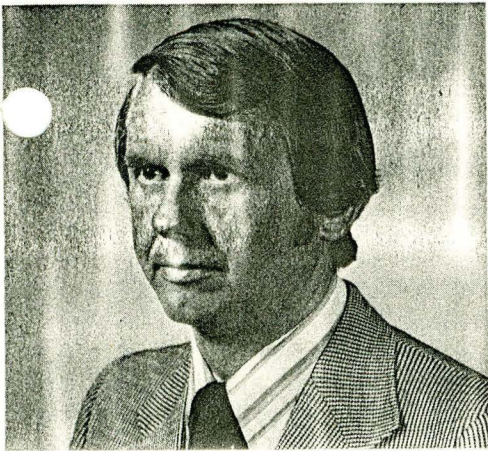
ASSOCIATESHIP/PARTNERSHIP:  
A SUMMARY OF MOA SEMINAR  
ON PERPETUATING PRIVATE PRACTICE

Kenneth Jones  
Practice Management  
Dr. G. Lowther  
Dr. D. Lakin  
5 - 2 - 85

Today more and more optometrists are turning to partnership/associateship as their primary mode of practice. Their reasons for this trend are many and diverse. A recent Michigan Optometric Association seminar entitled "Perpetuating Private Practice" had a half a dozen optometrists talk on this very subject.

This seminar presented a large variation of types of associateships and partnerships and the speakers told of their own personal experiences. The speakers were very candid in presenting both the advantages and disadvantages of partnerships and they all shared one common belief - Partnership is the best way to practice optometry.

Here is a summary of that seminar:



Donald H. Lakin, O.D.

Dr. Donald Lakin, "Overview and Introduction"

10 years ago 5-7% of practitioners were in group practices.

Today AOA estimates 20% are in group practice.

Who should look @ an associate/partnership?

- those in practice 8-10 years
- those 50 years or older

Don't wait too long.

- 40% of solo practices today have their equipment sold after the death of the practitioner.

Dr. Lawrence Beecher, Livonia, MI - "From Solo Practice to Partnership to Professional Corporation to Group Practice: A Case History."

"It's a big step to give up the independence where you are completely



Lawrence E. Beecher, O.D.

in charge and the thought of giving up what one has struggled to obtain does not come easily. But you must really give up something to gain something"

- Was in practice for 8 years solo
- setup an employee/employer relationship with Dr. Ned Grover in 1963. This lasted approximately 2 years.
- Later worked out an agreement to sell 50% of his practice to Dr. Grover.
- was not easy in 1963 due to the relative lack

of precedent

- agreed upon a salary differential of \$6,000 greater to the senior partner for a period of 5 years to represent the junior partner's capital investment
- formed a professional corporation in 1968 and rewritten in 1978
  - the terms of this agreement is included in the addendum
- have now employed another optometrist under a yearly renewable contract. At the end of 2 years, if all agree, the employee will be allowed to purchase in to the corporation
- have now established a profit-sharing and pension plan within the corporation
- Rx for Success was very helpful for example contracts and forms.

Dr. Rodney W. Bellows, Cadillac, MI : "The Decision to Take in an Associate. Locating the Right Associate. The Associateship Agreement. Impressions After Eight Years of Partnership Practice."

-Reasons to take in an associate

- Higher income, although decreased at first, due to greater efficiency of 2 O.D.'s sharing building
- shift in workload allowing specialization and better patient care

-Much easier to take time off and still have office producing income

-sharing of management responsibilities

-longterm benefits of having in-house sale guaranteed when Dr. retires

Disadvantages:

-Decreased income at first

-some loss of personal freedom

-must discuss decisions before making monetary commitments

How to locate partner:

-Need professional compatability

-look for similar training

-look for associate who would complement your

specialities, i.e. someone who likes visual therepy

-Need similar practice philosophy

- Hi volume vs. low volume

- Amount of hours desired to work must be similar

- Similar community involvement

- Spouses compatability

How to select partner:

-Interview/Application

-alot of personal questions

-educational background

-social/professional activities

-church affiliation

-optometric interest

-leisure activity

-smoking

-expected salary

-had interviewee rank importance of leisure time, money, friends, status in community, status in optometry, church.



Rodney W. Bellows, O.D.

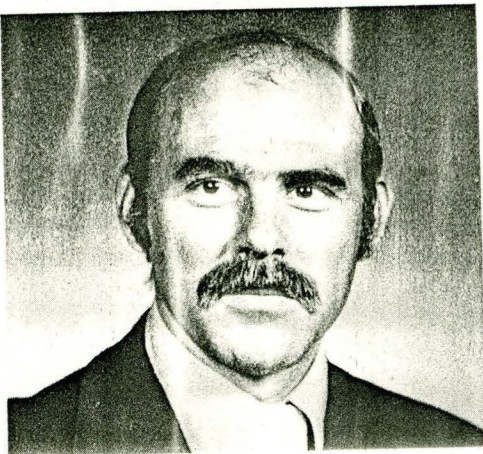
- used MOA/AOA placement service to list position
- had top 3 prospects over for lunch to meet his wife
- had top 3 prospects do an exam on him to evaluate his ability.

#### Associate/Partnership Agreement

- a copy of the partnership agreement is included in the addendum
- their partnership was a 50-50 agreement right from the start
- income split on production
  - not based on dollar production
  - based on unit system
  - equated to time
  - i.e. a general exam=1 unit
  - units produced are tallied up by month and income is split by the percentage produced.

#### Impressions of Jr. partner

- important for the junior partner to realize that a sizeable investment is required
- junior partner is able to pay off this debt relatively quickly, however
- junior partner is able to move into nice facilities right out of school
- junior partner feels like the junior partner even after 8 years and probably always will ever if the age differential is not great.



Robert L. Klein, O.D.

Robert L. Klein, Kalamazoo: "Why Take on an Associate. When to Take on an Associate. How to Take on an Associate."

- Has worked in professional corporation his entire professional career
- Has gone through the experience of a senior partner go through a total disability and die and found his contracts did work.

Why take on an associate?

1. Expanded Services

- "I feel alot of private practitioners are truly missing the boat by not taking on an associate sooner"
- they wait until a practice is starting to slide; they lose alot of money on the sale in these cases.
- "In a partnership, the biggest thing you can do is expand your services"
- took partners in from different schools because they wanted to mix the backgrounds
- one partner specializes in children's vision, one in low vision, and one in sports vision
- "everbody out there is providing eye exams and if you're trying to compete with eye exams, I think you're in trouble."

2. Guarantee practice continuity.

- many practitioners have done everything for their patients except provide for continued care of your patients
- hand select an individual to take care of your patients

3. Mutual Learning experience

- very helpful to keep the patient in the office; on tough cases can walk down the hall to get a second opinion
- senior doctors gets first hand knowledge of new techniques being taught in optometry schools

4. Patients can "switch doctors" without leaving the office

When should a practitioner take on an associate?

1. When you get booked a couple of weeks ahead.
2. When you start to think about retirement planning - do it as young as possible.

How to take an associate

1. Did not have to interview

- all associates were referred to him by practitioners in other areas

"There's a great opportunity twenty miles down the street"

2. Externships with schools
3. Short term work agreement
  - important to spell out the length of employment and to spell out the cost of the practice to the associate at the end of the trial period.

Reasons why associateships/partnerships breakup.

1. Salary arrangement not clearly spelled out and written down.
  - means for bonus is important
  - use unit system
  - senior partner can cause problems by working peak hours and taking off in slack periods and leaving the jr. partner to cover the office.
2. Length of trial period not clearly spelled out from the beginning.
  - the value of the practice can increase tremendously over a one to two year period that the associate is working
  - the price the associate pays must be based on the value of the practice before he starts working or else he will end up buying his own practice.

Buy-sell agreements essential in a contract

- Dr. Kleine's contract with his partners included in the addendum.
- should contain who is required ~~to~~ entitled to buy stock in the event of death or permanent disability of individual stock holders.



Joseph J. Lawless, O.D.

Dr. Joseph J. Lawless, "A Potential Associateship that Fell Through - Pitfalls in Communication and Negotiations. Rebuilding a Practice Following the Death of a Practitioner Who Did Not Have an Associate or Plans for Retirement."

- has experience of buying a practice from a deceased practitioner
- originally started to work with and older practitioner with whom he got no written or verbal guarantees
- "complications soon developed."
- low gross practice in which the practitioner was working 4 days out of his own office.
  - no staff
  - no formal bookkeeping
  - high percentage medicaid
- Older practitioner did not want to make any investment in his practice.
- Lawless wanted to make a large number of changes.
- Lawless eventually decided he wanted to buy the practice outright to make the necessary changes but the older practitioner had an unreasonably high asking price.

Conclusions from his experience

1. Put goals in writing from the outset.
  - a good example is the letter of intent from the AOA monograph series.
  - "if word is good, writing is better"
2. Be realistic on expectations
  - be open to suggestion and compromise
  - try to put yourself in the shoes of the other practitioner.
  - Lawless's second experience involved a buyout of a deceased optometrist's office.
    - practice was being covered about 23 hours per week after the death
    - complications developed due to:
      - the lawyer, who was a friend of the dead optometrist's family, had no experience in this area.
      - the practice was put up for sale on closed bids.

Methods of determining a practice's value:



1. Low End - Value of equipment and inventory
2. Medium - Value of equipment and inventory plus and average of the last three years net
3. High end - Average of the past 3 years gross

In Lawlesse's case these three values worked out as follows:

1. \$10,500
2. \$54,500
3. \$126,000

-Lawless bought the practice for \$34,000.

-Therefore, the family lost out because no buyer had been arranged before the practitioner's death

-First year after purchase, Lawless realized 70% of the practice's ~~gross~~ <sup>gross</sup> growth the year before the death

-Took only 3 years to realize the same gross

Dr. David E. Visser, "Advantages and Disadvantages of Parallel Practice. Consider the Alternative."



David E. Visser, O.D.

-Parallel practice for the past 8 years.

-two optometrists in the same offices with completely independent offices

-Dr. Visser owns the practice and his partner pays him a percentage of his gross in return for his use of the office space.

-separate records and exam forms which are color coded

-share the same patients

Advantages and Disadvantages of Associate Practice

1. "I was ready and the practice was ready"
2. Why do partnerships fail?  
-different goals<sup>@</sup> different times

Dr. 55

- wants deductions
- wants to defer income  
to retirement

Dr. 25

- wants cash
- wants to purchase home, car, etc.

-these differences in goals can make it difficult to agree on what should be done with practice money.

3. Parallel practice eliminates these conflicts  
-each practitioner has his own books and can do what they want with profits
4. Younger practitioner has his stature increased
5. Each practitioner goes his <sup>own</sup> way  
-both agree not to socialize with each other outside the office  
-keep meetings on professional level
6. Disadvantage is lack of plan for practice to transfer  
-anticipate that someday he will sell to his associate and will work for him for a time
7. Dr. Visser does not believe increased income is an advantage of this type of associateship.
8. Both partners benefit from nicer practice atmosphere

Agreement of Parallel Practice

- written on one side of a sheet of paper
- associate pays 35% of his gross and for that receives everything he needs to practice except lab materials
- if association becomes unsuccessful he may take the records of any patient he has seen more than Visser.

In summary one can easily see that there are a variety of approaches to establishing a partnership/associateship mode of practice. Simply, most

of the practitioners speaking on partnership would agree on a few principles.

First, establish realistic goals. Second, put agreements in writing, and third, enjoy your increased income.

ADDENDUM

PARTNERSHIP AGREEMENT

This Agreement is made this 1 day of July, 1978, by and between Lawrence E. Beecher of Northville, Michigan and Ned B. Grover of Farmington Hills, Michigan.

1. Name and Business. The parties have formed a partnership under the name of Beecher and Grover ~~Enterprises~~ and wish to hereby set forth a statement of their agreement with one another. It is the purpose of the partnership to deal with real and personal property, of any kind or description, particularly the lands and premises known as 31330 Schoolcraft, Livonia, Michigan. The principal office of the partnership shall be at such address.
2. Term. The partnership was begun on July 1, 1978, and shall continue until terminated as herein provided.
3. Capital. The capital of the partnership consists initially of an Agreement for Sale of Real Estate and the initial amount paid therewith. If at any time or times hereafter, the partners should determine that further capital is required by the partnership and that the capital of the partnership should be increased, the additional capital required shall be contributed by the partners equally.

A separate capital account shall be maintained for each partner. No partner shall withdraw any part of his capital account. If the capital account of a partner becomes impaired, his share of subsequent partnership profits shall be first credited to his capital account until that account has been restored, before such profits are credited to his income account.

The proportion of capital which each partner is required to contribute and to which he is entitled is:

Lawrence E. Beecher	50%
Ned B. Grover	50%

4. Profit and Loss. The net profits of the partnership shall be divided among the partners in proportion to their capital accounts. A separate income account shall be maintained for each partner. Partnership profits and losses shall be charged or credited to the separate income account of each partner in the indicated proportion. If a partner has no credit balance in his income account, losses shall be charged to his capital account.

5. Salaries and Drawings. No partner shall receive any salary for services rendered to the partnership. Each partner may, from time to time, withdraw the credit balance in his income account. No additional share of profits shall inure to any partner by reason of his capital or income account being in excess of the capital or income account of the other.
6. Interest. No interest shall be paid on the initial contributions to the capital of the partnership or on any subsequent contributions of capital.
7. Management Duties and Restrictions. (a) The consent of both partners shall be required with respect to the management, conduct and operation of the partnership business in all respects and in all matters, including, but not limited to, full power to sell and convey the Property on such terms as they may determine, to lease the Property or any part thereof on such terms and for such periods as they may determine, to mortgage the Property, whether such mortgage be a first or second mortgage lien, to make any agreements modifying any such lease or mortgage, and to borrow or lend money on behalf of the partnership.  
  
(b) Each partner may have other business interests and may engage in any other business or trade, profession, or employment whatsoever, on his own account, or in partnership with or as an employee of or as an officer, director, or shareholder of any other person, firm, or corporation, and he shall not be required to devote his entire time to the business of the partnership. No partner shall be obligated to devote more time and attention to the conduct of the business of the partnership than shall be required for the supervision of the ownership, operation, and management of the Property.
8. Banking. All funds of the partnership shall be deposited in its name in such checking account or accounts as shall be designated by the partners. All withdrawals therefrom are to be made upon checks signed by any one partner.
9. Books. The partnership books shall be maintained at the principal office of the partnership, and each partner shall at all times have access thereto. The fiscal year of the partnership shall be the calendar year. The books shall be closed and balanced at the end of each such fiscal year.

10. Voluntary Termination. The partnership may be dissolved at any time by agreement of the partners, in which event the partners shall proceed with reasonable promptness to sell the real and personal property owned by the partnership and to liquidate the business of the partnership. The partnership shall be dissolved also by the sale of all real property owned by the partnership. Upon dissolution, the assets of the partnership business shall be used and distributed in the following order: (a) to pay or provide for the payment of all partnership liabilities and liquidating expenses and obligations; (b) to equalize the income accounts of the partners; (c) to discharge the balance of the income accounts of the partners; (d) to equalize the capital accounts of the partners; and (e) to discharge the balance of the capital accounts of the partners.
11. Professional Practice Relationship. If at any time a partner shall cease to be employed by Suburban Optometric Associates, P.C., a Michigan professional corporation, other than by reason of death, disability or retirement then the partner so terminating employment shall be required to sell his interest to the partnership if the partnership so elects. The price to be paid shall be the sum (determined as of the day of termination) of the terminating partner's capital and income accounts adjusted for the terminating partner's portion of the difference between the fair market value of the assets of the partnership and the net book value thereof. The partnership's election to purchase shall be exercised in writing delivered to the terminating partner's last known home address no later than ninety (90) days after termination. The closing of the purchase shall occur not later than one hundred twenty (120) days after such termination (on a date specified in the notice of election) and shall be at the principal office of the partnership. The price shall be paid in installments, with twenty percent (20%) down at the closing and the balance in four equal installments on the first, second, third and fourth anniversaries of the closing. Interest shall be payable at the rate of eight percent (8%) per annum.
12. Death or Disability. (a) Upon the death of any partner, the surviving partners shall have the right to purchase the interest of the decedent in the partnership, to cause the partnership to purchase such interest, or to terminate and liquidate the partnership business. If an election is made to purchase the decedent's interest, the same procedure shall be followed as is stated in Section 11, above, with the date of death being treated

as the date of termination of employment with Suburban Optometric Associates, P.C. The required notice shall be served upon the executor or administrator of the deceased partner's estate, or if no such appointment has been made at the date of election, upon any of the known legal heirs of the deceased partner at the last known address of such heir.

(b) If a partner's employment with Suburban Optometric Associates, P.C. is terminated by reason of disability then the disabled partner shall have the right to sell his interest to the partnership upon the same terms and conditions and following the same procedure as in Section 11.

13. Right of First Refusal. If a partner desires to sell or otherwise dispose of his partnership interest during his lifetime, he shall notify the other partner in writing of such desire at his last known home address. Upon receipt of such notice, the other partner shall have ninety (90) days within which to purchase or to cause the partnership to purchase such interest. The terms of purchase and the place of closing shall be the same as a purchase upon a partner's termination of his relationship with Suburban Optometric Associates, P.C., as provided in Section 11. The date of closing shall be stated in the notice which indicates the non-disposing partner's or the partnership's exercise of its rights hereunder, so long as such date is within the ninety (90) day period specified above. If the non-disposing partner or the partnership does not exercise its right to purchase hereunder, then the disposing partner shall have ninety (90) days within which to sell or otherwise dispose of the interest in question, after which period the disposing partner must again offer his interest to the other partner as herein provided in order to sell or dispose of this interest.
14. Arbitration. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the rules then obtaining of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

In witness whereof the parties have signed this agreement.

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Lawrence E. Beecher

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Ned B. Grover



THIS AGREEMENT, between DR. R. W. BELLOWS, hereinafter referred to as BELLOWS, and DR. R. E. MYERS, hereinafter referred to as MYERS, both of Cadillac, Michigan, is made on the 1st day of January, 1977, as follows:

WHEREAS, BELLOWS is engaged in the practice of optometry at 216 East Chapin Street, Cadillac, Michigan, and

WHEREAS, the parties have mutual confidence in each other and,

THEREFORE, make this Partnership Agreement on the following terms and conditions, to-wit:

1. That the purpose of this Agreement is to provide optometric services to the general community area of Wexford County and the surrounding area.
2. That the term of this Agreement shall be from January 1, 1977, until termination as hereinafter provided.

EXPENSES OTHER THOSE NORMALLY INCURRED

BY THE PARTNERSHIP

1. The Partnership will pay for:
  - (a) Local, state and National Optometric Association dues.
  - (b) Dues for any two other health profession related organizations.
  - (c) Registration fees for optometric educationals, conventions and other professionally-related meetings when agreed upon by both parties.
  - (d) The professional liability insurance necessary for the conduct of the practice of optometry, for both partners.
  - (e) Dues for the Cadillac Chamber of Commerce or other Chamber of the community in which the practice is located.
  - (f) Charitable contributions when agreed upon by both partners.

BANKING

1. A checking account and a savings account shall be maintained at the First Bank of Cadillac or at the banking institution as otherwise agreed upon by both partners.

2. Checks written for the Partnership may be signed by either partner.

3. Consent of both partners is necessary and required for any expenditures over \$100.00 other than those for usual monthly bills and expenses.

COMPENSATION

1. Income will be based upon production:
  - (a) Production shall be based on a unit system where a unit

is determined to be a time value used in various procedures. The valued procedures shall be:

One unit for: Visual Analysis (VA)  
Contact Analysis (CA)  
Therapy Analysis (TA)  
Contact Fitting (CF)

Two units for: Initial Contact Analysis

Five units for: Initial contact lens dispensing

One-Half unit for: Vision Therapy  
Contact Problem

2. Division of profits shall be determined as near as possible on a quarterly basis with final reconciliation made annually.

3. Profits shall be divided based on each partner's percentage of production over that period, however, for the first, second and third years BELLOWS' percentage of production shall be increased by 2% and MYERS' decreased by 2%.

4. A drawing account shall be maintained and each partner shall draw each month, 80% of his expected share of the profit.

#### MILITARY LEAVE

1. In the event one of the partners is called to mandatory military service, he shall be granted a leave of absence not to exceed three years. The remaining partner shall have the authority to hire any additional personnel he deems necessary to maintain the high level of vision care provided.

#### VACATIONS AND PROFESSIONAL ABSENCES

1. BELLOWS shall be entitled to 30 working days of absences per year.

2. MYERS' working days of absences shall be as follows:

Calendar year of 1977 - 15 days  
Calendar year of 1978 - 18 days  
Calendar year of 1979 - 21 days  
Calendar year of 1980 - 24 days  
Calendar year of 1981 - 27 days  
Calendar year of 1982 - 30 days  
Thereafter - 30 days per year

3. All vacations, educations and other business and professional activities or meetings resulting in an absence shall be counted against this allotment of vacation days.

4. Absences due to illness shall be excluded from this group and not counted.

5. The days of absences shall be recorded in a log and open to inspection by the other partner at any time.

#### CAPITAL

1. The capital consists of \$            in cash and \$            of equipment.

2. An individual capital account is maintained for each partner.

Except by unanimous agreement of the partners or dissolution, the capital contribution cannot be withdrawn.

3. Each year, except by mutual consent, a minimum of 2% of the net income of the Partnership shall be contributed toward the increase of the Partnership capital. An equal amount will be credited to the capital account of each partner. It is understood that these funds will be maintained in a Partnership savings account. In addition, these funds will be retained in the business or utilized for such purposes as the partners both agree.

4. It is understood that all accounts receivable due and owing prior to the date of this Partnership Agreement shall remain the sole property of BELLOWS.

#### INSURANCE

##### 1. Liability Insurance

The Partnership shall provide:

- (a) Professional and other liability insurance of an equal amount to each partner.
- (b) Umbrella liability coverage in an amount of one million dollars.

##### 2. Life Insurance

- (a) It is understood that each partner is purchasing \$30,000.00 worth of life insurance on the life of the other partner, and the partners hereby agree to continue the insurance in full force and effect and not to exercise any of the rights of ownership of the policies without first obtaining the written consent of the insured partner. Partners also agree that, in the event of death, the surviving partner may purchase the policy on his own life from the estate of the deceased partner for a value equal to the value at which the policy would be included in the deceased partner's estate, rather than cash value, plus any part of prepaid premiums. The surviving partner shall have the option to purchase the policy for a period of 30 days from and after the commencement of probate proceedings for the deceased partner, at terms to be agreed upon between the deceased partner's estate and the surviving partner.
- (b) The amount of insurance shall be agreed upon by each partner and reconsidered at the end of each fiscal year.
- (c) In the event of death, the survivor agrees to collect the insurance proceeds and use these to purchase the deceased partner's interest in the Partnership.
- (d) In the event of retirement, the retiring partner agrees to exchange the life insurance policies without cost to either partner.
- (e) Neither partner, without the consent of the other, may borrow against either policy.

#### LIMITATION OF PARTNERS

- 1. Without the consent of the other partner, neither partner may:

- (a) Borrow money in the Partnership name for the use of the Partnership or otherwise.
- (b) Pledge Partnership assets as collateral or security for any loan.
- (c) Assign, transfer, pledge, compromise or release any claims or debts due the Partnership, except upon their payment in full.
- (d) Arbitrate consent to arbitration of any dispute or controversy in which the Partnership is a party.
- (e) Make, execute or deliver any assignment for the benefit of creditors, or make any bond or contract to sell any of the property of the Partnership.
- (f) Lease or mortgage any real estate owned or leased by the Partnership.

ILLNESS OR DISABILITY

1. The illness or disability in a case of illness, partial disability or total disability the income for the nonworking partner shall be determined by the following:

- (a) First quarter in which disability occurs:
  - 1. Either actual percent of production or,
  - 2. 0.8 of the partner's percentage of production for the previous quarter applied to the profits of the present quarter.
  - 3. Whichever is greater, 1 or 2.
- (b) Second quarter of continuous disability:
  - 1. Either actual percent of production or,
  - 2. 0.6 of the percentage of production used in section 1(a) above as applied to the Partnership profits of the present quarter.
  - 3. Whichever is greater, 1 or 2.
- (c) Third quarter of continuous disability:
  - 1. Either actual percent of production or,
  - 2. 0.4 of the percentage of production used in section 1(a) above as applied to the Partnership profits of the present quarter.
  - 3. Whichever is greater, 1 or 2.
- (d) Should disability extend to the fourth quarter, the non-working partner shall no longer be considered an active partner, but will remain an owner and be entitled to 0.2 of the percentage of production used in section 1(a) above, until the Partnership is dissolved.

2. A partner shall be considered disabled for a quarter if he is unable to work 50% of the usual working hours of the quarter.

3. After two years of continuous disability, the working partner has the choice of proceeding with dissolution of the Partnership as provided in the section on Termination.

#### TERMINATION OF PARTNERSHIP

##### 1. Death or Retirement

In the event of death of a partner, complete voluntary retirement or retirement caused by two complete years of total disability (as determined by a disinterested medical opinion), the remaining partner shall:

- (a) Have the right to continue the practice of the Partnership under its current name, by himself or in conjunction with any other person he may select.
- (b) The remaining partner shall pay to the retiring partner or the heirs of a deceased partner one-half of the value of the practice. The value shall be determined by the sum of:
  1. 75% of the net profit (net profit is understood to be income less all expenses, except the draw-salary of the partners) of the Partnership for the year preceeding the termination.
  2. 75% of accounts receivable.
  3. Cash on hand minus accounts payable.
  4. 80% of the value of inventory materials and supplies.
  5. 100% of depreciated value or the average of the appraised value, whichever is higher, of equipment, tools, instruments, furnishings and the fixed assets other than equipment and furnishings. The appraised value shall be determined by two independent appraisers.
- (c) Payment of the above shall be as follows:
  1. Minimum of 20% within 90 days or complete insurance proceeds, if available in the event of death, and 20% of the remaining balance per year plus interest of 6% per annum on the unpaid balance until payment in full has been made.

##### 2. Voluntary Withdrawal or Forced Withdrawal

- (a) Voluntary withdrawal means before retirement age of 60.
- (b) Forced withdrawal is a situation wherein one partner would lose his license to practice or is otherwise forced to terminate practice in the State of Michigan.
- (c) Termination shall be the same as Section 1, except the withdrawing partner shall receive only 40% of the value of practice as determined by paragraph 1(b). \*the

##### 3. Mutual Termination

Unless dissolved by retirement, death or total disability or voluntary or forced withdrawal, the Partnership continues until dissolved by agreement of the parties. Upon a voluntary dissolution,

by agreement, the affairs of the Partnership must be liquidated as soon as possible. The assets of the Partnership must first be utilized to pay or provide for all of the debts of the Partnership. Then all net profits of the Partnership in the year of dissolution must be paid to the parties entitled to said funds, less any amount drawn in anticipation of current-year net profit. The remaining assets, including accounts receivable, are divided according to the proportionate interest of the partners on the basis of their respective capital accounts as they stand on the date of dissolution, after crediting or debiting the net profit or net loss.

4. Upon termination of the Partnership by agreement of the parties, either party shall have the right (in lieu of liquidation) to continue the business of the Partnership by himself or in conjunction with any other person he may select upon paying cash as the terms of Section 2(c) specify. The withdrawing partner is entitled to the amounts he would receive in case of dissolution by voluntary withdrawal.

5. At no time shall the heirs or relatives of the deceased, retiring, disabled or withdrawing partner have any right to ownership or management in the Partnership.

6. This Partnership shall terminate upon the death of one of the partners.

7. If the Partnership shall terminate within the first two (2) years, other than by death or disability, then the first six (6) paragraphs of this section shall not apply, and this paragraph shall control. If the Partnership does terminate within the first two (2) years, then BELLOWS shall be the surviving partner and shall pay to MYERS in cash the amount MYERS paid to BELLOWS according to two Promissory Notes of even date herewith, including interest plus any downpayment made by MYERS. BELLOWS shall receive his initial investment of \$1,000.00, and MYERS to receive the initial investment of \$60.00 cash, plus the equipment he contributed. Any equipment owned by the Partnership shall be divided according to the agreement of the parties at the then market value, with BELLOWS having the option of first purchase.

#### MANAGEMENT

1. Employee management, including the firing and hiring of employees, shall require the consent of both partners, but BELLOWS shall have primary responsibility until and unless otherwise agreed upon.

2. Administrative tasks shall be shared by both partners as equally as possible.

3. In the general conduct of the Partnership business, the partners agree that consultation, discussion and the mutual agreement by both partners and all administrative and policy decisions regarding manner of practice, purchase of and disposal of instruments, equipment, furniture, fixtures and other property, the purchase of supplies and services shall be required. However, for the first five (5) years of this Agreement, BELLOWS shall have the final authority. Thereafter, all above decisions shall require mutual and unanimous consent.

4. If arbitration is required after the first five (5) years of the term of this Partnership, then the partners shall, within five (5) days, agree on a single arbitrator who is an expert in the field. If the partners cannot agree on a single arbitrator, then they shall each select an arbitrator, and the two arbitrators shall select a third arbitrator. A decision reached by two of the three arbitrators shall be binding and final upon the partners.

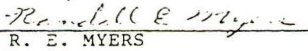
OWNERSHIP

1. Ownership shall be on a 50% per partner basis from the commencement of this Partnership.

2. The initial purchase shall be according to the terms of two Promissory Notes given pursuant to a Bill of Sale of even date hereof, copies of which are attached hereto, including equipment valued at \$940.00, as well as \$60.00 cash from MYERS and \$1,000.00 cash from BELLOWS.

3. This Agreement may be altered or amended only if done so in writing and signed and agreed to by both partners.

  
R. W. BELLOWS

  
R. E. MYERS

Amended

1-1-53

## 1983 AMENDMENT (BELLOWS & MYERS)

This amendment shall be considered a part of the Partnership Agreement of Dr. R.W. Bellows and Dr. R.E. Myers, Optometrists and shall add to, delete, or replace the following sections as indicated.

### ADD TO THE INTRODUCTION:

3. The name of the Partnership shall be Dr. R.W. Bellows and Dr. R.E. Myers, Optometrists.

### SECTION TITLED "EXPENSES OTHER THAN THOSE NORMALLY INCURRED BY THE PARTNERSHIP"

Change l. b. to: Dues for any three (3) other health profession related organizations.

Add l. g. Life insurance on the partners intended to provide funds for purchasing a deceased partners share of the business.

### SECTION TITLED "COMPENSATION"

Change the value for "Initial contact lens dispensing" from Five units to Four units.

### SECTION TITLED "INSURANCE"

Replace PART 2 "Life Insurance" with the following:

- a. The Partnership shall purchase life insurance for each partner. The insurance may be a combination of whole life and term insurance. The Partnership shall be the owner and beneficiary of these policies. The premiums shall be paid by the Partnership and the Partnership may exercise all rights of ownership of the policies.
- b. The amount of insurance and the ratio of whole life to term insurance shall be agreed upon by each partner and may be changed as deemed necessary by agreement of each partner.
- c. In the event of death, the insurance benefits from the policy or policies on the deceased shall be collected and used by the surviving partner to purchase the deceased partner's interest in the Partnership. Neither the cash values nor the death benefits shall, at anytime be considered a part of the value of the practice or the Partnership and are not to be included in the calculation of the value of the practice as set forth in Section l. (b) of "Termination of Partnership". It is also agreed that in the event of death, the surviving partner may maintain the policy or policies on his life for his personal use or business use as he sees fit.



- d. In the event of retirement or termination of the Partnership for any reason except the death of a partner, the partners agree to transfer the life insurance ownership and beneficiary from the Partnership to the individual partners without cost to either partner.
- e. Omit from original Partnership Agreement.

**SECTION TITLED "TERMINATION OF PARTNERSHIP"**

Change part 1. (b) by adding:

- 6. Neither the cash value nor the death benefit of the life insurance policies on either partner shall be added to the value of the practice or to the value of any other partnerships the partners may be involved in with each other.

Change part 1. (c) to:

c. Payment of the above be as follows:

- 1. In the event of death:

If the insurance proceeds are equal to or greater than one half the value of the practice the amount owed shall be paid within 90 days in a lump sum. If the insurance proceeds are not sufficient, then the complete insurance proceeds shall be paid within 90 days and the balance shall be paid by paying 50% per year at 7% interest per annum for the next 2 years unless other terms are agreeable to both parties.

- 2. In the event of retirement:

A minimum of 20% shall be paid within 90 days and 20% of the remaining balance per year for five years plus interest of 7% per annum on the unpaid balance shall be paid until payment in full has been made.

Change part 2 (c) by adding "Payment of the above shall be made by paying a minimum of 20% within 90 days and 20% of the remaining balance per year for five years plus interest of 7% per annum on the unpaid balance until payment in full has been made."

In WITNESS WHEREOF, the parties hereto have executed this Agreement at Cadillac, MICHIGAN, on \_\_\_\_\_, 1983.

Page 3  
1983 AMENDMENT (BELLOWS & MYERS)

Signed in the presence of:

\_\_\_\_\_

\_\_\_\_\_  
Rodney W. Bellows, O.D.

\_\_\_\_\_

\_\_\_\_\_  
Randall E. Myers, O.D.

SHAREHOLDERS

\* \* \* \* \*

BUY-SELL AGREEMENT

\* \* \* \* \*

THIS AGREEMENT is made by and among HARRY B. SOFEN, P.C., a professional corporation under the laws of the State of Michigan, hereinafter referred to as the Corporation, and HARRY B. SOFEN, ROBERT L. KLEIN and ROBERT L. UNSER, all the Shareholders of the Corporation, hereinafter referred to as Shareholders.

The purpose of this Agreement is to provide:

- (a) For the continued close control of the Corporation and for the harmonious operation thereof, both during the lifetime of any Shareholder and upon the death of any Shareholder, and
- (b) For the purchase of the shares in the Corporation of a Shareholder by the Corporation at a price fairly established.

In consideration of the mutual agreements set forth below, the Corporation and each Shareholder hereby agree as follows:

ARTICLE I

The number of shares now owned or being purchased by each Shareholder is as follows:

Robert L. Unser  
Robert L. Klein  
Harry B. Sofen



*Handwritten notes and signatures at the bottom right of the page.*

ARTICLE II

RESTRICTION UPON TRANSFER

Except as hereinafter provided, no Shareholder shall encumber or dispose of any part or all of his stock in the Corporation or any interest or any rights therein, without the prior written consent of all of the Shareholders and the Corporation.

ARTICLE III

DISPOSITION DURING LIFETIME

(A) OPTIONS. In the event any Shareholder shall desire to sell or otherwise dispose of all or any part of his stock then the following options shall arise:

(1) First, such shares shall be offered for sale to or redemption by the Corporation in the manner and subject to the conditions set forth below.

(2) Second, such shares shall be offered for sale to the remaining Shareholders in the manner and subject to the conditions set forth below.

(B) PROCEDURE FOR NOTICE AND EXERCISE OF OPTION.

(1) Notice of Intention to Dispose of Shares. In the absence of prior written consent of all other Shareholders and the Corporation to a disposition of his shares, any Shareholder desiring to sell or otherwise dispose of all or any part of his interest in the stock of the Corporation shall notify the Secretary and all Shareholders of the Corporation in writing of his intention to make such disposition and the number of shares involved.

(2) Corporation's Option's. The Corporation shall have the exclusive right and option to purchase all or any part of the shares proposed to be disposed of for a period of forty-five (45) days after receipt of the written notice. If the option has not been exercised in writing

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within the forty-five (45) day period or if the Corporation has sooner waived the option in writing, the Corporation's option shall terminate.

(3) Shareholder's Options. In the event the Corporation waives its option or otherwise fails to exercise its option, the Shareholders, for the next thirty (30) days, shall have the right to purchase all of the stock so offered that has not been purchased by the Corporation. If more than one of the Shareholders of the Corporation exercises such right, each Shareholder may purchase the number of shares of stock equal to the ratio of the stock then outstanding in his name on the books of the Corporation to the aggregate numbers of shares outstanding in the names of all of the Shareholders exercising such right of purchase, unless the Shareholders exercising such right of purchase shall by agreement among themselves decide on a different proportion. If the option has not been exercised in writing within the thirty (30) day period or if the Shareholders have sooner waived the option in writing, the Shareholders' option shall terminate.

(C) LIMITATION ON OBLIGATION TO SELL. The selling Shareholder or the person proposing to dispose of his shares shall not be required to sell any of his shares to the Corporation or to a Shareholder unless the Corporation and/or the Shareholders purchase all of the shares proposed to be disposed of.

(D) LIMITATION ON RIGHT TO SELL. If neither the Corporation's option nor the Shareholders' option is exercised, the Shareholder proposing to dispose of his shares shall have the right for a period of ninety (90) days to dispose of all (but not less than all) of those shares proposed to be disposed of to a third party or parties. Any stock not disposed of by the end of the ninety (90) day period shall again become subject to the restrictions of this Agreement.

(E) TERMINATION OF EMPLOYMENT. If any Shareholder leaves the employment of the Corporation for any reason other than because of his death, retirement or disability, said Shareholder shall be deemed to have given to the Corporation, notice of intention to dispose of all shares in accordance with Article III, Paragraph (B)(1) above. For the purpose of this Agreement, a Shareholder shall be deemed disabled if he incurs a physical or mental disability which, in the opinion

of a licensed physician, renders him incapable of performing his professional duties in a competent and satisfactory manner, and such disability continues for six (6) months.

(F) RESTRICTIVE COVENANT. The selling or terminating Shareholder agrees that he will not, anywhere within Kalamazoo County the County Building, and within a 25-mile radius of Kalamazoo County, Michigan, for a period of five (5) years from and after disposing of his shares hereunder, directly or indirectly, either in his own name or as a member of a professional corporation or in any other manner whatsoever, engage in the practice of optometry.

ARTICLE IV

PURCHASE OF STOCK ON DEATH OR RETIREMENT

Upon the death of any Shareholder, or the retirement of any Shareholder, or the disability of any Shareholder, the Corporation shall purchase and the estate of the deceased Shareholder or the retiring Shareholder or the disabled Shareholder, shall sell all the stock of such Shareholder. No person may retire under this Article unless he is at least sixty (60) years of age and has been employed by the Corporation for a period of not less than eleven (11) years.

ARTICLE V

PURCHASE PRICE

The purchase price shall be determined in accordance with the provisions of Exhibit "A" hereto.

ARTICLE VI

PAYMENT OF PURCHASE PRICE

(A) UPON DEATH OF SHAREHOLDER. The purchase price of the deceased Shareholder's stock shall be paid as follows:

(1) Upon the death of the deceased Shareholder, the Corporation shall proceed to collect the proceeds of the insurance policies carried under Article VII on the life of the deceased. As soon as such proceeds have been received by the Corporation and the purchase price has been determined, the Corporation shall pay in cash or by certified check, that portion of such proceeds which does not

exceed the purchase price, either to the estate of the deceased shareholder, his legal representatives, or to the distributee of the estate to whom the stock has been distributed prior to payment.

(2) If the purchase price exceeds the insurance proceeds and if the amount of such excess is One Hundred Thousand (\$100,000) Dollars or less, the amount of such excess shall be paid in equal annual installments within ten (10) years from the date of death; if the amount of excess is greater than One Hundred Thousand (\$100,000) Dollars, but does not exceed One Hundred Fifty Thousand (\$150,000) Dollars, then said excess shall be paid in equal annual installments within fifteen (15) years from the date of death; if the amount of excess is greater than One Hundred Fifty Thousand (\$150,000) Dollars, then said excess shall be paid in equal annual installments within twenty (20) years from the date of death. The amount of such excess shall be evidenced by the Corporation's Promissory Note which shall bear interest at the rate of six (6%) percent per annum commencing with the date of death, and which shall be in substantially the form as that set forth in Exhibit "B" hereto. Said Note shall be unsecured, but shall be guaranteed by each surviving and remaining Shareholder in substantially the form of that set forth in Exhibit "C" hereto.

(3) If at the time the Corporation is required to make payment of the purchase price for the deceased Shareholder's stock, its surplus is insufficient for such purpose, it shall be the express obligation of the Corporation and the surviving Shareholders to promptly take all action necessary and proper under applicable law to reduce the capital stock of the Corporation to permit, to the extent possible, the payment of the purchase price or any installment due thereunder and to the extent possible the Corporation shall promptly pay that purchase price or any portion then due. Any remaining balance of said purchase price then remaining due and unpaid shall be paid by the surviving Shareholders, each according to his interest in the Corporation, in accordance with the same terms as are available to the Corporation.

(4) In any event, the Corporation and/or Shareholders shall commence payment for the shares to be purchased within ninety (90) days of such time as said shares are presented to the Corporation for purchase pursuant to this Agreement.

(B) DURING SHAREHOLDER'S LIFETIME. In the event the total purchase price to be paid is One Hundred Thousand (\$100,000) Dollars or less, the purchase price shall

be payable in an initial installment of Ten (10%) per cent in cash and the balance in equal annual installments within ten (10) years;

In the event the total purchase price to be paid is greater than One Hundred Thousand and no/100 (\$100,000.00) Dollars, but does not exceed One Hundred Fifty Thousand and no/100 (\$150,000.00) Dollars, the purchase price shall be payable in an initial installment of Ten (10%) per cent in cash and the balance in equal annual installments within fifteen (15) years;

In the event the total purchase price to be paid is greater than One Hundred Fifty Thousand and no/100 (\$150,000.00) Dollars, the purchase price shall be payable in an initial installment of Five (5%) per cent in cash and the balance in equal annual installments within twenty (20) years.

Any balance remaining due after the initial installment payment shall be evidenced by the Purchaser's Promissory Note which shall bear interest at the rate of Six (6%) per cent per annum, and which shall be in substantially the form as set forth in Exhibit "B" hereto. If the maker of the Note is the P.C., the Note shall be secured by the P.C.'s pledge to the Payee of the Note of the shares purchased, and the Note shall be guaranteed by each remaining Shareholder in substantially the form as set forth in Exhibit "C" hereto.

If the maker of the Note is a Shareholder, the Note shall be secured by the Shareholder's pledge, to the payee of the Note, of the shares purchased pursuant to the provisions set forth immediately below.

(1) Transfer of Stock to Escrow Agent. Within thirty (30) days after the exercise by either the Corporation or the remaining Shareholders



of their option the selling Shareholder shall duly endorse the certificates for his stock in blank and deposit such certificates with the attorney for the Corporation who will serve as Escrow Agent, together with all documents necessary for the effective transfer and such proxies as may be necessary to confirm the voting rights of the parties during any period of this Agreement. Such stock and proxies are to be held by the Escrow Agent, in escrow, pursuant to the provisions of this Agreement.

(2) Voting and Dividend Rights During Escrow. So long as no default has occurred and is continuing, a Purchaser, other than the Corporation, shall vote the stock so deposited. All dividends and distribution on the stock deposited with the Escrow Agent shall be paid over to the Purchaser.

(3) Consummation of Purchase. Upon payment in full of the principal of and the interest on the notes evidencing the balance of the purchase price, the Escrow Agent shall deliver to the Purchaser, the stock so deposited, duly endorsed and transferred, together with all other documents necessary to transfer such stock.

(4) Default. In the event of any default for a period of sixty (60) days in the payment of any interest or principal of any notes evidencing the balance of the purchase price, and upon the Purchaser's failure to cure said default within fifteen (15) days of written notice of same, the selling Shareholder may, at his option, declare a "Default" by written notice to the Escrow Agent and the obligor on the notes. Upon such notice, the Escrow Agent shall return to the selling Shareholder or his representative all of the deposited stock. All of the remaining unpaid notes shall be cancelled and returned to the Purchaser. The Purchaser shall have no further rights in the deposited stock or any claims against the selling Shareholder or his representative. The selling Shareholder or his representative shall thereafter have the right to dispose of all of the stock returned to him by the Escrow Agent to a third party or parties; provided, that if the selling Shareholder or his representative so elects, upon the declaration of a default, he may, in lieu of the foregoing, declare the unpaid balance of the note or notes evidencing the balance of the purchase price to be due and payable and sue for recovery thereon or on the endorsement, if any thereof, in which event the

Escrow Agent shall continue to retain the stock certificates, distributions, dividends, resignations, proxies and other instruments held by him until payment in full of the principal and of any interest on such notes and of the actual expenses incurred by the selling Shareholder in connection with such suit, whereupon delivery shall be made to the Purchaser, unless otherwise directed by order of Court.

(5) Expenses of Escrow Agent. Fees and other expenses of the Escrow Agent shall be paid by the Purchaser.

(C) PURCHASE OF SHARES SUBJECT TO PURCHASE AGREEMENT. In the event the P.C. or the Shareholders purchase pursuant to the terms and conditions of this Agreement, any shares which are themselves subject to a purchase agreement under which there remains due and unpaid a balance of either principal or interest, it shall be the obligation of said purchasing P.C. or purchasing Shareholders to make all payments required hereunder directly to the original selling Shareholder so as to satisfy and fully pay any and all of the unpaid balance which may be unpaid at the time the said shares are acquired hereunder.

#### ARTICLE VII

##### INSURANCE

(A) PURCHASE OF INSURANCE. The Corporation desires to insure, or partially insure, its promises in this Agreement to purchase from a deceased Shareholder's estate, shares which he owned prior to his death. Therefore, the Corporation has purchased, and is the owner and beneficiary, or will purchase and be the owner and beneficiary, certain insurance policies on the lives of the Shareholders as set forth in Exhibit "D" hereto, or additions thereto.

(B) MAINTENANCE OR POLICIES. During the lifetime of the Shareholders and the continuing force of this Agreement, the Corporation will maintain such insurance in full force and effect

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and will not, without the prior written consent of all Shareholders, cancel any policy relating thereto or take or omit any action which might give rise to the termination or cancellation thereof. During the lifetime of a Shareholder and the continuing force of this Agreement, the Corporation shall pay premiums on all insurance policies carried by it pursuant to this Agreement. If any premium is not paid within twenty (20) days after its due date, any Shareholder may pay or cause it to be paid and shall be entitled to reimbursement from the Corporation. The Corporation shall apply any dividends declared on such policies to the payment of premiums.

(C) ADDITIONAL INSURANCE. The Corporation shall have the right to take out additional insurance on the life of any Shareholder, whenever in the opinion of the Corporation, additional insurance may be required for the benefit of the Corporation, or to enable it to carry out its obligation under this Agreement.

(D) SHAREHOLDER'S OPTIONS TO PURCHASE INSURANCE. At any time within six (6) months after the death of any Shareholder, if there remains only one surviving Shareholder, that surviving Shareholder shall have the right to purchase the insurance policy or policies carried on his life in accordance with this Agreement by paying to the Corporation an amount equal to the then cash surrendered value of such policy or policies, plus the unearned portion of any premiums which shall have been paid thereon.

In the event any Shareholder shall dispose of his stock during his lifetime, the Corporation shall continue to pay the premiums of the policies on the lives of all Shareholders until the disposal shall have been completed and for a period of six (6) months thereafter. During said six (6) months, the selling Shareholder, and, in the event there is only one (1) remaining

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Shareholder, the remaining Shareholder, shall have the right to purchase the policy or policies carried by the Corporation on their life by paying to the Corporation an amount equal to the then cash surrendered value of such policy or policies, plus the unearned portions of any premiums which now have been paid thereon.

#### ARTICLE VIII

##### ENDORSEMENT ON STOCK CERTIFICATES

All certificates now owned or hereafter issued by the Corporation shall represent shares of stock which are subject to the restrictions imposed by this Agreement and shall have endorsed on them:

Any sale, assignment, transfer, pledge or other disposition of shares of stock represented by this certificate is restricted by, and subject to, the terms and provisions of an Agreement, dated December 30, 1974. A copy of said Agreement is on file with the Secretary of the Corporation. By acceptance of this certificate the holder hereof agrees to be bound by the terms of said Agreement.

#### ARTICLE IX

##### VIOLATION OF AGREEMENT

In the event that any shares subject to this Agreement are held other than in compliance with this Agreement or the Shareholder takes any action inconsistent with the terms hereof, the shares so held shall have no voting rights and shall receive no dividends, if any be declared upon the stock of the Corporation, for so long as the shares are held in violation of this Agreement.

#### ARTICLE X

##### NOTICES

All notices, offers, acceptances, requests, and other communications hereunder, shall be in writing and shall be

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deemed to have been duly given if delivered or mailed by certified or registered mail to the Shareholders at the addresses set forth herein or to such other address as any part hereto shall designate to the other party in writing and to the Corporation at its registered office.

ARTICLE XI

TERMINATION OF THIS AGREEMENT

This Agreement shall terminate upon the occurrence of any of the following events:

- (A) Bankruptcy, receivership or dissolution of the Corporation.
- (B) Voluntary agreement of all Shareholders in the Corporation.

Upon termination of this Agreement, the Secretary of the Corporation shall, upon tender of the certificates of stock, delete the legend endorsed thereon, pursuant to this Agreement.

ARTICLE XII

BINDING EFFECT

The terms of this Agreement shall be binding upon and inure to the benefit of, and shall be enforceable by, the successors and assigns of the parties hereto and the holders from time to time of any of the stock of the Corporation.

ARTICLE XIII

GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of Michigan. In case any term of this Agreement shall be held invalid, illegal, or unenforceable

*W.S. Paul R2K*