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California Legal Forms--Transaction Guide

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PART II: Transactions in Turbulent Times - Enforcing or Settling Claims.

CHAPTER 12: Creditor Claims.

37TTT-12 California Legal Forms--Transaction Guide 12.syn

§ 12.syn Synopsis to Chapter 12: Creditor Claims.

Form T12-1 Contingent Fee Agreement in Letter Form for Handling Collection Claims

Form T12-1 Contingent Fee Agreement in Letter Form for Handling Collection Claims

Form T12-2 Power of Attorney to Demand and Receive Money Owing

Form T12-2 Power of Attorney to Demand and Receive Money Owing

Form T12-3 Power of Attorney to Collect Debts and/or to Name Substitute

Form T12-3 Power of Attorney to Collect Debts and/or to Name Substitute

Form T12-4 Power of Attorney to Represent Creditor of Bankrupt or Debtor

Form T12-4 Power of Attorney to Represent Creditor of Bankrupt or Debtor



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37TTT-12 California Legal Forms--Transaction Guide Form T12-1

Form T12-1 Contingent Fee Agreement in Letter Form for Handling Collection Claims

Description: This form is a contingent fee agreement in letter form in which the attorney agrees to represent a client in the collection of delinquent claims.

Form T12-1 Contingent Fee Agreement in Letter Form for Handling Collection Claims

[Letterhead of attorney or law firm]

_____ [date]

_____ [name of client]

_____ [street address]

_____ [city, state, and zip code]

Dear _____ [name of client]:

In accordance with our discussion on _____ [date], I am writing to confirm the terms on which you have retained this office to handle the collection of Claims on your firm's behalf.

Our attorney's fee for handling these matters will be a percentage of the amount recovered on each Claim, as follows:

1. _____ percent on the first \$_____.
2. _____ percent on the next \$_____.
3. _____ percent on the excess over \$_____.

This office will advance all court costs, for which your firm will reimburse us, whether or not an amount is recovered

on any Claim. By this arrangement, if you receive nothing on a Claim, this office will receive nothing for its services. However, you will be responsible for all costs advanced by this office on your behalf, even if you receive no recovery.

For the purposes of this agreement, "Claim" refers to a debt arising out of a transaction or a series of transactions, the entire amount of which is due at the time you first transmit the claim to this office for collection. If the debtor raises a defense or counterclaim that will involve an unusual amount of our time, we will notify you in order to agree on an increased percentage fee or some other mutually acceptable fee basis.

No settlement of any Claim will be made by this office without your complete approval, and all settlement offers will be communicated to you.

If the above meets with your complete approval, please date and sign the enclosed copy of this letter where indicated and return it to this office.

We look forward to being of service to you. If you have any questions, please do not hesitate to call us.

Very truly yours,

[Include signature block for attorney]

ACCEPTED AND AGREED TO on _____ [date].

[Include signature block for client]



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37TTT-12 California Legal Forms--Transaction Guide Form T12-2

Form T12-2 Power of Attorney to Demand and Receive Money Owing

Description: This limited power of attorney essentially authorizes the agent to act as a collection agent on a particular debt due and owing to the principal.

Form T12-2 Power of Attorney to Demand and Receive Money Owing

State of _____)
County of _____) ss:

Know all men by these presents, that I, _____ [name of principal] of _____ [address], do hereby make, constitute, and appoint _____ [name of agent], of _____ [address], my true and lawful attorney-in-fact for me and in my name, place, and stead:

To ask, demand, and receive all sums of money which shall be or become due, owing or payable to me by means of any sale or lease of the real estate of which _____ [name of decedent], deceased, died seized and possessed, or any part thereof, and to have and take all lawful ways and means for the recovery thereof; to compound, arbitrate and agree for the same, and give acquittances or other sufficient releases, satisfactions or discharges for the same to make, seal and deliver; giving and granting unto my said attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or her substitute shall lawfully do or cause to be done by virtue hereof.

Dated:

[signature of principal]

)

State of _____) ss:
County of _____)

On _____ [date], before me, _____ [name of notary public], the undersigned officer, personally appeared [name of principal], satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Notary Public _____

My commission expires on _____ [date]

[Seal]



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37TTT-12 California Legal Forms--Transaction Guide Form T12-3

Form T12-3 Power of Attorney to Collect Debts and/or to Name Substitute

Description: This form is a limited power of attorney which appoints an agent for the purpose of collecting debts owed to the principal. This form also allows the agent to appoint either a substitute agent or a subagent. The agent has the authority to remove this substitute or subagent at any time and for any reason.

Form T12-3 Power of Attorney to Collect Debts and/or to Name Substitute

State of _____)
County of _____) ss:

Know all men by these presents, that I, _____ [name of principal], of _____ [address], do hereby make, constitute, and appoint _____ [name of agent], of _____ [address], my true and lawful attorney-in-fact for me and in my name, place, and stead:

To demand, sue for, collect and receive all debts that may be due or owing to me, to accept notes for such debts and to discount such notes, to settle and compromise any such debts or obligations that may be due me and to indorse in my name any check or note payable to me or my order given in payment of any such debt or obligation and to take such other steps in connection with any such debt or obligation that he may deem necessary and proper and in my name to make and deliver all necessary receipts, releases and discharges of any such debt or obligation with the same effect as if such receipts, releases or discharges were executed by me personally.

My said attorney shall at any time and for any reason have the power to appoint, either as a substitute for him or to perform some or all of the powers conferred upon him, a substitute attorney who shall have such powers herein granted as shall be conferred upon him by my attorney herein named, and my said attorney shall further have the power to remove such substitute as such substitute attorney at any time and for any reason and whenever he deems it desirable to appoint another or others in the place of such substitute attorney.

Dated:

[signature of prin-

cipal]



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37TTT-12 California Legal Forms--Transaction Guide Form T12-4

Form T12-4 Power of Attorney to Represent Creditor of Bankrupt or Debtor

Description: This form is a limited power of attorney which appoints an agent for the purpose of representing the principal in his or her capacity as a creditor of a named debtor who has filed a Bankruptcy Petition.

Form T12-4 Power of Attorney to Represent Creditor of Bankrupt or Debtor

Dated: _____

To: _____

[name and address]

[city and state]

The undersigned claimant hereby authorizes you with full power of substitution, to attend all meetings of creditors of the bankrupt or debtor above named, and all adjournments thereof, at the places and times appointed by the Court, and for and in the name of the undersigned, to vote for or against any proposal or resolution that may be then submitted under the Acts of Congress relating to bankruptcy, to vote for a trustee or trustees of the estate of the said bankrupt or debtor and for a committee of creditors, to accept any Arrangement or Wage Earner's plan proposed by said bankrupt or debtor in satisfaction of his debts, and to receive payment of dividends and payment or delivery of money or of other consideration due the undersigned under such Arrangement or Wage Earner's Plan, and for any other purpose in the undersigned's interest whatsoever except acts constituting the practice of law; and with like powers to attend and vote at any special meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid.

You are expressly authorized and empowered to deduct from all moneys that you may receive as the undersigned's attorney-in-fact by way of dividends or payments due the undersigned pursuant to this power of attorney, a maximum of _____% thereof, and to pay over and apply the moneys so deducted to, and for the account of, the costs of representing the undersigned in such bankruptcy proceeding, and to remit the remaining balance of such moneys to the undersigned.

Signed, sealed, and delivered in the presence of _____ [name and address of notary public]

Acknowledged before me _____ [date].

Notary Public

[Seal]



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CHAPTER 13: Demand.

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§ 13.syn Synopsis to Chapter 13: Demand.

Form T13-1 Request for Statement of Account or List of Collateral (for use by debtor)

Form T13-1 Request for Statement of Account or List of Collateral (for use by debtor)

Form T13-2 Secured Party's Reply to Debtor's Request for Statement and Request for Payment of Charge

Form T13-2 Secured Party's Reply to Debtor's Request for Statement and Request for Payment of Charge

Form T13-3 General Commercial Debt Demand Letter

Form T13-3 General Commercial Debt Demand Letter

Form T13-4 General Consumer Demand Letter

Form T13-4 General Consumer Demand Letter

Form T13-5 Demand for Cash Payment of Dishonored Instrument

Form T13-5 Demand for Cash Payment of Dishonored Instrument

Form T13-6 Demand for Cash Payment of Check Subject to Stop Payment Order

Form T13-6 Demand for Cash Payment of Check Subject to Stop Payment Order

Form T13-7 Demand Letter--Breach of Payment Arrangement

Form T13-7 Demand Letter--Breach of Payment Arrangement

Form T13-8 Debtor's Demand for Termination Statement From Secured Party

Form T13-8 Debtor's Demand for Termination Statement From Secured Party



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37TTT-13 California Legal Forms--Transaction Guide Form T13-1

Form T13-1 Request for Statement of Account or List of Collateral (for use by debtor)

Description: This form includes a request for an accounting of unpaid obligations, a request for a statement of the amount due on the debtor's obligations secured by collateral, and a request regarding a list of collateral securing an obligation.

Form T13-1 Request for Statement of Account or List of Collateral (for use by debtor)

REQUEST _____ [FOR ACCOUNTING *or* REGARDING STATEMENT OF ACCOUNT *or* REGARDING LIST OF COLLATERAL]

TO: _____ [name of secured party]
_____ [address]
_____ [city], _____ [state]

[If accounting of unpaid obligations is desired, use:]

The undersigned debtor requests that you provide an accounting of the unpaid _____ [security agreement *or* note *or* conditional sale *or* specify other form of obligation], executed by the debtor on _____ [date], to you, [add, as required to reasonably identify transaction: secured by _____ (describe collateral)].

[Or, if statement of account of unpaid obligation is desired, use:]

The undersigned debtor requests that you approve or correct, and return to the debtor, this statement of account. The debtor believes that the aggregate balance due you on the _____ [security agreement *or* note *or* conditional sale *or* specify other form of obligation] executed by the debtor on _____ [date], [add, as required to reasonably identify transaction: secured by _____ (describe collateral)], is \$ _____ [amount] as of _____ [date].

[Or, if list of collateral is desired, use:]

The undersigned debtor requests that you approve or correct the following list of collateral in which you have a security interest by virtue of the security agreement dated _____ and executed by the debtor:
_____[list collateral].

[Continue with the following:]

In accordance with *Commercial Code Section* _____, your response is required within 14 days following receipt of this request.

Thank you for your prompt attention.

Date: _____

_____ [signature of debtor]

_____ [typed name]



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CHAPTER 13: Demand.

*37TTT-13 California Legal Forms--Transaction Guide Form T13-2***Form T13-2 Secured Party's Reply to Debtor's Request for Statement and Request for Payment of Charge**

Description: This form is for use by a secured party in reply to the debtor's request for an accounting of unpaid obligations, a request for a statement of the amount due on the debtor's obligations secured by collateral, or a request regarding a list of collateral securing an obligation.

Form T13-2 Secured Party's Reply to Debtor's Request for Statement and Request for Payment of Charge

REPLY TO REQUEST _____ [FOR ACCOUNTING *or* REGARDING STATEMENT OF ACCOUNT *or* REGARDING LIST OF COLLATERAL] [*if appropriate, add: AND DEMAND FOR PAYMENT OF CHARGE*]

TO: _____ [name of secured party]
 _____ [address]
 _____ [city], _____ [state]

[*If reply is to request for accounting of unpaid obligations, use:*]

Following is an accounting of the unpaid _____ [security agreement *or* note *or* conditional sale *or* specify other form of obligation], executed by you on _____ [date], [*add, if desired:*] secured by _____ [describe collateral], as of _____ [specify date not more than 35 days earlier *or* 35 days later than date of record]: _____

[*Or, if reply is to request for statement of account of unpaid obligation, use:*]

The undersigned secured party returns to you the statement of account you sent. The statement has been reviewed and _____ [approved *or* corrected as noted].

[*Or, if party claims no interest in obligation, use:*]

37TTT-13 California Legal Forms--Transaction Guide Form T13-2

The undersigned claims no interest in the obligation referred to in your request dated _____. *[If party knows the name and mailing address of any assignee or successor, add:]*

The name and mailing address of the [assignee or successor] are as follows: _____.

[Or, if reply is to request for list of collateral and secured party claims interest in collateral, use:]

The undersigned secured party returns to you the list of collateral you sent. The statement has been reviewed and _____ [approved or corrected as noted]. *[Add, if desired: Please be advised that, with respect to the list of collateral you have sent, the undersigned claims a security interest in all _____ (describe type of collateral) owned by you.]*

[Or, if party claims no interest in collateral, use:]

The undersigned claims no interest in the collateral referred to in your request dated _____. *[If party knows the name and mailing address of any known assignee or successor, add: The name and mailing address of the _____ (assignee or successor) are as follows: _____.]*

[If debtor has submitted more than one request in six months, add:]

Since you have submitted _____ [number greater than one] requests within six months, in accordance with _____ [state] Commercial Code Section _____, the undersigned demands payment of \$ _____ [not exceeding \$25.00] for furnishing this reply statement.

[Continue with the following:]

Date: _____
 _____ [signature of secured party]
 _____ [typed name]



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37TTT-13 California Legal Forms--Transaction Guide Form T13-3

Form T13-3 General Commercial Debt Demand Letter

Description: This form may be used by a creditor's attorney to demand payment of a commercial debt.

Form T13-3 General Commercial Debt Demand Letter

[Letterhead and Address]

Dear _____ [name of debtor]:

I have been retained to collect a debt of \$_____ that you owe to _____ [name of client]. In order to resolve this matter without further action, please send your _____ [preferred method of payment, *e.g.*, certified check] for that amount to me immediately.

If you believe, for any reason, that you should not pay this debt at this time, please have your attorney call me. If you are financially unable to pay this debt in full, you may propose terms on which you are ready and willing to pay it, and I will present those terms to _____ [name of client] for consideration. However, any proposal you make will not necessarily delay action to collect this debt.

If this debt is not paid, or an agreement to pay it in installments has not been concluded, within 30 days, I will recommend that _____ [name of client] file suit against you. A suit may result in additional expenses for interest and court costs, and attorneys' fees will be sought.

[Signature.]



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37TTT-13 California Legal Forms--Transaction Guide Form T13-4

Form T13-4 General Consumer Demand Letter

Description: This form may be used by an attorney to demand payment of a consumer debt.

Form T13-4 General Consumer Demand Letter

[Letterhead and Address]

Dear _____ [name of debtor]:

I have been retained to collect a debt of \$_____ that you owe to _____ [name of client] _____ [add if debt is on open account: on your account numbered _____]. In order to resolve this matter without further action, please send your _____ [preferred method of payment, e.g., certified check] for that amount to me immediately.

If you believe, for any reason, that you should not pay this debt at this time, please have your attorney call me. If you are financially unable to pay this debt in full, you may propose terms on which you are ready and willing to pay it, and I will present those terms to _____ [name of client] for consideration. However, any proposal you make will not necessarily delay action to collect this debt.

Unless you dispute the validity of the debt or a portion of it within 30 days after receipt of this notice, I will assume that the debt is valid. If you notify me in writing within 30 days that this debt or a portion of it is disputed, I will provide verification of the debt to you. [Add, if client is not original creditor: Also, on your written request within 30 days after receipt of this letter, I will provide you with the name and address of the original creditor.]

I am required by law to inform you that I am attempting to collect a debt and that any information obtained will be used for that purpose.

If this debt is not paid, or an agreement to pay it in installments has not been concluded, within 30 days, I will

recommend that _____ [name of client] should file suit against you. A suit may result in additional expenses for interest and court costs, and attorneys' fees will be sought.

_____ [Signature]



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37TTT-13 California Legal Forms--Transaction Guide Form T13-5

Form T13-5 Demand for Cash Payment of Dishonored Instrument

Description: This form is a demand for cash payment of the amount of a dishonored check, draft, or order. The demand is made by the payee on the maker, drawer, or the person who delivered the instrument. This form should not be used to demand payment of a check that has been dishonored because the maker instructed the drawee to stop payment.

Form T13-5 Demand for Cash Payment of Dishonored Instrument

DEMAND FOR PAYMENT IN CASH

_____ [name of drawer or person delivering instrument]
_____ [address]
_____ [date]

Please take notice that payment of the [check *or* draft *or* order] number _____, dated _____, in the amount of \$ _____ and [signed *or* delivered] by you has been refused by _____ [name of drawee] _____ [for lack of funds *or* for lack of credit to pay *or* because _____ (you have *or* the maker has) no account with the drawee].

As permitted by _____ [state] Civil Code Section _____, I demand that you pay me, within 30 days, in cash, \$ _____, which is the sum of the following:

\$ _____, which is the amount of that [check *or* draft *or* order], plus

\$ _____ [amount of service charge, not to exceed \$25 for first check passed on insufficient funds or \$35 for each subsequent check passed on insufficient funds], which is the amount of the service charge, plus

\$ _____, which is the cost to mail this written demand for payment.

If you fail pay that aggregate amount in full within 30 days from the date this written demand was mailed to you, you

37TTT-13 California Legal Forms--Transaction Guide Form T13-5

will be liable, instead, under *Civil Code Section* _____, for the amount of the [check *or* draft *or* order], minus any partial payments made toward the amount of the [check *or* draft *or* order] or the service charge within 30 days of the written demand, plus damages equal to three times the amount of the amount of the [check *or* draft *or* order], which shall not be less than \$100 or more than \$1,500.

However, you are not liable for the service charge under _____ [state] Civil Code Section _____ if either (1) at any time, you present me with written confirmation by your financial institution that the [check *or* draft *or* order] was returned to me by the financial institution because of an error on the part of that institution or (2) at any time, you present me with written confirmation that your account had insufficient funds as a result of a delay in the regularly scheduled transfer or posting of a direct deposit of a social security or government benefit assistance payment.

If you have stopped payment to resolve a good faith dispute with me, you are not liable for the service charge, costs to mail this written demand, or treble damages under _____ [state] Civil Code Section _____.

PAYEE

_____ [signature of payee]
[typed name]

NOTICE TO DRAWER

_____ [date]

To: _____ [name of drawer]

_____ [name of payee] is the payee of a check you wrote for \$ _____. The check was not paid because [of lack of funds *or* of lack of credit to pay *or* you have no account with the drawee], and the payee demands payment. You may have a good faith dispute as to whether you owe the full amount. If you do not have a good faith dispute with the payee and fail to pay the payee the full amount of the check in cash, a service charge not to exceed \$25 for the first check passed on insufficient funds and not to exceed \$35 for each subsequent check passed on insufficient funds, and the costs to mail this notice within 30 days after this notice was mailed, you could be sued and held responsible to pay at least both of the following:

- (1) The amount of the check.
- (2) Damages of at least \$100 or, if higher, three times the amount of the check, up to \$1,500.

To make payment, contact the payee at:

_____ [name of payee]

_____ [street address]

_____ [telephone number]

You may wish to contact a lawyer to discuss your legal rights and responsibilities.

_____ [signature of sender of notice]
[typed name]



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*37TTT-13 California Legal Forms--Transaction Guide Form T13-6***Form T13-6 Demand for Cash Payment of Check Subject to Stop Payment Order**

Description: This form is a demand for payment of a check that has been dishonored because the drawer has instructed the drawee to stop payment.

Form T13-6 Demand for Cash Payment of Check Subject to Stop Payment Order

NOTICE TO DRAWER

_____ [date]

To: _____ [name of drawer]

_____ [Name of payee] is the payee of a check you wrote for \$ _____. The check was not paid because you stopped payment, and the payee demands payment. You may have a good faith dispute as to whether you owe the full amount. If you do not have a good faith dispute with the payee and fail to pay the payee the full amount of the check in cash plus a service charge not to exceed \$25 for the first check passed on insufficient funds and not to exceed \$35 for each subsequent check passed on insufficient funds, and the costs to mail this notice, within 30 days after this notice was mailed, you could be sued and held responsible to pay at least both of the following:

- (1) The amount of the check.
- (2) Damages of at least \$100 or, if higher, three times the amount of the check, up to \$1,500.

If the court determines that you do have a good faith dispute with the payee, you will not have to pay the service charge, treble damages, or mailing costs. If you stopped payment because you had a good faith dispute with the payee, you should try to work out your dispute with the payee. You can contact the payee at:

_____ [name of payee]

_____ [street address]

[telephone number]

You may wish to contact a lawyer to discuss your legal rights and responsibilities.

_____ [signature of sender of notice]
[typed name]



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37TTT-13 California Legal Forms--Transaction Guide Form T13-7

Form T13-7 Demand Letter--Breach of Payment Arrangement

Description: This form may be used by an attorney to notify a consumer debtor that he or she failed to make timely payments under a payment arrangement to cure a previous default.

Form T13-7 Demand Letter--Breach of Payment Arrangement

[Letterhead and Address]

Dear _____ [name of debtor]:

You have failed to comply with the agreement dated _____ [date, for payment in installments of a debt of \$ _____ owed to _____ [name of client]. An initial installment in the amount of \$ _____ was received on _____ [date]. No payment has been received since _____ [date]. If all installments now past due are paid immediately, you may continue to pay installments as originally scheduled; otherwise, unless the debt is paid in full on or before the next installment due date, the entire unpaid amount will automatically become due and payable on that date.

If payment is not made as described above, I will recommend that _____ [name of client] file suit against you. A suit may result in additional expenses for interest and court costs, and attorneys' fees will be sought.

I am required by law to inform you that I am attempting to collect a debt and that any information obtained will be used for that purpose.

[Signature]



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37TTT-13 California Legal Forms--Transaction Guide Form T13-8

Form T13-8 Debtor's Demand for Termination Statement From Secured Party

Description: This form is for use by the debtor to demand a statement from the secured party of record that it no longer claims a security interest in the collateral.

Form T13-8 Debtor's Demand for Termination Statement From Secured Party

DEBTOR'S DEMAND FOR TERMINATION STATEMENT

The undersigned Debtor, _____ [debtor's name], having discharged the obligation secured by a security agreement executed on _____ [date] between _____ [debtor's name] and the Secured Party, _____ [secured party's name], demands that you, as the Secured Party of Record, prepare and furnish me a written "Termination Statement" on Standard Form UCC-3 that states that the security interest under the financing statement, under File No. _____, is no longer claimed by you.

Date: _____

_____ [debtor's signature]

_____ [typed name]



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CHAPTER 14: Default; Collateral.

37TTT-14 California Legal Forms--Transaction Guide 14.syn

§ 14.syn Synopsis to Chapter 14: Default; Collateral.

Form T14-1 Events of Default and Remedies--Alternate Provisions

Form T14-1 Events of Default and Remedies: Alternate Provisions

Form T14-2 Notice of Default

Form T14-2 Notice of Default

Form T14-3 Written Notice of Dishonor

Form T14-3 Written Notice of Dishonor

Form T14-4 Notice of Intent to Accelerate

Form T14-4 Notice of Intent to Accelerate

Form T14-5 Notice on Default Requiring Debtor to Assemble and Make Available Collateral

Form T14-5 Notice on Default Requiring Debtor to Assemble and Make Available Collateral

Form T14-6 Notice Before Disposition of Collateral--General

Form T14-6 Notice Before Disposition of Collateral--General

Form T14-7 Notification Before Disposition of Collateral--Form for Consumer-Goods Transaction (Form T1)

Form T14-7 Notification Before Disposition of Collateral--Form for Consumer-Goods Transaction (Form T1)

Form T14-8 Notice Before Disposition of Collateral--Consumer Goods Transaction (Form T2)

Form T14-8 Notice Before Disposition of Collateral--Consumer Goods Transaction

Form T14-9 Debtor's Consent to Acceptance of Collateral

Form T14-9 Debtor's Consent to Acceptance of Collateral

Form T14-10 Waiver by Debtor or Secondary Obligor of Right to Redeem Collateral

Form T14-10 Waiver by Debtor or Secondary Obligor of Right to Redeem Collateral

Form T14-11 Specifying Method of Resale by Seller on Buyer's Breach

Form T14-11 Specifying Method of Resale by Seller on Buyer's Breach



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Form T14-1 Events of Default and Remedies--Alternate Provisions

Description: This form is a provision that may be used to set forth the events of default that will allow a secured party to accelerate its rights and assert its remedies under a security agreement.

Form T14-1 Events of Default and Remedies: Alternate Provisions

Events of Default

The occurrence of any of the following conditions is an event of default for purposes of this Security Agreement:

1. The Debtor fails to timely make any payment due or perform any duty owing under the Security Agreement.
2. Any or all of the Collateral is lost, destroyed, stolen, damaged, encumbered, or improperly transferred by Debtor.
3. The Debtor dissolves or otherwise terminates its existence, whether voluntarily or involuntarily.
4. The Debtor becomes insolvent, is placed under a receivership, or suffers a business failure.
5. The Debtor makes any representations or warranties under or in connection with this Security Agreement or related obligations that prove to be false or incorrect.
6. Any obligations of the Debtor under other loan or credit agreements are accelerated.
7. The secured party [, in good faith,] deems itself to be insecure.

Remedies

On the occurrence of an event of default, and at any time after such an event, the Secured Party may without notice declare all obligations secured by the Security Agreement immediately due and payable. The Secured Party will have all the remedies of secured parties under the _____ [state] Business and Commerce Code.

The Secured Party may require the Debtor to assemble the Collateral and deliver it or make it available to the Secured Party at any reasonably convenient place designated by the Secured Party. The Secured Party may, but need not, dispose of the Collateral in conformity with procedures outlined in the _____ [state] Business and Commerce Code, giving Debtor any statutorily required notice.



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37TTT-14 California Legal Forms--Transaction Guide Form T14-2

Form T14-2 Notice of Default

Description: This form is used to notify a debtor that the creditor intends to foreclose or otherwise enforce its security interest in its collateral.

Form T14-2 Notice of Default

[Date]

NAME OF DEBTOR
STREET ADDRESS
CITY, STATE, ZIP CODE

Dear _____[Name of debtor]:

Previously, you were notified that your loan account with _____ [Name of Creditor/Promissory Note Holder] was in default. _____ [Creditor/Note Holder] intends to foreclose or otherwise enforce its security interest in its collateral

The following additional information is being sent to you in compliance with _____ [state] law. You may contact this office if you have any questions concerning the enclosed information.

Amount of Principal and Interest due as of the date of this Notice: \$ _____

Daily interest charge based on the contract rate as of the date of this Notice: \$ _____

Amount of other expenses or charges due as of the date of this Notice: \$ _____

Loan Account Arrearage as of the date of this Notice: \$ _____

This Notice does not replace or alter the terms of any previous letter mailed to you. You should refer to the loan documents for information concerning your right, if any, to cure the default. **This in an attempt to collect a debt. Any information obtained will be used for that purpose.**

[Signature or Creditor/Note Holder]



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*37TTT-14 California Legal Forms--Transaction Guide Form T14-3***Form T14-3 Written Notice of Dishonor**

Description: This form is a notice that presentment of a note or other negotiable instrument has been duly made but acceptance or payment has been refused or has not been obtained within the time allowed.

Form T14-3 Written Notice of Dishonor

NOTICE OF DISHONOR

_____ [date]

_____ [name of person liable on instrument]

_____ [street address]

_____ [city, state, zip]

This is to give notice, pursuant to Section _____ of the _____ [state] Commercial Code, that a [note *or* draft *or* check] dated _____, [made *or* drawn] by _____ [name], payable to _____ [name], or order, in the sum of \$_____ with interest, [*add if applicable*: payable at _____ (place) on _____ (date),] was duly presented for [payment *or* acceptance] by the payee or holder of that instrument to [*specify party by name and/or description, e.g., the maker*] [*add if applicable*: at the place designated in the instrument], that [payment *or* acceptance] was refused, and that the instrument has been dishonored.

PAYEE

_____ [signature of payee or holder]

_____ [typed name]



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37TTT-14 California Legal Forms--Transaction Guide Form T14-4

Form T14-4 Notice of Intent to Accelerate

Description: This form is a notice of a creditor's intent to accelerate the maturity of a debt.

Form T14-4 Notice of Intent to Accelerate

NOTICE OF INTENT TO ACCELERATE

To _____ [name of debtor]

From _____ [name of creditor]

You, _____ [name of debtor], are hereby notified that you are in default under the terms of the promissory note dated _____, in the original principal sum of \$_____. That note is secured by a deed of trust dated _____, which gives us the right if you default to sell the property located at _____ [address] without court action in satisfaction of payment of your debt.

You have _____ [*specify type of default, e.g., not made your payment in the amount of \$_____, due on _____ (date)*]. If you _____ [*e.g., do not pay this amount*] on or before _____ [date], we will declare the entire unpaid balance of the note immediately due and payable, and we will sell the real property described in the first paragraph of this notice. If that property does not sell for an amount that is enough to pay back the entire unpaid balance of your debt, we also intend to sue you for the difference.



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37TTT-14 California Legal Forms--Transaction Guide Form T14-5

Form T14-5 Notice on Default Requiring Debtor to Assemble and Make Available Collateral

Description: This form provides notice to debtor that due to the debtor's default, debtor is required to assemble and make available to the secured party the collateral described in the debtor's security agreement with the secured party.

Form T14-5 Notice on Default Requiring Debtor to Assemble and Make Available Collateral

Dated: _____, 20____

_____ [Debtor]
_____ [street]
_____ [city and state]

PLEASE TAKE NOTICE, pursuant to *UCC § 9-609n** and the security agreement executed on _____, 20____, between the above debtor and the undersigned secured party, that as a consequence of your default on the obligations described in the agreement you are required to assemble and make the collateral described therein available, pursuant to paragraph _____ of the agreement, at _____ Street, _____, _____ [state], on or before _____, 20____, no later than _____ a.m.. on that date, for repossession by the undersigned at that time and place.

[Signature]

FOOTNOTES:

(n1)Footnote *. Review your state's statutory version of U.C.C. Section 9-609, as it may include variances from the model U.C.C. version.



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37TTT-14 California Legal Forms--Transaction Guide Form T14-6

Form T14-6 Notice Before Disposition of Collateral--General

Description: This form is for use by a secured party to notify specified persons of the disposition of collateral after default. This form is for use when the disposition does not involve a consumer goods transaction.

Form T14-6 Notice Before Disposition of Collateral--General

NOTICE OF DISPOSITION OF COLLATERAL ON DEFAULT

To: _____ [Name of debtor, obligor, or other person to which the notification is sent]

From: _____ [Name, address, and telephone number of secured party]

Name of Debtor(s): _____ [include only if debtor(s) are not an addressee]

[If disposition is public, use:]

We will _____ [sell or lease or license] _____ [describe collateral] to the highest qualified bidder in public as follows:

Day and Date: _____

Time: _____

Place: _____

[Or, if disposition is private, use:]

We will _____ [sell or license] the _____ [describe collateral] privately sometime after _____ [day and date].

[Continue with the following:]

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to [sell or lease or license] [for a charge of \$_____]. You may request an accounting by calling us at _____ [telephone number].

Date: _____

_____ [signature of secured party]

_____ [typed name]



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37TTT-14 California Legal Forms--Transaction Guide Form T14-7

Form T14-7 Notification Before Disposition of Collateral--Form for Consumer-Goods Transaction (Form T1)

Description: This form is to be used by a secured party that wishes to exercise its right to dispose of collateral after default.

Form T14-7 Notification Before Disposition of Collateral--Form for Consumer-Goods Transaction (Form T1)

_____ [name and address of secured party]
_____ [date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]
Subject: [Identification of transaction]

We have your _____ [*describe collateral*], because you broke promises in our agreement.

[Option One. For a public disposition]

We will sell _____ [*describe collateral*] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____

Time: _____

Place: _____

You may attend the sale and bring bidders if you want.

[For a private disposition]

We will sell _____ [*describe collateral*] at private sale sometime after _____ [date].
A sale could include a lease or license.

[*Continue as follows:*]

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you _____ [will *or* will not] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at _____ [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at _____ [telephone number][or write us at _____ (secured party's address)] and request a written explanation. [We will charge you \$_____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at _____ [telephone number] [or write us at _____ (secured party's address)].

We are sending this notice to the following other people who have an interest in _____ [describe collateral] or who owe money under your agreement:

_____ [Names of all other debtors and obligors, if any, or NONE]

Date: _____

_____ [signature]

_____ [name and any title]

_____ [any company name]

Secured Party



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37TTT-14 California Legal Forms--Transaction Guide Form T14-8

Form T14-8 Notice Before Disposition of Collateral--Consumer Goods Transaction (Form T2)

Description: This form is for use by a secured party to notify specified persons of the disposition of collateral after default. This form is for use when the disposition involves a consumer goods transaction.

Form T14-8 Notice Before Disposition of Collateral--Consumer Goods Transaction

NOTICE OF DISPOSITION OF COLLATERAL ON DEFAULT--CONSUMER GOODS

_____ [name of secured party]

_____ [address of secured party]

_____ [date]

NOTICE OF OUR PLAN TO SELL PROPERTY

_____ [name and address of any obligor who is also a debtor]

Subject: _____ [identification of transaction]

We have your _____ [describe collateral], because you broke promises in our agreement.

[For a public disposition, use:]

We will sell _____ [describe collateral], at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____

Time: _____

Place: _____

You may attend the sale and bring bidders if you want.

[Or, for a private disposition, use:]

We will sell _____ [describe collateral] at private sale sometime after _____ [date].

[Continue with the following:]

A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at _____ [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at _____ [telephone number] or write us at _____ [secured party's address] and request a written explanation. [Add, if applicable: We will charge you \$ _____ [amount not to exceed \$25.00] for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at _____ [telephone number] or write us at _____ [secured party's address].

We are sending this notice to the following other people who have an interest in _____ [describe collateral] or who owe money under your agreement:

_____ [Names of all other debtors and obligors, if any.]



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37TTT-14 California Legal Forms--Transaction Guide Form T14-9

Form T14-9 Debtor's Consent to Acceptance of Collateral

Description: This form provides secured party with notice that debtor consents that secured party may accept the collateral as full or partial satisfaction of the debtor's obligation under a security agreement with the secured party.

Form T14-9 Debtor's Consent to Acceptance of Collateral

Dated: _____, 20____

_____ [name of secured party]
_____ [street]
_____ [city and street]

PLEASE TAKE NOTICE that the undersigned debtor under a security agreement dated _____, 20____, whereby you are secured party and the property described below is the collateral, hereby consents, pursuant to *Section 9-620 of the Uniform Commercial Coden**, that the secured party may accept the collateral as a [complete discharge] [partial discharge in the amount of \$_____] of the obligation of the debtor pursuant to the security agreement.

The property or collateral consists of: (*list*)

PLEASE TAKE FURTHER NOTICE that this consent is executed after default of the undersigned on _____, 20____.

_____ [Signature]

[Notarization of Debtor's Signature]

FOOTNOTES:

(n1)Footnote *. Review your state's statutory version of U.C.C. Section 9-620, as it may include variances from the

model U.C.C. version.



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37TTT-14 California Legal Forms--Transaction Guide Form T14-10

Form T14-10 Waiver by Debtor or Secondary Obligor of Right to Redeem Collateral

Description: This form is for use in obtaining a waiver from the debtor or secondary obligor of the right to redeem the collateral after default.

Form T14-10 Waiver by Debtor or Secondary Obligor of Right to Redeem Collateral

WAIVER OF RIGHT TO REDEEM

[If security interest were perfected with financing statement, add:]

RE: Financing Statement No. _____

Filed on: _____ [date]

Filed at: _____ [place]

[Continue with the following:]

In consideration of _____ [*describe consideration*], the receipt of which is acknowledged, the undersigned _____ [name of debtor or secondary obligor] expressly agrees to waive any right to redeem any portion of the collateral _____ [described in the Financing Statement described above *or* described in and subject to the security interest created by the Security Agreement dated _____ [date] and executed by _____ [name of debtor] and given by _____ [name of debtor] as security to _____ [name of secured party] for an obligation in the face amount of \$ _____ [amount], which is now in default.

Date: _____

_____ [signature of debtor or secondary obligor]

_____ [typed name]



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37TTT-14 California Legal Forms--Transaction Guide Form T14-11

Form T14-11 Specifying Method of Resale by Seller on Buyer's Breach

Description: The provisions in this form are examples of the types of advance limitations and specifications that may be placed by agreement on the seller's right to resell goods on breach by the buyer.

Form T14-11 Specifying Method of Resale by Seller on Buyer's Breach

RESALE

[Number]. In the event that Seller has the right to make a resale of the goods, due to Buyer's breach of this Agreement, the resale shall be private and held in accordance with the provisions of the _____ [state] Business and Commercial Code--Sales.

[OR]

[Number]. In the event that Seller has the right to make a resale of the goods due to Buyer's breach of this Agreement under the _____ [state] Business and Commercial Code--Sales, the resale shall be public and held in accordance with the following requirements:

1. _____ [Name of auctioneer], Auctioneer, of _____ [address], will be engaged to hold the sale at public auction.
2. The sale will be advertised in the ordinary and usual manner of Auctioneer and will be held at Auctioneer's place of business.
3. No bid will be acceptable that is less than _____ [e.g., ten (10)] percent below the price of the goods stated in this contract.
4. Any profit realized from any individual item will be credited to Buyer against the total damages claimed by Seller.

[OR]

[Number]. In the event that Seller elects to resell the goods in accordance with Seller's rights under the _____ [state] Business and Commercial Code--Sales for a breach by Buyer, Buyer must be given written notice of the sale by registered or certified mail at least _____ [e.g., ten (10)] days prior to the date of the sale, whether the sale be public or private.



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37TTT-15 California Legal Forms--Transaction Guide 15.syn

§ 15.syn Synopsis to Chapter 15: Remedies.

(See also Chapter 5, "Loans--Charges, Interest, Acceleration, Extension, and Payoff")

Form T15-1 Notice to Account Debtor or Obligor to Make Payment to Secured Party

Form T15-1 Notice to Account Debtor or Obligor to Make Payment to Secured Party

Form T15-2 Agreement Extending Time for Payment--Securities Pledged by Debtor

Form T15-2 Agreement Extending Time for Payment--Securities Pledged by Debtor

Form T15-3 Agreement Extending Time for Payment--Guaranty by Third Party

Form T15-3 Agreement Extending Time for Payment--Guaranty by Third Party

Form T15-4 Creditors' Composition Agreement--Payment in Installments

Form T15-4 Creditors' Composition Agreement--Payment in Installments

Form T15-5 Tender by Debtor of Sum in Default

Form T15-5 Tender by Debtor of Sum in Default

Form T15-6 Proposal to Accept Collateral in Full Satisfaction of Obligation

Form T15-6 Proposal to Accept Collateral in Full Satisfaction of Obligation

Form T15-7 Notice Letter--Offer of Alternative Dispute Resolution

Form T15-7 Notice Letter--Offer of Alternative Dispute Resolution

Form T15-8 Notice Letter--Request to Arbitrate

Form T15-8 Notice Letter--Request to Arbitrate

Form T15-9 Discharge of Party From Liability With Reservation of Rights Against Other Parties

Form T15-9 Discharge of Party From Liability With Reservation of Rights Against Other Parties



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37TTT-15 California Legal Forms--Transaction Guide Form T15-1

Form T15-1 Notice to Account Debtor or Obligor to Make Payment to Secured Party

Description: This form is for use by the secured party to notify the account debtor or the obligor to make future payments directly to the secured party.

Form T15-1 Notice to Account Debtor or Obligor to Make Payment to Secured Party

NOTICE TO MAKE PAYMENT TO SECURED PARTY

TO: _____ [name of account debtor]
_____ [address]
_____ [city], _____ [state]

The undersigned secured party, having a security interest in _____ [*describe secured obligation*] by virtue of a security agreement dated _____ and executed by _____ [name of debtor], demands, in accordance with _____ [state] Commercial Code Section _____, that beginning immediately you make payment on the obligation to the undersigned at the address indicated below.

Dated: _____
_____ [name of secured party]
_____ [typed name]
_____ [address]



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CHAPTER 15: Remedies.

37TTT-15 California Legal Forms--Transaction Guide Form T15-2

Form T15-2 Agreement Extending Time for Payment--Securities Pledged by Debtor

Description: This form illustrates agreement whereby creditors and debtors contractually modify their rights regarding a pre-existing debt.

Form T15-2 Agreement Extending Time for Payment--Securities Pledged by Debtor

AGREEMENT made this _____ [date] between _____ (the "Debtor") and _____ (the "Creditor").

Whereas the Creditor sold goods to the Debtor upon the Debtor's promise to pay therefor 30 days after delivery, and

Whereas such goods have been delivered to the Debtor but payment has not been made, and

Whereas the Debtor is unable to pay the debt to the Creditor and desires further time to liquidate such debt, and

Whereas the Creditor is willing to extend the time for payment upon condition that the Debtor furnish security for the payment of such debt,

It is therefore agreed:

1. *Extension of time.* The Creditor hereby extends the time for payment by the Debtor of the account set forth in Schedule A, annexed hereto, to _____ [date] at which time the Debtor shall pay such account in full, together with interest thereon at the annual rate of _____ percent (____%) from the date of this agreement.

2. *Collateral.* As security for the payment of such debt and accrued interest, the Debtor hereby grants to the Creditor a security interest in _____ preferred shares of _____, represented by certificate No. _____. Simultaneously with the execution of this agreement the debtor has pledged and delivered to the Creditor the foregoing certificate together with a stock power annexed thereto which has been endorsed in blank by Debtor and signature guaranteed by _____.

3. *Default of debtor.* If the Debtor fails to pay such debt and interest on the due date as extended, or if a petition under any provision of the Bankruptcy Act is filed by or against the Debtor, or a receiver is appointed for the Debtor's property, or if the Debtor executes a general assignment for the benefit of creditors, or if a judgment is entered against the Debtor, or if the Debtor should die, then and at any time thereafter, the Creditor may without notice or demand upon the Debtor declare such debt and accrued interest to be immediately due and payable. In such event, the Creditor shall have the rights and remedies provided in paragraph 4 of this agreement, in addition to all rights and remedies of a secured party under the Uniform Commercial Code. All such rights and remedies shall be cumulative, not exclusive, and enforceable alternatively, successively, or concurrently.

4. *Creditor's rights upon default; deficiency; resale.* (a) Upon any default, as provided in paragraph 3, the Creditor may sell any or all of the securities at public or private sale or proceedings, by one or more contracts, in one or more parcels, at the same or at different times, for cash and/or credit, or upon any other terms, at such places and times and to such persons as the Creditor deems best.

(b) Unless the securities threaten to decline speedily in value or are sold on a recognized market, the Creditor shall give the Debtor reasonable notice of the time and place of any public sale, or of the time after which any private sale is to be made. Any requirement for reasonable notice shall be met by the sending of five days' notice by regular mail, postage prepaid, to the Debtor's last known address. If any of the securities are sold by the Creditor upon credit or for future delivery, the Creditor shall not be liable for the failure of the purchaser to pay for the same, and in such event the Creditor may resell such securities. The Creditor may buy any part or all of the securities at any public sale and if the securities are sold in a recognized market, the Creditor may buy at private sale and make payment for the same by any means. The Creditor shall apply all cash proceeds actually received from any sale in the order and subject to the conditions provided in U.C.C. Section 9-504n*. The Creditor shall pay any surplus to the Debtor; but the Debtor shall remain liable for and shall pay to the Creditor, on demand, any deficiency.

(c) The Debtor acknowledges that the Creditor may be unable to hold a public sale of the securities by reason of certain prohibitions contained in the federal Securities Act of 1933, as amended (the "Securities Act"), and may be compelled to resort to one or more private sales of such securities to a restricted group of purchasers who shall be required to agree, among other things, that such securities are being acquired for their own account for investment and not with a view to the distribution or resale thereof. The Debtor further acknowledges that all such private sales may be at prices and terms less favorable to the Creditor than if sold publicly. The Debtor agrees that any such private sales shall be deemed to have been made in a commercially reasonable manner and that the Creditor has no obligation to delay the sale of any securities for the period of time necessary to permit the issuer of the securities, even if the issuer would agree, to register the same for public sale under the Securities Act or to comply with all other filing requirements.

5. *Payment of debt.* Upon payment of the debt and accrued interest as provided herein, the Creditor shall return to the Debtor all such shares held as collateral security as have not theretofore been sold pursuant to this agreement.

6. *Further assurances.* At any time requested by the Creditor, the Debtor shall perform such other acts and sign such other documents, instruments, and certificates as the Creditor may deem necessary, proper, or convenient in order to carry out the purposes and provisions of this agreement.

7. *Entire agreement.* This agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them.

8. *Notices.* All notices or other documents under this agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at their last known addresses.

9. *Non-waiver.* No delay or failure by either party to exercise any right under this agreement, and no partial or single

exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

10. *Headings.* Headings in this agreement are for convenience only and shall not be used to interpret or construe its provisions.

11. *Governing law.* This agreement shall be construed in accordance with and governed by the laws of the State of _____.

12. *Counterparts.* This agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

13. *Binding effect.* The provisions of this agreement shall be binding upon and inure to the benefit of each of the parties and their respective legal representatives, successors and assigns.

In witness whereof the parties have signed and sealed this agreement.

_____ L.S.

_____ L.S.

FOOTNOTES:

(n1)Footnote *. Review your state's statutory version of U.C.C. Section 9-504, as it may include variances from the model U.C.C. version.



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*37TTT-15 California Legal Forms--Transaction Guide Form T15-3***Form T15-3 Agreement Extending Time for Payment--Guaranty by Third Party**

Description: This form is used when a debtor is requesting the creditor to extend the time for payment of the debt; the consideration for the extension of the debt in this agreement is a third party guarantee.

Form T15-3 Agreement Extending Time for Payment--Guaranty by Third Party

AGREEMENT made this _____ [date] between _____ Corporation (the "Debtor"), _____ (the "Creditor"), and _____ (the "Guarantor").

Whereas the Debtor is indebted to the Creditor on a note for _____ Dollars (\$____), plus interest at the rate of ____ percent from _____ [date] which note is now past due, and

Whereas the Debtor and the Guarantor have requested the Creditor to extend the time of payment of such debt, and

Whereas the Guarantor, to induce the Creditor to accede to such request, has agreed to guarantee payment of the debt,

It is therefore agreed:

1. *Warranties of debtor.* Debtor warrants and represents to Creditor that its is indebted to Creditor, without any defense, offset, or counterclaim, in the principal sum of _____ Dollars (\$____) plus interest accrued and to accrue thereon from _____ [date] (the "Indebtedness"), until fully paid, as evidenced by Debtor's promissory note dated _____ [date] (the "Note").

2. *Extension of time.* The Creditor hereby extends the time for the payment of the Note, and the Indebtedness evidenced thereby, for a period of one year from the date of this agreement, and simultaneously with the execution of this agreement a notation of this extension has been made on the Note. Notwithstanding the foregoing, the Note and the Indebtedness evidenced thereby shall immediately become due and payable if any of the following events shall occur: the Debtor becomes insolvent; the Debtor executes an assignment for the benefit of creditors; a receiver is appointed for the Debtor's property; a petition is filed under any provision of the Bankruptcy Act by or against the Debtor; any of the Debtor's property is attached; any of the preceding events occur with respect to the Guarantor; or the Guarantor dies.

3. *Guaranty.* (a) The Guarantor hereby unconditionally guarantees to the Creditor, his legal representatives, endorsees and assigns, and to every subsequent holder of the Note, the prompt and punctual payment, when due, of the Note and the Indebtedness evidenced thereby (whether at maturity, by acceleration, or otherwise), irrespective of the genuineness, validity, regularity, or enforceability of the Note or of any liability or obligation evidenced or imposed, or purported to be evidenced or imposed by the Note, and irrespective of the genuineness, validity, regularity, or enforceability of any collateral security for such Indebtedness or the Note or of the existence or extent of any such collateral security.

(b) The Guarantor agrees that, without notice to or further consent of the Guarantor and without any such action in any way or to any extent releasing, extinguishing, reducing, or otherwise affecting the liability and obligations hereunder of the Guarantor, who shall be and remain fully bound hereby notwithstanding any such action:

(1) The time of payment of the Indebtedness, or any part thereof, and/or the Note may be accelerated or further extended, or one or more new notes or other instruments may be taken in exchange for or replacement or renewal of the Note, or any other indulgence may be granted with respect to the Indebtedness and/or the Note;

(2) Collateral security or additional collateral security may be accepted to secure payment of the Indebtedness, or any part thereof, and/or the Note;

(3) Any collateral security for the Indebtedness, or any part thereof, and/or the Note, may be taken, enforced, exchanged, surrendered, modified, released, or altered, or otherwise dealt with, in whole or in part, in any manner; and

(4) The obligations of the Debtor upon the Indebtedness, or any part thereof, and/or the Note, may be settled, released, compromised, or compounded.

(c) To the full extent permitted by law, the Guarantor hereby waives any presentment, demand of payment from the Debtor or anyone else, protest, any notice of presentment, demand, nonpayment, or protest and all other protests, notices, and demands whatsoever. The Guarantor agrees that its obligations hereunder shall not in any way be reduced or affected by any failure on the part of the Creditor, or any holder of the Note, to take any action to enforce the Indebtedness and/or the Note, or to pursue any remedy for the nonpayment of either thereof, or to enforce, protect, or preserve any collateral security.

(d) The Guarantor shall not have the right to require that the Creditor, or any other holder of the Note, first resort to or proceed against the Debtor or any collateral security. This guaranty is an absolute and unconditional guarantee of payment, and not of collection, and nothing except cash payment in full of the Indebtedness and/or the Note shall release the Guarantor from liability under this guaranty. The Guarantor shall not exercise any right of indemnification or subrogation until such time as the Indebtedness and/or the Note shall be fully paid.

4. *Binding effect.* This agreement shall be binding upon the parties, their legal representatives, successors, and assigns.

5. *Entire agreement.* This agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them.

6. *Notices.* All notices or other documents under this agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at their last known addresses.

7. *Non-waiver.* No delay or failure by a party to exercise any right under this agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

8. *Headings.* Headings in this agreement are for convenience only and shall not be used to interpret or construe its

provisions.

9. *Governing law.* This agreement shall be construed in accordance with and governed by the laws of the State of _____.

10. *Counterparts.* This agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

In witness whereof the parties have signed and sealed this agreement.

Corporate Seal

Attest:

by

Secretary

President



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CHAPTER 15: Remedies.

37TTT-15 California Legal Forms--Transaction Guide Form T15-4

Form T15-4 Creditors' Composition Agreement--Payment in Installments

Description: This form is a composition agreement which is a common law remedy for the discharge of a debtor's obligations.

Form T15-4 Creditors' Composition Agreement--Payment in Installments

AGREEMENT made this _____ [date] between _____ (the "Debtor"), and those of his creditors who become parties hereto by signing this agreement (the "Creditors").

Whereas the Debtor is indebted to the Creditors in the amounts set opposite their respective names at the bottom of this agreement, and

Whereas the Debtor is unable to satisfy and discharge these debts in full, and has offered to compromise these debts by the payment of _____ cents on the dollar in the manner hereinafter stated, and

Whereas at a meeting held on _____ [date] the Creditors agreed to accept such compromise in full satisfaction and discharge of their respective claims, subject however to the terms of this agreement,

It is therefore agreed:

1. *Composition.* The Debtor shall pay to each Creditor _____ percent of his total present claim, as set forth at the bottom of this agreement, such payment to be made in four equal quarter-annual installments, the first installment to be made on _____ [date].

2. *Acceptance of composition.* The Creditors shall accept from the Debtor _____ cents for each dollar owed by the Debtor, such amount to be paid in the manner specified in paragraph 1. So long as the Debtor pays the compromised amount in the manner specified in paragraph 1, no Creditor shall at any time sue or take any other action against the Debtor or against his property in connection with the present claim of such Creditor against the Debtor.

3. *Release of debtor.* Upon receipt by the Creditors of the amounts specified in paragraph 1, at or before the times

therein stated, the Debtor shall be completely released and discharged from all present claims of the Creditors against the Debtor, and each Creditor shall surrender to the Debtor all notes and other evidences of indebtedness now held in connection with the present claims.

4. *Default by debtor.* If the Debtor shall default as to any Creditor in making the payments specified in paragraph 1, at the times therein stated, the full amount of the present claim of such Creditor, less payments received under this agreement, shall immediately become due and payable, and each Creditor shall have the right to pursue any remedy then available to him as if this agreement had never been made.

5. *Effective date of agreement.* This agreement shall become effective only upon its acceptance by _____ percent of the unsecured creditors of the Debtor, both in number and amount, such acceptance to be evidenced by their signatures upon this agreement on or before _____ [date]. If this agreement is not so accepted, it shall be completely ineffective.

6. *Amounts due.* The amounts set opposite the respective names of the Creditors at the bottom of this agreement are the full amounts of the debts due to such Creditors from the Debtor.

7. *Binding effect.* This agreement, when effective, shall be binding upon the parties and their respective legal representatives, successors, and assigns.

8. *Entire agreement.* This agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them.

9. *Notices.* All notices or other documents under this agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at their last known addresses.

10. *Non-waiver.* No delay or failure by a party to exercise any right under this agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

11. *Headings.* Headings in this agreement are for convenience only and shall not be used to interpret or construe its provisions.

12. *Governing law.* This agreement shall be construed in accordance with and governed by the laws of the State of _____.

13. *Counterparts.* This agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

In witness whereof the parties have signed and sealed this agreement.

Creditors:	Amount:
_____	\$ _____

_____	\$ _____

_____\$ _____



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37TTT-15 California Legal Forms--Transaction Guide Form T15-5

Form T15-5 Tender by Debtor of Sum in Default

Description: This form is a formal tender of payment that a debtor may use to accompany the payment made to cure a default.

Form T15-5 Tender by Debtor of Sum in Default

TENDER OF PAYMENT

To _____ [name of creditor]

From _____ [name of debtor]

I, the undersigned, hereby tender the sum of \$_____, in the form of a _____ [e.g., a cashier's check] as the entire amount due to date on the promissory note dated _____, in the original amount of \$_____, secured by a deed of trust of the same date.

Dated: _____

_____ [signature of debtor]

_____ [typed name]



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37TTT-15 California Legal Forms--Transaction Guide Form T15-6

Form T15-6 Proposal to Accept Collateral in Full Satisfaction of Obligation

Description: This form may be used by a secured party who wishes to retain collateral in full satisfaction of to notify the debtor and other interested parties of that desire.

Form T15-6 Proposal to Accept Collateral in Full Satisfaction of Obligation

PROPOSAL TO ACCEPT COLLATERAL IN FULL SATISFACTION OF OBLIGATION

under _____ [state] Business and Commerce Code Section _____
UCC Section 9-620n*

To: _____ [name of debtor]
_____ [address]

Copies to: _____ [name of other interested party]
_____ [address]
_____ [name of other interested party]
_____ [address]

[Add if security interest perfected by filing financing statement]

RE: Financing Statement

No. _____

Filed on: _____ [date]

Filed at: _____ [filing office]

[Continue with following]

I, _____ [name], am the Secured Party under a security agreement executed on _____ [name of debtor], as Debtor, [add if security interest perfected by filing financing statement: evidenced by the Financing Statement described above]. The Debtor is now in default under the security agreement.

I propose that I accept the collateral described below in full satisfaction of the obligation. _____ [This proposal is unconditional or This proposal is subject only to the condition that any collateral which is not in the Debtor's possession be preserved and maintained until it can be acquired by Secured Party].

If the Debtor or any other person having a security interest in the property described below and to whom this proposal is given objects to the acceptance of the collateral in full satisfaction of the secured obligation, that person must promptly notify me in writing in writing at the following address:

_____ [name and address of secured party]

Any objection must be received by me by _____ [date], that is, within 20 days of the date this proposal is sent.

If I receive no timely objections, I will, under the authority of _____ [state] Business and Commerce Code _____ [section], accept the collateral in full satisfaction of the Debtor's obligation.

The collateral that I will accept in discharge of the obligation is described as follows: _____ [insert complete description of collateral].

Dated: _____

_____ [signature]

_____ [typed name]

FOOTNOTES:

(n1)Footnote *. Review your state's statutory version of U.C.C. Section 9-620, as it may include variances from the model U.C.C. version.



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37TTT-15 California Legal Forms--Transaction Guide Form T15-7

Form T15-7 Notice Letter--Offer of Alternative Dispute Resolution

Description: This form may be used by an attorney offering alternative dispute resolution to a consumer debtor.

Form T15-7 Notice Letter--Offer of Alternative Dispute Resolution

[Letterhead and Address]

Dear _____ [name of debtor]:

Based on our recent oral and written communications, it appears that we are not proceeding toward settlement of the claim by _____ [name of client] against you. In an effort to facilitate final resolution, _____ [name of client] has authorized me to propose alternative dispute resolution. I am enclosing a brochure entitled " _____ " offered by the State Bar of _____ [name of State Bar committee, e.g., "Standing Committee on Alternative Methods of Dispute Resolution"]. Locally such services are provided by _____ [name and address of agency].

Please review this brochure, contact the agency, and make a determination as to whether such a procedure might be a more expeditious way of resolving this dispute.

I will call you in approximately 10 days to follow up with respect to this offer.

I am required by law to inform you that I am attempting to collect a debt and that any information obtained will be used for that purpose.

_____ [Signature]



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37TTT-15 California Legal Forms--Transaction Guide Form T15-8

Form T15-8 Notice Letter--Request to Arbitrate

Description: This form may be used by an attorney to inform a consumer debtor that a dispute concerning the underlying debt may be resolved by arbitration.

Form T15-8 Notice Letter--Request to Arbitrate

[Letterhead and Address]

Dear _____ [name of debtor]:

Regarding the claim of _____ [name of client] against you, it is apparent that we are confronting a substantial disagreement that is not likely to be resolved by further negotiations. _____ [Name of client] feels that a third-party determination of this dispute may be in order and has authorized me to offer to submit this matter to binding arbitration.

Arbitration services are provided locally by _____ [name and address of service]. I am enclosing a copy of the governing rules. Please feel free to contact the agency to ask any questions concerning arbitration, to assure yourself of the agency's neutrality.

You may agree to binding arbitration by sending me a letter to that effect. If you have not sent such a letter to me within 20 days after the date of this letter, I will assume that you do not wish to proceed in this fashion and are prepared to litigate this matter.

I am required by law to inform you that I am attempting to collect a debt and that any information obtained will be used for that purpose.

[Signature]



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37TTT-15 California Legal Forms--Transaction Guide Form T15-9

Form T15-9 Discharge of Party From Liability With Reservation of Rights Against Other Parties

Description: This form is a discharge from liability by the payee or holder of a note or other negotiable instrument of a party who is obliged to pay. The form includes an optional reservation of rights against other parties that should be used by a payee or holder if there are other parties who may be held liable. The language contained in this form should be placed directly on the instrument itself, because no discharge of any party is effective against a subsequent holder in due course without notice of the discharge.

Form T15-9 Discharge of Party From Liability With Reservation of Rights Against Other Parties

DISCHARGE FROM LIABILITY

[Add if applicable: For valuable consideration,] I, the undersigned ("Payee") discharge _____ [name of party discharged] from any liability in connection with this instrument. [Add if applicable: I reserve all rights against all other parties to this instrument.]

Executed on _____ [date], at _____ [city and state].

PAYEE

_____ [signature of payee or holder]

[typed name]



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37TTT-16 California Legal Forms--Transaction Guide 16.syn

§ 16.syn Synopsis to Chapter 16: Assignment.

Form T16-1 Assignment--General Form

Form T16-1 Assignment--General Form

Form T16-2 Assignment for Benefit of Creditors

Form T16-2 Assignment for Benefit of Creditors

Form T16-3 Creditor's Consent

Form T16-3 Creditor's Consent

Form T16-4 Creditor Claim Against Assigning Debtor

Form T16-4 Creditor Claim Against Assigning Debtor

Form T16-5 Assignment for Benefit of Creditors--Sole Proprietor

Form T16-5 Assignment for Benefit of Creditors--Sole Proprietor

Form T16-6 Assignment for Benefit of Creditors--Partners and Partnership

Form T16-6 Assignment for Benefit of Creditors--Partners and Partnership

Form T16-7 Assignment for Benefit of Creditors--Corporation

Form T16-7 Assignment for Benefit of Creditors--Corporation

Form T16-8 Composition Agreement Following Assignment for Benefit of Creditors--Appointment of Trustee

Form T16-8 Composition Agreement Following Assignment for Benefit of Creditors--Appointment of Trustee

Form T16-9 Collateral Transfer of Creditor's Interest

Form T16-9 Collateral Transfer of Creditor's Interest

Form T16-10 Collateral Assignment of Contract Rights

Form T16-10 Collateral Assignment of Contract Rights

Form T16-11 Noncollateral Transfer of Creditor's Interest

Form T16-11 Noncollateral Transfer of Creditor's Interest

Form T16-12 Partial Assignment of Creditor's Interest

Form T16-12 Partial Assignment of Creditor's Interest

Form T16-13 Patent Assignment of Security

Form T16-13 Patent Assignment of Security

Form T16-14 Trademark Assignment of Security

Form T16-14 Trademark Assignment of Security

Form T16-15 Accounts Receivable Notification Letter

Form T16-15 Accounts Receivable Notification Letter



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CHAPTER 16: Assignment.

37TTT-16 California Legal Forms--Transaction Guide Form T16-1

Form T16-1 Assignment--General Form

Description: This form is used to advise a third party of an assignment. This particular letter concerns the assignment of a debt owed to the assignor by the third party to whom the letter is addressed.

Form T16-1 Assignment--General Form

_____ [name]
_____ [street address]
_____ [city, state, zip code]

Dear Sir:

You are hereby notified that by a written instrument dated _____, _____ [name of assignor], of _____ [assignor's address], assigned to me his entire interest in the debt owing to him from you in the amount of \$_____, together with interest thereon at the rate of _____ % per annum from _____ [date]. A copy of the assignment is enclosed.

You are required to pay to me at _____ [assignee's address], the full amount of \$ _____, plus interest as above set forth, on _____ [due date of underlying debt], in accordance with the terms of the debt. In the event of your failure to make such payment, I shall take such steps as are authorized by law for the enforcement of my rights under the assignment.

Dated: _____

(assignee's signature)



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CHAPTER 16: Assignment.

37TTT-16 California Legal Forms--Transaction Guide Form T16-2

Form T16-2 Assignment for Benefit of Creditors

Description: This form may be used to assign all of the assets and property of a financially distressed business to an assignee, who then holds the property in trust for the benefit of creditors.

Form T16-2 Assignment for Benefit of Creditors

ASSIGNMENT FOR THE BENEFIT OF CREDITORS

State of _____)
County of _____)
_____)

This agreement is made between _____ [name of assignor], a _____ [specify form of business], to be referred to in this agreement as Assignor, and _____ [name of assignee], of _____ [city and state], to be referred to as Assignee, for the benefit of creditors of Assignor.

Assignor, in consideration of the covenants and agreements to be performed by the parties to this agreement, transfers to Assignee, and any successors of Assignee, all of the property possessed by Assignor wherever situated, both real and personal, and any interest or equity in this property that is not exempt from execution. Exhibit A contains a schedule of all of Assignor's real and personal property at the date of this assignment. This property includes _____ [e.g., stocks of merchandise, store furniture and fixtures, book accounts, books, bills, receivables, cash on hand, choses in action, insurance policies covering any part of the property transferred, and all other real and personal property of every kind and nature] situated in or pertaining to the business now owned and conducted by Assignor at _____ [address], and is transferred for the benefit of the creditors of Assignor. Assignor agrees to deliver immediately to Assignee books of account showing all creditors and their

addresses and agrees to execute and deliver to Assignee on demand additional instruments in writing as may be required to vest legal title and establish record title to all of Assignor's real and personal property or Assignor's interest in real or personal property. These instruments shall include mortgages, trust deeds, patents, patent applications, patent rights, and interests and rights pertaining to patents.

Assignee shall record this assignment immediately in the county of _____ [his or her] residence and in each county in which there is real property conveyed by this assignment.

Assignee shall execute a bond within five days after the delivery of this assignment, with a surety who is approved by the judge of the _____ [county or district court] of _____ [county where Assignee resides] County, and this bond shall be conditioned on the faithful performance by Assignee of the duties of this assignment.

Assignee shall publish notice within 30 days after the delivery of this assignment in a newspaper published in or nearest to the county where Assignor _____ [resides or operated _____ (his or her or its) business before the assignment]. This notice shall be published for three consecutive weeks. Assignee shall also notify by mail each of Assignor's creditors as listed in Exhibit A.

Assignee shall hold the property assigned by this agreement for the following uses and purposes and is given the following authority in connection with the assigned property:

1. To take charge and possession of the assigned property and to reduce it to money as soon as this can wisely, prudently, and properly be done, using _____ [his or her] best judgment in selling and disposing of the assigned property on terms as _____ [he or she] may see fit at public or private sale.

2. To administer the trust created by this assignment to the best of _____ [his or her] ability, but it is understood that Assignee shall be liable only for reasonable care and diligence in the administering of the trust and that in doing so may act through or by agents, and _____ [he or she] shall not be responsible for any negligence of these agents if they were selected with reasonable care, nor shall _____ [he or she] be liable or responsible for anything done by _____ [him or her] in good faith in the execution of this trust. Any contract or agreement made by Assignee in connection with the trust agreement shall not be binding on Assignee in _____ [his or her] personal capacity, but shall bind the assignment estate and Assignee in _____ [his or her] representative capacity.

3. To compromise claims, discount bills, and complete or refuse to complete and cancel conditional sales contracts and other contracts now in force to which Assignor is a party.

4. To pay the creditors of Assignor, pro rata, according to the indebtedness due to them from Assignor. Payments shall be made to creditors each time 10 percent of the total amount of debt due to the creditors accumulates. Assignee shall at _____ [his or her] discretion pay to discharge any lien on any of the assigned property, as well as pay all expenses, including _____ [his or her] own remuneration and that of any agents and attorneys employed in connection with the administration of the trust.

5. To borrow money, mortgage, or pledge, on terms _____ [he or she] sees as appropriate, all assets of Assignor in _____ [his or her] possession, and Assignee shall have power and authority generally to do all matters and things that Assignor could have done prior to the execution of this assignment.

6. To apply for any deposits, refunds, or claims, whenever necessary, in the name of Assignor, and this instrument shall constitute Power of Attorney from Assignor to Assignee to accomplish this application.

7. To have all mail matter addressed to Assignor delivered to Assignee on _____ [his or her] order, and Assignee may execute a written order to that effect.

8. To pay nonconsenting creditors garnishing the property of the trust out of the balance or surplus of this assignment, if any, after full payment of consenting creditors and the expenses of carrying out the assignment. Then, any balance or surplus shall be deposited by Assignee with the court that approved the bond posted by Assignee.

Assignee is entitled to reasonable compensation for _____ [his or her] services and reimbursement for necessary expenses, including attorney's fees. Compensation and expenses shall be fixed by the court that approved Assignee's bond.

Executed on _____, 20____, at [city and state].

_____ [assignor]
_____ [signature]
_____ [typed name and title]

Assignor

_____ [signature]
_____ [typed name]

Assignee

ACKNOWLEDGMENT

Before me, the undersigned Notary Public, on this day personally appeared _____ [name of affiant], who being by me duly sworn by oath deposed and stated: "I, _____ [name], executed the foregoing instrument for the purposes and consideration expressed in the instrument. I, _____ [name], have personal knowledge of the facts set forth in the assignment and they are true and correct."

_____ [signature of debtor]
_____ [typed name of debtor]

Assignor and Affiant

SUBSCRIBED AND SWORN TO BEFORE ME on _____, 20____, to certify which witness my hand and official seal.

_____ [signature of notary]
Notary Public, State of _____
Commission Expires:

[Notarial Seal]

EXHIBIT A

INVENTORY OF ASSIGNOR'S DEBTS AND PROPERTY

_____ [Name of debtor] owes the following schedule of debts to the creditors listed below. The schedule includes the residence of the creditors, the amount owed to each creditor, the nature of each debt, the consideration for each debt, the place where the indebtedness arose, and any existing judgment or security for payment of the debts. The debts are as follows: _____ [list each creditor and debt in manner described].

_____ [Name of debtor] owned the following real and personal property on the date of the attached assignment. The total value of the property transferred is \$_____ and is composed of the individual items with their corresponding values as listed below. The items below include a description of any encumbrances, vouchers, and securities relating to the property. The assigned property is the following: _____ [list each item of real and personal property assigned by attached assignment in manner described].

I, _____ [Name of debtor], swear that the above inventory is just and true.

_____ [signature]
_____ [typed name of debtor]

ACKNOWLEDGMENT

State of)
County of)
)
)
)

Before me, the undersigned Notary Public, on this day personally appeared _____ [name of affiant], who being by me duly sworn by oath deposed and stated: "I, _____ [name], executed the foregoing inventory. I, _____ [name], have personal knowledge of the facts set forth in the inventory and swear that they are just and true."

_____ [signature of debtor]
_____ [typed name of debtor]

Assignor and Affiant

SUBSCRIBED AND SWORN TO BEFORE ME on _____, 20____, to certify which witness my hand and official seal.

_____ [signature of notary]
Notary Public, State of _____
Commission Expires:

[Notarial Seal]



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37TTT-16 California Legal Forms--Transaction Guide Form T16-3

Form T16-3 Creditor's Consent

Description: This form is for use by a creditor who wishes to participate in an assignment for the benefit of creditors.

Form T16-3 Creditor's Consent

CREDITOR CONSENT

_____, 20____
_____[Name of assignee]
_____[Address of assignee]
To _____ [name of assignee]:

I agree to participate in the assignment for the benefit of _____ [name of assignor]'s creditors about which I received notice on _____, 20____, by _____ [*specify form of notice*]. I understand that if my pro rata share of payment under the assignment equals at least one third of my claim against _____ [name of assignor] and there are no more funds available for satisfaction of claims, I must release _____ [name of debtor] from further liability on my claim against _____ [him or her].

_____[signature]
_____[typed name of creditor]



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37TTT-16 California Legal Forms--Transaction Guide Form T16-4

Form T16-4 Creditor Claim Against Assigning Debtor

Description: The form below is an example of a creditor's claim that must be filed with the assignee by each creditor who wishes to participate in an assignment.

Form T16-4 Creditor Claim Against Assigning Debtor

CREDITOR'S CLAIM

On _____, _____ [name of debtor] purchased [e.g., three Caterpillar tractors] from _____ [name of creditor] for \$_____. An agreement was made between _____ [name of debtor] and _____ [name of creditor] that _____ [e.g., a down payment of \$_____ would be paid, with the remainder to be paid in monthly installments of \$_____ each for 10 consecutive months beginning on _____, _____. The first _____ [number] payments were made according to the agreement, with the last payment made on _____, _____, _____, after which no further payment was received]. The balance due on the claim is \$_____.

The undersigned swears that the above claim against _____ [name of debtor] is true, that the debt is just, and that all proper credits and offsets have been allowed against the claim.

_____ [signature of creditor]
_____ [typed name of creditor]

AFFIDAVIT

State of _____)
County of _____)
_____)

Before me, the undersigned Notary Public, on this day personally appeared _____ [name of affiant], who being by me duly sworn by oath deposed and stated: "I, _____ [name], executed the foregoing inventory. I, _____ [name], have personal knowledge of the facts set forth in the claim and swear that they are just and true, that the debt is just, and that all proper credits or offsets have been allowed against the claim."

_____ [signature of creditor]
_____ [typed name of creditor]

Creditor and Affiant

SUBSCRIBED AND SWORN TO BEFORE ME on _____, _____, _____, to certify which witness my hand and official seal.

_____ [signature of notary]
Notary Public, State of _____
Commission Expires:

[Notarial Seal]



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PART II: Transactions in Turbulent Times - Enforcing or Settling Claims.

CHAPTER 16: Assignment.

*37TTT-16 California Legal Forms--Transaction Guide Form T16-5***Form T16-5 Assignment for Benefit of Creditors--Sole Proprietor**

Description: This form is used for an assignment for the benefit of creditors. The form includes verbiage on possession of property, payment of proceeds, and appointment of assignee as attorney.

Form T16-5 Assignment for Benefit of Creditors--Sole Proprietor

AGREEMENT made _____ [date] between _____, residing at _____, _____, _____ (the "Assignor"), and _____, located at _____, _____, _____ (the "Assignee").

Whereas the Assignor, who is engaged in the business of _____ located at _____, _____, _____, is indebted to various persons on account of such business, and is unable to pay such debts in full, and

Whereas the Assignor desires to provide for the payment of such debts so far as possible by a general assignment of all his property for that purpose,

Now, therefore, the Assignor hereby assigns to the Assignee, its successors, and assigns all his property of every kind and wherever situated, including the stock of merchandise located at _____, _____, _____, together with all fixtures used in the business of the Assignor, and all accounts receivable and notes owing to the Assignor, but excluding such property as is by law exempt from levy and sale under execution, in trust for the following purposes:

1. *Possession of property.* To take possession of all such property, insure it against loss by fire, and convert it into money with all reasonable diligence, and to collect all debts and demands hereby assigned that can be collected.

2. *Payment of proceeds.* (a) Out of the proceeds received, to pay and discharge all reasonable expenses, costs, and disbursements in connection with the execution of this assignment and the discharge of the trust created hereby, together with all commissions or allowances to which the Assignee may be entitled for his services in the execution of

this trust.

(b) Then to pay and discharge a certain note, dated _____ [date] due to _____, for the sum of _____ (\$____), secured by a security interest in the fixtures used in the business of the Assignor.

(c) Then to pay and discharge such claims as are entitled to preference under the laws of the State of _____, viz.: the claims of the Assignor's employees for wages or salaries incurred within three months prior to the execution of this assignment, not exceeding _____ Dollars (\$____) to each employee, and, after payment of the foregoing, all claims for cash deposits not exceeding _____ Dollars (\$____) made and left with the Assignor on account of purchases of merchandise where such deposits were made within six months before the execution of this assignment and such merchandise has not been delivered, shall be preferred before any other debt except wages or salaries. If, however, the assets of the Assignor are insufficient to pay in full all the foregoing preferred claims, they shall be applied to the payment first of wages or salaries to the full amount of each such wage or salary, and thereafter pro rata to the payment of such cash deposits.

(d) Then to pay and discharge all the remaining debts and liabilities now due from the Assignor, including existing but unmatured obligations, together with all interest owing thereon. If, however, the residue of the proceeds is insufficient to pay such debts, liabilities, and interests in full, then to apply the proceeds to the payments of such debts, liabilities, and interest pro rata.

(e) After payment of all such debts and liabilities in full, then to pay any residue of such proceeds to the Assignor, his legal representatives, or assigns.

(3) *Appointment of assignee as attorney.* For the more effectual execution of this assignment and of the trust hereby created, the Assignor hereby irrevocably appoints the Assignee his attorney, with power of substitution and revocation, and with complete authority to do anything necessary for the full execution of this assignment and trust; to demand of and receive from any person all property, debts, and demands belonging and owing to the Assignor, and to give acquittances and discharges therefor; to sue for, prosecute, defend, and interplead on account of all such property, debts, and demands; and to execute, acknowledge, and deliver all deeds, instruments of conveyance, receipts, and releases necessary or proper for the execution of this trust.

The Assignee hereby accepts the trust herein created and covenants with the Assignor, his legal representatives, and assigns that the Assignee shall faithfully and without delay execute the trust according to the best of its skill, knowledge, and ability.

In witness whereof the parties have signed this agreement.

Corporate Seal

Attest:

Secretary

by

President

[Acknowledgments]



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37TTT-16 California Legal Forms--Transaction Guide Form T16-6

Form T16-6 Assignment for Benefit of Creditors--Partners and Partnership

Description: This form is an assignment for the benefit of creditors; this agreement provides for the marshaling of assets, so that the partnership assets are first applied to the payment of partnership debts and the individual assets of each partner are first applied to the payment of that partner's debts.

Form T16-6 Assignment for Benefit of Creditors--Partners and Partnership

AGREEMENT made _____ [date] between _____ and _____, individually and as partners carrying on the business of _____ under the name _____, at _____, _____, _____ (the "Assignors") and _____ (the "Assignee").

Whereas the Assignors, who are indebted individually and as partners to various persons, are unable to pay such debts in full and desire to make a fair distribution of their assets among their creditors by applying their partnership and individual assets to the payment of their partnership and individual debts,

Now, therefore, the Assignors hereby jointly and severally assign to the Assignee, his successors and assigns, all property of every kind and wherever situated now held by them as partners, and all property of every kind and wherever situated now held by each of them individually, except such property as is by law exempt from levy and sale under execution, in separate trusts for the following purposes:

1. *Assets of assignors.* To take possession of all such property and to convert it into money with reasonable diligence; to collect all debts and demands hereby assigned that can be collected; and to deposit the proceeds received thereby in three separate accounts, as follows: the proceeds attributable to partnership property shall be deposited in one account, and the proceeds attributable to the individual property of each partner shall be deposited in two separate accounts.

2. *Payment of administration expenses.* Out of the proceeds received under this assignment, to pay and discharge all reasonable expenses, costs, and disbursements in connection with the execution of this assignment and the discharge of the trusts created hereby, together with any commissions or allowances to which the Assignee may be entitled for his services in the execution of these trusts, such expenses, costs, disbursements, and commissions to be charged against the

particular account which gave rise to them.

3. *Distribution of residue of proceeds.* (a). Out of the residue of the proceeds in the partnership account, to pay and discharge all debts and liabilities now due from the Assignors as partners, including existing but unmatured obligations, together with all interest owing thereon. If, however, the residue of such proceeds is insufficient to pay such debts, liabilities, and interest in full, then to apply such proceeds to the payment of such debts, liabilities, and interest pro rata.

(b) After payment in full of all such debts and liabilities of the partnership, then to pay and discharge out of any residue of proceeds remaining in the partnership account, the individual debts and liabilities of each of the Assignors now due, including existing but unmatured obligations, together with all interest owing thereon. In making such payment, however, the Assignee shall not permit any part of the proceeds to which one of the Assignors may be entitled to be applied in payment of the individual debts of the other Assignor. If in the case of either Assignor the residue of such proceeds is insufficient to pay the debts, liabilities, and interest of such Assignor in full, then to apply the residue to the payment of such debts, liabilities, and interest pro rata.

(c) Out of the residue of the proceeds in the individual accounts, to pay and discharge all the individual debts and liabilities of the Assignors now due, including existing but unmatured obligations, together with all interest owing thereon. In making such payment, however, the Assignee shall not permit any part of the proceeds of the property of one Assignor to be applied in payment of the individual debts of the other Assignor. If in the case of either Assignor the residue of such proceeds is insufficient to pay such debts, liabilities, and interest in full, then to apply the residue to the payment of such debts, liabilities, and interest pro rata.

(d) If the proceeds in the individual accounts, or either of them, exceed the amount necessary to discharge the liabilities payable therefrom, then to apply such surplus to the payment of any partnership debts which may remain unpaid, such application to be made in accordance with the provisions for payment set forth in this paragraph.

(e) After payment in full of all such debts and liabilities of the Assignors as partners and as individuals, then to pay any residue of the proceeds in the individual accounts to the Assignors, their legal representatives or assigns, according to their respective rights thereto.

4. *Powers of assignee.* For the most effectual execution of this assignment and of the trusts hereby created, the Assignors, jointly and severally, hereby irrevocably appoint the Assignee their attorney, with power of substitution and revocation, and with complete authority to do anything necessary for the full execution of this assignment and these trusts; to demand of and receive from any person all property, debts, and demands belonging and owing to the Assignors as partners or as individuals, and to give acquittances and discharges therefor; to sue for, prosecute, defend, and interplead on account of all such property, debts, and demands; to sign or endorse the names of the Assignors or the partnership upon any check, draft, note, or other instrument for the payment of money, and upon any instrument necessary to effectuate the purposes of these trusts; and to execute, acknowledge, and deliver all deeds, instruments of conveyance, receipts, and releases necessary or proper for the execution of these trusts.

5. *Covenants of assignee.* The Assignee hereby accepts the trusts herein created and covenants with the Assignors, their legal representatives, and assigns that the Assignee shall faithfully and without delay execute these trusts according to the best of his skill, knowledge, and ability.

In witness whereof the parties have signed and acknowledged this agreement.

(Acknowledgments)



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*37TTT-16 California Legal Forms--Transaction Guide Form T16-7***Form T16-7 Assignment for Benefit of Creditors--Corporation****Description:** This agreement illustrates an assignment for the benefit of creditors where the assignor is a corporation.**Form T16-7 Assignment for Benefit of Creditors--Corporation**

ASSIGNMENT made this _____ [date] by _____, a _____ corporation having its principal place of business at _____, _____, _____ (the "Assignor"), to _____, residing at _____, _____ (the "Assignee").

Whereas the Assignor is engaged in business as a manufacturer and distributor of _____ at _____, _____, _____, and

Whereas the Assignor is indebted to various persons and, being unable to pay such debts in full, desires to make a fair distribution of its assets among its creditors, and

Whereas at a special meeting of the Board of Directors of the Assignor, duly held at its office at _____, _____, _____, on _____ [date] a resolution was adopted authorizing the Assignor's President and Secretary to execute and deliver to the Assignee an assignment of all the assets of the Assignor for the benefit of its creditors,

Now, therefore, the Assignor hereby assigns to the Assignee all its property of every kind and wherever situated, as described in the annexed inventory marked Exhibit A, as well as all other property owned by it and not listed therein, in trust for the following purposes:

1. *Assets of assignor.* To take possession of all such property and to convert it into money with reasonable diligence as soon as it can be wisely and prudently done, and to collect all debts and demands hereby assigned that can be collected, including any amount that may be due from shareholders on its corporate shares issued to or subscribed for by them, or to compromise such debts and demands so as to realize therefrom the greatest sum possible.

2. *Administration expenses.* Out of the proceeds received under this assignment, to pay and discharge all reasonable expenses, costs, and disbursements in connection with the execution of this assignment and in connection with the discharge of the trust created hereby, including all reasonable and proper charges for services rendered in the premises of the Assignor during the continuance of the Assignor's business as hereinafter provided, and including also all commissions or allowances to which the Assignee may be entitled for his services in the execution of this trust.

3. *Wages and salaries.* Then to pay and discharge such claims as are entitled to preference under the laws of the State of _____, viz.: the claims of the Assignor's employees for wages or salaries incurred within three months prior to the execution of this assignment, not exceeding _____ Dollars (\$_____) to each employee, and after payment of the foregoing, all claims for cash deposits not exceeding _____ Dollars (\$_____) made and left with the Assignor on account of purchases of merchandise where such deposits were made within six months before the execution of this assignment and such merchandise has not been delivered shall be preferred before any other debt except wages or salaries. If, however, the Assignor's assets are insufficient to pay in full all the foregoing preferred claims, they shall be applied to the payment first of wages or salaries to the full amount of each such wage or salary, and thereafter pro rata to the payment of such cash deposits.

4. *Distribution of residue of proceeds.* (a) Then to pay and discharge all the remaining debts and liabilities now due from the Assignor, including existing but unmatured obligations, together with all interest owing thereon. If the residue of the proceeds is insufficient to pay such debts, liabilities, and interest in full, then to apply the proceeds to the payment of such debts, liabilities, and interest pro rata.

(b) After payment of all such debts, liabilities, and expenses in full, then to pay the residue of such proceeds to the Assignor, its successors, or assigns.

5. *Continuation of assignor's business by assignee.* It shall be lawful for the Assignee in his absolute discretion to continue, for a limited period of time, the business which the Assignor has hitherto carried on, in order to carry out more effectively the provisions of this assignment. To that end the Assignee shall have the right to complete the manufacture of raw materials now in process, and to employ such labor as shall in his opinion be necessary or proper for this purpose. Nothing herein, however, shall be construed to authorize the Assignee to purchase any new goods or materials.

6. *Powers of assignee.* For the more effectual execution of this assignment and of the trust hereby created, the Assignor hereby irrevocably appoints the Assignee its attorney, with power of substitution and revocation, and with complete authority to do anything necessary for the full execution of this assignment and trust; to demand and receive of and from any person all property, debts, and demands belonging and owing to the Assignor, and to give acquittances and discharges therefor; to sue for, prosecute, defend, and interplead on account of such property, debts, and demands; and to execute, acknowledge, and deliver all deeds, instruments of conveyance, receipts, and releases necessary or proper for the execution of this trust.

7. *Covenants of assignee.* The Assignee hereby accepts the trust hereby created and covenants with the Assignor, its successors, and assigns that the Assignee shall faithfully and without delay execute this trust, according to the best of his skill, knowledge, and ability.

8. *Entire agreement.* This agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them.

9. *Notices.* All notices or other documents under this agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at their last known addresses.

10. *Non-waiver.* No delay or failure by a party to exercise any right under this agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

11. *Headings.* Headings in this agreement are for convenience only and shall not be used to interpret or construe its provisions.

12. *Governing law.* This agreement shall be construed in accordance with and governed by the laws of the State of _____.

13. *Counterparts.* This agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

14. *Binding effect.* The provisions of this agreement shall be binding upon and inure to the benefit of each of the parties and their respective legal representatives, successors and assigns.

In witness whereof the parties have signed and acknowledged this agreement.

Corporate Seal

Attest:

by

President

Secretary

(Acknowledgments)



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*37TTT-16 California Legal Forms--Transaction Guide Form T16-8***Form T16-8 Composition Agreement Following Assignment for Benefit of Creditors--Appointment of Trustee**

Description: This form illustrates a settlement reached after the debtor has made an assignment for the benefit of creditors.

Form T16-8 Composition Agreement Following Assignment for Benefit of Creditors--Appointment of Trustee

AGREEMENT made this _____ [date] among _____ of _____, _____, doing business in the City of _____ as _____, (the "Debtor"), _____, of the City of _____, _____ (the "Trustee"), the several persons and companies whose names are hereunto subscribed (the "Creditors"), and _____, of _____, _____ (the "Assignee").

Whereas the Debtor, by instrument dated _____ [date] assigned all her property to the Assignee for the benefit of creditors, and

Whereas at a meeting of the Creditors held on _____ [date] it was unanimously decided, inasmuch as immediate liquidation of the Debtor's assets would result in insufficient funds to satisfy the claims of the Creditors, that it would be for the best interests of the Creditors to continue the business of the Debtor, and

Whereas the Creditors at such meeting unanimously agreed to accept an offer of the Debtor to pay to her creditors a composition of _____ cents on the dollar in full discharge of their claims, such composition payment to be secured by the assignment by the Debtor of her assets to the Trustee,

It is therefore agreed:

1. *Composition.* The Debtor shall pay to the Creditors and the Creditors shall accept in full satisfaction and discharge of their respective claims, _____ percent of the total amounts of such claims, in consideration of which the Creditors shall release the Debtor from the debts due to them respectively, and shall refrain from all actions, proceedings or demands in respect thereof.

2. *Payment to trustee.* Until the composition has been paid in full, the Debtor shall, within ten days after the end of each month, pay to the Trustee for the benefit of the Creditors the net cash proceeds of the Debtor's business for that month, deducting only the normal operating expenses including reasonable compensation to herself (such expenses not to exceed in any month the average monthly operating expenses for the six full months preceding the date of this agreement). The Trustee shall, immediately upon the receipt of such sum, distribute it among the Creditors proportionately, without preference or priority.

3. *Resignation of assignee.* The Assignee shall forthwith resign as assignee for the benefit of the Debtor's creditors under the agreement dated _____ [date] and shall promptly release to the Debtor all property for which, as assignee for the benefit of creditors, he is accountable, making a full account of all his acts to the Debtor and to the Trustee. Upon the receipt of this property by the Debtor, and upon condition that the Debtor and the Trustee are satisfied as to the correctness of the account of the Assignee, the Assignee shall be released from all obligations as assignee for the benefit of creditors, and his bond shall be canceled. To this end the Creditors hereby constitute the Trustee their attorney in fact to appear for them in all proceedings relating to the resignation and discharge of the Assignee, and to execute a release to him.

4. *Assignment to trustee.* Upon the receipt of the property from the Assignee, the Debtor shall and hereby does assign to the Trustee in trust all her property, except such property as is by law exempt from execution, upon condition, however, that until default shall be made by the Debtor in payment to the Trustee of any monthly installment of the net cash proceeds of the Debtor's business, as provided in paragraph 2, the Debtor shall be allowed to use, employ, and dispose of all such property in the normal conduct of her business, subject to the control and supervision of the Trustee; and upon the further condition that if the Debtor shall pay to the Trustee the full amount of the composition, then this assignment shall be void. Without the Trustee's prior written consent, the Debtor shall not use any proceeds of her business for the acquisition of any inventory or other property, and every such consent of the Trustee shall be made only on condition that any inventory or other property so acquired shall be immediately assigned to the Trustee to be held by him under the terms of this agreement.

5. *Accounting to trustee.* The Debtor shall keep a detailed account of all sales made by her in the conduct of her business, and of all cash realized therefrom, and accounts and notes contracted or received thereby; and the Debtor shall also keep a detailed account of all expenses incurred in the conduct of the business. Such accounts shall be rendered to the Trustee at the end of every month until the composition has been fully paid.

6. *Inspection of books.* The books of the Debtor shall at all reasonable times be open to inspection by the Trustee.

7. *Default by debtor.* If the Debtor defaults in the payment to the Trustee of any monthly installment of the net cash proceeds of the Debtor's business, as provided in paragraph 2, or shall otherwise default under this agreement, the Trustee shall immediately take possession of, collect, hold, manage, sell, or otherwise dispose of all property assigned to him; bring and prosecute, with the aid of counsel, any action necessary to realize upon the Debtor's assets; settle all suits affecting such assets; execute and deliver all assignments, deeds, or other instruments necessary to carry out the purposes of this agreement; pay all expenses in connection with the operation of the business; apply the net proceeds toward the immediate payment to the Creditors of the full unpaid balances due to them, without preference or priority, and without regard to the reduction of their claims by this agreement; and pay any surplus of such proceeds to the Debtor.

8. *Dissolution of business.* If at any time during the term of this agreement Creditors representing three-quarters in amount of the present claims against the Debtor decide, at a creditors' meeting called for that purpose, or in writing, that it would be in the best interests of the Creditors to dissolve and wind up the business of the Debtor, then the Trustee shall immediately take possession of the business, and liquidate its assets, under the powers and obligations specified in paragraph 7; except that if the Debtor is not then in default the Creditors shall be entitled to receive no more than the

unpaid balances due to them as reduced by this agreement.

9. *Marshaling of assets.* If any creditor shall hold security for any part of his debt which he would be bound to realize on before proceeding against the general assets of the Debtor in equity, then such Creditor shall be entitled to receive installments of composition from the Trustee as if such Creditor's full claim amounted only to the excess of his entire debt over the value of such security, as such value shall be determined by the Trustee, unless such creditor shall surrender such security to the Trustee for the benefit of all Creditors.

10. *Other security.* Except as otherwise provided in paragraph 9, this agreement shall in no way affect the rights of any Creditor with respect to any security which he may hold for his debt or with respect to the rights of any Creditor against any surety or any persons other than the Debtor.

11. *Fee of trustee.* For his services under this agreement, the Trustee shall be entitled to receive _____ Dollars (\$_____) payable out of the amounts received from the Debtor before any money is distributed to the Creditors. If the Trustee shall be required to act under either paragraph 7 or 8, he shall be entitled to reasonable additional compensation.

12. *Power of attorney.* The Creditors hereby constitute the trustee their attorney in fact for the purpose of carrying out the trust created by this agreement, to execute all instruments, and to do such other things as to him shall seem necessary or proper.

13. *Termination of agreement.* This agreement shall terminate upon the receipt by the Creditors of ____ percent of their respective claims, after payment of the Trustee's fee as provided in paragraph 11, and the Debtor shall thereupon be completely released from all liability on account of any claim covered by this agreement. Notwithstanding anything herein contained to the contrary, in case any petition in bankruptcy or any other insolvency proceeding is instituted by or against the Debtor, or in case attachment or execution is levied on any of her property, or application is made for the appointment of a receiver of her property by anyone not a party to this agreement, then this agreement shall automatically terminate, and the full amounts of the claims covered by this agreement, less payments received hereunder or otherwise, shall immediately become due and payable, and each Creditor shall have the right to pursue any remedy available to him.

14. *Amounts due.* The amounts set opposite the respective names of the Creditors at the bottom of this agreement, or of any counterparts, are the full amounts of the claims of such Creditors against the Debtor.

15. *Binding effect.* This agreement shall be binding upon the parties, their legal representatives, successors, and assigns.

16. *Entire agreement.* This agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them.

17. *Notices.* All notices or other documents under this agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at their last known addresses.

18. *Non-waiver.* No delay or failure by a party to exercise any right under this agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

19. *Headings.* Headings in this agreement are for convenience only and shall not be used to interpret or construe its provisions.

20. *Governing law.* This agreement shall be construed in accordance with and governed by the laws of the State of _____.

21. *Counterparts.* This agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

In witness whereof the parties have signed this agreement.

Creditors: Amount:

, Debtor

, Trustee

, Assignee



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37TTT-16 California Legal Forms--Transaction Guide Form T16-9

Form T16-9 Collateral Transfer of Creditor's Interest

Description: This form may be used when the creditor puts up the secured debt as collateral for the creditor's obligation to another person.

Form T16-9 Collateral Transfer of Creditor's Interest

COLLATERAL TRANSFER OF NOTE

State of _____
County of _____

Parties

1. This Collateral Transfer of a Note is made on _____ [date], between _____ [name of debtor] (the "Debtor"), whose mailing address is _____, and _____ [name of creditor] (the "Secured Party"), whose mailing address is _____.

Consideration

2. This Transfer is made _____ [e.g., for a valuable and sufficient consideration paid, receipt of which is acknowledged, or other appropriate provision on consideration for the transfer].

Transfer

3. The Debtor assigns to the Secured Party that certain promissory note ("the Collateral"), and grants to the Secured Party a security interest in the Collateral, together with all liens securing the Collateral. The Collateral is more particularly described in Paragraph 4, below.

Collateral

4. The Collateral for this transfer is a promissory note in the original principal sum of \$ _____, dated _____, executed by _____ [name of maker] and payable to the order of _____ [name of payee], and which is more fully described in and secured by a _____ [Deed of Trust *or* Mortgage] of record recorded in Volume _____, page _____, of the _____ [Deed of Trust *or* Mortgage] Records of _____ County, _____ [state], on the following described property in _____ County, _____ [state]: _____ (*give metes and bounds legal description*).

Purpose

5. The purpose of this transfer is to secure the payment of _____ [*describe obligation, e.g., a promissory note ("the Promissory Note")*], dated the same day as this Collateral Transfer, in the original principal sum of \$ _____, executed by the Debtor and payable to the order of the Secured Party].

Retransfer of the Collateral

6. On full payment of the Promissory Note, this transfer shall be null and void, and the Collateral, together with all liens securing the Collateral, shall, at the Debtor's expense, be retransferred, without warranty or recourse, to the Debtor by the Secured Party.

Acceleration of Indebtedness Under Promissory Note

7. In the event of default by the Debtor of any installment, principal, or interest of the Promissory Note secured by this Transfer, in accordance with the terms of the Promissory Note, the Secured Party may elect to declare the entire indebtedness secured by this Transfer immediately due and payable. The Debtor expressly waives notice, demand, and presentment.

Sale of the Collateral on Default

8. In the event of default in the payment of the indebtedness when due or declared due, the Secured Party shall have the right to sell the Collateral at public sale at auction at the time and place stated in Section _____ of the _____ [state] Property Code, as amended. The Secured Party shall give notice of the public sale as required under Section _____ of the _____ [state] Property Code, as amended. The Secured Party shall transfer to the purchaser at the sale the Collateral, together with all liens, rights, titles, equities, and interests in and to the above-described property securing the payment thereof. The recitals in this transfer shall be prima facie evidence of the truth of the matters stated in this Transfer, and all the prerequisites to the sale required under this Transfer and under the laws of this state shall be presumed to have been performed. The proceeds of the sale shall be applied as follows:

(1) First to the reasonable expenses of the sale;

(2) Then toward the payment of the principal, interest, and attorneys' fees due and unpaid on the Promissory Note secured by this Transfer; and

(3) The balance, if any, and surplus, if any, to the person or persons legally entitled to receive the balance under the Business and Commercial Code of _____ [state].

The Debtor shall remain liable for any deficiency. The Secured Party shall have the right to purchase at the public sale.

Additional Remedies of the Secured Party

9. The Secured Party, in addition to the rights and remedies provided in Paragraph 8, shall have all the rights and remedies of a secured party under the Business and Commercial Code of _____ [state]; the Secured Party shall be entitled to any other remedy that may now or hereafter exist at law or in equity for the collection of any unpaid indebtedness under the Promissory Note and for the foreclosure of the Security Interest created in this Transfer. The use of any remedy provided under this Transfer or provided by the Business and Commercial Code of _____ [state] or by any other law of _____ [state], however, shall not prevent the concurrent use of any other appropriate remedy or remedies.

No Waiver of Default

10. The Secured Party may remedy any default without waiving the default or may waive any default under this Transfer without waiving any prior or subsequent default. The Secured Party is under no duty or obligation to make or enforce the collection of the Collateral. The failure of the Secured Party to make or to enforce collection of the Collateral shall not prejudice the right of the Secured Party to thereafter make or enforce collection of the Collateral or to affect the indebtedness to the Secured Party secured by this Transfer.

Construction of Security Interest

11. The security interest created in this Transfer shall not be affected by, and shall not affect, any other security taken _____ [e.g., for the indebtedness secured by this Transfer *or* in additional consideration for the loan extended on the date this Transfer is made], or any part of the indebtedness secured by this Transfer. Any extensions of the indebtedness may be made without affecting the priority of this security interest or its validity with reference to any third party.

Right of Secured Party to Control Collateral

12. The Debtor authorizes the Secured Party at the Secured Party's option to collect any and all sums becoming due on the Collateral. The Maker of the note constituting the Collateral under this Transfer is authorized to pay these sums to the Secured Party. The Secured Party shall hold these sums without liability for interest and shall apply these sums toward payment of the Promissory Note secured by this Transfer as and when it becomes payable. The Secured Party shall have the full control of the Collateral and the liens securing the Collateral until the note secured by this Transfer is fully paid and shall have the further right and authority to release the lien or liens securing the Collateral on the full and final payment of the Collateral to the Secured Party.

Duty of the Secured Party

13. The duty of the Secured Party with reference to the Collateral shall be solely that of reasonable care in the custody

and preservation of the Collateral in the possession of the Secured Party and _____ [shall *or* shall not] include that of taking any steps necessary to preserve rights against prior parties.

_____ **[State] Law to Apply**

14. This Transfer shall be construed in accordance with the Business and Commercial Code of _____ [state] and other applicable laws of the state of _____. All obligations of the parties created under this Transfer are performable in _____ County, _____ [state].

Parties Bound

15. This Transfer shall be binding on and inure to the benefit of the parties to this Transfer and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Transfer.

Legal Construction

16. In case any one or more of the provisions contained in this Transfer shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision of this Transfer, and this Transfer shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in this Transfer.

Prior Agreements Superseded

17. This Transfer constitutes the sole agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting this subject matter.

Definitions

18. All terms that are defined in the Business and Commercial Code of _____ [state] shall have the same meaning in this Transfer as in that Code.

Executed on _____ [date], in _____ County, _____ [state].

_____ [signature of assignor]

_____ [typed name]

ACKNOWLEDGMENT



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CHAPTER 16: Assignment.

*37TTT-16 California Legal Forms--Transaction Guide Form T16-10***Form T16-10 Collateral Assignment of Contract Rights****Description:** This form provide a sample form for assigning as collateral, contractual rights.**Form T16-10 Collateral Assignment of Contract Rights****COLLATERAL ASSIGNMENT**

COLLATERAL ASSIGNMENT made as of this _____ day of _____, 20____ by _____ ("Assignor") to _____ ("Assignee").

FOR VALUE RECEIVED, and as collateral security for all debts, liabilities and obligations of Assignor to Assignee, now existing or hereafter arising under any agreement between Assignor and Assignee, including, without limitation, that certain [Revolving Credit] [Term Loan] [and Security] Agreement dated as of _____, 20____, between Assignor and Assignee (as amended, modified, restated or supplemented from time to time, the "Loan Agreement"), Assignor hereby assigns, transfers and sets over unto Assignee, its successors and assigns, all of its rights, but not its obligations, under that certain _____ [Asset] _____ [Stock] _____ [Purchase] _____ [Acquisition] Agreement dated as of _____, 20____, among Assignor and _____ ("Seller") and all of the agreements and documents by which assets or rights of Seller are transferred to Assignor (as each may be amended, modified, restated or supplemented from time to time, collectively, the "Agreements"), including, without limitation, all indemnity rights and all moneys and claims for moneys due and/or to become due to Assignor under the Agreements.

Assignor hereby (i) specifically authorizes and directs Seller upon notice to Seller by Assignee to make all payments due under or arising under the Agreements directly to Assignee and (ii) irrevocably authorizes and empowers Assignee (a) to ask, demand, receive, receipt and give acquittance for any and all amounts which may be or become due or payable, or remain unpaid at any time and times to Assignor by Seller under and pursuant to the Agreements, (b) to endorse any checks, drafts or other orders for the payment of money payable to Assignor in payment thereof, and (c) in Assignee's discretion to file any claims or take any action or institute any proceeding, either in its own name or in the name of Assignor or otherwise, which Assignee may deem necessary or advisable to effectuate the foregoing. It is expressly understood and agreed, however, that Assignee shall not be required or obligated in any manner to make any

demand or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim or take any other action to collect or enforce the payment of any amounts which may have been assigned to Assignee or to which Assignee may be entitled hereunder at any time or times.

Seller is hereby authorized to recognize Assignee's claims to rights hereunder without investigating any reason for any action taken by Assignee or the validity or the amount of the obligations or existence of any default, or the application to be made by Assignee of any of the amounts to be paid to Assignee. Checks for all or any part of the sums payable under this Assignment shall be drawn to the sole and exclusive order of Assignee.

Without first obtaining the written consent of Assignee, Assignor and Seller shall not (i) amend or modify the Agreements or (ii) agree to or suffer any amendment, extension, renewal, release, acceptance, forbearance, modification or waiver with respect to any rights arising under the Agreements.

In the event Assignor declines to exercise any rights under the Agreements, Assignee shall have the right to enforce any and all such rights of Assignor against Seller.

IN WITNESS WHEREOF, Assignor has duly executed this Assignment the day and year first above written.

[ASSIGNOR]

By: _____

Name: _____

Its: _____

Seller hereby consents and agrees to the provisions of this Collateral Assignment as of this _____ day of _____, 20_____.

[SELLER] _____

By: _____

Name: _____

Its: _____



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*37TTT-16 California Legal Forms--Transaction Guide Form T16-11***Form T16-11 Noncollateral Transfer of Creditor's Interest**

Description: This form may be used when a creditor makes a noncollateral transfer or assignment of rights in a debt and the accompanying security interest.

Form T16-11 Noncollateral Transfer of Creditor's Interest

TRANSFER OF LIEN AND NOTE

State of _____
 County of _____

Preamble

_____ [name of transferor], the undersigned, of _____ County,
 _____ [state], is the present legal and equitable owner and holder of a certain promissory note in the
 principal sum of \$ _____, dated _____, executed by _____ [name
 of maker], of _____ County, _____ [state], payable to the order of
 _____ [name of payee], and more fully described in a _____ [e.g., deed of trust] duly
 recorded in Volume _____, page _____, of the _____ [e.g., Deed
 of Trust] Records of _____ County, _____ [state]. This note is secured by
 _____ [e.g., the above-mentioned Deed of Trust] against the following described property in
 _____ County, _____ [state]: _____ [property description].

Transfer

In consideration of _____ [describe consideration, e.g., the sum of \$ _____], paid to
 the undersigned by _____ [name of transferee], the receipt of which is acknowledged, the undersigned
 assigns to _____ [name of transferee], whose mailing address is _____, the
 above-described note, together with _____ [e.g., all liens and the superior title held by the undersigned]

securing payment of the note *or* the collateral note securing the same]. There remains unpaid on this note _____ [*specify; e.g., the principal sum of \$*_____, together with interest from _____ (date), as provided in the note, *or other appropriate provision as to the unpaid balance of the note that is being transferred*]. [*Add, if appropriate, provision negating recourse, such as: This transfer is without recourse on the undersigned.*]

Executed on _____ [date], in _____ County, _____ [state].

_____ [signature of transferor]

_____ [typed name]

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*37TTT-16 California Legal Forms--Transaction Guide Form T16-12***Form T16-12 Partial Assignment of Creditor's Interest**

Description: This form may be used by a creditor to transfer part of the creditor's rights in a debt and the accompanying security interest.

Form T16-12 Partial Assignment of Creditor's Interest

PARTIAL ASSIGNMENT

State of _____
County of _____

Preamble

_____ [Name of assignor] (the "Assignor"), of _____ County,
_____ [state], is the present legal and equitable owner and holder of a certain promissory note in the principal sum of \$ _____, dated _____, executed by _____ [name of maker], of _____ County, _____ [state], payable to the order of _____ [name of payee], and more fully described in a _____ [e.g., Deed of Trust] duly recorded in Volume _____, page _____, of the _____ [e.g., Deed of Trust] Records of _____ County, _____ [state]. This note is secured by _____ [e.g., the above-mentioned Deed of Trust] against the following described property in _____ County, _____ [state]: _____ [property description].

Transfer

In consideration of _____ [describe consideration, e.g., the sum of \$ _____], paid to the Assignor by _____ [name of assignee] (the "Assignee"), the receipt of which is acknowledged, the Assignor assigns to the Assignee, whose mailing address is _____, an undivided _____ [specify; e.g., one-third] interest in the above-described note, together with an undivided

_____ [specify; e.g., one-third] interest in _____ [e.g., all liens and the superior title held by the Assignor securing payment of the note]. There remains unpaid on this note _____ [specify; e.g., a balance of \$_____ that includes unearned interest, or other appropriate provision as to the unpaid balance of the note that is being transferred].

[If parties wish to specify priority of interests, add appropriate subordination provision, such as:]

As part of the consideration for this transfer, the Assignee agrees that the Assignee's interest in the lien securing the promissory note shall be and shall remain subject and subordinate to the interest of the Assignor in the lien securing the promissory note. The Assignee further agrees that the Assignee's interest shall be subject and subordinate to the interest of any subsequent holder or assignee of the Assignor's interest in the lien securing the promissory note.

[If desired, add appropriate provision specifying authority to receive and collect debt, such as:]

The Assignor shall continue to receive all principal and interest payments made on the promissory note mentioned above. The Assignor shall retain _____ [e.g., two-thirds] and shall forward to the Assignee _____ [e.g., one-third] of any payment received on the promissory note, within _____ [e.g., five (5)] business days after the receipt of the payment. In the event of default on the promissory note, the Assignor, but not the Assignee, shall have the power to exercise any right of foreclosure under the promissory note. The Assignor shall notify the Assignee of any foreclosure proceeding, and the Assignee shall be made a party to any foreclosure proceeding initiated by or on behalf of the Assignor.

Executed on _____ [date], in _____ County, _____ [state].

_____ [signature of assignor]
_____ [typed name]

[If instrument contains subordination provision or sets forth authority to collect debt, add:]

_____ [signature of assignee]
_____ [typed name]

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37TTT-16 California Legal Forms--Transaction Guide Form T16-13

Form T16-13 Patent Assignment of Security

Description: This form is an assignment of a patent as security in a secured transaction.

Form T16-13 Patent Assignment of Security

PATENT ASSIGNMENT OF SECURITY

WHEREAS, _____, a corporation formed under the laws of _____, located at _____ ("Borrower"), owns the patents and patent applications shown in the attached Schedule A (the "Patents"), for which there are recordings or applications in the United States Patent and Trademark Office under the numbers shown in the attached Schedule A; and

WHEREAS, Borrower is obligated to _____ ("Lender") pursuant to (i) a certain [Revolving Credit] [Term Loan] [and Security] Agreement, dated the date hereof, between Lender and Borrower and (ii) a certain Patent Collateral Security Agreement, dated the date hereof, made by Borrower in favor of Lender (as each may be amended, modified, restated or supplemented from time to time, collectively, the "Agreements"); and

WHEREAS, pursuant to the Agreements, Borrower is granting to Lender a security interest in the Patents, all proceeds thereof, all rights corresponding thereto and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, and the recordings and applications therefore.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Borrower does hereby assign unto Lender and grant to Lender a security interest in and to the Patents, and recordings and applications therefor, which assignment and security interest shall secure all the Obligations as defined in the Agreements and in accordance with the terms and provisions thereof.

Borrower expressly acknowledges and affirms that the rights and remedies of Lender with respect to the assignment and security interest granted hereby are more fully set forth in the Agreements.

Dated: _____ [city], _____ [state]
 _____, 20_____

OR PATENT NO.

FILING DATE

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CHAPTER 16: Assignment.

37TTT-16 California Legal Forms--Transaction Guide Form T16-14

Form T16-14 Trademark Assignment of Security

Description: This form is an assignment of a trademark as security in a secured transaction.

Form T16-14 Trademark Assignment of Security

TRADEMARK ASSIGNMENT OF SECURITY

WHEREAS, _____, a corporation formed under the laws of _____, located at _____ ("Borrower"), has adopted, used and is using the marks shown in the attached Schedule A (the "Marks"), for which there are registrations or applications in the United States Patent and Trademark Office under the numbers shown in the attached Schedule A; and

WHEREAS, Borrower is obligated to _____ ("Lender") pursuant to (i) a certain [Revolving Credit] [Term Loan] [and Security] Agreement, dated the date hereof, between Lender and Borrower and (ii) a certain Trademark Collateral Security Agreement, dated the date hereof, made by Borrower in favor of Lender (as each may be amended, modified, restated or supplemented from time to time, collectively, the "Agreements"); and

WHEREAS, pursuant to the Agreements, Borrower is granting to Lender a security interest in the Marks, the goodwill of the business symbolized by the Marks, and the registrations and applications therefor.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Borrower does hereby assign unto Lender and grant to Lender a security interest in and to the Marks, together with the goodwill of the business symbolized by the Marks, and registrations and applications therefor, which assignment and security interest shall secure all the Obligations as defined in the Agreements and in accordance with the terms and provisions thereof.

Borrower expressly acknowledges and affirms that the rights and remedies of Lender with respect to the assignment and security interest granted hereby are more fully set forth in the Agreements.

Dated: _____ [city], _____ [state]
_____, 20____

Witness: _____ [BORROWER]
 _____ By: _____
 Name:
 Title:

Witness: _____ [LENDER]
 _____ By: _____
 Name:
 Title:

STATE OF _____)
 COUNTY OF _____) ss.:

On this _____ day of _____, 20____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that s/he is the _____ of _____, the corporation described in and which executed the foregoing instrument; and that s/he signed her/his name thereto by order of the board of directors of said corporation.

 Notary Public

STATE OF _____)
 COUNTY OF _____) ss.:

On this _____ day of _____, 20____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that s/he is the _____ of _____, the company described in and which executed the foregoing instrument; and that s/he was authorized to sign her/his name thereto on behalf of said company.

 Notary Public

SCHEDULE A

Schedule A to a Trademark Assignment of Security dated _____, 20____, by and between _____ and _____.

REGISTRATION NO. OR REGISTRATION OR MARK

APPLICATION NO.

FILING DATE



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CHAPTER 16: Assignment.

37TTT-16 California Legal Forms--Transaction Guide Form T16-15

Form T16-15 Accounts Receivable Notification Letter

Description: This form provides notice of assignment of accounts receivable (invoice).

Form T16-15 Accounts Receivable Notification Letter

Re: Invoices Payable to _____

Amount Outstanding: \$ _____

Dear _____:

Please be advised that we have assigned all our accounts receivable to: _____

so that in the future you should pay all of our invoices now or hereafter due to _____ directly. Please notify your bookkeeping department of these instructions since any payments hereafter made not in accordance herewith shall be at your own risk. Any change in these instructions must come directly from _____.

According to our records, the aggregate outstanding invoices presently issued to your company is the sum set forth above.

Please notify _____ of any dispute regarding any invoices directly to them at the above address.

Very truly yours,

By _____



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CHAPTER 17: Security Interest--General.

37TTT-17 California Legal Forms--Transaction Guide 17.syn

§ 17.syn Synopsis to Chapter 17: Security Interest--General.

Form T17-1 Bailee Letter

Form T17-1 Bailee Letter

Form T17-2 Notice of Intention to Finance Purchase of Inventory

Form T17-2 Notice of Intention to Finance Purchase of Inventory

Form T17-3 Notice Letter--Perfection of Rights Under Bankruptcy Code

Form T17-3 Notice Letter--Perfection of Rights Under Bankruptcy Code

Form T17-4 Peaceful Possession Letter and Waiver of Rights

Form T17-4 Peaceful Possession Letter and Waiver of Rights



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CHAPTER 17: Security Interest--General.

37TTT-17 California Legal Forms--Transaction Guide Form T17-1

Form T17-1 Bailee Letter

Description: This form provides notice to a bailee of a borrower's inventory of the lender's security interest in the inventory.

Form T17-1 Bailee Letter

_____, _____,
20____

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: _____ ("Borrower")

Ladies and Gentlemen:

Pursuant to a certain [Revolving Credit] [Term Loan] [and Security] Agreement dated as of _____, 20____ (as amended, modified, restated or supplemented from time to time, the "Loan Agreement") by and between _____ ("Lender") and Borrower, Borrower has granted to Lender a security interest in, among other things, all of its inventory. We understand that from time to time inventory of Borrower is delivered to you for storing, processing and/or finishing.

This letter constitutes notice to you of our security interest and that with respect to all goods of Borrower in your possession you are acting as bailee for our benefit. Until you are notified to the contrary, however, you may continue to accept instructions from Borrower regarding work to be performed and delivery of goods stored, processed and/or finished by you.

In order to complete our records, kindly have a duplicate of this letter signed by an authorized officer of your company and return same to us. You will note that notification contained herein has been consented to by Borrower.

Very truly yours,

[LENDER] _____

By: _____

Name: _____

Title: _____

Confirmed and approved in all respects,

[BORROWER] _____

By: _____

Name: _____

Title: _____

Receipt acknowledged, confirmed and approved:

[BAILEE]

By: _____

Name: _____

Title: _____



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CHAPTER 17: Security Interest--General.

37TTT-17 California Legal Forms--Transaction Guide Form T17-2

Form T17-2 Notice of Intention to Finance Purchase of Inventory

Description: This form is for use by a secured party holding a perfected purchase money security interest in inventory. It is a notice of intention to finance the purchase of the inventory.

Form T17-2 Notice of Intention to Finance Purchase of Inventory

NOTICE OF INTENTION TO FINANCE THE PURCHASE OF INVENTORY

TO: _____ [name of other secured party]
_____ [address]
_____ [city], _____ [state]

In accordance with _____ [state] Commercial Code Section _____ and _____, this will notify you that the undersigned _____ [has or expects to acquire] a purchase money security interest in the following inventory: _____ [describe by item or type].

Dated: _____

_____ [signature of secured party]
_____ [typed name]
_____ [address]



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CHAPTER 17: Security Interest--General.

37TTT-17 California Legal Forms--Transaction Guide Form T17-3

Form T17-3 Notice Letter--Perfection of Rights Under Bankruptcy Code

Description: This form may be used by an attorney to notify a bankruptcy trustee that the attorney's client is a secured creditor of a debtor in bankruptcy.

Form T17-3 Notice Letter--Perfection of Rights Under Bankruptcy Code

[Letterhead and Address]

Dear _____ [name of address]:

I represent _____ [name of creditor], a secured creditor of the debtor in the above-referenced proceeding. My client has a right to receive rents and revenues of certain real property located at _____ [address], pursuant to a deed of trust securing a real estate lien note dated _____ [date], and recorded at _____ [recordation information] in the official records of _____ County, _____ [state]. Copies of the note and deed of trust are enclosed.

Because of the debtor's filing in bankruptcy, my client has been prevented by the automatic stay from taking direct steps to collect rent from the tenants at the property. This letter is notice to you, pursuant to Title 11 of the United States Code, Section 546(b), in lieu of that action, and places you on notice of the security interest in all future rents and revenues as they accrue in connection with the real property in question.

_____ [Signature]



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CHAPTER 17: Security Interest--General.

*37TTT-17 California Legal Forms--Transaction Guide Form T17-4***Form T17-4 Peaceful Possession Letter and Waiver of Rights**

Description: This form notifies secured party that debtor is unable to pay its debts and grants secured party rights to possession of debtor's collateral and provides consent to secured party to enter any of debtor's premises to repossess the collateral.

Form T17-4 Peaceful Possession Letter and Waiver of Rights

_____, _____,
20____

_____ [Secured Party's Name]

_____ [Address]

Gentlemen and Ladies:

Pursuant to the terms of a [Revolving Credit] [Term Loan] [and Security] Agreement by and between the undersigned and you dated as of _____, 20____, the undersigned is indebted to you as of this date in the approximate sum of \$_____ plus interest and costs secured by security interests in your favor in all real property and all personal property, including without limitation all accounts, general intangibles, goods, instruments, documents and chattel paper of each of the undersigned (the "Collateral"). Because of the inability of the undersigned to pay its debts and obligations to you, the undersigned herewith grants to you all rights of possession in and to the aforesaid Collateral of the undersigned to be disposed of, as you, in your best discretion, deem advisable and for you to credit the net proceeds resulting from any sale or other disposition to the account of the undersigned with you. Any such net proceeds remaining after the application thereof to the undersigned's indebtedness to you (together with interest and costs) shall be remitted to the undersigned.

This letter also serves as an authorization to any employee of the undersigned or any third party to grant you, and the

undersigned hereby grants you, full and complete access to any premises where the Collateral is located to allow you to take possession of any such Collateral in order to enforce your rights against and collect the liability due to you from the undersigned. In addition, you may designate a custodian who shall have the right, among other things, to change the locks on all gates and doors providing access to such premises or the Collateral.

The undersigned further acknowledges that it has defaulted in the payment of all of its debts and obligations to you and hereby waives and renounces all of its rights (i) to notification under *Section 9-611 of the Uniform Commercial Coden** as in effect in the State of _____ from time to time ("UCC") as to the time and place of the sale or other disposition by you of the Collateral, and (ii) under *Section 9-623 of the UCC* regarding the Borrowers' rights to redeem collateral, respectively.

Each of the undersigned acknowledges that it has been represented by legal counsel with respect to the negotiation and execution of this letter and the transactions contemplated hereby, and that each of the undersigned's legal counsel has reviewed this letter prior to its execution by the undersigned.

The undersigned knowingly and intelligently waives any rights they may have to notice and a hearing before a court of competent jurisdiction and consents to your entry on the premises where the aforesaid Collateral is located for the purposes set forth herein.

Very truly yours,

[DEBTOR] _____

By: _____

Name: _____

Title: _____

CONSENT OF GUARANTORS

Each of the undersigned as a guarantor of the debts and obligations of _____ ("Debtor") to _____ ("Secured Party") hereby consents to the aforesaid letter granting peaceful possession described therein and hereby waives and renounces all of his/her rights to notification under *§ 9-611 of the Uniform Commercial Coden** as to the time and place of the sale or disposition by Secured Party of the above described Collateral, and under *9-623 of the UCC* of the right to redeem the Collateral, respectively.

[GUARANTOR]

By: _____

Name: _____

Title: _____

Notarization of Signature:

[GUARANTOR]

By: _____

Name: _____

Title: _____

Notarization of Signature:

FOOTNOTES:

(n1)Footnote *. Review your state's statutory versions of U.C.C. Sections 9-611 and 9-623, as they may include variances from the model U.C.C. versions.

(n2)Footnote *. Review your state's statutory versions of U.C.C. Sections 9-611 and 9-623, as they may include variances from the model U.C.C. versions.



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CHAPTER 18: Subordination.

37TTT-18 California Legal Forms--Transaction Guide 18.syn

§ 18.syn Synopsis to Chapter 18: Subordination.

Form T18-1 Subordination Agreement

Form T18-1 Subordination Agreement

Form T18-2 General Subordination Agreement

Form T18-2 General Subordination Agreement

Form T18-3 Intercreditor Agreement

Form T18-3 Intercreditor Agreement

Form T18-4 Continuing Subordination Agreement by Prior Creditor to Borrower's New Creditor

Form T18-4 Continuing Subordination Agreement by Prior Creditor to Borrower's New Creditor

Form T18-5 Agreement by Third Party to Subordinate Debt to Bank Loan

Form T18-5 Agreement by Third Party to Subordinate Debt to Bank Loan

Form T18-6 Objection to Secured Party's Acceptance of Collateral

Form T18-6 Objection to Secured Party's Acceptance of Collateral

Form T18-7 Demand by Subordinate Secured Party for Satisfaction of Subordinate Debt

Form T18-7 Demand by Subordinate Secured Party for Satisfaction of Subordinate Debt

Form T18-8 Demand by Subordinate Secured Party to Share in Proceeds of Disposition of Collateral

Form T18-8 Demand by Subordinate Secured Party to Share in Proceeds of Disposition of Collateral

Form T18-9 Request by Secured Party for Proof of Demand for Satisfaction of Subordinate Debt

Form T18-9 Request by Secured Party for Proof of Demand for Satisfaction of Subordinate Debt



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CHAPTER 18: Subordination.

37TTT-18 California Legal Forms--Transaction Guide Form T18-1

Form T18-1 Subordination Agreement

Description: This form is an agreement of a secured party to subordinate a senior security interest to a junior security interest of another creditor in the same collateral.

Form T18-1 Subordination Agreement

SUBORDINATION AGREEMENT

This Subordination Agreement (this "Agreement") dated as of _____, 20____ among _____ ("Senior Lender"), _____ ("Subordinated Lender") and _____ ("Company").

BACKGROUND

As an inducement for Senior Lender to provide a credit facility in favor of Company, Subordinated Lender has agreed to enter into this Agreement to provide for the subordination of the "Subordinated Indebtedness" to the "Senior Indebtedness".

AGREEMENTS

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

1.1. General Terms. For purposes of this Agreement, the following terms shall have the following meanings:

"Company" shall mean Company and its successors and assigns.

"Creditor Agreements" shall mean, collectively, the Senior Lending Agreements and the Subordinated Lending Agreements.

"Creditors" shall mean, collectively, Senior Lender and Subordinated Lender and their respective [heirs, administrators, executors,] successors and assigns.

"Default" shall have the meaning [given to the term "Incipient Event of Default"] [set forth] in the Loan Agreement.

"Distribution" shall mean any payment, whether in cash, in kind, securities or any other property, or security for any such Distribution.

"Documents" shall have the meaning [given to the term "Other/Loan Documents"] [set forth] in the Loan Agreement.

"Event" shall have the meaning set forth in Section 2.2(c) hereof.

"Holder of Subordinated Indebtedness" or "Subordinated Lender" shall mean _____, and any other Person(s) at any time or in any manner acquiring any right or interest in any of the Subordinated Indebtedness, and any [heirs, administrators, executors,] successor and assigns of such Person.

"Loan Agreement" shall mean the [Revolving Credit] [Term Loan] [and Security] Agreement dated as of _____, 20____ between Company and Senior Lender as the same may be amended, supplemented, modified or restated from time to time.

"Person" shall mean an individual, a partnership, a corporation (including a business trust), a joint stock company, a trust, an unincorporated association, a joint venture, a limited liability company, a limited liability partnership or other entity, or a government or any agency, instrumentality or political subdivision thereof.

"Senior Indebtedness" shall mean all Obligations of any kind owed by Company to Senior Lender from time to time under or pursuant to any of the Senior Lending Agreements including, without limitation, all principal, interest accruing thereon, charges, expenses, fees and other sums (including all interest, charges, expenses, fees and other sums accruing after commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of Company) chargeable to Company by Senior Lender, and reimbursement, indemnity or other obligations due and payable to Senior Lender. Senior Indebtedness shall continue to constitute Senior Indebtedness, notwithstanding the fact that such Senior Indebtedness or any claim for such Senior Indebtedness is subordinated, avoided or disallowed under the federal Bankruptcy Code or other applicable law. Senior Indebtedness shall also include any indebtedness of Company incurred in connection with a refinancing of the Senior Indebtedness under the Senior Lending Agreements if the terms and conditions of the agreements, documents and instruments related to such refinancing, taken as a whole, are not materially more onerous to the Holder of Subordinated Indebtedness than those set forth in the Senior Lending Agreements, as in effect on the date hereof.

"Senior Lender" shall have the meaning set forth in the introductory paragraph of this Agreement.

"Senior Lending Agreements" shall mean collectively the Loan Agreement, [the Note(s)] and the other Documents, each as from time to time in effect.

"Subordinated Indebtedness" shall mean all principal, interest and other amounts payable or chargeable in connection with the Subordinated Note.

"Subordinated Lending Agreements" shall mean, collectively, the _____ Agreement, the Subordinated Note and all promissory notes, agreements, documents and instruments now or at any time hereafter executed and/or

delivered by Company or any other person to, with or in favor of Subordinated Lender in connection therewith or related thereto, as all of the foregoing now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Subordinated Note" shall mean that certain promissory note issued by Company to Subordinated Lender in the original principal amount of \$ _____ dated _____, 20 _____ together with any extensions thereof, securities issued in exchange therefor or modifications or amendments thereto or replacements and substitutions therefor.

1.2. Other Terms. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

1.3. Certain Matters of Construction. The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. Wherever appropriate in the context, terms used herein in the singular also include the plural and vice versa. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. Except as expressly set forth herein, all references to any instruments or agreements, including, without limitation, references to any of Creditor Agreements shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof.

2. Covenants. Company and each Holder of Subordinated Indebtedness hereby covenant that until the Senior Indebtedness shall have been paid in full and satisfied in cash and the Loan Agreement shall have been irrevocably terminated, all in accordance with the terms of the Loan Agreement, each will comply with such of the following provisions as are applicable to it:

2.1. Transfers. Each Holder of Subordinated Indebtedness covenants that any transferee from it of any Subordinated Indebtedness shall, prior to acquiring such interest, execute and deliver a counterpart of this Agreement to each other party hereto.

2.2. Subordination Provisions. To induce Senior Lender to enter into the Loan Agreement and to make loans and advances thereunder, notwithstanding any other provision of the Subordinated Indebtedness to the contrary, any Distribution with respect to the Subordinated Indebtedness is and shall be expressly junior and subordinated in right of payment to all amounts due and owing upon all Senior Indebtedness outstanding from time to time. Specifically, but not by way of limitation:

(a) Payments. Company shall make no Distribution on the Subordinated Indebtedness until such time as the Senior Indebtedness shall have been paid in full in cash and the Loan Agreement shall have been irrevocably terminated[; provided, however, so long as no Default or Event of Default shall have occurred under the Senior Lending Agreements or would occur after giving effect to such payment, Company may pay, and the Holders of Subordinated Indebtedness may receive, regularly scheduled payments of [principal and] interest on the Subordinated Indebtedness as set forth on the date hereof in the [Subordinated Note] [Subordinated Lending Agreements].

Following the occurrence of a Default or an Event of Default under the Senior Lending Agreements, (i) Company shall make no Distribution on the Subordinated Indebtedness and (ii) upon and after receipt by the Holders of Subordinated Indebtedness of written notice of such Default or Event of Default from Senior Lender (such notice, the "Default Notice"), no such Holder of Subordinated Indebtedness shall be entitled to receive or retain any such Distribution in respect of the Subordinated Indebtedness, provided, further, that notwithstanding the foregoing restriction, Company may pay and the Holders of Subordinated Indebtedness shall be entitled to receive and retain any [principal or] [interest] payment which shall have become due and payable (on a non-accelerated basis) on the earliest to occur of (x) the date on which all such Defaults and/or Events of Default specified in the Default Notice shall have been cured or waived,

[or] (y) payment in full in cash of all Senior Indebtedness and the irrevocable termination of the Loan Agreement [or (z) the expiration of a period of _____ days from delivery of the Default Notice].

(b) Limitation on Acceleration. [During any period described in Section 2.2(a) hereof in which a Distribution is not permitted to be made on Subordinated Indebtedness,] no Holder of Subordinated Indebtedness shall be entitled to accelerate the maturity of the Subordinated Indebtedness, exercise any remedies or commence any action or proceeding to recover any amounts due or to become due with respect to Subordinated Indebtedness, provided, however, the foregoing limitation on acceleration [or exercise of any remedies] shall not be applicable following (x) the occurrence of an Event (as to which Section 2.2(c) shall apply) [or (y) following the maturity or acceleration of all Senior Indebtedness].

(c) Prior Payment of Senior Indebtedness in Bankruptcy, etc. In the event of any insolvency or bankruptcy proceedings relative to Company or its property, or any receivership, liquidation, reorganization or other similar proceedings in connection therewith, or, in the event of any proceedings for voluntary liquidation, dissolution or other winding up of Company or distribution or marshalling of its assets or any composition with creditors of Company, whether or not involving insolvency or bankruptcy, or if Company shall cease its operations, call a meeting of its creditors or no longer do business as a going concern (each individually or collectively, an "Event"), then all Senior Indebtedness shall be paid in full and satisfied in cash and the Loan Agreement irrevocably terminated before any Distribution shall be made on account of any Subordinated Indebtedness. Any such Distribution [(except equity securities or securities which are subordinated and junior in right of payment to the payment in full in cash of all Senior Indebtedness)] which would, but for the provisions hereof, be payable or deliverable in respect of the Subordinated Indebtedness, shall be paid or delivered directly to Senior Lender or its representatives, in the proportions in which they hold the same, until amounts owing upon Senior Indebtedness shall have been paid in full in cash and the Loan Agreement irrevocably terminated.

[(d) Acceleration. In the event of any Senior Indebtedness becoming due and payable, whether by acceleration, maturity or otherwise, no Distribution shall thereafter be made on account of the Subordinated Indebtedness until all Senior Indebtedness shall be paid in full in cash and the Loan Agreement shall have been irrevocably terminated.]

(e) Power of Attorney. To enable Senior Lender to assert and enforce its rights hereunder in any proceeding referred to in Section 2.2(c) or upon the happening of any Event, Senior Lender or any person whom it may designate is hereby irrevocably appointed attorney in fact for Subordinated Lender with full power to act in the place and stead of Subordinated Lender including the right to make, present, file and vote such proofs of claim against Company on account of all or any part of the Subordinated Indebtedness as Senior Lender may deem advisable and to receive and collect any and all dividends or other payments made thereon and to apply the same on account of the Senior Indebtedness. Subordinated Lender will execute and deliver to Senior Lender such instruments as may be required by Senior Lender to enforce any and all Subordinated Indebtedness, to effectuate the aforesaid power of attorney and to effect collection of any and all dividends or other payments which may be made at any time on account thereof, and Subordinated Lender hereby irrevocably appoints Senior Lender as the lawful attorney and agent of Subordinated Lender to execute financing statements on behalf of Subordinated Lender and hereby further authorizes Senior Lender to file such financing statements in any appropriate public office.

[(f) Knowledge; Delivery of Default Notice. No Holder of any Subordinated Indebtedness shall at any time be charged with knowledge of any of the events described in Section 2.2(a) hereof or on such account be prohibited from receiving or retaining any payment of monies or from taking any action regarding acceleration or the exercise of remedies, unless and until such holder shall have received the Default Notice; provided, however, any "default" or "event of default" under the Subordinated Note and/or Subordinated Lending Agreements shall automatically constitute an Event of Default under the Senior Lending Agreements so that payments received by any Holder of Subordinated Indebtedness following any such occurrence shall not be retained irrespective of the lack of receipt by such holder of a Default Notice, unless (i) the Event of Default is waived by such Holder of Subordinated Indebtedness, (ii) a copy of such waiver is given in writing by such Holder of Subordinated Indebtedness to Senior Lender, and (iii) no Default Notice is

thereafter forthcoming from Senior Lender within five (5) Business Days following the giving of notice of the aforesaid waiver, in which event any Holder of Subordinated Indebtedness may retain all payments previously or thereafter received, subject to the provisions of Section 2.2(a).

Each Default Notice shall be deemed to be properly given by Senior Lender or other holder of Senior Indebtedness to the Holders of Subordinated Indebtedness if such Default Notice is delivered in accordance with Section 3.7 hereof; provided, however, that each and every additional or subsequent Holder of Subordinated Indebtedness shall be entitled to deliver written notice to Senior Lender of its name and address and of its status as such a Holder of Subordinated Indebtedness, and upon delivery of such notice said holder shall also be entitled to receive Default Notices and to have the benefit of the provisions of this paragraph.]

(g) Payments Held in Trust. Should any Distribution or the proceeds thereof, in respect of the Subordinated Indebtedness, be collected or received by Subordinated Lender or any Affiliate (as such term is defined in Rule 405 of Regulation C adopted by the Securities and Exchange Commission pursuant to the Securities Act of 1933) of Subordinated Lender at a time when Subordinated Lender is not permitted to receive any such Distribution or proceeds thereof including if same is collected or received when there is or would be after giving effect to such payment a Default or an Event of Default under the Loan Agreement, then Subordinated Lender will forthwith deliver, or cause to be delivered, the same to Senior Lender in precisely the form held by Subordinated Lender (except for any necessary endorsement) and until so delivered, the same shall be held in trust by Subordinated Lender, or any such Affiliate, as the property of Senior Lender and shall not be commingled with other property of the Subordinated Lender or any such Affiliate.

(h) Subrogation. Subject to the prior payment in full in cash of the Senior Indebtedness and the irrevocable termination of the Loan Agreement, to the extent that Senior Lender has received any Distribution on the Senior Indebtedness which, but for this Agreement, would have been applied to the Subordinated Indebtedness, Subordinated Lender shall be subrogated to the then or thereafter rights of Senior Lender including, without limitation, the right to receive any Distribution made on the Senior Indebtedness until the principal of, interest on and other charges due under the Subordinated Indebtedness shall be paid in full; and, for the purposes of such subrogation, no Distribution to Senior Lender to which Subordinated Lender would be entitled except for the provisions of this Agreement shall, as between Company, its creditors (other than Senior Lender) and Subordinated Lender, be deemed to be a Distribution by Company to or on account of Senior Indebtedness, it being understood that the provisions hereof are and are intended solely for the purpose of defining the relative rights of Subordinated Lender on the one hand, and Senior Lender on the other hand.

(i) Scope of Subordination. The provisions of this Agreement are solely to define the relative rights of any Holder of Subordinated Indebtedness and Senior Lender. Nothing in this Agreement shall impair, as between Company and Subordinated Lender the unconditional and absolute obligation of Company to punctually pay the principal, interest and any other amounts and obligations owing under the Subordinated Note and Subordinated Lending Agreements in accordance with the terms thereof, subject to the rights of Senior Lender under this Agreement.

3. Miscellaneous.

3.1. Provisions of Subordinated Note. From and after the date hereof, Company and Subordinated Lender shall cause each Subordinated Note to contain a provision to the following effect:

"This Note is subject to the Subordination Agreement, dated as of _____, 20____, among the Maker, the Payee and [Senior Lender], under which this Note and the Maker's obligations hereunder are subordinated in the manner set forth therein to the prior payment of certain obligations to the holders of Senior Indebtedness as defined therein."

Proof of compliance with the foregoing shall be promptly given to Senior Lender.

If requested by Senior Lender, each Holder of Subordinated Indebtedness shall transfer, assign and endorse over to Senior Lender the Subordinated Note, as collateral for the obligations hereunder of any Holders of Subordinated Indebtedness.

The Subordinated Note will be held by Senior Lender in accordance with the terms of this Agreement.

3.2. Additional Agreements. In the event that the Senior Indebtedness is refinanced in full, Subordinated Lender agrees at the request of such refinancing party to enter into a subordination agreement on terms substantially similar to this Agreement.

3.3. Survival of Rights. The right of Senior Lender to enforce the provisions of this Agreement shall not be prejudiced or impaired by any act or omitted act of Company or Senior Lender including forbearance, waiver, consent, compromise, amendment, extension, renewal, or taking or release of security in respect of any Senior Indebtedness or noncompliance by Company with such provisions, regardless of the actual or imputed knowledge of Senior Lender.

3.4. Bankruptcy Financing Issues. (a) This Agreement shall continue in full force and effect after the filing of any petition ("Petition") by or against Company under the United States Bankruptcy Code (the "Code") and all converted or succeeding cases in respect thereof. All references herein to Company shall be deemed to apply to Company as debtor-in-possession and to a trustee for Company. If Company shall become subject to a proceeding under the Code, and if Senior Lender shall desire to permit the use of cash collateral or to provide post-Petition financing from Senior Lender to Company under the Code, Subordinated Lender agrees as follows: (1) adequate notice to Subordinated Lender shall be deemed to have been provided for such consent or post-Petition financing if Subordinated Lender receives notice thereof three (3) Business Days (or such shorter notice as is given to Senior Lender) prior to the earlier of (a) any hearing on a request to approve such post-petition financing or (b) the date of entry of an order approving same and (2) no objection will be raised by Subordinated Lender to any such use of cash collateral or such post-Petition financing from Senior Lender.

(b) Subordinated Lender shall not join in, solicit any other person to, or act to cause the commencement of, any case involving Company under any state or federal bankruptcy or insolvency laws or seek the appointment of a receiver for the affairs or property of Company until such time as the Senior Indebtedness shall have been paid in full in cash and the Senior Lending Agreements shall have been irrevocably terminated.

3.5. Receipt of Agreements. Subordinated Lender hereby acknowledges that it has delivered to Senior Lender a correct and complete copy of the Subordinated Lending Agreements as in effect on the date hereof. Subordinated Lender, solely for the purposes of this Agreement, hereby acknowledges receipt of a correct and complete copy of each of the Senior Lending Agreements as in effect on the date hereof.

3.6. No Amendment of Subordinated Lending Agreements. So long as the Loan Agreement remains in effect, neither Company nor any Holder of Subordinated Indebtedness shall enter into any amendment to or modification of any Subordinated Lending Agreements which relates to or affects the principal amount, interest rate, payment terms, or any other material covenant or agreement of Company thereunder or in respect thereof, without the prior written consent of Senior Lender.

3.7. Amendments to Senior Lending Agreements. Nothing contained in this Agreement, or in any other agreement or instrument binding upon any of the parties hereto, shall in any manner limit or restrict the ability of Senior Lender from increasing or changing the terms of the loans under the Senior Lending Agreements, or to otherwise waive, amend or modify the terms and conditions of the Senior Lending Agreements, in such manner as Senior Lender and Company shall mutually determine. Each Holder of Subordinated Indebtedness hereby consents to any and all such waivers,

amendments, modifications and compromises, and any other renewals, extensions, indulgences, releases of collateral or other accommodations granted by Senior Lender to Company from time to time, and agrees that none of such actions shall in any manner affect or impair the subordination established by this Subordination Agreement in respect of the Subordinated Indebtedness.

3.8. Notice of Default and Certain Events. Senior Lender and the Holders of Subordinated Indebtedness shall undertake in good faith to notify the other of the occurrence of any of the following as applicable:

- (a) the obtaining of actual knowledge of the occurrence of any default under the Subordinated Note;
- (b) the acceleration of any Senior Indebtedness by Senior Lender or of any Subordinated Indebtedness by any Holder of Subordinated Indebtedness;
- (c) the granting by Senior Lender of any waiver of any Event of Default under the Loan Agreement or the granting by any Holder of Subordinated Indebtedness of any waiver of any "default" or "event of default" under the Subordinated Lending Agreements; or
- (d) the payment in full by Company (whether as a result of refinancing or otherwise) of all Senior Indebtedness.

The failure of any party to give such notice shall not affect the subordination of the Subordinated Indebtedness as provided in this Agreement.

3.9. Notices. Any notice or other communication required or permitted pursuant to this Agreement shall be deemed given (a) when personally delivered to any officer of the party to whom it is addressed, (b) on the earlier of actual receipt thereof or three (3) days following posting thereof by certified or registered mail, postage prepaid, or (c) upon actual receipt thereof when sent by a recognized overnight delivery service or (d) upon actual receipt thereof when sent by facsimile to the number set forth below with electronic confirmation of receipt, in each case addressed to each party at its address or facsimile number set forth below or at such other address or facsimile number as has been furnished in writing by a party to the other by like notice:

If to Senior Lender:

Attention: _____

Telephone: _____

Facsimile: _____

with a copy to:

Attention: _____

Telephone: _____

Facsimile: _____

—

If to Subordinated Lender: _____

Attention: _____
 —

Telephone: _____
 —

Facsimile: _____
 —

with a copy to: _____

Attention: _____

Telephone: _____

Facsimile: _____

If to Company: _____

Attention: _____

Telephone: _____

Facsimile: _____

with a copy to: _____

Attention: _____

Telephone: _____

Facsimile: _____

3.10. Books and Records. Subordinated Lender shall (a) make notations on the books of Subordinated Lender beside all accounts or on other statements evidencing or recording any Subordinated Indebtedness to the effect that such Subordinated Indebtedness is subject to the provisions of this Agreement, (b) furnish Senior Lender, upon request from

time to time, a statement of the account between Subordinated Lender and Company and (c) give Senior Lender, upon its request, full and free access to Subordinated Lender's books pertaining only to such accounts with the right to make copies thereof.

3.11. Binding Effect; Other. This Agreement shall be a continuing agreement, shall be binding upon and shall inure to the benefit of the parties hereto from time to time and their respective successors and assigns, shall be irrevocable and shall remain in full force and effect until the Senior Indebtedness shall have been satisfied or paid in full in cash and the Loan Agreement shall have been irrevocably terminated, but shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any amount paid by or on behalf of Company with regard to the Senior Indebtedness is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Company, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee, custodian, or similar officer, for Company or any substantial part of its property, or otherwise, all as though such payments had not been made. No action which Senior Lender or Company may take or refrain from taking with respect to the Senior Indebtedness, including any amendments thereto, shall affect the provisions of this Agreement or the obligations of Subordinated Lender hereunder. Any waiver or amendment hereunder must be evidenced by a signed writing of the party to be bound thereby, and shall only be effective in the specific instance. This Agreement shall be governed by and construed in accordance with the laws of the State of _____. The headings in this Agreement are for convenience of reference only, and shall not alter or otherwise affect the meaning hereof.

4. Representations and Warranties.

(a) Subordinated Lender represents and warrants to Senior Lender that Subordinated Lender is the holder of the Subordinated Indebtedness. Subordinated Lender agrees that it shall not assign or transfer any of the Subordinated Indebtedness without (i) prior notice being given to Senior Lender and (ii) such assignment or transfer being made expressly subject to the terms of this Agreement. Subordinated Lender further warrants to Senior Lender that it has full right, power and authority to enter into this Agreement and, to the extent Subordinated Lender is an agent or trustee for other parties, that this Agreement shall fully bind all such other parties.

(b) Senior Lender represents and warrants to Subordinated Lender that Senior Lender is the holder of the Senior Indebtedness. Senior Lender agrees that it shall not assign or transfer any of the Senior Indebtedness without (i) prior notice being given to Subordinated Lender and (ii) such assignment or transfer being made expressly subject to the terms and provisions of this Agreement. Senior Lender further warrants to Subordinated Lender that it has full right, power and authority to enter into this Agreement and, to the extent Senior Lender is an agent or trustee for other parties, that this Agreement shall fully bind all such other parties.

5. Proceedings. ANY JUDICIAL PROCEEDING BROUGHT BY OR AGAINST SUBORDINATED LENDER OR COMPANY WITH RESPECT TO THIS AGREEMENT OR ANY RELATED AGREEMENT MAY BE BROUGHT IN ANY COURT OF COMPETENT JURISDICTION IN STATE OF _____, UNITED STATES OF AMERICA, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT EACH PARTY THERETO ACCEPTS FOR THEMSELVES AND IN CONNECTION WITH THEIR PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS, AND IRREVOCABLY AGREE TO BE BOUND BY ANY FINAL JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF SENIOR LENDER TO BRING PROCEEDINGS AGAINST SUBORDINATED LENDER OR COMPANY IN ANY COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY SUBORDINATED LENDER OR COMPANY AGAINST SENIOR LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER OR CLAIM IN ANY WAY ARISING OUT OF, RELATED TO OR CONNECTED WITH THIS AGREEMENT OR ANY RELATED AGREEMENT, SHALL BE BROUGHT ONLY IN A COURT LOCATED IN THE CITY OF _____,

STATE OF _____; PROVIDED THAT NOTWITHSTANDING THE FOREGOING, IF IN ANY JUDICIAL PROCEEDING BY OR AGAINST SUBORDINATED LENDER OR COMPANY THAT IS BROUGHT IN ANY OTHER COURT SUCH COURT DETERMINES THAT SENIOR LENDER IS AN INDISPENSABLE PARTY, SUBORDINATED LENDER OR COMPANY SHALL BE ENTITLED TO JOIN OR INCLUDE EACH PARTY HERETO IN SUCH PROCEEDINGS IN SUCH OTHER COURT. SUBORDINATED LENDER AND COMPANY WAIVE ANY OBJECTION TO JURISDICTION AND VENUE OF ANY ACTION INSTITUTED HEREUNDER AND SHALL NOT ASSERT ANY DEFENSE BASED ON LACK OF JURISDICTION OR VENUE OR BASED UPON FORUM NON CONVENIENS.

6. Waiver Of Jury Trial. EACH PARTY HERETO HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF ANY CREDITOR OR COMPANY OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENTS OR AGREEMENT EXECUTED OR DELIVERED BY THEM IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE AND EACH PARTY HERETO HEREBY AGREES AND CONSENTS THAT ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT JURY, AND THAT ANY OF THEM MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THEIR CONSENT TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

7. Company Acknowledgement. Company agrees that (i) nothing contained in this Agreement shall be deemed to amend, modify, supercede or otherwise alter the terms of the respective agreements between Company and each Creditor and (ii) this Agreement is solely for the benefit of the Creditors and shall not give Company, its successors or assigns or any other person any rights vis-a-vis any Creditor.

8. Counterparts; Facsimile. This Agreement may be executed by the parties hereto in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same agreement. Any signature delivered by a party by facsimile transmission shall be deemed to be an original signature hereto.

[9. Agent for Service of Process. Service of all pleadings, writs, process and summonses in any suit, action or proceeding against Subordinated Lender may be made upon _____ (the "Process Agent"), and Subordinated Lender hereby irrevocably appoints the Process Agent its true and lawful attorney-in-fact in its name, place and stead to accept such service of any and all such pleadings, writs, process and summonses, and agrees that the failure of the Process Agent to give any notice of such service of process to Subordinated Lender shall not impair or affect the validity of such service or of any judgment based thereon.]

IN WITNESS WHEREOF, the undersigned have entered into this Agreement as of the date first written above.

[Senior Lender]

By: _____

Name: _____

Title: _____

[Subordinated Lender]

On the _____ day of _____ 20____, before me personally came
_____ to me known to be the individual described in and who executed the foregoing instrument, and
acknowledged to me that s/he executed the same.

Notary Public



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California Legal Forms--Transaction Guide

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PART II: Transactions in Turbulent Times - Enforcing or Settling Claims.

CHAPTER 18: Subordination.

37TTT-18 California Legal Forms--Transaction Guide Form T18-2

Form T18-2 General Subordination Agreement

Description: This form is an agreement of a secured party to subordinate a senior security interest to a junior security interest of another creditor in the same collateral.

Form T18-2 General Subordination Agreement

SUBORDINATION AGREEMENT

_____ [city], _____ County, _____ [state]

For _____ [valuable consideration *or state consideration*], the undersigned subordinates the security interest represented by the security agreement dated _____, between the undersigned and _____ [name of debtor], to the security interest arising out of the security agreement dated _____ [date], between _____ [name of secured party obtaining priority] and _____ [name of debtor].

Date: _____

_____ [signature of subordinating party]

_____ [typed name]



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California Legal Forms--Transaction Guide

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PART II: Transactions in Turbulent Times - Enforcing or Settling Claims.

CHAPTER 18: Subordination.

37TTT-18 California Legal Forms--Transaction Guide Form T18-3

Form T18-3 Intercreditor Agreement

Description: This form is an agreement between two creditors arranging in advance how to address their competing interests in their common borrower.

Form T18-3 Intercreditor Agreement

INTERCREDITOR AGREEMENT

This Subordination and Intercreditor Agreement (this "Agreement") dated as of _____, 20____ among _____ ("Senior Lender"), _____ ("Subordinated Lender") and _____ ("Company").

BACKGROUND

As an inducement for Senior Lender to provide a secured credit facility in favor of Company, Subordinated Lender has agreed to enter into this Agreement to provide for the subordination of (i) the "Subordinated Indebtedness" to the "Senior Indebtedness" and (ii) the "Liens" in [certain of] the assets of Company granted to Subordinated Lender to the "Liens" in such assets of Company granted to Senior Lender.

AGREEMENTS

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

1.1. General Terms. For purposes of this Agreement, the following terms shall have the following meanings:

"Collateral" shall mean all of the property and interests in property, tangible or intangible, real or personal, now owned

or hereafter acquired by Company in or upon which Senior Lender at any time has a Lien, and including, without limitation, all proceeds and products of such property and interests in property.

"Company" shall mean Company and its successors and assigns.

"Creditor Agreements" shall mean, collectively, the Senior Lending Agreements and the Subordinated Lending Agreements.

"Creditors" shall mean, collectively, Senior Lender and Subordinated Lender and their respective [heirs, administrators, executors,] successors and assigns.

"Default" shall have the meaning [given to the term "Incipient Event of Default"] [set forth] in the Loan Agreement.

"Distribution" shall mean any payment, whether in cash, in kind, securities or any other property, or security for any such Distribution.

"Documents" shall have the meaning [given to the term "Other/Loan Documents"] [set forth] in the Loan Agreement.

"Event" shall have the meaning set forth in Section 2.2(c) hereof.

"Holder of Subordinated Indebtedness" or "Subordinated Lender" shall mean _____, and any other Person(s) at any time or in any manner acquiring any right or interest in any of the Subordinated Indebtedness, and any [heirs, administrators, executors,] successor and assigns of such Person(s).

"Lien" shall mean any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance (including, but not limited to, easements, rights of way and the like), lien (statutory or other), security agreement or transfer intended as security including, without limitation, any conditional sale or other title retention agreement, the interest of a lessor under a capital lease or any financing lease having substantially the same economic effect as any of the foregoing.

"Loan Agreement" shall mean the [Revolving Credit] [Term Loan] [and Security] Agreement dated as of _____, 20____ between Company and Senior Lender, as the same may be amended, supplemented, modified or restated from time to time.

"Person" shall mean an individual, a partnership, a corporation (including a business trust), a joint stock company, a trust, an unincorporated association, a joint venture, a limited liability company, a limited liability partnership or other entity, or a government or any agency, instrumentality or political subdivision thereof.

"Secured Lender Remedies" shall mean any action which results in the sale, foreclosure, realization upon, or a liquidation of any of the Collateral including, without limitation, the exercise or any of the rights or remedies of a "secured party" under Article 9 of the Uniform Commercial Code, such as, without limitation, the notification of account debtors.

"Senior Indebtedness" shall mean all Obligations of any kind owed by Company to Senior Lender from time to time under or pursuant to any of the Senior Lending Agreements including, without limitation, all principal, interest accruing thereon, charges, expenses, fees and other sums (including all interest, charges, expenses, fees and other sums accruing after commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of Company) chargeable to Company by Senior Lender, and reimbursement, indemnity or other obligations due and payable to Senior Lender. Senior Indebtedness shall continue to constitute Senior Indebtedness, notwithstanding the fact that such Senior Indebtedness or any claim for such Senior Indebtedness is subordinated, avoided or disallowed under

the federal Bankruptcy Code or other applicable law. Senior Indebtedness shall also include any indebtedness of Company incurred in connection with a refinancing of the Senior Indebtedness under the Senior Lending Agreements if the terms and conditions of the agreements, documents and instruments related to such refinancing, taken as a whole, are not materially more onerous to the Holder of Subordinated Indebtedness than those set forth in the Senior Lending Agreements, as in effect on the date hereof.

"Senior Lender" shall have the meaning set forth in the introductory paragraph of this Agreement.

"Senior Lending Agreements" shall mean collectively the Loan Agreement[, the Note(s)] and the other Documents, each as from time to time in effect.

"Subordinated Indebtedness" shall mean all principal, interest and other amounts payable or chargeable in connection with the Subordinated Note.

"Subordinated Lending Agreements" shall mean, collectively, the _____ Agreement, the Subordinated Note and all promissory notes, agreements, documents and instruments now or at any time hereafter executed and/or delivered by Company or any other person to, with or in favor of Subordinated Lender in connection therewith or related thereto, as all of the foregoing now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Subordinated Note" shall mean that certain promissory note issued by Company to Subordinated Lender in the original principal amount of \$_____ dated _____, 20____ together with any extensions thereof, securities issued in exchange therefor or modifications or amendments thereto or replacements and substitutions therefor.

1.2. Other Terms. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

1.3. Certain Matters of Construction. The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. Wherever appropriate in the context, terms used herein in the singular also include the plural and vice versa. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. Except as expressly set forth herein, all references to any instruments or agreements, including, without limitation, references to any of the Creditor Agreements shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof.

2. Covenants. Company and each Holder of Subordinated Indebtedness hereby covenant that until the Senior Indebtedness shall have been paid in full and satisfied in cash and the Loan Agreement shall have been irrevocably terminated, all in accordance with the terms of the Loan Agreement, each will comply with such of the following provisions as are applicable to it:

2.1. Transfers. Each Holder of Subordinated Indebtedness covenants that any transferee from it of any Subordinated Indebtedness shall, prior to acquiring such interest, execute and deliver a counterpart of this Agreement to each other party hereto.

2.2. Subordination Provisions. To induce Senior Lender to enter into the Loan Agreement and to make loans and advances thereunder, notwithstanding any other provision of the Subordinated Indebtedness to the contrary, any Distribution with respect to the Subordinated Indebtedness is and shall be expressly junior and subordinated in right of payment to all amounts due and owing upon all Senior Indebtedness outstanding from time to time. Specifically, but not by way of limitation:

(a) Payments. Company shall make no Distribution on the Subordinated Indebtedness until such time as the Senior Indebtedness shall have been paid in full in cash and the Loan Agreement shall have been irrevocably terminated[; provided, however, so long as no Default or Event of Default shall have occurred under the Senior Lending Agreements or would occur after giving effect to such payment, Company may pay, and the Holders of Subordinated Indebtedness may receive, regularly scheduled payments of [principal and] interest on the Subordinated Indebtedness as set forth on the date hereof in the [Subordinated Note][Subordinated Lending Agreements].

Following the occurrence of a Default or an Event of Default under the Senior Lending Agreements, (i) Company shall make no Distribution on the Subordinated Indebtedness and (ii) upon and after receipt by the Holders of Subordinated Indebtedness of written notice of such Default or Event of Default from Senior Lender (such notice, the "Default Notice"), no such Holder of Subordinated Indebtedness shall be entitled to receive or retain any such Distribution in respect of the Subordinated Indebtedness, provided, further, that notwithstanding the foregoing restriction, Company may pay and the Holders of Subordinated Indebtedness shall be entitled to receive and retain any [principal or] [interest] payment which shall have become due and payable (on a non-accelerated basis) on the earliest to occur of (x) the date on which all such Defaults and/or Events of Default specified in the Default Notice shall have been cured or waived, [or] (y) payment in full in cash of all Senior Indebtedness and the irrevocable termination of the Loan Agreement [or (z) the expiration of a period of _____ days from delivery of the Default Notice].]

(b) Limitation on Acceleration. [During any period described in Section 2.2(a) hereof in which a Distribution is not permitted to be made on Subordinated Indebtedness,] no Holder of Subordinated Indebtedness shall be entitled to accelerate the maturity of the Subordinated Indebtedness, exercise any Secured Lender Remedies or commence any other action or proceeding to recover any amounts due or to become due with respect to Subordinated Indebtedness, provided, however, the foregoing limitation on acceleration [or exercise of any remedies] shall not be applicable following (x) the occurrence of an Event (as to which Section 2.2(c) shall apply) [or (y) following the maturity or acceleration of all Senior Indebtedness].

(c) Prior Payment of Senior Indebtedness in Bankruptcy, etc. In the event of any insolvency or bankruptcy proceedings relative to Company or its property, or any receivership, liquidation, reorganization or other similar proceedings in connection therewith, or, in the event of any proceedings for voluntary liquidation, dissolution or other winding up of Company or distribution or marshalling of its assets or any composition with creditors of Company, whether or not involving insolvency or bankruptcy, or if Company shall cease its operations, call a meeting of its creditors or no longer do business as a going concern (each individually or collectively, an "Event"), then all Senior Indebtedness shall be paid in full and satisfied in cash and the Loan Agreement irrevocably terminated before any Distribution shall be made on account of any Subordinated Indebtedness. Any such Distribution [(except equity securities or securities which are subordinated and junior in right of payment to the payment in full in cash of all Senior Indebtedness)] which would, but for the provisions hereof, be payable or deliverable in respect of the Subordinated Indebtedness, shall be paid or delivered directly to Senior Lender or its representatives, in the proportions in which they hold the same, until amounts owing upon Senior Indebtedness shall have been paid in full in cash and the Loan Agreement irrevocably terminated.

[(d) Acceleration. In the event of any Senior Indebtedness becoming due and payable, whether by acceleration, maturity or otherwise, no Distribution shall thereafter be made on account of the Subordinated Indebtedness until all Senior Indebtedness shall be paid in full in cash and the Loan Agreement shall have been irrevocably terminated.]

(e) Power of Attorney. To enable Senior Lender to assert and enforce its rights hereunder in any proceeding referred to in Section 2.2(c) or upon the happening of any Event, Senior Lender or any person whom it may designate is hereby irrevocably appointed attorney in fact for Subordinated Lender with full power to act in the place and stead of Subordinated Lender including the right to make, present, file and vote such proofs of claim against Company on account of all or any part of the Subordinated Indebtedness as Senior Lender may deem advisable and to receive and collect any and all dividends or other payments made thereon and to apply the same on account of the Senior

Indebtedness. Subordinated Lender will execute and deliver to Senior Lender such instruments as may be required by Senior Lender to enforce any and all Subordinated Indebtedness, to effectuate the aforesaid power of attorney and to effect collection of any and all dividends or other payments which may be made at any time on account thereof, and Subordinated Lender hereby irrevocably appoints Senior Lender as the lawful attorney and agent of Subordinated Lender to execute financing statements on behalf of Subordinated Lender and hereby further authorizes Senior Lender to file such financing statements in any appropriate public office.

[(f) Knowledge; Delivery of Default Notice. No Holder of any Subordinated Indebtedness shall at any time be charged with knowledge of any of the events described in Section 2.2(a) hereof or on such account be prohibited from receiving or retaining any payment of monies or from taking any action regarding acceleration or the exercise of remedies, unless and until such holder shall have received the Default Notice; provided, however, any "default" or "event of default" under the Subordinated Note and/or Subordinated Lending Agreements shall automatically constitute an Event of Default under the Senior Lending Agreements so that payments received by any Holder of Subordinated Indebtedness following any such occurrence shall not be retained irrespective of the lack of receipt by such holder of a Default Notice, unless (i) the Event of Default is waived by such Holder of Subordinated Indebtedness, (ii) a copy of such waiver is given in writing by such Holder of Subordinated Indebtedness to Senior Lender, and (iii) no Default Notice is thereafter forthcoming from Senior Lender within five (5) Business Days following the giving of notice of the aforesaid waiver, in which event any Holder of Subordinated Indebtedness may retain all payments previously or thereafter received, subject to the provisions of Section 2.2(a).

Each Default Notice shall be deemed to be properly given by Senior Lender or other holder of Senior Indebtedness to the Holders of Subordinated Indebtedness if such Default Notice is delivered in accordance with Section 3.7 hereof; provided, however, that each and every additional or subsequent Holder of Subordinated Indebtedness shall be entitled to deliver written notice to Senior Lender of its name and address and of its status as such a Holder of Subordinated Indebtedness, and upon delivery of such notice said holder shall also be entitled to receive Default Notices and to have the benefit of the provisions of this paragraph.]

(g) Payments Held in Trust. Should any Distribution or the proceeds thereof, in respect of the Subordinated Indebtedness, be collected or received by Subordinated Lender or any Affiliate (as such term is defined in Rule 405 of Regulation C adopted by the Securities and Exchange Commission pursuant to the Securities Act of 1933) of Subordinated Lender at a time when Subordinated Lender is not permitted to receive any such Distribution or proceeds thereof including if same is collected or received when there is or would be after giving effect to such payment a Default or an Event of Default under the Loan Agreement, then Subordinated Lender will forthwith deliver, or cause to be delivered, the same to Senior Lender in precisely the form held by Subordinated Lender (except for any necessary endorsement) and until so delivered, the same shall be held in trust by Subordinated Lender, or any such Affiliate, as the property of Senior Lender and shall not be commingled with other property of the Subordinated Lender or any such Affiliate.

(h) Subrogation. Subject to the prior payment in full in cash of the Senior Indebtedness and the irrevocable termination of the Loan Agreement, to the extent that Senior Lender has received any Distribution on the Senior Indebtedness which, but for this Agreement, would have been applied to the Subordinated Indebtedness, Subordinated Lender shall be subrogated to the then or thereafter rights of Senior Lender including, without limitation, the right to receive any Distribution made on the Senior Indebtedness until the principal of, interest on and other charges due under the Subordinated Indebtedness shall be paid in full; and, for the purposes of such subrogation, no Distribution to Senior Lender to which Subordinated Lender would be entitled except for the provisions of this Agreement shall, as between Company, its creditors (other than Senior Lender) and Subordinated Lender, be deemed to be a Distribution by Company to or on account of Senior Indebtedness, it being understood that the provisions hereof are and are intended solely for the purpose of defining the relative rights of Subordinated Lender on the one hand, and Senior Lender on the other hand.

(i) Scope of Subordination. The provisions of this Agreement are solely to define the relative rights of any Holder of Subordinated Indebtedness and Senior Lender. Nothing in this Agreement shall impair, as between Company and Subordinated Lender the unconditional and absolute obligation of Company to punctually pay the principal, interest and any other amounts and obligations owing under the Subordinated Note and Subordinated Lending Agreements in accordance with the terms thereof, subject to the rights of Senior Lender under this Agreement.

3. Security.

3.1. Acknowledgment of Lien. Each Creditor hereby agrees and acknowledges that the other Creditor has been granted a Lien upon the Collateral.

3.2. Priority. Notwithstanding the order or time of attachment, or the order, time or manner of perfection, or the order or time of filing or recordation of any document or instrument, or other method of perfecting a Lien in favor of each Creditor in any Collateral and notwithstanding any conflicting terms or conditions which may be contained in any of the Creditor Agreements, the Liens upon the Collateral of Senior Lender have and shall have priority over the Liens upon the Collateral of Subordinated Lender and such Liens of Subordinated Lender are and shall be, in all respects, subject and subordinate to the Liens of Senior Lender therein to the full extent of the Senior Indebtedness outstanding from time to time. Subordinated Lender shall not take any action to foreclose or realize upon the Collateral until such time as the Senior Indebtedness shall have been paid in full in cash and the Loan Agreement irrevocably terminated.

3.3. No Alteration of Priority. The Lien priorities provided in Section 3.2 hereof shall not be altered or otherwise affected by any amendment, modification, supplement, extension, renewal, restatement or refinancing of any Senior Indebtedness or the Subordinated Indebtedness, nor by any action or inaction which either Creditor may take or fail to take in respect of the Collateral.

3.4. Perfection. Each Creditor shall be solely responsible for perfecting and maintaining the perfection of its Lien in and to each item constituting the Collateral in which such Creditor has been granted a Lien. The foregoing provisions of this Agreement are intended solely to govern the respective lien priorities as between the Creditors and shall not impose on Senior Lender any obligations in respect of the disposition of proceeds of foreclosure on any Collateral which would conflict with prior perfected claims therein in favor of any other Person. Subordinated Lender agrees that it will not contest the validity, perfection, priority or enforceability of the Liens of Senior Lender in the Collateral and that as between Senior Lender and Subordinated Lender, the terms of this Agreement shall govern even if part or all of the Senior Indebtedness or the Liens of Senior Lender securing payment and performance thereof are avoided, disallowed, set aside or otherwise invalidated in any judicial proceeding or otherwise.

3.5. Management of Collateral. Senior Lender shall have the exclusive right to manage, perform and enforce the terms of the Senior Lending Agreements with respect to the Collateral and to exercise and enforce all privileges and rights thereunder according to its discretion and exercise of its business judgment, including, without limitation, the exclusive right to enforce or settle insurance claims, take or retake control or possession of the Collateral and to hold, prepare for sale, process, sell, lease, dispose of, or liquidate the Collateral. In connection therewith, Subordinated Lender waives any and all rights to affect the method or challenge the appropriateness of any action by Senior Lender.

3.6. Sale of Collateral. Notwithstanding anything to the contrary contained in any of the Creditor Agreements only Senior Lender shall have the right to restrict or permit, or approve or disapprove, the sale, transfer or other disposition of Collateral. Subordinated Lender will, immediately upon the request of Senior Lender, release or otherwise terminate its Liens upon the Collateral, to the extent such Collateral is sold or otherwise disposed of either by Senior Lender, its agents, or Company with the consent of Senior Lender, and Subordinated Lender will immediately deliver such release documents as Senior Lender may require in connection therewith.

3.7. Secured Lender Remedies. In no event shall Subordinated Lender exercise any Secured Lender Remedies until such

time as the Senior Indebtedness shall have been paid in full in cash and the Senior Lending Agreements irrevocably terminated; nor shall Subordinated Lender join in, solicit any other person to, or act to cause the commencement of, any case involving Company under any state or federal bankruptcy or insolvency laws or seek the appointment of a receiver for the affairs or property of the Company until such time as the Senior Indebtedness shall have been paid in full in cash and the Senior Lending Agreements shall have been irrevocably terminated. In the event Subordinated Lender shall receive any payment or distribution of any kind representing proceeds of any Collateral as to which its Lien in the Collateral is or is required to be subordinated to the Lien of Senior Lender before the Obligations shall have been paid in full in cash and the Senior Lending Agreements irrevocably terminated, such sums shall be held in trust by Subordinated Lender for the benefit and on account of Senior Lender and such amounts shall be paid to Senior Lender for application to the then unpaid Obligations under the Senior Lending Agreements.

3.8. Section 9-611 Notice and Waiver of Marshaling. Subordinated Lender and Senior Lender acknowledge that this Agreement shall constitute notice of their respective interests in the Collateral as provided by *Section 9-611(c) of the _____ [state] Uniform Commercial Coden** and each hereby waive any right to compel any marshaling of any of the Collateral.

4. Miscellaneous.

4.1. Provisions of Subordinated Note. From and after the date hereof, Company and Subordinated Lender shall cause each Subordinated Note to contain a provision to the following effect:

"This Note is subject to the Subordination and Intercreditor Agreement, dated as of _____, 20____, among the Maker, the Payee and [Senior Lender], under which this Note and the Maker's obligations hereunder are subordinated in the manner set forth therein to the prior payment of certain obligations to the holders of Senior Indebtedness as defined therein."

Proof of compliance with the foregoing shall be promptly given to Senior Lender.

If requested by Senior Lender, each Holder of Subordinated Indebtedness shall transfer, assign and endorse over to Senior Lender the Subordinated Note, as collateral for the obligations hereunder of any Holders of Subordinated Indebtedness.

The Subordinated Note will be held by Senior Lender in accordance with the terms of this Agreement.

4.2. Additional Agreements. In the event that the Senior Indebtedness is refinanced in full, Subordinated Lender agrees at the request of such refinancing party to enter into a subordination and intercreditor agreement on terms substantially similar to this Agreement.

4.3. Survival of Rights. The right of Senior Lender to enforce the provisions of this Agreement shall not be prejudiced or impaired by any act or omitted act of Company or Senior Lender including forbearance, waiver, consent, compromise, amendment, extension, renewal, or taking or release of security in respect of any Senior Indebtedness or noncompliance by Company with such provisions, regardless of the actual or imputed knowledge of Senior Lender.

4.4. Bankruptcy Financing Issues. This Agreement shall continue in full force and effect after the filing of any petition ("Petition") by or against Company under the United States Bankruptcy Code (the "Code") and all converted or succeeding cases in respect thereof. All references herein to Company shall be deemed to apply to Company as debtor-in-possession and to a trustee for Company. If Company shall become subject to a proceeding under the Code, and if Senior Lender shall desire to permit the use of cash collateral or to provide post-Petition financing from Senior Lender to Company under the Code, Subordinated Lender agrees as follows: (1) adequate notice to Subordinated Lender shall be deemed to have been provided for such consent or post-Petition financing if Subordinated Lender

receives notice thereof three (3) Business Days (or such shorter notice as is given to Senior Lender) prior to the earlier of (a) any hearing on a request to approve such post-petition financing or (b) the date of entry of an order approving same and (2) no objection will be raised by Subordinated Lender to any such use of cash collateral or such post-Petition financing from Senior Lender.

4.5. Insurance Proceeds. Proceeds of the Collateral include insurance proceeds, and therefore, notwithstanding the terms set forth in the Senior Lending Agreements or Subordinated Lender Agreements, the priorities set forth in Section 3.2 govern the ultimate disposition of casualty insurance proceeds. Senior Lender, as the holder of a senior security interest on the Collateral insured shall have the sole and exclusive right, as against Subordinated Lender, to adjust settlement of insurance claims in the event of any covered loss, theft or destruction of such Collateral. All proceeds of such insurance shall inure to Senior Lender, to the extent of Senior Lender's claim, and Subordinated Lender shall cooperate (if necessary) in a reasonable manner in effecting the payment of insurance proceeds to Senior Lender. In the event Senior Lender, in its sole discretion or pursuant to agreement with Company, permits Company to utilize the proceeds of insurance to replace Collateral, the consent of Senior Lender thereto shall be deemed to include the consent of Subordinated Lender.

4.6. Receipt of Agreements. Subordinated Lender hereby acknowledges that it has delivered to Senior Lender a correct and complete copy of the Subordinated Lending Agreements as in effect on the date hereof. Subordinated Lender, solely for the purposes of this Agreement, hereby acknowledges receipt of a correct and complete copy of each of the Senior Lending Agreements as in effect on the date hereof.

4.7. No Amendment of Subordinated Lending Agreements. So long as the Loan Agreement remains in effect, neither Company nor any Holder of Subordinated Indebtedness shall enter into any amendment to or modification of any Subordinated Lending Agreements which relates to or affects the principal amount, interest rate, payment terms, or any other material covenant or agreement of Company thereunder or in respect thereof, without the prior written consent of Senior Lender.

4.8. Amendments to Senior Lending Agreements. Nothing contained in this Agreement, or in any other agreement or instrument binding upon any of the parties hereto, shall in any manner limit or restrict the ability of Senior Lender from increasing or changing the terms of the loans under the Senior Lending Agreements, or to otherwise waive, amend or modify the terms and conditions of the Senior Lending Agreements, in such manner as Senior Lender and Company shall mutually determine. Each Holder of Subordinated Indebtedness hereby consents to any and all such waivers, amendments, modifications and compromises, and any other renewals, extensions, indulgences, releases of collateral or other accommodations granted by Senior Lender to Company from time to time, and agrees that none of such actions shall in any manner affect or impair the subordination established by this Agreement in respect of the Subordinated Indebtedness.

4.9. Notice of Default and Certain Events. Senior Lender and the Holders of Subordinated Indebtedness shall undertake in good faith to notify the other of the occurrence of any of the following as applicable:

- (a) the obtaining of actual knowledge of the occurrence of any default under the Subordinated Note;
- (b) the acceleration of any Senior Indebtedness by Senior Lender or of any Subordinated Indebtedness by any Holder of Subordinated Indebtedness;
- (c) the granting by Senior Lender of any waiver of any Event of Default under the Loan Agreement or the granting by any Holder of Subordinated Indebtedness of any waiver of any "default" or "event of default" under the Subordinated Lending Agreements;
- (d) The payment in full by Company (whether as a result of refinancing or otherwise) of all Senior Indebtedness; or

(e) the sale or liquidation of, or realization upon, the Collateral.

The failure of any party to give such notice shall not affect the subordination of the Subordinated Indebtedness or the relative Lien priorities as provided in this Agreement.

4.10. Notices. Any notice or other communication required or permitted pursuant to this Agreement shall be deemed given (a) when personally delivered to any officer of the party to whom it is addressed, (b) on the earlier of actual receipt thereof or three (3) days following posting thereof by certified or registered mail, postage prepaid, (c) upon actual receipt thereof when sent by a recognized overnight delivery service or (d) upon actual receipt thereof when sent by facsimile to the number set forth below with electronic confirmation of receipt, in each case addressed to each party at its address or facsimile number set forth below or at such other address or facsimile number as has been furnished in writing by a party to the other by like notice:

If to Senior Lender:

Attention: _____

Telephone: _____

Facsimile: _____

with a copy to:

Attention: _____

Telephone: _____

Facsimile: _____

If to Subordinated Lender:

Attention: _____

Telephone: _____

Facsimile: _____

with a copy to:

Attention: _____

 Telephone: _____

 Facsimile: _____

If to Company:

Attention: _____

 Telephone: _____

 Facsimile: _____

with a copy to:

Attention: _____

 Telephone: _____

 Facsimile: _____

4.11. Books and Records. Subordinated Lender shall (a) make notations on the books of Subordinated Lender beside all accounts or on other statements evidencing or recording any Subordinated Indebtedness to the effect that such Subordinated Indebtedness is subject to the provisions of this Agreement, (b) furnish Senior Lender, upon request from time to time, a statement of the account between Subordinated Lender and Company and (c) give Senior Lender, upon its request, full and free access to Subordinated Lender's books pertaining only to such accounts with the right to make copies thereof.

4.12. Binding Effect; Other. This Agreement shall be a continuing agreement, shall be binding upon and shall inure to the benefit of the parties hereto from time to time and their respective successors and assigns, shall be irrevocable and shall remain in full force and effect until the Senior Indebtedness shall have been satisfied or paid in full in cash and the Loan Agreement shall have been irrevocably terminated, but shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any amount paid by or on behalf of Company with regard to the Senior Indebtedness is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Company, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee, custodian, or similar officer, for Company or any substantial part of its property, or otherwise, all as though such payments had not been made. No action which Senior Lender or Company may take or refrain from taking with respect to the Senior Indebtedness, including any amendments thereto, shall affect the provisions of this Agreement or the obligations of Subordinated Lender hereunder. Any waiver or amendment hereunder must be evidenced by a signed writing of the party to be bound thereby, and shall only be effective in the

specific instance. This Agreement shall be governed by and construed in accordance with the laws of the State of _____ . The headings in this Agreement are for convenience of reference only, and shall not alter or otherwise affect the meaning hereof.

5. Representations and Warranties.

(a) Subordinated Lender represents and warrants to Senior Lender that Subordinated Lender is the holder of the Subordinated Indebtedness and Liens which secure or will secure the Subordinated Indebtedness. Subordinated Lender agrees that it shall not assign or transfer any of the Subordinated Indebtedness or Liens without (i) prior notice being given to Senior Lender and (ii) such assignment or transfer being made expressly subject to the terms of this Agreement. Subordinated Lender agrees upon Senior Lender's request to execute and file an amendment to any financing statement or mortgage, trust deed or other encumbrance now on file which covers Collateral to the effect that the same is subject to the terms of this Agreement, and agrees to so mark any extension of such financing statements, or any financing statement or mortgage, trust deed or other encumbrance filed by Subordinated Lender on Collateral in the future. Subordinated Lender further warrants to Senior Lender that it has full right, power and authority to enter into this Agreement and, to the extent Subordinated Lender is an agent or trustee for other parties, that this Agreement shall fully bind all such other parties.

(b) Senior Lender represents and warrants to Subordinated Lender that Senior Lender is the holder of the Senior Indebtedness and Liens which secure or will secure the Senior Indebtedness. Senior Lender agrees that it shall not assign or transfer any of the Senior Indebtedness or Liens without (i) prior notice being given to Subordinated Lender and (ii) such assignment or transfer being made expressly subject to the terms and provisions of this Agreement. [Senior Lender agrees upon Subordinated Lender's request to execute and file an amendment to any financing statement or mortgage, trust deed or other encumbrance now on file which covers Collateral to the effect that the same is subject to the terms of this Agreement, and agrees to so mark any extension of such financing statements, or any financing statement or mortgage, trust deed or other encumbrance filed by Senior Lender on Collateral in the future.] Senior Lender further warrants to Subordinated Lender that it has full right, power and authority to enter into this Agreement and, to the extent Senior Lender is an agent or trustee for other parties, that this Agreement shall fully bind all such other parties.

6. Proceedings. ANY JUDICIAL PROCEEDING BROUGHT BY OR AGAINST SUBORDINATED LENDER OR COMPANY WITH RESPECT TO THIS AGREEMENT OR ANY RELATED AGREEMENT MAY BE BROUGHT IN ANY COURT OF COMPETENT JURISDICTION IN STATE OF _____, UNITED STATES OF AMERICA, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT EACH PARTY THERETO ACCEPTS FOR THEMSELVES AND IN CONNECTION WITH THEIR PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS, AND IRREVOCABLY AGREE TO BE BOUND BY ANY FINAL JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF SENIOR LENDER TO BRING PROCEEDINGS AGAINST SUBORDINATED LENDER OR COMPANY IN ANY COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY SUBORDINATED LENDER OR COMPANY AGAINST SENIOR LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER OR CLAIM IN ANY WAY ARISING OUT OF, RELATED TO OR CONNECTED WITH THIS AGREEMENT OR ANY RELATED AGREEMENT, SHALL BE BROUGHT ONLY IN A COURT LOCATED IN THE CITY OF _____, STATE OF _____; PROVIDED THAT NOTWITHSTANDING THE FOREGOING, IF IN ANY JUDICIAL PROCEEDING BY OR AGAINST SUBORDINATED LENDER OR COMPANY THAT IS BROUGHT IN ANY OTHER COURT SUCH COURT DETERMINES THAT SENIOR LENDER IS AN INDISPENSABLE PARTY, SUBORDINATED LENDER OR COMPANY SHALL BE ENTITLED TO JOIN OR INCLUDE EACH PARTY HERETO IN SUCH PROCEEDINGS IN SUCH OTHER COURT. SUBORDINATED LENDER AND COMPANY WAIVE ANY OBJECTION TO JURISDICTION AND VENUE OF ANY ACTION INSTITUTED

HEREUNDER AND SHALL NOT ASSERT ANY DEFENSE BASED ON LACK OF JURISDICTION OR VENUE OR BASED UPON FORUM NON CONVENIENS.

7. Waiver Of Jury Trial. EACH PARTY HERETO HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF ANY CREDITOR OR COMPANY OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENTS OR AGREEMENT EXECUTED OR DELIVERED BY THEM IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE AND EACH PARTY HERETO HEREBY AGREES AND CONSENTS THAT ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT JURY, AND THAT ANY OF THEM MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THEIR CONSENT TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

8. Company Acknowledgement. Company agrees that (i) nothing contained in this Agreement shall be deemed to amend, modify, supercede or otherwise alter the terms of the respective agreements between Company and each Creditor and (ii) this Agreement is solely for the benefit of the Creditors and shall not give Company, its successors or assigns or any other person any rights vis-a-vis any Creditor.

9. Counterparts; Facsimile. This Agreement may be executed by the parties hereto in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same agreement. Any signature delivered by a party by facsimile transmission shall be deemed to be an original signature hereto.

[10. Agent for Service of Process. Service of all pleadings, writs, process and summonses in any suit, action or proceeding against any Subordinated Lender may be made upon _____ (the "Process Agent"), and Subordinated Lender hereby irrevocably appoints the Process Agent its true and lawful attorney-in-fact in its name, place and stead to accept such service of any and all such pleadings, writs, process and summonses, and agrees that the failure of the Process Agent to give any notice of such service of process to Subordinated Lender shall not impair or affect the validity of such service or of any judgment based thereon.]

IN WITNESS WHEREOF, the undersigned have entered into this Agreement as of this _____ day of _____, 20_____.

[Senior Lender]

By: _____

Name: _____

Title: _____

[Subordinated Lender]

By: _____

Name: _____

Title: _____

[Company]

By: _____

Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____) ss.:

On the _____ day of _____, 20____, before me personally came _____ to me known, who, being by me duly sworn did depose and say that s/he is the _____ of _____, the corporation described in and which executed the above instrument; and that s/he signed her/his name thereto by order of the board of directors of said corporation.

Notary Public

STATE OF _____)
COUNTY OF _____) ss.:

On the _____ day of _____, 20____, before me personally came _____ to me known, who, being by me duly sworn did depose and say that s/he is the _____ of _____, the corporation described in and which executed the above instrument; and that s/he was authorized to sign her/his name thereto.

Notary Public

STATE OF _____)
COUNTY OF _____) ss.:

On the _____ day of _____, 20____, before me personally came _____ to me known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that s/he executed the same.

Notary Public

FOOTNOTES:

(n1)Footnote *. Review your state's statutory version of U.C.C. Section 9-611, as it may include variances from the model U.C.C. version.



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37TTT-18 California Legal Forms--Transaction Guide Form T18-4

Form T18-4 Continuing Subordination Agreement by Prior Creditor to Borrower's New Creditor

Description: This form is used when a lender extends a revolving credit line for either a fixed or an indefinite time period, and there may be various intervals during which no amount may be outstanding. If the lender requires the subordination of a specified debt it may also require, under such circumstances, that the subordination be continuous in order to avoid the necessity of obtaining a new subordination for each new loan.

Form T18-4 Continuing Subordination Agreement by Prior Creditor to Borrower's New Creditor

AGREEMENT OF SUBORDINATION made this _____ [date] between _____ (the "Debtor"), _____ (the "Subordinator"), and _____ (the "Creditor").

1. *Debt.* The Subordinator warrants and represents to the Creditor that the Subordinator is an officer, director, and principal shareholder of the Debtor and the Debtor is indebted to the Subordinator in the sum of _____ Dollars (\$ _____), without any defense, offset, or counterclaim.

2. *Subordination.* To induce the Creditor to discount or purchase from the Debtor deferred payment paper, accounts receivable, notes, security agreements, customer obligations, or other receivables at any time offered to the Creditor by the Debtor, or to lend or advance moneys or otherwise extend credit to the Debtor, and to better secure the Creditor in respect thereof, the Subordinator hereby subordinates the indebtedness owed by the Debtor to the Subordinator as well as any other indebtedness which the Debtor may now or hereafter owe to the Subordinator to all debts, demands, claims, liabilities, or causes of action for which the Debtor may now or at any time hereafter in any way be liable to the Creditor. The Debtor shall not pay, and the Subordinator shall not accept payment of or assert or seek to enforce against the Debtor, any indebtedness now or hereafter owing by the Debtor to the Subordinator or any collateral or security thereto appertaining, unless and until the Creditor has been paid in full all such debts, claims, liabilities, demands, or causes of action now or hereafter owing to the Creditor by the Debtor.

3. *Assignment.* As further security for the Creditor, the Subordinator hereby assigns to the Creditor any and all such indebtedness now or hereafter owing by the Debtor to the Subordinator and any and all collateral or security therefor. The Subordinator agrees to assign, endorse, and deliver to and deposit with the Creditor any and all notes or other obligations or instruments evidencing any such indebtedness and all collateral and security thereto appertaining, hereby

irrevocably authorizing the Creditor to collect, receive, enforce, and accept any and all sums or distributions of any kind that may become due, payable, or distributable on or in respect of such indebtedness, either principal or interest, or such collateral or security, whether paid directly or indirectly by the Debtor, paid or distributed in any bankruptcy, receivership, reorganization, or dissolution proceedings or otherwise. The Subordinator irrevocably authorizes the Creditor in its discretion to make and present claims therefor in any such proceedings, in the name of either the Creditor or the Subordinator, and in case any such sums or distributions come into the Subordinator's hands the Subordinator shall promptly turn the same over to the Creditor.

4. *Representations.* The Subordinator represents and warrants that he has not assigned or transferred any of the indebtedness or any interest therein or any such collateral or security to any other person and that he shall make no other assignment or transfer thereof, and that all notes or written obligations taken to evidence the indebtedness or all renewal notes or written obligations shall be endorsed with a proper notice of this agreement.

5. *Claims.* The Subordinator hereby postpones in favor of the Creditor all claims of every kind and description that the Subordinator may now or hereafter have against the Debtor to the payment to the Creditor of all debts, claims, demands, or causes of action of every character and description that the Creditor may now or hereafter have against the Debtor, whether arising hereunder or in any other manner.

6. *Waiver.* The Subordinator waives notice of acceptance hereof, notice of the creation of any indebtedness or liability of the Debtor to the Creditor, the giving or extension of credit to the Debtor, or the taking or releasing of security for the payment thereof, and waives presentment, demand, protest, notice of protest or default, and all other notices to which the Subordinator might otherwise be entitled.

7. *Continuance of agreement.* This agreement and the obligations of the Debtor and the Subordinator and the rights and privileges of the Creditor hereunder shall continue until payment in full of all claims of the Creditor notwithstanding any action or nonaction of the Creditor with respect thereto or any collateral therefor and any guarantees thereof; and after such payment shall continue until the Subordinator notifies the Creditor in writing to the contrary. Such notice shall not affect any loans made by the Creditor or claims arising in favor of the Creditor prior to the Creditor's receipt of such notice, but shall terminate this agreement only as to loans made or claims arising after the Creditor's receipt of such notice.

8. *Binding effect.* This agreement shall be binding on the Subordinator, his heirs, personal representatives, and assigns, and shall inure to the benefit of the Creditor, its successors and assigns.

9. *Entire agreement.* This agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them.

10. *Notices.* All notices or other documents under this agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at their last known addresses.

11. *Non-waiver.* No delay or failure by a party to exercise any right under this agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

12. *Headings.* Headings in this agreement are for convenience only and shall not be used to interpret or construe its provisions.

13. *Governing law.* This agreement shall be construed in accordance with and governed by the laws of the State of _____.

14. *Counterparts.* This agreement may be executed in two or more counterparts, each of which shall be deemed an

original but all of which together shall constitute one and the same instrument.

In witness whereof the parties have signed this agreement the day and year first above written.

Attest:

Secretary

Accepted:

by _____

President

by

President



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37TTT-18 California Legal Forms--Transaction Guide Form T18-5

Form T18-5 Agreement by Third Party to Subordinate Debt to Bank Loan

Description: This form illustrates the agreement of a creditor to subordinate the indebtedness due him from his debtor in order that the debtor may obtain a loan from a bank.

Form T18-5 Agreement by Third Party to Subordinate Debt to Bank Loan

AGREEMENT of subordination made _____ [date] between _____ (the "Creditor") and _____ (the "Borrower"), to induce the _____ (the "Bank") to make or continue loans from time to time. In consideration of loans made or to be made or continued by the Bank to the Borrower, the Borrower and Creditor hereby agree with the Bank as follows:

1. *Debt to creditor.* The Borrower is indebted to the Creditor at this time in the sum of _____ Dollars (\$____), plus accrued and unpaid interest.

2. *Subordination.* The Creditor and the Borrower hereby subordinate all claims now or hereafter owing to the Creditor by the Borrower to all claims of the Bank, and agree that except as provided below, all claims of the Bank shall be paid in full before any payment may be made on the debt of the Creditor, whether of principal or interest. The Creditor agrees not to enforce or to apply any security now or hereafter existing or to sue upon or collect or receive payment of, and the Borrower agrees not to pay to the Creditor any such claim or claims. In furtherance of the foregoing, the Creditor hereby assigns all of his present and future accounts, contract rights, general intangibles, and all claims of any nature against the Borrower, together with the proceeds thereof to the Bank to secure the performance of this agreement.

3. *Primacy of bank's claim as against creditor.* In any insolvency, receivership, bankruptcy, dissolution, liquidation, or reorganization proceeding, or in any other proceeding, whether voluntary or involuntary, by or against the Borrower under any bankruptcy or insolvency law or laws relating to the relief of debtors, to compositions, extensions, or readjustment of indebtedness, the Bank's claim against the assets of the Borrower shall be paid in full at the expense of the Creditor before any payment is made to the Creditor, whether such payment is in kind or in cash. The fund out of which the Creditor's claim is to be paid shall be subject to a security interest in the Bank's favor to secure this agreement of subordination, and the Creditor and the Borrower agree that the Bank may collect the Creditor's claim directly from the trustee in such proceeding. The Creditor agrees to furnish all assignments, powers, or other documents requested by

the Bank to facilitate such direct collection by the Bank. The Bank may file a claim in any such proceeding on the Creditor's behalf or may compel the Creditor to file such claim and in no event shall the Creditor waive, forgive, or cancel any claim it may now or hereafter have against the Borrower. In any such proceeding or at any meeting of creditors, the Creditor hereby grants to the Bank an irrevocable proxy to vote its claim and agrees to execute all further documents requested by the Bank to facilitate exercise of this proxy.

4. *Collection of creditor's claims.* If the Bank so requests in writing, any or all claims of the Creditor against the Borrower shall be collected, enforced, and received by the Creditor as trustee for the Bank and shall be paid over to the Bank on account of the claim or claims of the Bank against the Borrower. The Creditor agrees to pay over to the Bank on account of the claim or claims of the Bank against the Borrower all moneys or funds that may be received by the Creditor from the Borrower, or for or on behalf of the Borrower at any time when the Bank has any claim or claims against the Borrower. The Creditor further agrees not to sell, assign, transfer, or endorse its claim or claims, no matter how evidenced, to anyone except subject to the terms and conditions of this agreement, and not to join in any petition of bankruptcy or any assignment for the benefit of creditors, or any creditors' agreement, or to take any lien or security on any of the Borrower's property at any time when the Bank has any claim or claims against the Borrower.

5. *Reference on evidence of indebtedness.* The Borrower and the Creditor agree that any existing evidence of indebtedness of the Borrower to the Creditor or any subsequent evidence of any existing or future indebtedness shall contain or be stamped with a statement referring to the existence of this agreement.

6. *Continuance of agreement.* The agreement and the obligations of the Borrower and the Creditor and the rights and privileges of the Bank hereunder shall continue until payment in full of all claims of the Bank notwithstanding any action or nonaction of the Bank with respect thereto or any collateral therefor or any guarantees thereof; and after such payment shall continue until the Creditor notifies the Bank in writing to the contrary. Such notice shall not affect any loans made by the Bank or claims arising in favor of the Bank prior to the Bank's receipt of such notice, but shall terminate this agreement only as to loans made or claims arising after the Bank's receipt of such notice.

7. *Waiver.* The Bank shall have uncontrolled power and discretion, without notice to the Creditor, to deal in any manner with any indebtedness, interest, costs, and expenses payable by or liability of the Borrower to the Bank and any security and guarantees therefor included, but not by way of limitation, release, surrender, extension, renewal, acceleration, compromise, or substitution. The Creditor hereby waives and agrees not to assert against the Bank any rights which a guarantor or surety could exercise; but nothing in this agreement shall constitute the Creditor a guarantor or surety.

8. *Insolvency.* The insolvency or bankruptcy of the Borrower shall not affect this agreement and it shall remain in full force and effect and constitute an assignment by the Creditor to the Bank of all funds or property payable to the Creditor from the Borrower's assets not previously assigned to the Bank. Subject to the prior rights and interests, if any, of third parties, the Bank covenants to account for and pay over to the Creditor any excess thereof in its hands when its own claims have been paid in full.

9. *Binding effect.* This agreement shall extend to and bind the respective successors, assigns, and administrators of the parties hereto. The covenants of the Creditor and the Borrower respecting subordination of the claims of the Creditor in favor of the Bank shall extend to, include, and be enforceable by any transferee or endorsee of the Bank of any of its claim or claims.

10. *Acceleration.* If the Borrower or the Creditor violates any provision of this agreement, or if any subordinated indebtedness is involuntarily accelerated, the Bank may elect by a notice in writing delivered to the Borrower and the Creditor to cause all indebtedness of the Borrower to the Bank to become immediately due and payable. The obligation of the Borrower and the Creditor hereunder shall continue irrespective of, and the Borrower and the Creditor hereby waive, so far as the law permits, any existing or future statute of limitations applicable thereto or applicable to the enforcement of indebtedness and liability of the Borrower, and any collateral therefor or guarantees thereof.

11. *Definitions.* The words "claim" and "indebtedness" are used herein and in their most comprehensive sense and include all advances, debts, obligations, and liabilities of the Borrower heretofore, now, or hereafter made, incurred, or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether the Borrower may be liable individually or jointly with others, or as principal or as surety or guarantor.

12. *Entire agreement.* This agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them.

13. *Notices.* All notices or other documents under this agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at their last known addresses.

14. *Non-waiver.* No delay or failure by a party to exercise any right under this agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

15. *Headings.* Headings in this agreement are for convenience only and shall not be used to interpret or construe its provisions.

16. *Governing law.* This agreement shall be construed in accordance with and governed by the laws of the State of _____.

17. *Counterparts.* This agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

In witness whereof, this agreement has been executed by the parties the day and year first above written.

Attest:

_____ by _____

(Seal)

Secretary

President

Accepted:

Company

by _____

Vice

Pres

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*37TTT-18 California Legal Forms--Transaction Guide Form T18-6***Form T18-6 Objection to Secured Party's Acceptance of Collateral**

Description: This form may be used by debtors and subordinate secured parties who receive notice of the senior secured party's intention to accept collateral in full or partial satisfaction of the obligation to object to the proposed acceptance of collateral.

Form T18-6 Objection to Secured Party's Acceptance of Collateral

OBJECTION TO RETENTION OF COLLATERAL

TO: _____ [name of secured party]
 _____ [street address]
 _____ [city], _____ [state]

[If security interest was perfected by filing of financing statement, add:]

RE: Financing Statement No. _____

Filed on: _____ [date]

Filed at: _____ [place]

[Continue with the following:]

The undersigned _____ [debtor or secured party] objects to the acceptance, as proposed in your notice dated _____, of any portion of the collateral described in the Security Agreement dated _____ [add, if applicable: and in the Financing Statement mentioned above] for the purpose of satisfying the underlying obligation set forth in _____ [e.g., the Security Agreement entered into between the debtor and you on _____ (date)].

The undersigned demands that the collateral be disposed of by sale or lease or otherwise, in accordance with the provisions of _____ [state] Commercial Code Section _____.

Dated: _____

_____ [signature of debtor or secured party]

_____ [typed name]



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*37TTT-18 California Legal Forms--Transaction Guide Form T18-7***Form T18-7 Demand by Subordinate Secured Party for Satisfaction of Subordinate Debt**

Description: This form is for use by the holder of a subordinate security interest in or other subordinated lien on collateral to demand that the senior secured party satisfy the subordinate obligation from the proceeds of the disposition of the collateral securing both debts, after the debtor has defaulted.

Form T18-7 Demand by Subordinate Secured Party for Satisfaction of Subordinate Debt

DEMAND FOR SATISFACTION OF SUBORDINATE DEBT

TO: _____ [name of senior secured party]
 _____ [address]
 _____ [city], _____ [state]

[If subordinate security interest was perfected by filing of financing statement, add:]

RE: Financing Statement No. _____

Filed on: _____ [date]

Filed at: _____ [place]

[Continue with the following:]

The undersigned demands that the indebtedness owed by _____ [name of debtor] to the undersigned in the amount of \$ _____ and secured by a security interest in the collateral that you propose to _____ [sell or dispose of] _____ [on or on or after] _____ [date] be satisfied from the proceeds of that _____ [sale or disposition].

The undersigned perfected a security interest in the collateral by _____ [filing the Financing Statement referenced above or describe method of perfection].

Date: _____

_____ [signature of subordinate secured party]

_____ [typed name]

_____ [address]



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37TTT-18 California Legal Forms--Transaction Guide Form T18-8

Form T18-8 Demand by Subordinate Secured Party to Share in Proceeds of Disposition of Collateral

Description: This form is for use by a subordinate secured party to demand a share of proceeds from the disposition of collateral after defaults.

Form T18-8 Demand by Subordinate Secured Party to Share in Proceeds of Disposition of Collateral

DEMAND FOR SATISFACTION OF SUBORDINATE DEBT

To: _____ [name of senior secured party]
_____ [address]

RE: Security Agreement dated _____

[Add if subordinate security interest was perfected by filing of financing statement]

RE: Financing Statement

No. _____

Filed on: _____ [date]

Filed at: _____ [filing office]

[Continue with following]

_____ [I or we] demand that the indebtedness owed by _____ [name of debtor] to the _____ [me or us] the amount of \$_____, secured by the collateral that you propose to _____ [sell or dispose of], be satisfied from the proceeds of that disposition.

Our security interest in the collateral is evidenced and described by the security agreement dated _____, between _____ [name] and _____ [name] _____ [and is further evidenced by and described in the above-captioned Financing Statement or and

was perfected in the following manner _____ (*describe method of perfection*).

Dated: _____

_____ [signature of subordinate secured party]

_____ [typed name]

_____ [address]



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*37TTT-18 California Legal Forms--Transaction Guide Form T18-9***Form T18-9 Request by Secured Party for Proof of Demand for Satisfaction of Subordinate Debt**

Description: If a subordinate secured party demands to share in the proceeds of a sale of collateral after default by the debtor, the senior secured party conducting the sale may request reasonable proof of the subordinate party's interest in the collateral. This form may be used to make such a request.

Form T18-9 Request by Secured Party for Proof of Demand for Satisfaction of Subordinate Debt

REQUEST FOR PROOF OF DEMAND

TO: _____ [name of subordinate secured party]
 _____ [street address]
 _____ [city], _____ [state]

I RESPECTFULLY REQUEST that you furnish me with reasonable proof of your interest, as claimed in your Demand for Satisfaction of Subordinate Debt dated _____ [date], in the property I propose to sell _____ [on *or* on or after] _____ [date], because of the default of my debtor _____ [name of debtor].

I further request that proof of your interest in the property be furnished me on or before _____ [date], or I am not required to, and will not, comply with your demand.

Dated: _____
 _____ [signature of secured party]
 _____ [typed name]