

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

FILED

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

2019 MAY 24 P 3:41

HEAFNER FINANCIAL SOLUTIONS,  
INC.,

MECKLENBURG CO., C.S.O. Case No. 2019-CVS- 10080

BY  
Plaintiff,

vs.

BAKER WEALTH MANAGEMENT, INC.;  
and JASON M. BAKER;

Defendants.

**COMPLAINT**  
(Non-Jury)

Plaintiff Heafner Financial Solutions, Inc. complaining of Defendants Baker Wealth Management, Inc. and Jason M. Baker, alleges and states as follows:

**PARTIES**

1. That Plaintiff Heafner Financial Solutions, Inc. ("Plaintiff") is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business in Mecklenburg County, North Carolina.
2. That Plaintiff is informed and believes Defendant Baker Wealth Management, Inc. ("Baker Wealth") is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business in Mecklenburg County, North Carolina.
3. That Plaintiff is informed and believes Defendant Jason M. Baker ("Baker") is a citizen and resident of Mecklenburg County, North Carolina.

**FOR A FIRST CAUSE OF ACTION**  
(Breach of Contract – Promissory Note)

4. That on or about November 13, 2018, Plaintiff and Defendants entered into a Buy-Sell Agreement (the “Agreement”), wherein Defendants agreed to purchase for \$600,000.00 various assets from Plaintiff. A copy of the Agreement is attached hereto as **Exhibit A**, and its contents are incorporated herein by reference as if stated verbatim.

5. In accordance with the terms of the Agreement, Defendants executed on or about November 30, 2018, a Promissory Note (“Note”) in favor of Plaintiff in the amount of \$500,000.00 (the “Note Amount”). A copy of the Note is attached hereto as **Exhibit B**, and its contents are incorporated herein by reference as if stated verbatim.

6. That pursuant to the terms of the Agreement, Defendants on or about February 22, 2019, made a payment to Plaintiff in the amount of \$100,000.00.

7. That on or about April 26, 2019, Defendants notified Plaintiff via a letter from Defendants’ attorney, that they had no intention of making any payments as required by the Note (the “Repudiation Letter”).

8. That in the Repudiation Letter, Defendants further contended that the Agreement and Note are unenforceable and void or voidable.

9. That Defendants failed to pay the initial payment of \$43,753.00 due on or about May 13, 2019 pursuant to the terms of the Note.

10. That failure to pay the initial payment due pursuant to the terms of the Note constitutes an event of default as defined by the terms of the Note.

11. That Plaintiff is informed and believes Defendants repudiation of the Agreement and Note constitutes a breach of the Agreement and Note.

12. That Plaintiff is further informed and believes Defendants are in default of the terms of the Note.

13. That the principal of and accrued interest on the Note are due and payable immediately.

14. That the balance due on the Note is the principal amount of \$500,000.00 plus interest at 3% from November 13, 2018.

15. That Defendants have failed to fulfill their obligations under the Note.

16. That Defendants are obligated to pay the balance owed on the Note.

17. That Plaintiff and Defendants are parties to a contract supported by valuable consideration.

18. That Defendants have breached the contract by repudiating the Agreement and Note.

19. That Defendants have breached the contract by failing to pay the Note Amount and interest as required by the terms of the Note.

20. That as a direct and proximate result of the breach by Defendants, Plaintiff is informed and believes it is entitled to recover from Defendants, jointly and severally, its actual damages in the amount of \$500,000.00, plus interest at the rate of 3% per annum from November 13, 2018.

21. That as a direct and proximate result of the breach by Defendants, Plaintiff is informed and believes it is entitled to recover from Defendants, jointly and severally, its attorney's fees and costs in this action.

22. That Plaintiff is informed and believes it is entitled to a judgment against Defendants, jointly and severally, in the amount of \$500,000.00, plus interest at the rate of 3% per annum from November 13, 2018, as well as attorney's fees and the costs of this action.

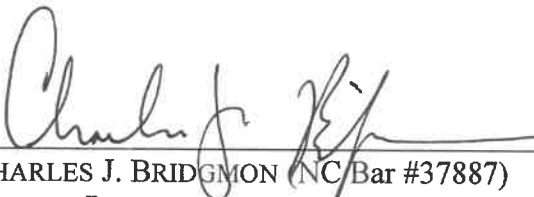
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Heafner Financial Solutions, Inc. prays for a judgment against Defendants Baker Wealth Management, Inc. and Jason M. Baker, jointly and severally, as follows:

1. For damages against Defendants, jointly and severally, in the amount of \$500,000.00;
2. For interest as allowed by the Note and by law;
3. For attorney's fees as allowed under the Agreement, Note, and common or statutory law;
4. For the costs of this action; and
5. For such other relief as the Court deems just and proper.

This the 23<sup>rd</sup> day of May, 2019.

By:



CHARLES J. BRIDGMON (NC Bar #37887)

**BRAY & LONG, PLLC**

2820 Selwyn Avenue, Suite 400

Charlotte, North Carolina 28209

Phone: (704) 523-7777

Fax: (704) 523-7780

Email: cbridgmon@braylong.com

*Attorney for Plaintiff*

# EXHIBIT A

## Buy-Sell Agreement

This Buy-Sell Agreement (this "**Agreement**") is made between Heafner Financial Services, Inc., located at 10700 Sikes Place, Suite 150, Charlotte, NC 28277 (the "**Seller**"), and Jason M. Baker and Baker Wealth Management, Inc., located at 10955 Winds Crossing Drive, Suite 100, Charlotte, NC 28273 (collectively, the "**Buyer**"). The Buyer and Seller are each hereinafter referred to as a "**Party**" and collectively as the "**Parties**".

**WHEREAS**, Seller has developed certain good will (the "**Good Will**") associated with its existing relationships with the individuals set forth on Exhibit A (the "**List**") and Seller has provided certain non-investment advisory services to Buyer to assist with the transfer to the Buyer (the "**Transfer Services**" and, together with the Good Will, the "**Purchased Items**");

**WHEREAS**, Seller is the sole and unencumbered owner of the Good Will; and

**WHEREAS**, Buyer is affiliated with Cambridge Investment Research, Inc. ("**CIR**") as a registered representative of FINRA and is properly licensed with the applicable state securities regulators as a securities agent of CIR and/or an investment advisor representative of Cambridge Investment Research Advisors, Inc.; and

**WHEREAS**, Seller desires to sell to Buyer, and Buyer desires to buy from Seller, the Purchased Items pursuant to the terms of this Agreement.

**NOW, THEREFORE**, Buyer and Seller agree as follows:

- 1. Purchase and Sale.** Buyer will purchase and Seller will sell under the terms described in this Agreement the Good Will free and clear of any debts, franchise restrictions, security interests, or other liens or encumbrances. For purposes of this Agreement, the Good Will specifically excludes Seller's good will and any services associated with Seller's insurance business.
- 2. Assets Excluded from Assignment.** Except as otherwise provided by this Agreement, Buyer is not acquiring or assuming any other assets, liabilities, or other contractual obligations of Seller or other legal entities owned or controlled by Seller. Buyer is not assuming any obligations or liabilities owed by Seller to any of Seller's employees or independent contractors. Buyer is not assuming liability for any office or equipment leases of Seller. All office furnishings, computers, printers, filing cabinets, vehicles, and other office items will remain property of Seller except as otherwise provided by this Agreement, and such property is not part of the sale of the Purchased Items. Buyer is not assuming any liability presently owed by Seller, or subsequently owed by Seller in the future, to any individuals on the List or any other third-party.
- 3. Transfer Efforts.** The Buyer agrees that on and for at least twelve (12) months after the date this Agreement is signed (the "**Closing Date**"), Buyer will provide his best efforts to retain the investment advisory business of the individuals set forth on the List.
- 4. Payments.** Buyer will pay Seller (or Seller's designee) Six Hundred Thousand Dollars (\$600,000.00) (the "**Purchase Price**"), with One Hundred Thousand Dollars (\$100,000) or

16.67% being allocated to the Good Will and Five Hundred Thousand Dollars (\$500,000) or 83.33% being allocated to consulting, the provision of the non-solicit contained in this Agreement, and the Transfer Services. The Purchase Price will be payable as follows:

- A. Initial Payment. Immediately upon the total market value of each and every account, investment, or other product associated with one or more individuals on the List (including, but not limited to, any related or affiliated entity, IRA, 401k, trust, or other accounts) for which Buyer directly or indirectly charges (or could charge) any fee equals Fifteen Million Dollars (\$15,000,000) or more, Buyer will pay Seller One Hundred Thousand Dollars (\$100,000.00) (the “**Initial Payment**”); and
- B. Seller Financing. Buyer will pay Seller (or Seller’s designee) the remaining Five Hundred Thousand Dollars (\$500,000.00), subject to the terms and conditions set forth in the promissory note attached as Exhibit B (the “**Promissory Note**”) and as set forth herein.
  - i. Initial Promissory Note Payment and Payment Schedule. The initial Promissory Note payment will be due and payable six (6) months after the Closing Date. Thereafter, the remaining Promissory Note payments will be payable quarterly for three (3) years (*i.e.*, the Promissory Note will be paid in twelve (12) equal payments).
  - ii. Interest. The outstanding balance of the Promissory Note will bear simple interest at a rate of three percent (3%) annually (the “**Interest**”).
  - iii. Prepayment. Any time after the Adjustment Date (defined below), Buyer may elect to pay the then outstanding balance then due under the Promissory Note in full at any time with no early payment penalty.

5. **Promissory Note Adjustment.** The total amount due under the Promissory Note (the “**Note Amount**”) will be subject to adjustment on the date twelve (12) months after the Closing Date (the “**Adjustment Date**”). For purposes of calculating the amount of any adjustment to be made to the Note Amount on the Adjustment Date, the total market value of each and every account associated with one or more individuals on the List (including, but not limited to, any related or affiliated entity, IRA, 401k, trust, or other accounts) for which Buyer charges (or could charge) any fee will be calculated (the “**Total Market Value**”). If the Total Market Value is less than \$25 million on the Adjustment Date, the Note Amount will be adjusted proportionately in accordance with how much the Total Market Value is less than \$30 million. For example, if on the Adjustment Date the Total Market Value is \$27 million, no adjustment to the Note Amount will be made. Alternatively, if on the Adjustment Date the Total Market Value is \$20 Million, then the Note Amount will be reduced by 33.34%  $((\$30,000,000 - \$20,000,000) / \$30,000,000)$ . If the Note Amount is adjusted on the Adjustment Date, then all future Promissory Note payments will be adjusted so that the remaining payments will be sufficient to repay the adjusted Note Amount plus Interest.

6. **Non-Solicit.** In exchange for Buyer's purchase of the Purchased Items, for forty eight (48) months following the Closing Date, Seller and/or entities or individuals who control or are controlled by Seller will not solicit directly or indirectly any of the individuals on the List for the provision of investment advisory services, nor serve as a registered representative, or investment adviser representative to any such individual or account associated with such individual. In exchange for the Seller's sale of the Purchased Items, Buyer agrees not to solicit directly or indirectly any of the individuals on the List for the provision of insurance services during any period when the Seller has such a relationship with an applicable individual and for a period of twelve (12) months thereafter.

7. **Warranty.** Seller warrants and covenants that Seller is the owner of all right, title, and interest (legal and beneficial), free and clear of all liens or any other encumbrances, in the Good Will at the time Seller executes this Agreement. Seller warrants there is no outstanding security interest, contractual obligation, or other condition or circumstance that may directly or indirectly give rise to or provide a basis for the assertion of a claim by any person to the effect that such person is entitled to acquire or receive the Good Will that conflicts with Seller's obligations or Buyer's rights hereunder.

8. **Eligibility.** Neither the Buyer, nor the Seller, believe that the Payment of the Purchase Price to Seller or Seller's legal representative, estate, or beneficiaries violates any statute, regulation, or rule enforced or administered by the United States Securities and Exchange Commission, FINRA, or any state securities regulator. In addition, Seller represents and Buyer acknowledges that Seller has no brokerage relationships with any of the individuals on the List and is not entitled to receive any payments that would be subject to FINRA Rule 2040. Further, both Buyer and Seller represent and acknowledge that the payment of the Purchase Price is in exchange for the sale and transfer of the Good Will and does not constitute the payment of ongoing commissions or ongoing investment advisory fees. Notwithstanding the foregoing, in no event will Buyer be required to make a payment to Seller that a court or regulator of competent jurisdiction officially determines is impermissible in a formal writing.

9. **Indemnification.**

- A. The representations, warranties, covenants, and obligations of Buyer and Seller under this Agreement will survive (without limitation) the execution of this Agreement. All of said representations, warranties, covenants, and obligations will remain in full force and effect and will survive for forty eight (48) months.
- B. Seller will hold harmless and indemnify Buyer from any damages, including attorney fees, which are directly or indirectly suffered or incurred by Buyer and arising directly or indirectly from or in connection with any of the following:
  - i. any material breach, resulting from Seller's intentional misrepresentation, fraud, or gross negligence, of any representation or warranty made by Seller in this Agreement;
  - ii. any material breach by Seller of any obligation or covenant under this Agreement; and



- iii. any complaint, regulatory investigation or proceeding, arbitration, or lawsuit initiated by an individual or a securities regulator regarding Seller's activities or investment recommendations.
- C. Buyer will hold harmless and indemnify Seller from any damage, including attorney fees, which are directly or indirectly suffered or incurred by Seller and arising directly or indirectly from or in connection with any of the following:
  - i. any material breach, resulting from Buyer's intentional misrepresentation, fraud, or gross negligence, of any representation or warranty made by Buyer in this Agreement;
  - ii. any material breach by Buyer of any obligation or covenant under this Agreement; and
  - iii. any complaint, regulatory investigation or proceeding, arbitration, or lawsuit initiated by an individual or a securities regulator regarding Buyer's activities or investment recommendations.
- D. The indemnification remedies provided under this section are not exclusive. Accordingly, the exercise of any of the rights under this section will not be deemed to be an election of remedies and will not be deemed to prejudice, or to constitute or operate as a waiver of, any other right or remedy that a Party may be entitled to exercise (whether under this Agreement, under any other contract, under any statute, at common law, in equity, or otherwise).

9. **Successors and Assigns.** This Agreement may not be assigned by any Party without prior written consent of the other Party. Upon any effective assignment of either Party's rights hereunder, the assigning Party as well as the assignee will be jointly and severally liable hereunder, unless otherwise agreed to by the other Party.

10. **Miscellaneous.**

- A. Amendments. No provisions of this Agreement may be amended or modified in any manner except by a written agreement properly authorized and executed by the Parties hereto.
- B. Counterparts. The Parties may execute this Agreement in any number of counterparts, and all of the counterparts taken together will be deemed to constitute one and the same instrument.
- C. Severability. Unless if to do so would defeat a material purpose of this Agreement, if any part, term, or provision of this Agreement is held to be illegal, in conflict with any law, or otherwise invalid, the remaining portion or portions will be considered severable and not be affected by such determination, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be illegal or invalid.


- D. Headings. Section and paragraph headings in this Agreement are included for convenience only and are not to be used to construe or interpret this Agreement.
- E. Representation of Signatories. Each of the undersigned expressly warrants and represents that it has full power and authority to sign this Agreement on behalf of the Party indicated and that its signature will bind the Party indicated to the terms hereof.
- F. Notice. Any notice or other communication required or permitted to be given pursuant to this Agreement will be deemed to have been duly given when delivered in person, sent by U.S. mail (first class) or overnight courier, or transmitted electronically by email with a hard copy subsequently sent by U.S. mail (first class). All postage must be prepaid. All notices or communications to the respective Parties will be sent to the address provided at the preamble of this Agreement unless written instructions are provided to the other Party to send notifications to an alternate address.
- G. Costs of Enforcement. In the event of any litigation brought to enforce any material provision of this Agreement, the prevailing Party will be entitled to recover his/her reasonable attorney's fees and court costs from the other Party.
- H. Successors and Assigns Bound. This Agreement will be binding upon the heirs, successors, and assigns of the Parties hereto.
- I. Entire Agreement. This Agreement sets forth the entire understanding of the parties relating to the subject matter hereof and supersedes all prior agreements and understandings among or between any of the parties relating to the subject matter hereof.

[SIGNATURE PAGE FOLLOWS]

The Parties hereto agree to the above terms and have caused this Agreement to be executed in their names or on their behalf by and through their duly authorized persons on the dates below.

**BUYER:**

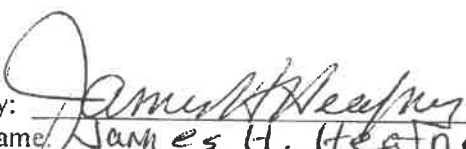
**BAKER WEALTH MANAGEMENT, INC.      JASON M. BAKER**

By:   
Name: JASON BAKER  
Date: 11-13-2018

  
\_\_\_\_\_  
Jason Baker

**SELLER:**

**HEAFNER FINANCIAL SERVICES, INC.**

By:   
Name: James H. Heafner  
Date: 11-13-2018

**EXHIBIT A**

**THE LIST**

[TO BE INSERTED]

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**EXHIBIT B**  
**THE PROMISSORY NOTE**

[TO BE INSERTED]

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## **EXHIBIT B**

## PROMISSORY NOTE

\$500,000.00

November 30, 2018

1. Principal. In accordance with Section 4(B) of that certain Buy-Sell Agreement dated November 13, 2018 (the "**Purchase Agreement**"), Jason M. Baker and Baker Wealth Management, Inc. (collectively, the "**Maker**"), for value received, hereby jointly and severally promise to pay to the order of Island Dreams Master Preservation, LLC ("**Holder**") in lawful money of the United States of America, the principal amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00), together with interest as set forth below. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement.

2. Interest. The Maker promises to pay interest on the unpaid principal amount from November 13, 2018 until such principal amount is paid in full at the simple interest rate of three percent (3%) per annum. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

3. Repayment of Principal and Interest. The Maker will repay the total unpaid balance of principal and accrued interest described in this promissory note (this "**Note**") as follows:

- 3.1 one installment of \$[43,753.00] due on the six-month anniversary of the date of the Purchase Agreement;
- 3.2 one installment of \$[43,753.00] due on the nine-month anniversary of the date of the Purchase Agreement (the "**Second Payment Date**");
- 3.3 ten (10) equal quarterly installments of \$[43,753.00] (subject to adjustment as set forth in Section 5 hereof) due on each three-month anniversary of the Second Payment Date for each of the immediately following ten (10) three-month periods; and
- 3.4 one final payment of any amounts remaining due and payable hereunder, due on the thirty-nine-month anniversary of the Purchase Agreement.

4. Prepayment. Unpaid principal and unpaid accrued interest of this Note may be prepaid by Maker without penalty at any time following the Adjustment Date (defined below).

5. Adjustment. The total amount due under this Note will be subject to adjustment on the date twelve (12) months after the date of the Purchase Agreement (the "**Adjustment Date**"), pursuant to the terms of Section 5 of the Purchase Agreement, based on the Total Market Value as of the Adjustment Date. If the total amount due under this Note is adjusted on the Adjustment Date, then the installment amounts and payments described in Section 3.3 and 3.4 hereof will be adjusted accordingly so that the remaining payments will be sufficient to repay the adjusted amount due under this Note, plus any interest thereon.

6. Defaults and Remedies.

6.1 Events of Default. An “**Event of Default**” will occur hereunder if:

- (i) the Maker defaults in the payment of the principal of this Note, when and as the same will become due and payable; or
- (ii) the Maker defaults in the payment of any interest on this Note, when and as the same becomes due and payable; or
- (iii) if the Maker commences any proceeding in bankruptcy or for dissolution, liquidation, winding-up, composition or other relief under state or federal bankruptcy laws; or
- (iv) if any proceedings described in clause (iii) above are commenced against the Maker, or a receiver or trustee is appointed for the Maker or a substantial part of its property, and such proceeding or appointment is not dismissed or discharged within 60 days after its commencement;

provided, however, that, notwithstanding the foregoing, an Event of Default will only be deemed to occur if an event described in any of clauses (i) through (iv) above continues for ten (10) days following written notice thereof from the Holder to the Maker.

6.2 Acceleration. If an Event of Default occurs and is continuing, the Holder, by written notice to the Maker, may declare the principal of and accrued interest on this Note to be due and payable immediately. Upon any such declaration of acceleration, such principal and interest will become immediately due and payable and the Holder will be entitled to exercise all of its rights and remedies hereunder whether at law or in equity. The failure of the Holder to declare the Note due and payable will not be a waiver of its right to do so, and the Holder will retain the right to declare the Note due and payable unless it executes a written waiver.

7. Waiver of Notice of Presentment. The Maker hereby waives presentment, demand for performance, notice of non-performance, protest, notice of protest, and notice of dishonor. No delay on the part of Holder in exercising any right hereunder will operate as a waiver of such right or any other right.

8. Costs and Expenses. Upon the occurrence of an Event of Default under this Note, the Maker agrees to pay immediately upon Holder’s demand therefor all costs and expenses (including, without limitation, reasonable attorneys’ fees) incurred by Holder in exercising its rights and remedies hereunder on account of such Event of Default.

9. Non-Waiver. The failure of the Holder to enforce or exercise any right or remedy provided in this Note or at law or in equity upon any default or breach will not be construed as waiving the rights to enforce or exercise such or any other right or remedy at any later date. No exercise of the rights and powers granted in or held pursuant to this Note by the Holder, and no delays or omissions in the exercise of such rights and powers will be held to exhaust the same or be construed as a waiver thereof, and every such right and power may be exercised at any time and from time to time.



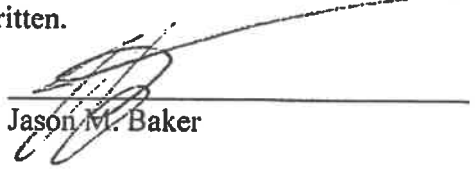
10. Notices. All notices and other communications under this Note shall be in writing and governed by the requirements, procedures, and provisions of Section 10(F) of the Purchase Agreement.

11. Governing Law. This Note is being delivered in and will be construed in accordance with the laws of the State of North Carolina, without regard to the conflicts of laws provisions thereof.

12. Amendment; Assignment. Any term of this Note may be amended only with the written consent of the Holder and the Maker.

*[Remainder of page intentionally left blank.]*

ISSUED as of the date first above written.

  
\_\_\_\_\_  
Jason M. Baker

BAKER WEALTH MANAGEMENT, INC.

By: \_\_\_\_\_

Name: JASON BAKER

Title: CEO