

## CROSS PURCHASE AGREEMENT

This agreement is between **Randy Clements** and **Gary P. Dean**, hereinafter referred to as "Members" and each singly as "Member."

### *WITNESSETH:*

Members own all of the capital interest ("interest") of **Clements Dean Building Company, LLC** and **C D Investments, LLC** ("Companies") and the Members desire the capital interest to remain closely held in order to promote harmonious management of the businesses.

Therefore, the Members agree as follows:

**1. Purchase Obligation upon Death.** Upon the death of either Member, the surviving Member shall purchase, and the legal representative of the estate of the deceased Member shall sell, the ownership interests of Companies owned by the deceased Member for the price established in accordance with the provisions of Article 2 and upon the terms and conditions set forth herein.

### **2. Value of Interests.**

2.1. Unless and until new values are established as herein provided, the value of the net ownership interests of the Companies for purposes of this Agreement is the greater of:

a. Book values on the date of death of the first Member to die as reflected on the federal income tax returns for the preceding calendar year, or

b. One Million Two Hundred Fifty Thousand Dollars and No Cents (\$1,250,000.00).

2.2. Within ninety days after the end of each year, the Members will redetermine the value of the ownership interests of the Companies for purposes of this Agreement and will endorse the redetermined values on Schedule "A" attached hereto and made a part hereof. The value, as redetermined from time to time, will be substituted for the value stated in 2.1 b. above. If the Members fail to redetermine the values of the ownership interests of the Companies for a particular year, the last previously established values will control. The value of the ownership interests of the Companies as above stated, and as redetermined from time to time hereafter, is and will be inclusive of the value of goodwill.

2.3 In the event the book values of the deceased Member's interests in the companies exceed the amount of life insurance on the deceased Members's life, the Members may cause the Companies to make a distribution to the Members so as to reduce the book value of the deceased Member's interest to equal the amount of insurance proceeds available to purchase the interests.



**3. Insurance.** In order to assure the availability of funds for the purchase of the ownership interests of a Member by the other Member, the Members have purchased insurance on the lives of each other, the details of the insurance is set forth in Schedule "B" attached hereto and made a part hereof. Each Member may purchase additional insurance to further the availability of funds for this purpose and, with the joint approval of both Members, other policies may be substituted for policies set forth in Schedule "B". Any additions or substitutions of policies will be evidenced on Schedule "B".

**4. Ownership of Policies.** Subject to the terms of any Split Dollar arrangement, each Member will be the beneficiary and absolute owner of all policies purchased by him on the life of the other Member for purposes of this Agreement, will retain physical custody of the policies and will pay all premiums necessary to maintain the policies in force. Until the termination of this Agreement, neither Member will surrender any policies owned by him on the life of the other Member for purposes of this agreement for their cash surrender value, borrow upon the policies, pledge or assign them as security for any loan or indebtedness, nor otherwise modify or impair any of the rights or values in the policies, except with the written consent of the insured Member.

**5. Purchase of Interests.**

5.1 Upon the death of the first Member to die, the surviving Member will immediately collect the proceeds of the policies owned by him on the life of the deceased Member for purposes of this Agreement and will apply as much of the proceeds as may be necessary to purchase the ownership interests of the deceased Member at the price established in accordance with the provisions of Article 2. If the proceeds are not sufficient to purchase all the ownership interests of the deceased Member, the balance of the purchase price of the ownership interests will be paid in one sum, or, at the option of the surviving Member, within three (3) years, in equal quarterly payments with interest at the rate of six percent (6%) per year, which payments will be evidenced by a promissory note. The promissory note will be subject to prepayment in whole or in part at any time without penalty.

5.2 Upon payment of the purchase price of all the ownership interests of the deceased Member by cash and the delivery of any necessary note as aforesaid, the legal representative of the estate of the deceased Member will execute and deliver to the surviving Member all instruments necessary to transfer complete title to the deceased Member's ownership interests to the surviving Member, provided, however, that the legal representative will have the right to retain as collateral security for the payment of any unpaid payments under the promissory note any percentage of the deceased Member's ownership interests as will equal in value, as determined by Article 2, the amount of any unpaid payments. No distributions of earnings from the Companies will be made to the holder of the collateral security interest.

**6. Purchase of Insurance from Deceased Member's Estate.** Upon the death of the first Member to die, the surviving Member will have an option, for sixty (60) days after the appointment of the legal representative of the estate of the deceased Member, to purchase from the deceased Member's estate for their cash surrender value any policies the deceased Member owned on the life of the surviving Member for the purpose of this Agreement. If the policies are



not purchased within the sixty (60) day period, the legal representative can surrender them for their cash surrender values or dispose of them in any other lawful manner. If the surviving Member exercises the purchase option, the legal representative will immediately transfer all right, title and interest in the policies, together with their physical possession, to the surviving Member.

**7. Death of Both Members.** The deaths of both Members prior to the completion of the obligations contained herein will not excuse performance under this Agreement, and the estate of the Member that is the first to die will complete the obligation to purchase the ownership interests from the estate of the Member that is the second to die if the insurance on the Member that is the second to die has not been canceled or transferred to the Member pursuant to the terms of Article 6.

**8. Restrictive Legend on Interests.** The certificates for all ownership interests of the Companies subject to this Agreement will be endorsed as follows: "The sale or transfer of this Certificate is restricted and subject to a Purchase Agreement, a copy of which is on file with the Companies".

**9. Termination of Agreement.** This agreement and all restrictions on ownership interests transfer created hereby will terminate on the occurrence of any of the following events:

- (a) The bankruptcy or dissolution of the Companies;
- (b) The execution of a written instrument by all the Owners of the Companies which terminates the agreement;
- (c) A single Member becoming the owner of all interests in the Companies.

**10. Option on Termination.** Upon termination of this Agreement, each Member will have the right, within thirty (30) days after termination, to purchase from the other Member (or his estate), any insurance policy or policies on his life, for cash, in the amount of the cash surrender value and the net unearned premium of the policy, both amounts as of the date of the termination of the agreement upon the same terms and conditions as set forth in Article 6.

**11. Amendment.** This Agreement may be amended or revoked at any time by the written agreement of the Members.

**12. Insurance Company.** No insurance company will be under any obligation with respect to the performance of the terms and conditions of this Agreement, and payment by any insurance company pursuant to the terms of any policies which are subject to this Agreement will be a complete discharge of the insurance company from all claims, suits and demands of all persons whomsoever with respect to its policies.

**13. Binding Agreement.** This Agreement will be binding upon the Members individually and their respective heirs, personal representatives and administrators.

**14. Governing Law.** This Agreement will be governed by the laws of the State of Alabama.



**15. The Closing.** The closing of the sale and the purchase of interests will take place at the general offices of the Companies as soon as reasonably practicable after compliance with the notice provisions of this agreement. Unless agreed otherwise, a written ten (10) day notice will be given of the closing time and date.

**16. General Provisions.**

16.1 Notices. All notices will be in writing and delivered either (1) by actual delivery into the hands of the other Member; or (2) by mailing the notice in the U. S. mails to the last known address of the other Member, certified mail, return receipt requested. Notice will be deemed to be received in case (1) on the date of its actual receipt by the other Member and in case (2) on the date of its mailing.

16.2 Description Headings. Titles to sections of this agreement are for information purposes only.

16.3 Binding Effect. This agreement is binding upon and inures to the benefit of the Members and their heirs, personal representatives, successors and assigns; and each Member directs his personal representative to open his estate promptly in the court of proper jurisdiction and to execute, procure and deliver all documents required to effectuate the purposes of this agreement.

16.4 Voting. On the date of the closing with respect to the sale of any interests of a Member the interests sold will cease to have the right to vote.

16.5 Specific Performance. The Members agree that the interests in the Companies are unique and that failure to perform the obligations under this Agreement will result in irreparable damage to the other Member and that specific performance of these obligations may be obtained by a suit in equity.

16.6 "Days" Defined. Any reference in this Agreement to "days" means all calendar days, whether or not the days are legal holidays under the laws of the United States or any State.

16.7 Waiver. Any Member's failure to insist on compliance or enforcement of any provision of this Agreement shall not affect its validity or enforceability or constitute a waiver of future enforcement of that provision or of any other provision of this Agreement.

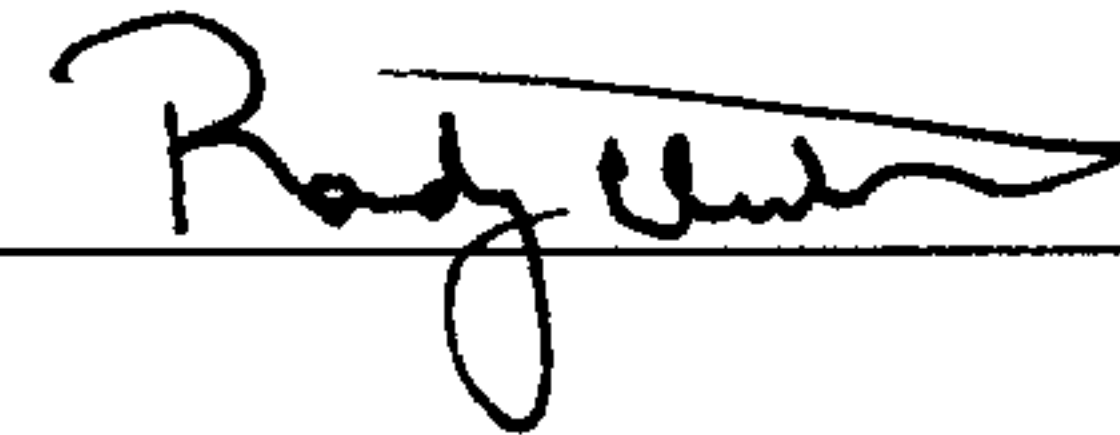
16.8 Copies. More than one (1) copy of this Agreement may be executed and all Members agree and acknowledge that each executed copy shall be a duplicate original.


16.9 Gender and Number. Whenever the context of this Agreement requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural and vice versa.

IN WITNESS WHEREOF, The Members have executed this agreement on the 25<sup>th</sup>  
day of April, 2007.

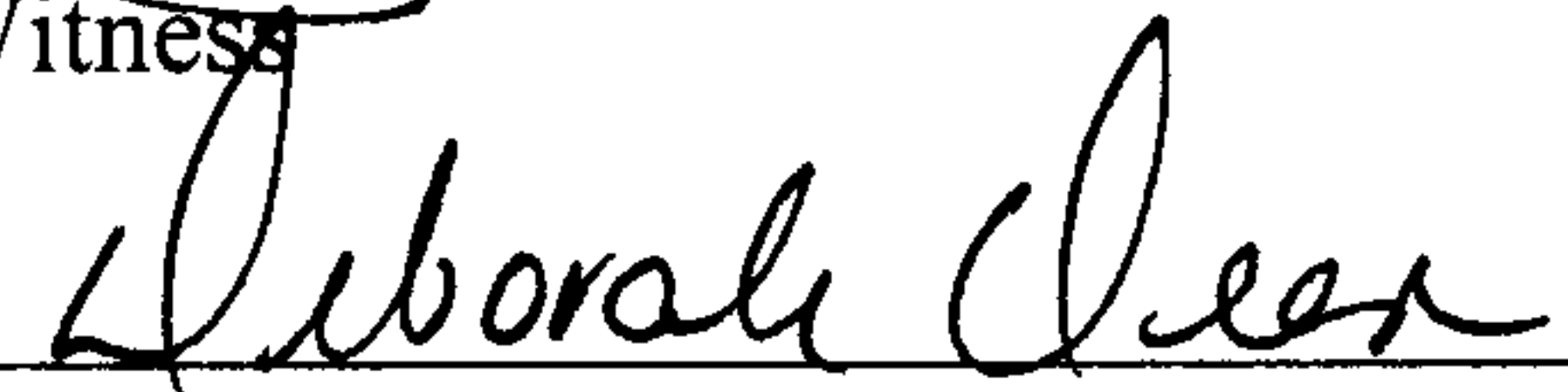
CLEMENTS DEAN BUILDING COMPANY, LLC

  
Witness

By 

  
Witness

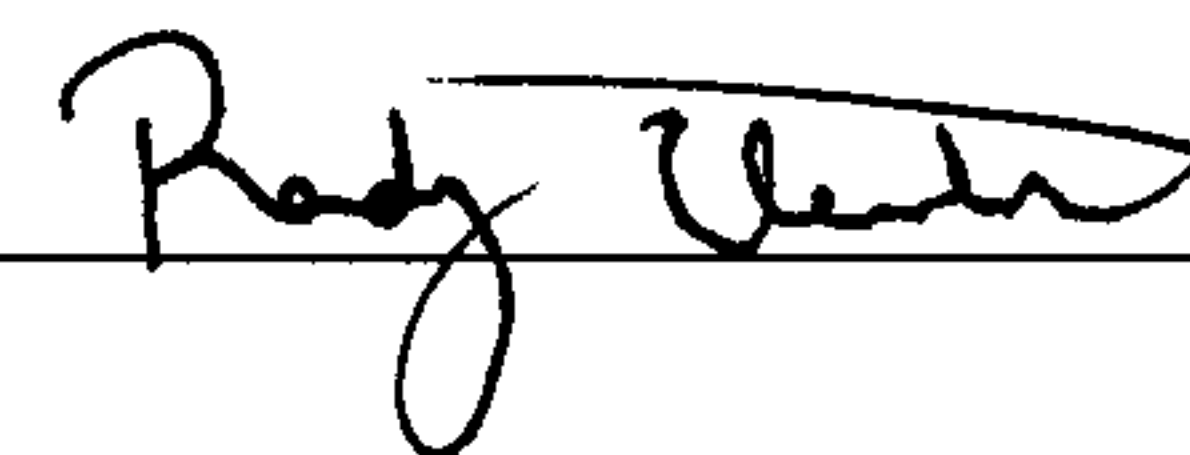
  
Randy Clements


  
Witness

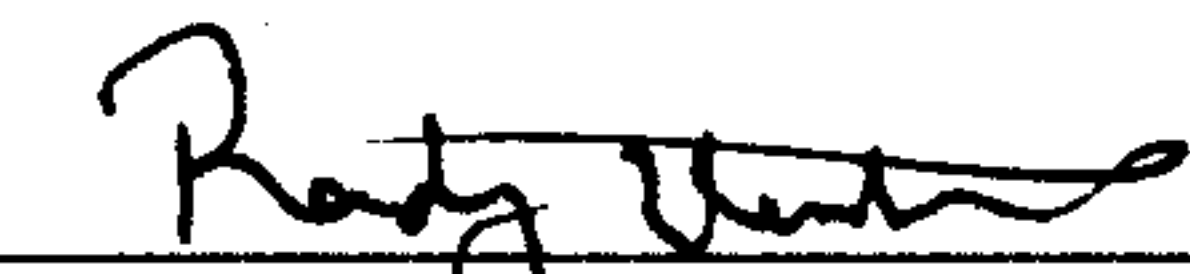
  
Gary P. Dean


C D INVESTMENTS, LLC

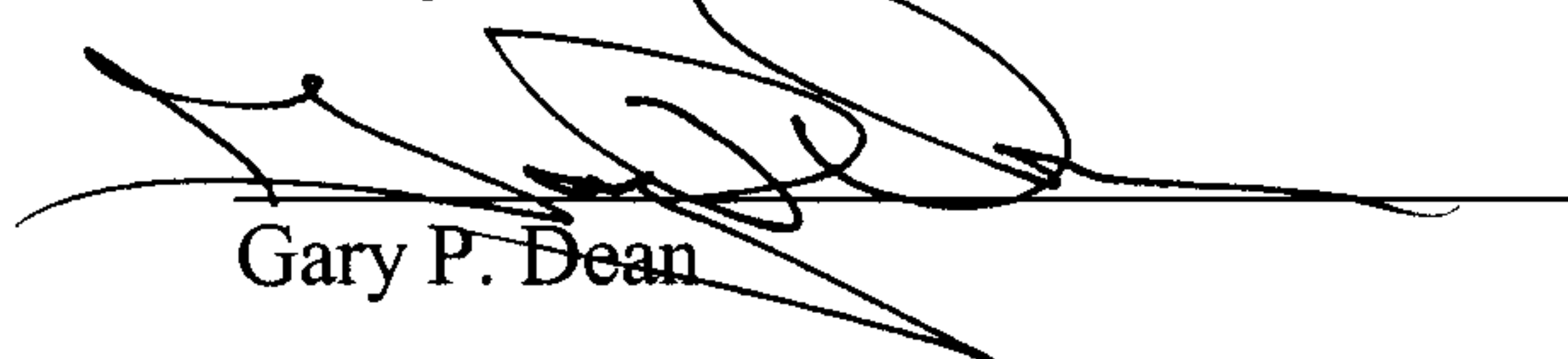
  
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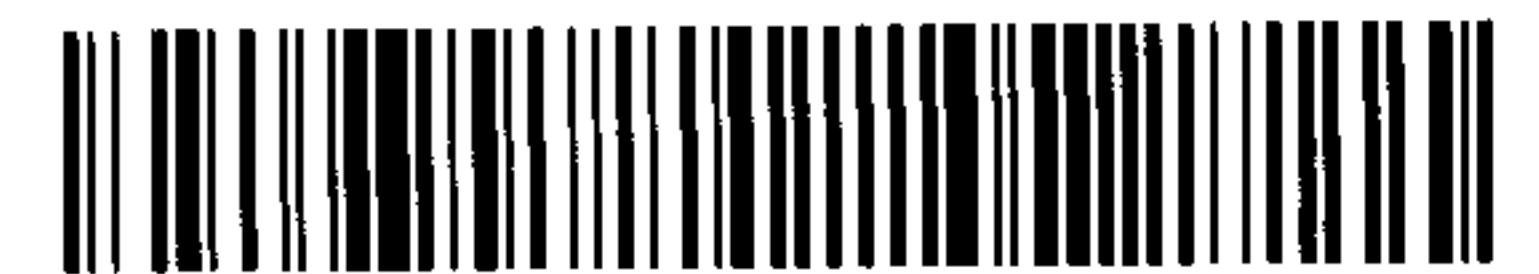
By 

  
Witness

  
Randy Clements

  
Witness

  
Gary P. Dean



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**EXHIBIT "A"**

<b><u>Date</u></b>	<b><u>Value</u></b>	
_____, 2008	\$ _____	_____ Randy Clements _____ Gary P. Dean
_____, 2009	\$ _____	_____ Randy Clements _____ Gary P. Dean
_____, 2010	\$ _____	_____ Randy Clements _____ Gary P. Dean
_____, 2011	\$ _____	_____ Randy Clements _____ Gary P. Dean
_____, 2012	\$ _____	_____ Randy Clements _____ Gary P. Dean
_____, 2013	\$ _____	_____ Randy Clements _____ Gary P. Dean
_____, 2014	\$ _____	_____ Randy Clements _____ Gary P. Dean

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\_\_\_\_\_, 2015 \$ \_\_\_\_\_

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Randy Clements

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Gary P. Dean

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Gary P. Dean

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## SCHEDULE B

Insured	Policy No.	Issued By:	Amount
Randy Clements	180010669	Banner Life Insurance Co.	\$750,000.00
Gary P. Dean	180008678	Banner Life Insurance Co.	\$500,000.00