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§ 19.syn Synopsis to Chapter 19: Cost Saving Measures-- General/Real Estate/Employees.

Form T19-1 Resolution Closing Branch Office

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37TTT-19 California Legal Forms--Transaction Guide Form T19-1

Form T19-1 Resolution Closing Branch Office

Description: This form is a resolution that may be used by the board of directors to close a branch office of the corporation.

Form T19-1 Resolution Closing Branch Office

RESOLUTION CLOSING BRANCH OFFICE

RESOLVED, that the ___________________ [*designate person in charge of establishing branch office, e.g.,* President] is authorized and directed to close the branch office of this corporation located at ___________________ [address of branch office].

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37TTT-19 California Legal Forms--Transaction Guide Form T19-2

Form T19-2 Separation Agreement and Release Related to Corporate Downsizing

Description: This agreement, which governs the severance benefits of employees terminated pursuant to a corporate downsizing, comports with the requirements for valid age releases offered in connection with exit incentives or programs applicable to a group or class of employees.

Form T19-2 Separation Agreement and Release Related to Corporate Downsizing

Mr. James Smithn*

[address]

Dear Jim:

We regret to inform you that your position is being eliminated, effective ___________________[date], as part of ABC Corporation's ("ABC") administrative consolidation and reduction in force. In recognition of your past service, and in the interest of assisting you with your transition to other employment, we have retained ___________________[firm name] to prepare a severance package and have retained ___________________[firm name] to assist you with outplacement. The severance and outplacement arrangements are as follows:

1. Your last day of employment will be ___________________[date]

2. You will be paid your regular salary, less all applicable deductions, through

___________________ , 20_____, for a total severance pay benefit of $

____________________ . Upon determination of incentive awards based on the June 30,
___________________ year-end statement, incentives will be paid to separated associates based on the

prorated time worked.

3. ABC will continue your existing health insurance, long-term disability and life insurance through February 1, 20___________________.

4. On February 1, 20___________________, you will be eligible to continue your health insurance, at your own expense, in accordance with the conditions of ABC's insurance plan and the requirements of federal law (COBRA) related to extended health coverage.

5. You will be paid all accrued but unused vacation pay

($____________________) at the next regular payroll date.

6. ABC has retained ___________________[firm name] to provide you with three months of career transition services. Severance in lieu of outplacement is not an option.

7. ABC will provide you with a positive employment reference. (See attached).

In exchange for, and to begin receipt of these severance benefits, you must agree that:

1. You will cooperate with ABC to ensure a smooth transition and will return to ABC all of its property, records, documents, electronic data, systems, plans, financial information and all other ABC information or property, regardless of its form.

2. You will refrain from making any disparaging statements concerning ABC and will maintain the confidentiality of all proprietary and/or confidential information relating to ABC, including, but not limited to, all financial data, electronic data, information systems, plans, practices, procedures, and any other non-public information relating to ABC. ABC, likewise, agrees not to make any disparaging remarks against you.

3. Except as required by law, you will not disclose the existence or terms of this agreement to anyone other than your legal advisors and immediate family. Neither your legal advisors nor your immediate family shall discuss the existence or terms of this agreement with anyone else. ABC agrees not to disclose the existence or terms of this separation agreement to anyone outside of ABC, with the exception of legal counsel.

4. You hereby release ABC, its agents, employees, affiliates and representatives from any and all claims arising prior to the date this agreement is executed, including, but not limited to, all claims of employment discrimination and all claims arising under the common law or under any local, state or federal employment law, statute, regulation or ruleregulating any aspect of employment, including, but not limited to, any and all claims:

a. Arising under the Age Discrimination in Employment Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Civil Rights Act of 1964, the Americans with Disabilities Act, the Rehabilitation Act of 1973, the Civil Rights Acts of 1870 and 1871, the Civil Rights Act of 1991, the ___________________[state] Human Rights Act, the ___________________[city] Human Rights Ordinance, the ___________________ County Human Rights Act, or any other statute, ordinance, rule or regulation of any state, federal, county or municipal government regulating any aspect of the employment relationship;

b. Any and all claims or causes of action for breach of contract or breach of personnel policies or employee handbooks, promissory estoppel, intentional or negligent infliction of emotional distress, invasion of privacy, wrongful or retaliatory discharge, defamation, libel, slander, any act contrary to the public policy of ____________________[state], or any other violation of the common law of ____________________[state] or of any other state; and

c. Any and all claims of any kind arising under, or based on, any violation of any other provision of any constitution, statute, ordinance, order, regulation, enactment, or the common law of the United States, any state thereof, or any subdivision of any state, or of any governmental agency.

5. This agreement constitutes the parties' entire agreement and may only be modified by a writing signed by both parties.

The positions that are being eliminated are administrative positions. Attached to this letter is a list describing each administrative job title, the ages of the employees in each job title, and the job titles that are being eliminated. All employees whose positions have been eliminated are eligible for enhanced severance benefits in exchange for executing the waiver set forth in paragraph 4(a)-(c).

You will have forty-five (45) days, until ____________________ [date], to consider the terms of this severance package and should consult an attorney before executing this agreement. If you wish to accept this package, please sign where indicated and return this letter to me within forty-five (45) days of your receipt of this letter. If you choose to accept the package, you will have seven (7) days from your initial acceptance to revoke your initial acceptance. If you do not revoke your acceptance, this agreement will take effect on the eighth (8th) day following your acceptance. If you have any questions concerning your severance benefits, please let me know.

Sincerely,
Steve Jones, President

ACCEPTED AND AGREED to:

____

Dated: ____________________

FOOTNOTES:
(n1)Footnote *. Arbitrary names, dates, and companies have been added to some forms to promote better understanding of the form.

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37TTT-19 California Legal Forms--Transaction Guide Form T19-3

Form T19-3 Termination Agreement with Salary Continuation and Release and Indemnity Provisions

Description: This executive termination package includes a termination agreement in letter format that provides for extended salary continuation benefits and a release and indemnity agreement and settlement agreement and release of claims as separate documents attached and incorporated by reference into the letter agreement.

Form T19-3 Termination Agreement with Salary Continuation and Release and Indemnity Provisions

___________________ [date]

To: ___________________
____
___________________ [address]

Dear Mr. Smith:

Termination Agreement

This letter is to confirm that you have reached an agreement with Business Corporation of America ("BCA") to terminate your employment with BCA on the following terms and conditions:

1. You agree that your employment relationship with BCA and any of its associated companies, including Business Corporation of Canada, Ltd. ("BCC") will terminate effective ___________________ [date of termination].

2. BCA will pay you a salary at the monthly rate of $___________________ for a period of up to ___________________ [number of] months starting from ___________________[date] or until you commence new employment, whichever occurs first. This payment will be administered through BCC's payroll on behalf of BCA.

3. If you commence new employment before the expiration of the ___________________ [number of] months notice period stipulated in paragraph 2 above, the salary continuation payments will cease immediately upon commencement of new employment. However, you will receive a lump sum payment equal to 50% of the remaining salary continuation payments that would have been paid to you during the balance of the [number of] months notice period. Under no circumstances, however, will you be paid less than the relevant statutory minimum notice and/or severance payments to whichyou are entitled.

4. For purposes of this Agreement, new employment includes self-employment, providing services as a consultant or contractor, or any other business activity entered into with a view to earning income.

5. The payments described in paragraphs 2 and 3 above are subject to necessary statutory deductions, and are inclusive of any entitlements to notice, pay in lieu of notice or severance pay you may have under the ___________________ [state] or ___________________ [province] Employment Standards Act.

6. BCC will contribute to your BCC Pension Plan on a monthly basis for the duration of the ___________________ [number of] months notice period described in paragraph 2 above, or until you commence new employment.

7. You acknowledged that you have read this Agreement, that you understand its content and legal effect, and that you are freely, knowingly and voluntarily entering into this Agreement.

8. This Agreement is effective as of ___________________ [the date of termination].

9. This Agreement and the Release and Indemnity required by paragraph 8, above, constitute the entire agreement and supersede all prior agreements in respect of the termination of your employment with BCA and BCC.

10. This Agreement shall be enforced and construed under the laws of the [state *or* province] of ___________________.

Please confirm your agreement to the above terms and conditions of your termination of employment with BCA and BCC by signing and returning the attached copy of this letter, together with a signed copy of the Release and Indemnity attached as Schedule "A" to this letter to my attention no later than ___________________[date].

A duly authorized officer of BCA has also signed this letter to confirm BCA's agreement to the terms and conditions set out in this letter.

Yours Truly,
Margaret Jones
Business Corporation of America

Agreed to this ____________________ day of ____________________, 20_____ at ____________________________________ [city], ___________________________________ [state].

Signed in the presence of:

______________________	______________________
Signature of Witness	Signature of Employee
[Print Name & Address of Witness]	[Print Name of Employee]

Agreed to this ____________________ day of ____________________, 20_____ at ___________________________________ [city], ___________________________________ [state].

Business Corporation of America

By: ____________________
Authorized Officer

Schedule "A"

Release and Indemnity Agreement

I, Michael Smith, (the "Releasor," which term includes my heirs, executors, administrators, successors and assigns), in consideration of the benefits and payments to me by Business Corporation of Canada Ltd. (the "Releasee," which term includes its subsidiary, affiliated and parent companies, and all related companies and entities including Business Corporation of America, and their respective past and present employees, servants, agents, directors, insurers, successors and assigns) as set out in the attached letter dated March 31, 20____________________, from Business Corporation of America to me, plus other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby release and forever discharge the Releasee from all claims, debts, complaints, demands, actions and liabilities of any kind or nature whatsoever ("Claims") which I now have or may have in the future against the Releasee, by reason of any matter, cause or things whatsoever existing up to the present time, whether legal or equitable, and arising in contract, tort or statute, including without limitation, any Claims arising out of or in any way connected with my employment with or the termination of my employment by Business Corporation of Canada Ltd. and Business Corporation of America.

I expressly acknowledge and agree that in exchange for the payment of the consideration referred to above, I release any and all claims of discrimination that I may have against the Releasee under the _________________ [legislation *or* statute].

I acknowledge that I have received from the Releasee any monies to which I may be entitled as payment in lieu of notice of termination, severance pay, wages, salary, benefits, pension plan contributions, overtime pay, vacation pay and holiday pay, including all amounts to which I am entitled pursuant to the _________________, [legislation *or* statute] any employment contract, statute, and common law.

I further acknowledge and agree that the consideration described in this Release and Indemnity includes full compensation and consideration for loss of all employment benefits, and that I have no further claim against the Releasee for benefits.

I expressly acknowledge that the consideration referred to herein shall not inany way be deemed to constitute an admission of any liability by the Releasee.

I agree not to make any claim or take any proceeding against any person or corporation who might claim, pursuant to the provisions of any applicable statute or the common law or otherwise, contribution or indemnity from the Releasee in respect of the matters referred to in this Release and Indemnity.

And it is further agreed and understood that in the event that I should hereafter make any claim or demand, or threaten to commence any action, claim or proceedings, or make any complaint against the Releasee or anyone else by reason of any cause, matter or claim referred to in this Release, this document may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint.

I further covenant and agree to save harmless and indemnify the Releasee from and against all claims, taxes, penalties or demands which may be made by the _________________ [authority] requiring the Releasee to pay income tax, charges, taxes or penalties under the _________________ [legislation *or* statute] in respect of income tax payable by me in excess of income tax previously withheld; and in respect of any and all claims, charges, taxes or penalties and demands which may be made on behalf of or related to _________________ [agency] and the _________________ [agency] with respect to any amounts which may in the future be found to be payable by the Releasee in respect of me under the _________________ [legislation *or* statute], the _________________ [legislation *or* statute], or any other applicable statutes.

It is understood and agreed that I shall keep the terms of the Termination Agreement completely confidential, and that I will not in the future, unless required by law, voluntarily disclose any information concerning the terms of the Termination Agreement to anyone except my immediate family, legal counsel, accountant, or financial advisors, provided they first agree to keep said information confidential and not to disclose it to others. I acknowledge that this is a fundamental term of this Release and Indemnity.

I expressly declare that I have been given sufficient time to consider my actions and to seek such independent legal or other advice as I deem appropriate with respect to this matter and the terms of this document. I voluntarily accept the severance agreement attached hereto in full and final compromise of all claims that I may have against the Releasee as set out above. I acknowledge that no representation of fact or opinion, threat or inducement has been made or given by the Releasee to me to induce me to sign this Release.

The provisions in this Release and Indemnity shall endure to the benefit of the Releasee's successors and assigns, and shall be binding upon the heirs, executors and administrators of the Releasor.

This Release and Indemnity shall be deemed to have been made in, and shall be construed in accordance with, the laws of the [state *or* province] of ___________________.

IN WITNESS THEREOF I, Michael Smith, have executed this Release and Indemnity this ____________________ day of ____________________, 20_____ at ___________________.

Signed in the presence of:

______________________	______________________
Signature of Witness	Signature of Employee
[Print Name & Address of Witness]	[Print Name of Employee]

Schedule "B"

Settlement Agreement and Complete Release of All Claims

This Agreement, made and entered into as of the ____________________ day of ____________________, 20_____, by and between Michael Smith (the "Employee") and Business Corporation of America (the "Employer") (collectively, the "Parties).

WHEREAS, the Parties wish to resolve all matters concerning the separation and conclusion of the Employee's services with Employer in a written agreement ("Agreement"):

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements, and undertakings by the Parties set forth herein and in full settlement of any and all claims whatsoever, including, but not limited to, any and all claims arising out of the Employee's employment relationship with Employer, and the termination thereof, and intending to be legally bound hereby, the Parties agree as follows:

1. *Employer's Obligation to Provide Remuneration*

1.1 Employer agrees to provide Employee with the remuneration and other benefits described in the Termination Agreement Letter (the "Letter") and Schedule A thereto, which Employee acknowledges is over and above anything owed to Employee by law, contract, or under the policies of Employer, and is being provided to Employee expressly in exchange for Employee's entering into this Agreement.

1.2 Employer will not be obligated to provide Employee with any additional remuneration as described above if Employee revokes this Agreement as provided in paragraphs 5 and 6 below within seven (7) days after Employee has signed it.

2. *Separation Date*. The Parties agree that the effective date of separation of Employee's employment shall be ____________________ _____, 20_____ (the "Separation Date").

3. No benefits other than those described in this Agreement, the Letter and Schedule A shall be extended to Employee.

4. *Comprehensive General Release and Waiver*.

4.1 Employee unconditionally releases and forever discharges Employer and Employer's parent, subsidiary or affiliate companies, and all of their directors, trustees, officers, agents, employees, attorneys, insurers, and representatives, and their heirs, successors, administrators and assigns (hereinafter "Released Parties") from all liabilities and obligations under federal, state and local statutes or laws, whether known or unknown, relating in any way to this employment, termination thereof or communication concerning the circumstances of such termination to third parties.

4.2 These claims and causes of action, if any, from which the Employee releases the Released Parties include, but are not limited to, any claims for counsel fees and costs and any action sounding in tort, contract, and discrimination of any kind, and any cause of action arising under any federal, state, or local statute (including specifically any age discrimination claims that Employee may be entitled to assert pursuant to Employee's rights under the Age Discrimination in Employment Act), whether presently accrued, accruing to, or to accrue to Employee on account of, arising out of, or in any way connected with the Employee's employment with the Employer. Notwithstanding anything in this paragraph 4 to the contrary, Employee shall not waive any rights or claims under the Age Discrimination in Employment Act that may arise after the date of execution hereof, nor shall anything contained in this Agreement be construed to constitute a release by either the Employer or Employee of any rights, claims, liability, demands, controversies, actions and causes of action (whether in law or at equity), loss, damages, costs, or expenses of whatsoever type or amount arising out of the performance of this Agreement. This release also includes but is not limited to:

4.2.1. Any claim for wrongful termination, defamation, intentional infliction of emotional distress, invasion of privacy, or any other common law claims;

4.3.1. Any claims of violation of any written, implied or oral contract, including, but not limited to, any contract of employment between Employer and Employee, or between Employee or its affiliates and any other entity;

4.2.3. Any claims of discrimination, harassment or retaliation based on such things as age, race, national origin, religion, sex, or physical or mental disability, medical condition, or employee benefits claims;

4.2.4. Except for payments referred to herein, any claims for payments of any nature, including but not limited to wages, overtime pay, vacation pay, severance pay, bonuses; and

4.2.5. Any claims that may arise under the common law and under all federal, state and local statutes, ordinances, rules, regulations and orders, including but not limited to any claims based on the Fair Labor Standards Act, Title VII of the Civil Rights Act, the Civil Rights Act of 1866, 1871 and 1991, the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Family and Medical Leave Act, the Occupational Safety and Health Act, the Labor Management Relations Act, the National Labor Relations Act, the Employee Retirement Income Security Act, the Sarbanes-Oxley Act of 2002, the Vietnam Veterans' Readjustment and Assistance Act of 1974, Executive Order 11246, the ___________________________________ [state] Wage Claims Statutes, and ___________________ [state] Civil Rights Law, as each of them has been or may be amended.

5. *Reasonableness and Disclosure of Rights*.

5.1. Both the Employee and Employer hereby certify that they have read the terms of this Agreement, that they have been afforded the opportunity to consult with legal counsel of their choice and to deliberate about whether to enter into this Agreement, and that they understand its terms and effects.

5.2 Employee specifically acknowledges that Employee has been advised by Employer in writing of Employee's option to be given a minimum of twenty-one (21) days to review this Agreement or to have it reviewed by legal or other counsel of Employee's choice, and that Employee has been advised by Employer to consult with an attorney prior to executing this Agreement.

5.3 Employee acknowledges that Employee has been advised by Employer that Employee has seven (7) days following the execution of this agreement during which Employee may revoke or cancel this Agreement, and that this Agreement shall not become enforceable against Employee until the expiration of such seven (7) day period.

6. *Resolution of All Matters*. This Agreement resolves all matters between the Parties relating to Employee's employment and termination of employment with Employer. This Agreement becomes binding on Employee seven (7) days after the date it is signed and delivered to Employer by Employee (the "Binding Date"). Employee may revoke this Agreement during this seven (7)-day revocation period prior to the Binding Date by delivering a written notice of revocation to Business Corporation of America at facsimile number (000) 000-0000. This Agreement will become final and binding on Employee if notice of revocation is not delivered by 5:00 p.m. EST within the seven (7)-day revocation

period.

7. *Confidentiality; Non-Disclosure; Non-Disparagement*.

7.1. Employee agrees to keep the terms of this Agreement, other than the fact that his employment with the Company has terminated, confidential and he will not disclose any information concerning it to anyone, except that he may disclose the terms of this Agreement to his attorneys, accountants, advisors, and immediate family members provided that he advises such persons of the confidential nature of this Agreement and they agree not to disclose such information further, and except as may otherwise be necessary to enforce its terms, as permitted below in subparagraph 7.4, or as required by law.

7.2. Employee agrees not to, directly or indirectly, disclose, use divulge, disseminate, or publish "confidential and/or proprietary information" obtained by him during his employment. "Confidential and/or propriety information" includes, but is not limited to, any oral or written information disclosed to Employee or known by Employee as a consequence of or through Employee's employment by the Company which relates to the company's business, products, processes, services, or human resources, including but not limited to information relating to research, development, inventions, products under development, manufacturing processes, formulas, purchasing, finance, accounting, revenues, expenses, marketing, selling, suppliers, customer lists, customer requirements, employees, outside contractors and the documentation thereof. Employee will deliver to the Company (and not retain any copies of) all notes, memoranda, correspondence, documents, records, notebooks, tapes, disks and other repositories of Confidential Information, including all copies in Employee's possession or under his control, whether prepared by Employee or by others. Employee also agrees to return all Company property, including but not limited to identification, before departing the Company.

7.3. Employee agrees not to make any disparaging remarks, or any remarks that could reasonably be construed as disparaging, regarding the company or its officers, directors, employees, partners, owners, affiliates, attorneys, or agents, except as permitted by subparagraph 7.4, below, or as required by law. Employee further agrees that he will not take any action or provide information or issue any statement regarding the Company or its officers, directors, employees, partners, owners, affiliates, attorneys, or agents, except as permitted by subparagraph 7.4, below, or as required by law. Employee further agrees that he will not take any action or provide information or issue statements regarding the Company or its officers, directors, employees, partners, owners, affiliates, attorneys, or agents that would cause the Company or its officers, directors, employees, partners, owners, affiliates, attorneys, or agents embarrassment or humiliation or otherwise contribute to them being held in disrepute, except as permitted by subparagraph 7.4, below, or as required by law.

7.4. Nothing contained in this Paragraph or Agreement is intended to prohibit or restrict Employee from providing truthful information concerning his employment or the Company's business activities to any government, regulatory, or self-regulatory agency.

8. *Reasonable Cooperation*. Employee agrees to make himself reasonably available and to cooperate with the Company and its counsel in connection with any investigation, administrative proceeding, or litigation relating to any matter in which he was involved or of which he has knowledge as a result of his employment with the Company.

9. *Miscellaneous*.

9.1. This Agreement sets forth the entire understanding and agreement between the Parties with respect to the subject matter hereof and shall be binding on the Parties and their respective successors, heirs, and assigns. All prior negotiations, agreements, and understandings are superseded hereby.

9.2. This Agreement shall not be amended or revised except with the written consent of both Parties, and shall not be assigned by either party except with the written consent of the other party. Any assignment in violation of the previous sentence shall be void.

9.3. This Agreement shall be construed and enforced pursuant to the laws of the State of ____________________.

9.4. This Agreement may be enforced through an action filed in courts of ____________________ [county], ____________________ [state]. Breach of this Agreement may be enjoined.

9.5. If either party breaches this Agreement, the other party shall be entitled to recover its damages as well as reasonable attorneys' fees incurred in enforcing this Agreement.

9.6. If either party to this Agreement waives a breach of one of the provisions of this Agreement by other party, that waiver shall neither operate nor be construed as a waiver of subsequent similar breach of any provision hereof.

9.7. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as though such invalid or unenforceable provision were omitted.

PLEASE READ THIS AGREEMENT CAREFULLY. IT INCLUDES A RELEASE BY YOU OF IMPORTANT RIGHTS THAT YOU MAY HAVE.

WITNESS AS TO EMPLOYEE	EMPLOYEE
_______________________	_______________________
	Date: ____________________
WITNESS AS TO EMPLOYER	BUSINESS CORPORATION OF AMERICA
_______________________	By: _______________________
	Authorized Officer
	Date: ____________________

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37TTT-19 California Legal Forms--Transaction Guide Form T19-4

Form T19-4 Termination Other Than for Cause

Description: This form may be used to establish circumstances that will cause the agreement to terminate, such as death of the employee or dissolution of the employer.

Form T19-4 Termination Other Than for Cause

Termination on Grounds Other Than for Good Cause

____________________ [paragraph number]. This Agreement terminates immediately on the occurrence of any one of the following events:

(a) The occurrence of circumstances that make it impossible or impracticable for the business of the Employer to be continued.

(b) The death of the Employee.

(c) The loss by the Employee of legal capacity.

(d) The continued incapacity on the part of the Employee to perform ____________________ [his *or* her] duties for a continuous period of ____________________ [*e.g.*, 90] days, unless waived by the Employer.

[(e) The death of ____________________ (*e.g.*, the Employer *or* any partner in the business operated by the Employer)].

[*Option to terminate in event of bankruptcy*]

Effect of Bankruptcy or Similar Proceeding

____________________ [paragraph number]. This Agreement may be terminated immediately by

____________________ [the Employer *or* the Employee *or* either party to this Agreement] at ____________________ [his *or* her] discretion and without prejudice to any other remedy to which ____________________ [he *or* she] may be entitled either at law, in equity, or under this Agreement, by giving written notice of termination to the ____________________ [Employee *or* Employer *or* other party to this Agreement] if ____________________ [the Employee *or* the Employer *or* either party to this Agreement]:

(a) Files a petition in a court of bankruptcy or is adjudicated a bankrupt.

(b) Institutes, or has instituted against ____________________ [him *or* her], any bankruptcy proceeding for reorganization or rearrangement of the party's financial affairs.

(c) Has a receiver of the party's assets or property appointed because of insolvency.

(d) Makes a general assignment for the benefit of creditors.

[*Option to terminate if employee permanently disabled*]

Effect of Disability

_____________________ [paragraph number]. If the Employee becomes permanently disabled because of sickness, physical or mental disability, or any other reason, so that it reasonably appears that the Employee will be unable to complete ____________________ [his *or* her] duties under this Agreement [despite reasonable accommodations made by [the employer], the Employer has the option to terminate this Agreement immediately by giving written notice of termination to the Employee. Any termination is without prejudice to any right or remedy to which the Employer may be entitled either at law, in equity, or under this Agreement.

[*OR*]

_____________________ [paragraph number]. If, during the course of Employment, the Employee becomes disabled as that term is defined ____________________ [*e.g.,* in the Americans with Disabilities Act], the Employer will take steps to make reasonable accommodations allowing the Employee to continue working. These accommodations may include ____________________ [*e.g.,* modifications to the Employee's work schedule, alteration of facilities and equipment to make them usable by the Employee, or transfer to an available position with that the Employee is qualified for and able to perform.] However, the Employer is not required to make accommodations that would impose undue hardships on the Employer in business operations. Furthermore, if the Employee becomes unable to perform the Employee's duties due to a condition or cause that is not encompassed within the scope of ____________________ [*e.g.,* the Americans with Disabilities Act], the Employer may, but is not obligated, to offer the Employee other duties or a different position at a salary or wage to be determined by the Employee. Rejection of any such offer by the Employee results in a termination of this Agreement immediately on the giving of written notice to that effect by the Employer.

[*Option to terminate or continue agreement on change in business form of employer*]

Effect of Change in Business Form

_____________________ [paragraph number]. In the event that the Employer changes its form of doing business, by

____________________ [*specify, e.g.*, incorporation, merger, conversion, share or interest change, or otherwise], this Agreement will ____________________ [continue in effect *or* terminate]. [The termination of the agreement will be effective _____________________ days after the effective date of the ____________________ [*e.g.*, merger *or* conversion].

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PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 20: Transferring A Going Business.

37TTT-20 California Legal Forms--Transaction Guide 20.syn

§ 20.syn Synopsis to Chapter 20: Transferring A Going Business.

Form T20-1 Agreement Transferring Going Business to New Corporation Supervised by Creditors--Retention of Rights Against Debtors

Form T20-2 Agreement Transferring Going Business to Creditors' Committee

Form T20-3 Agreement Transferring Going Business to Major Creditor--Cancellation of Balance of Debt

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PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 20: Transferring A Going Business.

37TTT-20 California Legal Forms--Transaction Guide Form T20-1

Form T20-1 Agreement Transferring Going Business to New Corporation Supervised by Creditors--Retention of Rights Against Debtors

Description: This agreement is used for transferring a going business to a new corporation supervised by creditors. The form includes language outlining appointment of a creditors' committee, priority of future liabilities, settlement of claims, and personal liability of debtors, among other things.

Form T20-1 Agreement Transferring Going Business to New Corporation Supervised by Creditors--Retention of Rights Against Debtors

AGREEMENT made this ____________________ [date] among ___________________, residing at ___________________, ___________________, ___________________, and ___________________, residing at ___________________, ___________________, ___________________, individually and as partners trading as ___________________, having their principal place of business at ___________________, ___________________, ___________________ (the "Debtors"); ___________________ of ___________________, ___________________ of ___________________, ___________________ of ___________________, and ___________________ of ___________________ (the "Creditors' Committee); and all creditors of the Debtors who shall sign this agreement (the "Creditors").

Recitals

The Debtors owe the Creditors various sums of money. Such debts have matured or are about to mature, and the Debtors are presently unable to pay the same in full as they mature.

The net worth of the Debtors' business, known as ___________________, is approximately ____________________ Dollars ($_____) at the present time.

The Debtors desire that their business and assets be continued or liquidated in the discretion of the Creditors' Committee, and that their creditors refrain from instituting any suit or proceedings with respect to such indebtedness or the continuation or liquidation thereof.

The Creditors are willing to refrain from instituting any such suit or proceedings, and to consent to a continuation or liquidation of the Debtors' business and assets, in accordance with the terms and conditions hereof, provided the Debtors comply with all of the terms and provisions required hereunder.

It is therefore agreed:

1. *Appointment of creditors' committee.* The Debtors and Creditors hereby appoint as a Creditors' Committee the following: ____________________.

2. *Conduct of committee.* The Creditors' Committee shall act by a majority thereof, and any action by such a majority shall be binding upon the entire Creditors' Committee. Any vacancies which may occur in the membership of the Creditors' Committee for any reason shall be filled by the remaining members of the Creditors' Committee.

3. *Organization of corporation.* The Debtors shall do the following:

(a) Organize a ____________________ [state of incorporation] corporation, under the name of ____________________, hereinafter called the Corporation, with authority to issue _____________________ common shares without par value.

(b) Transfer to the Corporation all the assets of ____________________, the debtor partnership, more particularly reflected in the report of the accountants, ____________________ [name of accountants], in return for all of the authorized capital stock of the Corporation and its agreement to pay the indebtedness of the partnership to the Creditors.

(c) Cause the shares of the Corporation to be issued in the name of the Creditors' Committee, or its nominee, or in their own names. In the latter case, the shares shall be indorsed in blank and deposited with the Creditors' Committee.

(d) Deposit with the Creditors' Committee the resignations of all officers and directors, subject to acceptance at the will of the Creditors' Committee.

(e) Cause appropriate resolutions to be passed by the Corporation's Board of Directors providing that all checks for the withdrawal of funds to the credit of the Corporation be signed by either one of the Debtors, as an officer of the Corporation, and countersigned by a designee of the Creditors' Committee.

(f) Cause appropriate resolutions to be passed by the Corporation's Board of Directors fixing the salary of each of the Debtors at _____________________ Dollars ($_____) per week, subject to increase, if approved by the Creditors' Committee, in the maximum sum of _____________________ Dollars ($_____) per week each. Nothing herein contained shall be deemed a hiring other than at will.

(g) Cause the Corporation to engage as its auditors such firm of certified public accountants as the Creditors' Committee shall designate, and cause the Corporation to pay the fees of such accountants, subject to the approval of such fees by the Creditors' Committee. The accountants shall furnish monthly reports to the Creditors' Committee.

(h) Perform all acts and sign all documents which they are requested by the Creditors' Committee to sign in connection with the performance of this agreement of extension, and in connection with the dissolution and liquidation of the Corporation, should the Corporation be dissolved or liquidated.

4. *Purchase of new merchandise.* The Debtors on their own behalf or on behalf of the Corporation shall not purchase any new merchandise except with the prior approval of the committeeman, ____________________, and they shall not purchase on their own behalf or on behalf of the Corporation any merchandise beyond the limit in volume fixed by the Creditors' Committee. If for any reason ____________________ ceases to act as such committeeman, the Creditors' Committee shall designate his/her successor for the purpose of exercising the power granted to him/her in this paragraph.

5. *Priority of future liabilities.* All liabilities for the purchase of merchandise or supplies, the borrowing of money, or other expenses incurred by reason of the operation or liquidation of the Corporation, contracted or incurred after the date of the execution of this agreement, shall, in the absence of any agreement to the contrary and irrespective of whether any security may have been furnished therefor, be entitled to payment out of the Corporation's business and assets at the time of the maturity of such respective new debts, in priority to the balance then owing on the present claims of the Creditors.

6. *Employees and agents.* The Creditors' Committee may employ such agents and representatives, including accountants and counsel, as it shall in its discretion deem proper, and may fix the reasonable compensation for such accountants, counsel, and representatives. Such compensation shall be paid by the Debtors and the Corporation out of their assets. The members of the Committee, the accountants and counsel, and their respective firms shall not be responsible for any mistake of fact, error of judgment, mistake of law, or misfeasance, but each shall be responsible for his own misfeasance or fraud.

7. *Settlement of claims.* The Creditors' Committee may authorize settlement or compromise, including payment in full, of all small claims. The Creditors' Committee shall determine in its sole discretion what constitutes small claims.

8. *Dividends.* Whenever in the opinion of the Creditors' Committee it is advisable to do so, the Corporation shall pay dividends to Creditors on their claims, on a pro rata basis.

9. *Termination of business.* The Creditors' Committee in its sole discretion, whenever it deems it to the best interest of the Debtors and the Creditors, or upon the termination of this agreement provided all claims have not been paid in full at that time, may vote or cause all of the stock of the Corporation to be voted, or cause the directors of the Corporation to vote, for the dissolution and liquidation of the Corporation, or for the execution of a general assignment for the benefit of creditors, for the filing of a petition in bankruptcy, for the filing of a petition for an arrangement, for the filing of a certificate of dissolution of the Corporation, or for any other proceeding which the Committee, in its sole discretion, may deem advisable. If the Creditors' Committee shall determine to dissolve and liquidate the Corporation, the Creditors shall not take any proceedings or institute any action in any court to interfere with the method of liquidation or dissolution recommended by the Creditors' Committee, and shall abide by such proceedings as may be recommended by the Creditors' Committee, but nothing herein contained shall be deemed to permit the Creditors' Committee to accept on behalf of the Creditors any settlement or compromise.

10. *Payment of claims.* Upon payment in full of all the claims of the Creditors, together with interest at the rate of 6 percent per year, and all the expenses and obligations incurred by the Creditors' Committee, there shall be returned to the Debtors all of the stock of the Corporation as their interests may appear, together with their resignations as officers and directors.

11. *Personal liability of debtors.* The transfer of the partnership assets of the Debtors to the Corporation shall not relieve the Debtors of their individual obligation to pay such debts to the Creditors, and they shall continue to be responsible

for and undertake and guarantee the payment to the Creditors of the claims of the Creditors hereunder.

12. *Forbearance by creditors.* While this agreement is in effect and provided the Debtors have complied with all of the terms on their part to be performed hereunder, the Creditors shall not institute against the Debtors or their property, or against the Corporation, any action or proceeding of any kind arising out of their claims.

13. *Revival of rights against debtors.* Anything herein to the contrary notwithstanding, upon the expiration of this agreement or the complete liquidation of the business of the Corporation, all rights or remedies which any Creditors may then have against the Debtors or the Corporation, and against endorsers or guarantors, shall immediately be revived or restored, and such Creditors may, without any limitation by reason of this agreement, exercise all such rights or remedies.

14. *Effective date and term.* This agreement shall become operative if, prior to the ____________________ [date], _____ percent in number and amount of the present creditors of the Debtors become parties hereto. If this agreement becomes operative, it shall continue until the ____________________ [date].

15. *Notice.* Any notices required hereunder shall be deemed sufficiently given if forwarded by mail, postage prepaid, and shall be deemed given as of the date of mailing. All notices shall be addressed to the respective parties at their last known addresses.

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

17. *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.

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. *Binding effect.* This agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors, and assigns.

In witness whereof the parties have signed this agreement.

Creditors:		Amount:	Committee:
___	$	___	_______
___		___	_______
___		___	_______
___		___	_____
___		___	
___		___	
___		___	
_		_	

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 20: Transferring A Going Business.

37TTT-20 California Legal Forms--Transaction Guide Form T20-2

Form T20-2 Agreement Transferring Going Business to Creditors' Committee

Description: The debtor in this agreement undertakes to assign all his or her property to a creditors' committee, giving that committee full power to operate his or her business or to liquidate it.

Form T20-2 Agreement Transferring Going Business to Creditors' Committee

AGREEMENT made this ____________________ [date] between ___________________ (the "Debtor"), ___________________ and ___________________ (the "Committee"), and the undersigned creditors of ___________________ [insert the debtor's name] (the "Creditors").

Whereas the Debtor is indebted to the Creditors in various amounts and is unable to pay such debts as they fall due, and

Whereas the Debtor and the Creditors have agreed that the interests of all may be best served by a transfer of the Debtor's property to a creditors' committee for the purposes hereinafter stated, and

Whereas, ___________________ and ___________________ have agreed to serve as the creditors' committee,

It is therefore agreed:

1. *Transfer of property.* Upon the acceptance of this agreement by _____ percent of the Debtor's creditors, both in number and amount, the Debtor shall assign to the Committee all his property, except such property as is by law exempt from levy and sale under execution, in trust for the purposes of this agreement. The creditors shall evidence their acceptance by signing this agreement within _____ days from the date hereof.

2. *Dissenting creditors.* Out of the property assigned in trust, the Committee shall pay in full the claims of creditors who refuse to sign this agreement. If sufficient cash to pay such claims is not available, the Committee shall have the right to obtain the necessary cash by the sale or other disposition of a part of the trust property.

3. *Operation of business.* The Committee shall continue the retail furniture business heretofore conducted by the Debtor through such agents and employees as it may engage, and shall have the power to do all things necessary or proper to

the conduct of such business as if it were the absolute owner thereof. The Debtor shall be employed at such salary as the Committee in its discretion shall determine.

4. *Expenses.* The Committee shall have the right to deduct from the receipts of the business all necessary current expenses incurred in its operation. The Committee shall have a lien on all property which may come into its possession under this agreement for all necessary expenses and obligations incurred in the performance of this agreement.

5. *Dividends.* If at the end of any month the receipts of the business exceed its expenses to such date, and if in the judgment of the Committee the distribution of such excess would be for the best interest of the Debtor and the Creditors, the Committee may pay a dividend to the Creditors. Such dividend shall be divided among the Creditors pro rata. Similar dividends may be paid in the discretion of the Committee until all the Creditors have been paid in full, with interest at _____ percent to the date of payment, at which time the Committee shall turn over to the Debtor the trust property remaining in its hands and the trust shall terminate.

6. *Accounting.* The Committee shall render quarterly to the Debtor and the Creditors a written report of the condition of the business and of the trust property.

7. *Term.* The trust shall continue for _____ years from the date of this agreement, unless sooner terminated as provided in paragraphs 5 and 8. If the Creditors shall not have been fully paid, upon the expiration of such _____-year period, the Committee shall within a reasonable time convert the trust property into money and after payment of all expenses and obligations of the trust, including the compensation of the Committee, shall distribute the balance of the proceeds among the Creditors pro rata until their claims are paid in full. All proceeds in excess of the amount necessary to pay expenses and obligations of the trust and claims of Creditors shall be returned to the Debtor.

8. *Power of sale.* Notwithstanding the provisions of paragraph 7, if at any time during the term of the trust the Committee deems it to the best interest of the Creditors to convert the trust property into money, it shall have the right to do so. All proceeds of such conversion shall be distributed in accordance with the provisions for distribution contained in paragraph 7.

9. *Majority to act.* In the administration of the trust, a decision by a majority of the Committee's members as to any matter shall be binding upon the Committee.

10. *Compensation of committee.* For its services in connection with the administration of the trust, the members of the Committee shall be entitled to an aggregate fee equal to _____ percent of the money distributed to the Creditors, but in no event shall the aggregate fee be less than ____________________ Dollars ($_____).

11. *Successor members of committee.* In the event of a vacancy in the membership of the Committee, a successor shall be elected from among the Creditors by the vote of a majority in amount of claims.

12. *Covenant to assist committee.* The Debtor shall assist the Committee in carrying on the business in compliance with this agreement, and shall do all things and execute all instruments necessary to effectuate the purposes of this agreement.

13. *Amounts due.* The amounts set opposite the respective signatures of the Creditors are the amounts which the Debtor now owes the Creditors. The Creditors shall not attempt to collect or enforce such claims against the Debtor in any manner during the term of this trust.

14. *Release.* Upon the termination of this trust under any provision hereof, the Creditors shall release the Debtor from all liability upon the claims due them. Such release shall have the same effect as a discharge of the debtor in bankruptcy proceedings.

15. *Binding effect.* This agreement shall be binding upon the parties and their respective 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 Committee:

_______________________ _______________________

_______________________ _______________________

_______________________ _______________________

Creditors: Amount:

____________ ____________________

____________ _____

____________ ____________________

____________ _____

____________ ____________________

____________ _____

____________ ____________________

____________ _____

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 20: Transferring A Going Business.

37TTT-20 California Legal Forms--Transaction Guide Form T20-3

Form T20-3 Agreement Transferring Going Business to Major Creditor--Cancellation of Balance of Debt

Description: This form is used to transfer a going business to a major creditor with cancellation of balance of debt. In this agreement, the debtor transfers all of its operating assets to its major creditor. The consideration for this transfer is the cancellation of the balance of the debt, the assumption of the debtor's remaining liabilities by the creditor, and the release of the debtor's parent corporation from its guaranty.

Form T20-3 Agreement Transferring Going Business to Major Creditor--Cancellation of Balance of Debt

AGREEMENT made this ____________________ [date] between ___________________, a ___________________ [state of incorporation] corporation ("Creditor"), and ___________________, Inc., an ___________________ [state of incorporation] corporation ("Debtor").

Recitals

Debtor is a distributor of Creditor's products and is exclusively authorized to sell the Creditor's products in the States of ___________________, ___________________, and ___________________.

Debtor is indebted to Creditor, Debtor's principal creditor, in the amount of approximately ____________________ Dollars ($_____) (the "Debt").

Debtor has offered to transfer and assign all of its assets to Creditor in reduction of the Debt, if Creditor assumes Debtor's liabilities hereinafter described.

___________________ [name of third party corporate guarantor] ("Guarantor"), a ___________________ [state of incorporation] corporation ("___________________"), has guaranteed payment of the Debt to Creditor, and has requested that Creditor release it from such guarantee.

Creditor deems it advisable to acquire certain of Debtor's assets, assume certain of its liabilities, discharge certain of its obligations, and operate its business directly, and is willing to release Guarantor from its guarantee, all upon the terms and conditions herein contained.

It is therefore agreed:

1. *Transfer of assets by Debtor to Creditor.* Debtor shall transfer, convey, and assign to Creditor on the Closing Date as hereinafter defined, in reduction of the Debt of approximately ____________________ ($_____) owing by it to Creditor, Debtor's business as a going concern and all other of Debtor's assets and property, real and personal, of every kind, nature, and description, without limitation and wherever located, owned, or held by Debtor or to which Debtor is entitled on the Closing Date, except the following (the "Excluded Assets"):

(a) All cash in banks and on hand on the Closing Date;

(b) Goodwill;

(c) Corporate seal, Certificate of Incorporation, minute books, stock books, and other records having to do with the corporate organization or capitalization of Debtor; and

(d) Rights which accrue or will accrue to Debtor under this agreement.

The assets which Debtor shall transfer and assign hereunder (the "Assets to be Acquired") shall consist of those owned by Debtor on ____________________ [date] without limitation, except for Excluded Assets, those reflected in the ____________________ [date] balance sheet of Debtor (a copy of which is attached hereto as Exhibit I), with only such changes therein as shall have occurred in the ordinary course of Debtor's business between ____________________ [date] and the Closing Date.

2. *Assumption of liabilities of Debtor.* Subject to the conditions hereinafter set forth, Creditor shall assume, pay, perform, and discharge in accordance with the respective terms thereof the following liabilities and obligations of Debtor and no other:

(a) All indebtedness, being obligations to repay evidenced by written instruments, of Debtor listed in Exhibit II annexed hereto;

(b) All guarantees of indebtedness, being obligations and liabilities of Debtor listed in Exhibit III annexed hereto;

(c) All liabilities incurred by Debtor in the ordinary course of business, or incurred with the approval of Creditor, between ____________________ [date] and the Closing Date and remaining unpaid at the Closing Date;

It being the intent that the following liabilities shall not be assumed by Creditor:

(d) All liabilities of Debtor not disclosed to Creditor; and

(e) All liabilities or indebtedness or obligations owing by Debtor to Guarantor, ____________________, ____________________, and all other affiliates of Debtor.

3. *Documents of transfer.* The conveyance, transfer, assignments, and delivery of the Assets to be Acquired by Creditor shall be effected by bills of sale, endorsements, assignments, deeds, and other instruments of transfer and conveyance in such form as Creditor shall request. Debtor shall, at any time, and from time to time after the Closing Date, upon the request of Creditor execute, acknowledge, and deliver, or shall cause to be done, executed, acknowledged, and delivered, all such further acts, bills of sale, endorsements, assignments, deeds, transfers, conveyances, powers of attorney, and assurances as may be required for effectively selling, assigning, transferring, granting, conveying, assuring, and confirming to Creditor, or to its successors and assigns, or for aiding and assisting in collecting and reducing to possession any or all of the Assets to be Acquired. If Debtor is unwilling or, for any reason, unable to take any of the foregoing actions, Debtor hereby authorizes and empowers Creditor (or any duly authorized officer of Creditor) in its (or his) own name, or in the name of its (or his) nominee, or in the name of, and as attorney hereby irrevocably constituted for, Debtor, to take any and all such action.

4. *Supplemental list of receivables and payables.* Promptly following the Closing Date, Debtor shall furnish to Creditor a supplemental list of its accounts and notes receivable as of the Closing Date (including the name of the respective debtors and principal amounts owed), and also a supplemental list of such accounts and notes payable as of the Closing Date as are within paragraph 2(c). The total of the amounts on such lists shall agree with the books and records of Debtor as of the Closing Date.

5. *Extinguishment of indebtedness.* On the Closing Date, Creditor shall accept the Assets to be Acquired in reduction of the Debt of Debtor to Creditor. To the extent that the Debt exceeds the value of the Assets to be Acquired after charging against such assets the liabilities being assumed by Creditor hereunder, Creditor acknowledges that it shall recognize the unpaid balance of the Debt as an uncollectible loss, subject to effectuation of the terms and conditions and consummation of the Closing as provided in this agreement.

(a) Creditor shall use its best efforts to obtain for the benefit of Debtor and any of its affiliates written releases from the respective lenders of the debts listed in Exhibit II and of the guarantees made by Debtor, its affiliates, or their respective officers, listed in Exhibit III. If such releases cannot be obtained by Creditor and the lender seeks to collect the debts or the guarantees of indebtedness, as the case may be, directly from Debtor or its affiliates, or their respective officers, Creditor shall save and hold harmless such debtor or guarantor from and against any liability, cost, or expense, including reasonable attorneys' fees incurred in connection therewith.

(b) To the extent that the assignment of any contract, license, lease, commitment, or receivable to be assigned to Creditor shall require the consent of any other party to such contract, license, lease, commitment, or receivable, this agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof. Debtor shall use its best efforts to obtain, on or before the Closing Date, the consent of the other party to such contract, license, lease, commitment, or receivable to the assignment thereof to Creditor. If such consent is not obtained on or before the Closing Date, Debtor shall cooperate with Creditor in any reasonable arrangement designed to provide for Creditor the benefits under any such contract, license, lease, commitment, or receivable, including enforcement, at the cost and for the benefit of Creditor, of any and all rights of Debtor against the other party thereto arising out of the breach or cancellation by such other party or otherwise.

6. *Collection of receivables subsequent to closing.* From and after the Closing Date, Creditor shall have the right and authority to collect for the account of Debtor, but for the exclusive benefit of Creditor, all receivables and other items which shall be transferred to Creditor, as provided herein, and to indorse with the name of Debtor checks received on account of such receivables or other items. At and after the Closing Date, Debtor shall transfer and deliver to Creditor any cash or other property that Debtor may receive in respect of such receivables or other items.

7. *Closing.* The Closing under this agreement shall take place at ____________________ [time], at the Creditor's offices located at ___________________, on ____________________ [date] or at such other time and place as shall be fixed by an agreement between counsel for the parties hereto (the "Closing Date"). From and after the Closing Date, Debtor shall not engage in any business or other activity, except as is required to complete its winding up, liquidation, and dissolution or as is contemplated or required by this agreement.

8. *Debtor's representations.* Debtor represents and warrants to Creditor as follows:

(a) *Organization and standing.* Debtor is duly incorporated, validly existing, and in good standing under the laws of the State of ___________________, and is duly qualified, licensed, and in good standing as a foreign corporation in the States of ___________________ and ___________________. Neither the business activities nor the ownership or leasing of property by Debtor require it to be qualified in any other jurisdiction.

(b) *Capital stock.* The authorized capital stock of Debtor consists of ____________________ shares of Common Stock, par value $_____ per share, all of which have been validly issued and are presently outstanding, fully paid, and nonassessable. All of such shares are registered in the name of and beneficially owned by Guarantor, free and clear of all liens or encumbrances.

(c) *Financial statements.* Annexed hereto as Exhibit I are the balance sheet of Debtor and the related statements of income, retained earnings, and related schedules for the fiscal year ending ____________________ [date]. Such financial statements (1) are in agreement with the books and records of Debtor, (2) present fairly the financial condition of Debtor, as at the dates indicated, and the results of their operations for the periods indicated, and (3) have been prepared in accordance with generally accepted accounting principles consistently applied. The respective amounts set up as provisions for taxes on the balance sheet are sufficient for the payment of all unpaid federal, state, county, and local taxes of Debtor for or applicable to the respective fiscal periods ended on such balance sheet dates and all fiscal periods prior thereto.

(d) *Taxes.* Debtor has duly filed all required federal, state, county, and local tax reports and returns, and such reports and returns are true and correct to the best of Debtor's knowledge.

(e) *Absence of certain changes.* Since ____________________ [date], there has been no material adverse change in Debtor's condition, financial or otherwise, as reflected by the above balance sheet, other than changes occurring in the ordinary course of business and the continued operation of Debtor at a loss. Except as set forth in any of the exhibits Debtor has not: (1) issued any securities of any kind whatsoever, except evidences of indebtedness as listed in Exhibit H; (2) incurred any liability (absolute or contingent), except current liabilities incurred and liabilities under instruments which are listed and described in the exhibits annexed hereto; (3) discharged or satisfied any lien or encumbrance, or paid any liability (absolute or contingent), other than current liabilities shown on the balance sheet of Debtor as at ____________________ [date] and current liabilities incurred since the date of such balance sheet in the ordinary course of business; (4) declared, set aside, or paid any dividend or made other distribution in respect of its capital stock or made any direct or indirect redemption, purchase, or other acquisition of any of such stock; (5) subjected any of its assets to any lien or other encumbrance, except financing in the ordinary course of business; (6) sold or transferred any of its tangible assets or canceled any debts or claims, except in each case in the ordinary course of business; (7) suffered any extraordinary losses or waived any rights of substantial value; (8) made any increase in excess of ____________________ Dollars ($_____) per month in employee or officer compensation, or paid any bonuses; (9) entered into any transaction other than in the ordinary course of business; or (10) made capital expenditures aggregating in excess of ____________________ Dollars ($_____), without Creditor's specific knowledge and consent.

(f) *Leases and equipment.* Annexed hereto as Exhibit IV is a complete and correct list and summary description of all real estate leased by Debtor and of all structures located thereon. Debtor owns all the equipment in the plants and structures located on such leased premises in each case free and clear of all mortgages, claims, liens, security interests, or other encumbrances whatsoever, except those listed as liabilities in the annexed exhibits.

(g) *Insurance.* Annexed hereto as Exhibit V is a complete and correct list and summary description of all policies of fire, liability, and other forms of insurance held by Debtor.

(h) *Employment agreements, pension, profit sharing, and other obligations.* Except for the items described or listed in Exhibits II, III, IV, or VI hereto, Debtor is not a party to any written or oral (1) agreement for the employment of any officer or employee, (2) pension, profit sharing, retirement, bonus, insurance, or similar obligation with respect to its employees or others, (3) contract with any labor union, (4) agency or advertising contract which is not terminable on 30 days' (or less) notice, or (5) contract or agreement of any other nature with any person, firm, or corporation, whether or not such obligations are of a legally binding nature or in the nature of informal understandings, other than the contracts and agreements made in the ordinary course of business which terminate or are terminable without penalty by Debtor on or before the Closing Date.

(i) *Contracts.* Annexed hereto as Exhibit VI is a complete and correct list and summary description of all material contracts and agreements, oral or written, to which Debtor is a party at the date hereof, other than those described in other exhibits and other than arrangements made in the ordinary course of business which terminate or are terminable by Debtor on or before the Closing Date.

(j) *Loans, lines of credit.* Debtor is not a party to any contract or arrangement relating to loans, lines of credit, or other extensions of credit to Debtor or agreements therefor of any kind other than the contracts or loans set forth in the annexed exhibits.

(k) *Prior delivery.* True copies of all agreements, contracts, and other instruments listed in the exhibits annexed hereto have been delivered to Creditor and its attorneys and agents prior to the date of this agreement.

(l) *Litigation.* There are no actions, suits, or proceedings pending or, to the knowledge of Debtor, threatened against, by, or affecting Debtor in any court or before any governmental agency, domestic or foreign, except as set forth in Exhibit VII annexed hereto. Debtor is not subject to any order, writ, injunction, or decree of any court or agency which would prevent the sale of all or any part of Debtor's assets, or has created or would create any lien thereon or would affect or interfere with Debtor's use thereof or rights therein.

(m) *Compliance with laws.* Debtor, to the best of its knowledge, has complied with all laws, regulations, and orders applicable to its business. The execution and carrying out of this agreement and compliance with the provisions hereof by Debtor will not violate any provision of law applicable to Debtor and will not conflict with, or result in a breach of, any term, condition, or provision of, or constitute a default under, Debtor's corporate charter and bylaws, or any indenture, mortgage, security interest, agreement, or other instrument to which Debtor is a party or by which it may be bound, nor result in the creation of any lien, charge, or encumbrance upon any of Debtor's properties or assets.

(n) *Collection of accounts prior to closing.* Debtor shall use its best efforts to collect its accounts receivable in accordance with past practices and shall follow its past practices in connection with the extension of any credit prior to the Closing Date.

9. *Creditor's representations.* Creditor represents and warrants to Debtor as follows:

(a) *Organization and standing.* Creditor is duly incorporated, validly existing, and in good standing under the laws of the State of ____________________.

(b) *Compliance with laws.* Neither the execution and delivery of this agreement, nor the consummation of the transactions herein contemplated, nor the fulfillment of or compliance with the terms, provisions, and conditions hereof will conflict with, or result in a breach of any term, provision, or condition of Creditor's Certificate of Incorporation or Bylaws or of any instrument to which Creditor is a party or by which it may be bound or constitute (with the giving of notice, or the passage of time, or both) a default under any such instrument.

10. *Access to books, records, etc.* From and after the execution of this agreement, Debtor shall afford to the officers and accredited representatives of Creditor free access to the offices, books, and records of Debtor in order that Creditor may have full opportunity to make such investigation as it desires of the affairs of Debtor.

11. *Conditions precedent to consummation of transaction by Creditor.* The obligations of Creditor are, at its option, subject to the conditions that:

(a) *Performance.* All of the terms, covenants, and conditions of this agreement to be complied with by Debtor on or before the Closing Date shall have been complied with.

(b) *Representations and warranties.* The representations and warranties made by Debtor herein shall be correct, as of the Closing Date, with the same force and effect as though such representations and warranties had been made on the Closing Date and Debtor shall have delivered a certificate signed by its President and by its Treasurer to Creditor to such effect. Creditor shall be deemed to have relied on each and every such representation and warranty made hereunder by Debtor.

(c) *No substantial change.* The business and property of Debtor between the date hereof and the Closing Date shall not have been adversely affected in any substantial way by any cause whatsoever, including, but in no way limited to, acts of God, fire, explosion, earthquake, windstorm, accident, flood, drought, war, embargo, riot, condemnation, confiscation, seizure, activities of armed forces, and order of the United States of America, the states and their municipalities, and federal, state or local departments, agencies and commissions, unless such order has general application to the industry or any business in which Debtor is engaged.

(d) *Opinion of counsel for Debtor.* Creditor shall have received from counsel for Debtor, ____________________ [name of Debtor's law firm], its opinion dated as of the Closing Date, in substance and form satisfactory to counsel for Creditor, ____________________ [name of Creditor's law firm], that:

(1) Debtor is a corporation duly organized, validly existing, and in good standing under the laws of the State of ____________________ and is duly qualified, licensed, and in good standing as a foreign corporation authorized to do business in the States of ____________________ and ____________________ and has the requisite corporate power to carry on the business which it conducts;

(2) This agreement is a legal, valid, and binding obligation of Debtor, enforceable in accordance with its terms;

(3) requisite corporate action has been duly taken by the directors and shareholders of Debtor in order to render the consummation of this agreement fully valid and effective; and

(4) The deeds, bills of sale, instruments of assignment, and other instruments of transfer of title required to be delivered by Debtor to Creditor hereunder are, with respect to the form of conveyance, effective to transfer the right, title, and interest of Debtor in and to the Assets to be Acquired.

(e) *Compliance with Uniform Commercial Code.* ____________________ [debtor's state of incorporation] counsel for Debtor shall have rendered its opinion that Debtor has complied with the bulk transfer provisions of the ____________________ [state of incorporation] Uniform Commercial Code.

12. *Conditions precedent to consummation of transaction by Debtor.* The obligations of Debtor are, at its option, subject to the conditions that:

(a) *Representations and warranties.* The representations and warranties made by Creditor herein shall be correct, as of the Closing Date, with the same force and effect as though such representations and warranties had been made on the Closing Date.

(b) *Opinion of counsel for Creditor.* Debtor shall have received from counsel for Creditor, ___________________ [name of Creditor's law firm], its opinion dated as of the Closing Date that this agreement has been duly authorized, executed, and delivered by Creditor and is a legal, valid, and binding obligation of Creditor enforceable in accordance with its terms.

13. *Deliveries to be made at the closing.* The following payments shall be made at the Closing:

(a) By Debtor: Debtor shall pay to the ___________________ [name of financial institution] an amount equal to its cash on hand at the Closing Date, to be applied against Debtor's promissory note dated ____________________ [date] in the principal amount of ___________________ Dollars ($_____) and listed in Exhibit II;

(b) By Creditor: Creditor shall pay (1) to the ___________________ [name of financial institution] the sum of ____________________ Dollars ($_____) in reduction of the note of Debtor to such bank with a principal unpaid balance of ____________________ Dollars ($_____), and (2) to the ___________________ [name of another financial institution] the full amount of the note listed in Exhibit II;

(c) By Guarantor: Guarantor shall deliver to the ___________________ [name of financial institution] its promissory note in the amount of ____________________ ($_____) in payment of the balance due under the note described in preceding paragraph (b);

(d) Creditor between the date hereof and the Closing Date is verifying the inventories and fixed assets of Debtor and on the Closing Date shall deliver to Debtor its written confirmation that the fixed assets and inventories are assigned and conform to Exhibit I and are acceptable to Creditor, if such be the case.

In addition to the foregoing payments and deliveries, the parties shall deliver such other closing documents as shall be required in order to carry out the terms of this agreement.

14. *Fees and expenses.* Each party hereto shall pay its own expenses incident to this agreement and the transactions contemplated hereby, including all fees of its counsel and accountants, whether or not this agreement and such transactions shall be consummated. Creditor shall pay the ___________________ [state] Sales Taxes in connection with the transfer of the Assets to be Acquired.

15. *Releases.* Except for the covenants, agreements, representations, and warranties made herein by the parties and in the assignments and documents to be delivered at the Closing, none of which are hereby released:

(a) Debtor and Guarantor each hereby release Creditor, its affiliates, and their respective officers, directors, and employees of and from all claims, demands, and liabilities of any kind or nature from the beginning of the world to the date hereof; and

(b) Creditor hereby releases Debtor and Guarantor, and their respective officers and directors, of and from any and all claims, demands, and liabilities to Creditor of any kind or nature, arising from direct transactions between Creditor and such parties from the beginning of the world to the date hereof.

16. *Debtor's indemnification to Creditor.* Debtor shall be liable to Creditor for any damage or loss arising out of the breach of any representation or warranty or agreement made by it in or pursuant to this agreement, and shall indemnify Creditor against:

(a) Any liability for taxes arising out of the failure of Debtor to pay the correct amount of its taxes payable, except to the extent that such liability has been specifically assumed by Creditor pursuant to paragraph 2;

(b) Any other liability of Debtor which has not been specifically assumed by Creditor pursuant to Paragraph 2; and

(c) Any loss sustained or any liability incurred by Creditor because a representation or warranty made by Debtor in this agreement or in the documents delivered pursuant hereto, or any information furnished to Creditor by any officer of Debtor shall prove to have been false or incorrect on the date on or as of which it was made, or Debtor shall fail to perform or observe any covenant made by it in this agreement.

Provided that nothing herein or in this agreement shall be interpreted as a guaranty or assurance by Debtor or Guarantor as to the collectibility of any of the Accounts Receivable of Debtor included in the Assets to be Acquired hereunder.

17. *Miscellaneous provisions.* (a) *Special provision with respect to certain casualties.* If the fixed assets to be transferred hereunder shall be damaged prior to the Closing Date to an extent which materially impairs the value of the tangible assets of Debtor as a whole or materially impairs the productive capacity of Debtor's plant taken as a whole, by act of God, fire, explosion, earthquake, windstorm, accident, flood, drought, war, embargo, riot, condemnation, confiscation, seizure, or activities of the armed forces, or other casualty, Creditor shall have the right at any time prior to the Closing Date at its option to terminate and cancel this agreement without liability of either party to the other. If Creditor does not elect to terminate and cancel this agreement, all proceeds of insurance policies received in respect of any such casualty by Debtor prior to the Closing Date shall be received by Debtor for the account of Creditor and shall be turned over to Creditor at the Closing, and all unsettled claims of Debtor for proceeds of insurance policies arising from such casualty shall at the Closing Date be assigned by Debtor to Creditor.

(b) *Survival of representations.* All representations and warranties of the parties hereunder shall survive the Closing Date. All of the terms and provisions of this agreement shall be binding upon and inure to the benefit of and be enforceable by the successors and assigns of Debtor and Creditor. It is contemplated that Creditor may assign its rights hereunder prior to the Closing Date to a subsidiary or subsidiaries to be formed for such purpose.

(c) *Nonperformance of conditions--termination.* If either party to this agreement shall be unable to perform on or before the Closing Date any of the agreements, covenants, or conditions which are of material significance required to be performed or fulfilled by such party, the other party, at its option, may terminate this agreement by notice given to such defaulting party, and in the event of such termination both parties shall be released from any further obligation or liability hereunder.

(d) *Notices.* All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or mailed, first class, postage prepaid:

(1) If to Debtor at

Attention:

(2) If to Creditor at

Attention:

(e) *Entire agreement--alteration or amendment.* This agreement embodies the entire agreement between the parties and may not be altered or amended except by a writing signed by the parties.

(f) *Captions.* The captions are for convenience only and shall not control or affect the meaning or construction of any provision of this agreement.

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

(h) *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.

(i) *Governing law.* This agreement shall be construed in accordance with and governed by the laws of the State of ____________________.

(j) *Binding effect.* This agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors, and assigns.

Witness the due execution hereof as of the day and year first above-written.

Corporate Seal

Attest:

Secretary President

Concurred in insofar as this agreement applies to the undersigned:

(Guarantor)

by:

President

Attest:

(Seal)

Secretary

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 21: Merger.

37TTT-21 California Legal Forms--Transaction Guide 21.syn

§ 21.syn Synopsis to Chapter 21: Merger.

Form T21-1 Articles of Merger--Business Entity Merger

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 21: Merger.

37TTT-21 California Legal Forms--Transaction Guide Form T21-1

Form T21-1 Articles of Merger--Business Entity Merger

Description: This form sets forth the articles of merger of the surviving business entity in the merger between one or more business entities.

Form T21-1 Articles of Merger--Business Entity Merger

State of ___________________
Department of the Secretary of State

ARTICLES OF MERGER
BUSINESS ENTITY MERGER

Pursuant to Section ___________________ of the ___________________ [state] General Statutes, the undersigned business entity does hereby submit the following Articles of Merger as the surviving business entity in a merger between one or more business entities.

1. The name of the surviving business entity is ___________________, a ___________________ [*specify entity*] organized under the laws of ___________________; the name of the merged business entity is ___________________, a ___________________ [*specify entity*] organized under the laws of ___________________.

2. Attached is a copy of the Plan of Merger that was duly approved in the manner prescribed by law by each of the business entities participating in the merger.

3. With respect to the surviving business entity (check a, b, or c as applicable): If a domestic corporation,

a. ___________________ Shareholder approval was not required for the merger.

b. ___________________ Shareholder approval was required for the merger, and the plan of merger was approved by the shareholders as required by Chapter ___________________ of the ___________________ [state] General Statutes.

If another business entity,

c. ____________________ Approval was obtained in accordance with the laws of the state or country governing the organization of the business entity.

4. With respect to the merged business entity (check a, b, or c, as applicable):

a. ____________________ Shareholder approval was not required for the merger.

b. ____________________ Shareholder approval was required for the merger, and the plan of merger was approved by the shareholders as required by Chapter ____________________ of the ____________________ [state] General Statutes.

If another business entity,

c. ____________________ Approval was obtained in accordance with the laws of the state or country governing the organization of the business entity.

5. The merger is permitted by the law of the state or country of business entity or organization of each foreign business entity which is a party.

6. Each foreign business entity which is a party has complied or shall comply with the applicable laws of its state or country of business entity or organization.

7. These articles will be effective upon filing, unless a delayed date and/or time is specified: ____________________.

This the _____________________ day of ____________________, 20_____.

Name of Business entity:

____
Signature

____
Type or Print Name and Title

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 22: Recapitalization.

37TTT-22 California Legal Forms--Transaction Guide 22.syn

§ 22.syn Synopsis to Chapter 22: Recapitalization.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 22: Recapitalization.

37TTT-22 California Legal Forms--Transaction Guide Form T22-1

Form T22-1 Resolution Canceling Treasury Shares

Description: This form is a resolution by a board of directors when it has decided to reduce stated capital by canceling treasury shares.

Form T22-1 Resolution Canceling Treasury Shares

RESOLUTION OF CANCELLATION

BE IT RESOLVED by the Board of Directors that ___________________ [number and class] shares of the corporation, which have been reacquired after their issuance and are now owned by the corporation as treasury shares, are by this resolution canceled and restored to the status of authorized but unissued shares, and that stated capital is by this resolution reduced by the amount of stated capital represented by these shares.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 22: Recapitalization.

37TTT-22 California Legal Forms--Transaction Guide Form T22-2

Form T22-2 Resolution of Reduction of Stated Capital

Description: This form is a resolution by a board of directors of a corporation with no-par value shares when it has decided to reduce stated capital by resolution.

Form T22-2 Resolution of Reduction of Stated Capital

RESOLUTION TO REDUCE STATED CAPITAL

BE IT RESOLVED, that the Board of Directors of the corporation proposes and approves a reduction of the stated capital of the corporation ____________________ [in the amount of $_______ *or* from $_______ to $_______], this reduction to be effected by ____________________ [*set forth manner of effecting reduction*, *e.g.*, transferring $1 of the consideration received for the issuance of each share of common stock without par value from stated capital to the surplus account], that the question of the reduction will be submitted to a vote of the holders of the shares at ____________________ [their next annual meeting *or* a special meeting called for ____________________ (date)]. The Secretary of the corporation is authorized and directed to cause a written notice, stating that a purpose of the meeting is to consider the question of the reduction of stated capital in the amount and manner proposed, to be delivered within not less than 10 nor more than 60 days before the date of the meeting to the shareholders of record on ____________________ [date].

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 22: Recapitalization.

37TTT-22 California Legal Forms--Transaction Guide Form T22-3

Form T22-3 Exchange of Old Preferred for New Preferred--Recapitalization Plan and Directors' Resolution

Description: This form illustrates an "E" reorganization, which is defined as a recapitalization. This form illustrates a program for a one-for-two exchange of existing preferred stock for a new class of preferred stock.

Form T22-3 Exchange of Old Preferred for New Preferred--Recapitalization Plan and Directors' Resolution

(1) Plan of recapitalization

1. *Basic purpose of plan.* It is proposed to amend Article Fourth of the Certificate of Incorporation to provide for the creation of a new class of preferred shares, and thereafter further to amend Article Fourth to eliminate the old preferred shares. The affirmative votes of the holders of two-thirds of the outstanding shares of each class, in person or by proxy, each class voting separately, are necessary to effect the proposal to increase and reclassify the authorized shares of the Company by creating the new preferred shares of the par value of $50 each, to retire the old preferred shares of the par value of $100 each, and to amend the Certificate of Incorporation accordingly.

2. *Changes respecting shares.* In addition to the 400,000 common shares, the Certificate of Incorporation now authorizes the issuance of 1,400 preferred shares (old preferred shares) of which 1,000 shares are outstanding. It is proposed to increase and reclassify the shares of the Company by the authorization of 2,000 $50 par value preferred shares (new preferred shares), and to decrease the shares of the Company by the retirement of the old preferred shares of the par value of $100 each, by exchanging each of the old preferred shares for two of the new preferred shares, except that the old preferred shares will be retired by the payment in cash of $180 a share plus accrued dividends either at the election of the holder or his omission to elect on or before the Retirement Date (as defined in Exhibit I hereto) to receive new preferred shares.

3. *Comparison of old and new preferred shares.* The old preferred shares are entitled to cumulative dividends at the rate of 6% (or $6) per share per annum, and to 50 votes per share at all meetings in general and class votes. The new preferred shares will be entitled to cumulative dividends from April 1, _____, at the rate of $3.60 per share per annum, and to 25 votes per share at all meetings in general and class votes, and will be redeemable if called at any time on or after January 1, _____, at $100 a share plus accrued dividends. With respect to both the old and new preferred shares, dividends and payments on liquidation, dissolution, or winding up must be made or set aside before any dividends or

payments on liquidation, dissolution, or winding up are paid to holders of common shares. There are no conversion rights with respect to either the old or the new preferred shares. Rights of holders of either old or new preferred shares cannot be modified by less than a majority class vote. A full and complete statement of the provisions of and difference between the old and new preferred shares is set forth in Exhibit I hereto.

4. *Reduction of stated capital and surplus charges.* The stated capital of the Company will be reduced by the aggregate par value of old preferred shares retired for cash; the Company's capital surplus account will be reduced by an amount equal to the difference between the aggregate par value of the shares so retired and the aggregate amount paid with respect thereto, excluding accrued dividends, i.e., $80 a share. With respect to old preferred shares exchanged for the new preferred shares, no reduction of surplus will be required because the aggregate par value of the old will be identical with the aggregate par value of the new for which it is exchanged.

5. *Method and time for effecting proposal.* As soon as practicable after approval of the foregoing proposal, the holders of old preferred shares will be mailed a 22-day notice containing detailed instructions as to the manner in which it is to be effective. It will be accompanied by a form of notice to be returned to the Company for the purpose of advising the Company whether the shareholder wishes to receive the new preferred shares or cash. Unless an election to receive new preferred shares is made by the "Retirement Date," a shareholder will receive cash. A more complete statement of the method of effecting the proposed recapitalization is set forth in Exhibit I hereto.

6. *Tax opinion.* The Company is advised by counsel that the exchange by shareholders of their old preferred shares for the new preferred will be nontaxable and will be free of federal capital gains tax. Those preferred shareholders who receive $180 in cash upon surrender of their shares for retirement will recognize gain or loss for purposes of the federal capital gains tax.

7. *Directors' resolution.* Exhibit I annexed hereto is a copy of a resolution of the Board of Directors declaring the foregoing proposal advisable, such resolution having been adopted at a regular meeting of the Board of Directors held on February 17, _____[year]. It sets forth in detail the proposed action with respect to this plan of recapitalization and the proposed amendments of Article Fourth of the Certificate of Incorporation, all of which is to be submitted to the shareholders for approval as hereinafter provided.

8. *Recommendation of board.* The Board of Directors, having adopted the foregoing plan of reorganization of the Company, recommends its adoption by the shareholders and urges a vote in favor of the proposal. To adopt the foregoing proposal, the following resolution will be presented at the annual meeting of shareholders:

Resolved that the shareholders of Marin's Methods Company, Inc., hereby vote in favor of the increase and reclassification of the authorized shares, the retirement and decrease of the existing preferred shares, the reduction of stated capital, and the amendments of the Certificate of Incorporation declared advisable by resolution of the Board of Directors adopted at a regular meeting held on February 17, _____ [year], a copy of which is set forth in full as Exhibit I to the Plan of Reorganization accompanying the notice of this meeting.

(2) Resolution of board of directors--Exhibit I

Resolved that the Board of Directors of Marin's Methods Company, Inc., a corporation of the State of _____, deems the following recapitalization advisable and hereby declares it to be advisable that:

1. There be authorized 2,000 shares of a new class of preferred shares of the par value of $50 each, herein called the new preferred shares, entitled to preferential dividends at the rate of $3.60 a year, cumulative from April 1, _____ [year], having the voting powers, preferences, rights, qualifications, limitations, and restrictions thereof hereinafter set forth, and issuable only upon the exchange of the preferred shares of the Company of the par value of $100 each, herein called the old preferred shares, as provided in paragraph 2 hereof.

2. The authorized shares of the Company be decreased on the Retirement Date, hereinafter defined, by the retirement of all of the authorized old preferred shares, 1,000 shares thereof to be reclassified and exchanged for new preferred shares (but without payment of accrued dividends on old preferred shares on or after April 1, _____ [year]) on the basis of two new preferred shares for each old preferred share except that:

At the option of a holder, exercised as hereinafter in this paragraph provided, any old preferred share shall be retired by the payment in cash to such holder of $180 plus accrued unpaid dividends thereon to the Retirement Date. A holder's election to receive either cash or new preferred share certificate(s) may be exercised by written notice given by the holder to the Company on or before the Retirement Date in such form and manner as the proper officers of the Company shall prescribe. In respect of the old preferred shares owned by him, a holder may elect to receive cash for one or more shares and new preferred shares for the others. An election to receive cash in such amount shall be deemed to have been irrevocably exercised by a holder who has failed to give such written notice.

From and after the Retirement Date, all dividends on the old preferred shares shall cease to accrue and all rights of the holders thereof as shareholders of the Company shall cease and determine and such shares shall be deemed to be no longer outstanding; and the sole rights of a holder of such old preferred shares shall be to receive the certificate(s) for new preferred shares upon the surrender by him of his certificate(s) of old preferred shares, if he has given such written notice of his election to receive new preferred shares on or before the Retirement Date, otherwise to receive the cash amount payable upon the retirement thereof as set forth above, without interest, upon the surrender of the certificate(s) therefor.

3. The Certificate of Incorporation of the Company, as heretofore amended, be further amended to give effect to the increase provided in paragraph 1 hereof and to make provision for the exchange provided in paragraph 2 hereof, by amending Article Fourth thereof to read as follows:

Fourth: The aggregate number of shares that the Company is authorized to issue is 403,500 shares, 1,500 of which are to be preferred shares of the par value of $100 each, herein called the old preferred shares, 2,000 of which are to be $3.60 preferred shares of the par value of $50 each, herein called the new preferred shares, and the remaining 400,000 shares are to be common shares of the par value of $10 each.

The new preferred shares shall be issued only in exchange for the old preferred shares and only upon the retirement of all the old preferred shares.

The holders of such old preferred shares shall be entitled to receive, and the Company shall be bound to pay thereon, cumulative dividends at the rate of 6% per annum, payable quarterly in the months of January, April, July, and October, and no dividends shall be declared or paid on the common shares until all dividends on the old preferred shares shall be paid or accumulated and set aside for each then previous quarter-year of the existence of the Company.

The holders of the new preferred shares shall be entitled to receive, and the Company shall be bound to pay thereon, cumulative dividends per share from and after April 1, _____, at the rate of $3.60 in lawful money of the United States of America, per annum, payable quarterly in the months of January, April, July, and October, and no dividends shall be declared or paid on the common shares until all dividends upon the new preferred shares shall be paid or accumulated and set aside from and after April 1, _____. All dividends in excess of 6% per annum upon the old preferred shares and of $3.60 per share per annum upon the new preferred shares shall be paid upon the common shares.

In the case of any dissolution, liquidation or winding up of the Company, the surplus assets after payment of debts shall first be paid to the holders of the old preferred shares to the extent of the par value thereof; then to the holders of the new preferred shares, (a) if such was involuntary to the extent of the par value thereof, or (b) if such was voluntary, at the rate of $100 for each new preferred share held, in either case plus an amount equal to all accrued and unpaid dividends thereon to the date of payment thereof; and the remainder of the assets shall be divided among the holders of common shares.

At all meetings of the shareholders, each holder of old preferred shares shall be entitled to 50 votes for each share thereof held by him, each holder of new preferred shares shall be entitled to 25 votes for each share thereof held by him, and each holder of common shares shall be entitled to one vote for each share thereof held by him.

The new preferred shares may be redeemed from and after January 1, _____ [year], by the Company at the option of its Board of Directors, as a whole at any time, or from time to time in part, at the redemption price of $100 a share plus, in each case, a sum equal to accrued and unpaid dividends thereon to the date of redemption. If less than all the outstanding new preferred shares are to be redeemed, the redemption shall be in such amount and shall be effected in such manner, whether by lot or pro rata, and subject to such conditions and provisions of expediency and convenience as may be prescribed by resolution of the Board of Directors. Notice of any proposed redemption of new preferred shares shall be given by the Company by mailing a copy of such notice at least 30 days and not more than 60 days prior to the date fixed for such redemption to the holders of record of new preferred shares to be redeemed, at their respective addresses appearing on the books of the Company. From and after the date specified in such notice as the date of redemption, all dividends on the new preferred shares to be redeemed shall cease to accrue, and from and after such date all rights of the holders of the new preferred shares so to be redeemed as shareholders of the Company, except only the right to receive the redemption price, shall cease and determine and such shares shall be deemed to be no longer outstanding. The new preferred shares so redeemed shall be retired and a certificate of their redemption and retirement shall be filed, and the authorized shares of the Company shall be deemed to be decreased to the extent of the shares so redeemed and retired.

4. As used herein, "Retirement Date" shall mean the close of business on May 23, _____[year], provided that not less than 22 days prior thereto the Certificate referred to in paragraph 8 hereof shall have been filed in the office of the Secretary of State of _____, and written notice shall have been mailed to each holder of old preferred shares at his address as the same appears on the records of the Company at the close of business on April 29, _____[year], advising him of his rights and the manner of effecting the surrender of his old preferred share certificate(s) in exchange for new preferred share certificate(s) and/or cash. In the event, however, that such Certificate is not so filed or such notice is not so mailed on or before April 30, _____[year], "Retirement Date" shall mean the close of business on a date 22 days after such Certificate shall have been so filed and such notice shall have been so mailed.

5. Upon the retirement of the old preferred shares:

(a) the capital represented by such shares thereof as are exchanged for new preferred shares shall continue to be represented by the new preferred shares exchanged therefor;

(b) the authorized shares of the Company shall be decreased to 402,000, 2,000 of which will be new preferred shares and 400,000 of which will be common shares;

(c) the stated capital of the Company shall be reduced by the aggregate par value of the old preferred shares which are retired against payment of cash therefor; and

(d) the Board of Directors shall have the power to take such action as it shall deem necessary, proper, or advisable with respect to the foregoing retirement.

6. Upon the retirement of the old preferred shares, the Certificate of Incorporation of the Company, as theretofore amended, shall be further amended to reflect the retirement of the old preferred shares, the decrease of authorized shares, and the reduction of stated capital referred to in paragraph 5 hereof, and to eliminate therefrom all references to and description of the old preferred shares, and be further amended so that Article Fourth shall thenceforth read as

follows:

Fourth: The aggregate number of shares that the Company is authorized to issue is 402,000 shares, 2,000 of which are to be preferred shares of the par value of $50 each, and the remaining 400,000 shares of which are to be common shares of the par value of $10 each.

The holders of such preferred shares shall be entitled to receive, and the Company shall be bound to pay thereon, cumulative dividends per share from and after April 1, _____ [year], at the rate of $3.60 in lawful money of the United States of America, per annum, payable quarterly in the months of January, April, July, and October, and no dividends shall be declared or paid on the common shares until all such dividends upon the preferred shares shall be paid or accumulated and set aside from and after April 1, _____ [year]. All dividends made in excess of $3.60 per share per annum upon the preferred shares shall be paid upon the common shares.

In the case of any dissolution, liquidation, or winding up of the Company, the surplus assets after payment of debts shall first be paid to the holders of preferred shares, (a) if such was involuntary, to the extent of the par value thereof, or (b) if such was voluntary, at the rate of $100 for each share of the preferred shares held, in either case plus an amount equal to all accrued and unpaid dividends thereon to the date of payment thereof, and no more; and the remainder of the assets shall be divided among the holders of common shares.

At all meetings of the shareholders, each holder of such preferred shares shall be entitled to 25 votes for each share thereof held by him, and each holder of such common shares shall be entitled to one vote for each share thereof held by him.

The preferred shares may be redeemed from and after January 1, _____ [year], by the Company at the option of its Board of Directors, as a whole at any time, or, from time to time in part, at the redemption price of $100 per share plus, in each case, a sum equal to accrued and unpaid dividends thereon to the date of redemption. If less than all of the outstanding preferred shares are to be redeemed, the redemption shall be in such amount and shall be effected in such manner, whether by lot or pro rata, and subject to such conditions and provisions of expediency and convenience as may be prescribed by resolution of the Board of Directors. Notice of any proposed redemption of preferred shares shall be given by the Company by mailing a copy of such notice at least 30 days and not more than 60 days prior to the date fixed for such redemption to the holders of record of preferred shares to be redeemed at their respective addresses appearing on the books of the Company From and after the date specified in such notice as the date of redemption, all dividends on the preferred shares to be redeemed shall cease to accrue, and from and after such date all rights of the holders of preferred shares so to be redeemed as shareholders of the Company, except only the right to receive the redemption price, shall cease and determine and such shares shall be deemed to be no longer outstanding. Preferred shares so redeemed shall be retired and a certificate of their redemption and retirement shall be filed and the authorized shares of the Company shall be deemed to be decreased to the extent of the shares so redeemed and retired.

7. This proposed reorganization and the foregoing proposed amendments to the Certificate of Incorporation of the Company as heretofore amended shall be submitted for action thereon by the shareholders of the Company at the next annual meeting thereof to be held on Thursday, April 28, _____[year], at 12 o'clock noon, and notice of the time, place, and purposes of such meeting, including the taking of action upon the foregoing matters, shall be given in accordance with the requirements of the Bylaws of the Company.

8. Upon the affirmative vote of two-thirds in interest of each class of shareholders in favor of the matters hereinabove declared advisable, the President or a Vice President and the Secretary or an Assistant Secretary of the Company are directed to execute, acknowledge or prove, and file in the office of the Secretary of State of _____ a certificate or certificates of the action taken by the directors and shareholders of the Company with respect to such matters, all in the form and in the manner prescribed by law.

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PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 22: Recapitalization.

37TTT-22 California Legal Forms--Transaction Guide Form T22-4

Form T22-4 Recapitalization Plan and Stockholders' Resolution--Two-for-One Stock Split

Description: This form is used for one of the simplest and the most common recapitalizations is the stock split, in which each share of outstanding common stock is converted into two or more shares of common stock.

Form T22-4 Recapitalization Plan and Stockholders' Resolutions--Two-for-One Stock Split

(1) Proposed plan of recapitalization

Subject to approval by the shareholders, the Board of Directors has declared advisable and adopted a Plan of Recapitalization under which:

(a) The number of common shares which the Company is authorized to issue shall be increased from 100,000 shares to 200,000 shares.

(b) The authorized common shares with a par value of $10 a share shall be changed to common shares with a par value of $5 a share.

(c) Each common share of the par value of $10 a share which the Company had authority to issue immediately prior to the taking effect of the Plan (whether issued or unissued, including each share reserved for issuance and sale free of preemptive rights to employees pursuant to the Employee Stock Option Plan) shall be changed into and become two common shares of the par value of $5 a share.

(d) Each certificate representing one or more common shares of the par value of $10 a share which shall be issued and outstanding immediately prior to the taking effect of the Plan shall thereafter represent the same number of common shares of the par value of $5 a share; and the Company shall issue to or upon the order of each holder of record, as of the close of business on the day the Plan takes effect, an additional certificate or certificates representing one common share of the par value of $5 a share for each common share of the par value of $10 a share theretofore represented by such outstanding share certificate.

(e) The Board of Directors will make or cause to be made an appropriate adjustment in the number, option price, and kind of shares covered by employee options granted and outstanding under the Employee Stock Option Plan and in the computation and amount of credits applicable to such options.

(f) The Board of Directors will make an appropriate adjustment in the maximum number of shares on which options may be granted in any one fiscal year under the Employee Stock Option Plan.

(g) The aggregate amount of the stated capital of the Company which shall be represented by the common shares of the par value of $5 a share, that shall be issued and outstanding upon the taking effect of the Plan, shall be the same as the aggregate amount of the stated capital of the Company which shall be represented by the common shares of the par value of $10 a share that shall be issued and outstanding immediately prior to taking effect of the Plan.

(h) Such amendment shall be made to the Articles of Incorporation of the Company as is necessary or appropriate to effectuate the Plan and such amendment shall be adopted and filed with the Secretary of State of the State of ____________________. The Plan shall become effective upon the filing of such amendment.

(2) Resolutions for submission to stockholders

Resolved that the Plan of Recapitalization of the Company as adopted by the Board of Directors on January 5, _____[year], is hereby authorized and adopted;

Further Resolved that the Board of Directors and the proper officers of the Company are hereby authorized and directed to do or cause to be done all acts and things necessary or appropriate to carry such Plan into effect;

Further Resolved that Paragraph Fourth of the Articles of Incorporation of the Company adopted by the shareholders on August 23, _____[year], is hereby amended to read as follows:

Fourth: The maximum number of share which the corporation is authorized to have outstanding is 200,000 common shares of the par value of $5 a share.

The Board of Directors is authorized in its discretion to determine, fix, and approve the consideration other than money for shares which may be issued, and to determine the fair value to the Corporation of such consideration.

Each of the 100,000 common shares (both issued and unissued, including unissued shares heretofore released from preemptive rights for sale to employees) with a par value of $10 a share which the Corporation had authority to issue immediately prior to the taking effect of this amendment is hereby changed into two common shares with a par value of $5 a share.

The aggregate stated capital of the common shares issued and outstanding upon the taking effect of this amendment shall be the same as the aggregate stated capital of the common shares issued and outstanding immediately prior to the taking effect of this amendment.

Further Resolved that the proper officers of the Company are hereby authorized to subscribe and file a certificate in proper form of the adoption of the foregoing amendments to the Articles of Incorporation.

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California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 22: Recapitalization.

37TTT-22 California Legal Forms--Transaction Guide Form T22-5

Form T22-5 Additional Contributions Required by Partners

Description: This clause is used to cover the possibility of inadequate capital; this provision requires the partners to contribute proportionately toward partnership expenses whenever partnership income is insufficient.

Form T22-5 Additional Contributions Required by Partners

FORM

All fixed charges, rent, taxes, insurance premiums, expenses for repair of buildings and equipment, salaries, wages, and all other expenses of the partnership business shall be paid out of the receipts of the business. In the event such receipts are insufficient to pay such expenses, the partners shall furnish all sums necessary to make up the deficiency. However, in no event shall the annual amount of such additional contributions exceed $35,000 in the aggregate. Such contributions shall be made by the partners in the same proportions in which they share the profits of the business.

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California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 23: Dissolution--Reorganization.

37TTT-23 California Legal Forms--Transaction Guide 23.syn

§ 23.syn Synopsis to Chapter 23: Dissolution--Reorganization.

Form T23-1 "A" Reorganization: Merger Agreement--Two Corporations

Form T23-2 "A" Reorganization: Certificate of Merger--Two New York Corporations

Form T23-3 "A" Reorganization: Merger Agreement--Two Corporations; Receipt of Cash and Warrants (boot)

Form T23-4 "B" Reorganization: Acquisition by One Corporation of Stock of Another Corporation--Application for Tax Ruling

Form T23-5 "C" Reorganization: Liquidation of Transferor Corporation--Warranties by Individual Shareholders

Form T23-6 "D" Reorganization--Reorganization Agreement

Form T23-7 "F" Reorganization--Merger Agreement; Change in State of Organization

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 23: Dissolution--Reorganization.

37TTT-23 California Legal Forms--Transaction Guide Form T23-1

Form T23-1 "A" Reorganization: Merger Agreement--Two Corporations

Description: The following form is used for a merger agreement in which a West Virginia corporation which has one class of stock is merged into a Massachusetts corporation which has two classes of stock and outstanding options for the purchase of part of its common stock.

Form T23-1 "A" Reorganization: Merger Agreement--Two Corporations

AGREEMENT OF MERGER, dated ___________________ [date], between Ironwood Mills, Inc., a Massachusetts corporation,n* hereinafter sometimes called Ironwood, and A. B. Steeley & Sons, Inc., a West Virginia corporation, hereinafter sometimes called Steeley.

Ironwood is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, having been incorporated in 1955. The authorized capital stock of Ironwood consists of (1) 228,078 shares of $1.25 Cumulative Preferred Stock of the par value of $20 each, hereinafter called $1.25 Preferred Stock, of which 190,334 shares are issued and outstanding and 3,782 shares are held for retirement in its treasury, and (2) 1,000,000 shares of Common Stock of the par value of $1 each, hereinafter called Common Stock, of which 229,000 shares are issued and outstanding and 79,570 are reserved for the exercise of options, options being outstanding with respect to 71,470 shares.

Steeley is a corporation organized and existing under the laws of the State of West Virginia, having been incorporated in 1920. The authorized capital stock of Steeley consists of 1,000,000 shares of Capital Stock of the par value of $5 each, of which 307,440 shares are issued and outstanding, there being no outstanding options, and, by virtue of the stock dividend hereinafter referred to, 819,840 shares will be issued and outstanding upon the effective date of the merger hereinafter provided for.

The Boards of Directors of Ironwood and Steeley, respectively, deem it desirable and in the best interests of the corporations and their shareholders that Steeley be merged into Ironwood, and the corporations, respectively, desire that they so merge under and pursuant to the laws of Massachusetts and West Virginia.

Now, therefore, in consideration of the premises and of the mutual covenants and agreements herein set forth and for the purpose of prescribing the terms and conditions of such merger, the parties hereto covenant and agree as follows:

1. *Merger.* As soon as all the following events shall have happened, *viz.*,

(a) this agreement shall have been adopted and approved by the votes of the holders of the $1.25 Preferred Stock and of the Common Stock of Ironwood and of the Capital Stock of Steeley at separate meetings of the shareholders of Ironwood on the one hand and of the shareholders of Steeley on the other, in accordance with the requirements of the laws of Massachusetts and West Virginia, respectively, and that fact shall have been certified hereon by the respective Secretaries of each of such Corporations under their respective corporate seals; and

(b) this agreement, so adopted and certified, shall have been signed, acknowledged, and filed, all as required by the provisions of Section 31-1-36 of the West Virginia Code; and

(c) Articles of Merger shall have been made, signed, sworn to, certified, endorsed, and filed all as required by the provisions of Section 79 of Chapter 156B of the General Laws of Massachusetts, 46D; thereupon Steeley shall be deemed to have merged with and into Ironwood which shall survive the merger and which shall have the name provided in paragraph 2 hereof.

The single corporation which shall so survive the merger is hereinafter sometimes called the Surviving Corporation; Ironwood and Steeley are hereinafter sometimes called the Constituent Corporations; and the date and time when the Constituent Corporations shall merge and become the Surviving Corporation are hereinafter referred to as "the effective date of the merger."

2. *Name and purposes of surviving corporation.* The name of the Surviving Corporation shall be Ironwood Mills, Inc. The purposes for which the Surviving Corporation is formed and the nature of the business to be transacted by it shall be as set forth in the Articles of Organization of Ironwood, as amended, on the effective date of the merger, *viz.*, as set forth in Exhibit A which is attached hereto and made a part hereof with the same force and effect as if herein set forth in full.

3. *Articles of organization of surviving corporation.* On the effective date of the merger, the Articles of Organization of Ironwood, as amended to date and as it will be amended by the Articles of Merger filed in Massachusetts, shall be the Articles of Organization of the Surviving Corporation until further amended as provided by law.

4. *Bylaws of surviving corporation.* On the effective date of the merger, the Bylaws of Ironwood, as heretofore amended, shall be the Bylaws of the Surviving Corporation until the same shall be altered, amended, or repealed, or until new Bylaws shall be adopted, in accordance with the provisions thereof.

5. *Directors and officers of surviving corporation.* The Board of Directors of the Surviving Corporation shall initially consist of seven directors, each of whom shall hold office until the annual meeting of the shareholders of the Surviving Corporation to be held ____________________[date] and until his successor shall have been duly elected and shall have qualified, or until his earlier death, resignation, or removal. The respective names, places of residence, and addresses of such directors are as follows:

Name	City or Town of Residence and Home Post Office Address
George Brown	7 Long Road Boston, Massachusetts
James M. Ford	2 Croy Street Malden, Massachusetts

Gerard L. Hight	1000 Maryland Avenue
	Washington, D. C.
Robert Lawson	15 Corcoran Place
	Narragansett, Rhode Island
Louis C. Petty	10 Post Office Square
	Boston, Massachusetts
Peter Ross	2 State Street
	Wheeling, West Virginia
Mark P. Young	14 Garden Street
	Cambridge, Massachusetts

The principal officers of the Surviving Corporation, each of whom shall hold office until his successor shall have been duly elected or appointed and shall have qualified or until his earlier death, resignation, or removal, and their respective offices, places of residence, and post office addresses, are as follows:

Office	Name	City or Town of Residence and Home Post Office Address
Chairman of	Robert Lawson	15 Corcoran Place
the Board		Narragansett, Rhode Island
President	Dennis E. Wright	10 Ardsley Avenue
		Armonk, New York
Vice President	James M. Ford	2 Croy Street
		Malden, Massachusetts
Vice President	Charles P. Wolf	44 Meadow Avenue
		Ridgewood, New Jersey
Vice President	Peter E. Sully	9 Hunting Road
and Treasurer		Greenwich, Connecticut
Controller	James A. Gordon	15 Concord Drive
		Newark, New Jersey
Clerk	George Brown	7 Long Road
		Boston, Massachusetts

The Surviving Corporation may have such other officers as shall be provided for in its Bylaws.

If on the effective date of the merger a vacancy shall exist in the Board of Directors of the Surviving Corporation or in any of the offices above specified by reason of the inability or failure of any of the above persons to accept a directorship in the Surviving Corporation or the office to which he is designated, as the case may be, such vacancy may thereafter be filled in the manner provided by law or in the Bylaws of the Surviving Corporation.

6. *Capital stock of surviving corporation.* On the effective date of the merger, the total amount of capital stock of the

Surviving Corporation to be authorized, the number of shares into which the capital stock is to be divided, and the par value of the shares are as follows:

228,078 shares of the $1.25 Cumulative Preferred Stock a par value of $20 a share, hereinafter called the $1.25 Preferred Stock, amounting in the aggregate to $4,461,560;

204,960 shares of $1.50 Cumulative Preferred Stock of a par value of $20 a share, hereinafter called the $1.50 Preferred Stock, amounting in the aggregate to $4,099,200; and

1,000,000 shares of Common Stock of a par value of $1 per share, amounting in the aggregate to $1,000,000.

A description of the different classes of such stock, a statement of the terms on which they are to be created, and the method of voting thereon shall be as set forth in Exhibit B which is attached hereto and made a part hereof with the same force and effect as if herein set forth in full.

7. *Conversion of outstanding securities on merger.* The manner and basis of converting the outstanding $1.25 Preferred Stock and the Common Stock and options of Ironwood and the Capital Stock of Steeley into stock and options of the Surviving Corporation upon the effective date of the merger shall be as follows:

(a) *$1.25 preferred stock of Ironwood.* Each of the 194,116 shares of $1.25 Preferred Stock of Ironwood outstanding on the effective date of the merger (including shares thereof held for retirement in its treasury) shall continue to be one share of $1.25 Preferred Stock of the Surviving Corporation with the preferences, voting powers, restrictions, and qualifications set forth in Exhibit B attached hereto.

(b) *Common stock and options of Ironwood.* Each of the 229,000 shares of Common Stock of Ironwood outstanding on the effective date of the merger shall continue to be one share of Common Stock of the Surviving Corporation with the voting powers, restrictions, and qualifications set forth in Exhibit B attached hereto. Options heretofore granted by Ironwood to purchase an aggregate of 71,470 authorized but unissued shares of its Common Stock shall continue to be options to purchase equal numbers of authorized but unissued shares of Common Stock of the Surviving Corporation without any change in the terms and conditions as set forth in such options, and 79,570 authorized but unissued shares of Common Stock of the Surviving Corporation shall continue to be reserved for the exercise of options granted by Ironwood or the Surviving Corporation.

(c) *Capital stock of Steeley.* Steeley shall, prior to the effective date of the merger, declare and pay a dividend of one and two-thirds shares of its Capital Stock on each one of the 307,440 shares thereof presently outstanding so that on the effective date of the merger there shall be 819,840 shares outstanding. Each of the 819,840 shares of Capital Stock of Steeley outstanding on the effective date of the merger shall be converted into one-quarter of one share of $1.50 Preferred Stock, $20 par value, of the Surviving Corporation with the preferences, voting powers, restrictions, and qualifications set forth in Exhibit B attached hereto.

8. *Exchange of certificates.* (a) On and after the effective date of the merger, each holder of a certificate or certificates theretofore representing outstanding $1.25 Preferred Stock or Common Stock of Ironwood or Capital Stock of Steeley shall be entitled, upon the surrender of such certificate or certificates at the office or the agency of the Surviving Corporation designated for the purpose, to receive in exchange therefor a certificate or certificates representing the number of full shares of $1.25 Preferred Stock, Common Stock, or $1.50 Preferred Stock of the Surviving Corporation which the shares of $1.25 Preferred Stock or Common Stock of Ironwood continue to be or into which the shares of Capital Stock of Steeley shall have been converted as provided in this paragraph 7 hereof, together with, in the case of surrender of a certificate or certificates theretofore representing Capital Stock of Steeley, a scrip certificate, as hereinafter provided, in respect of any fraction of a share of $1.50 Preferred Stock. Until so surrendered, each outstanding certificate which, prior to the effective date of the merger, represented shares of $1.25 Preferred Stock or

Common Stock of Ironwood or Capital Stock of Steeley shall be deemed for all purposes to evidence only the ownership of the full shares of $1.25 Preferred Stock, Common Stock, or $1.50 Preferred Stock of the Surviving Corporation as the same shall have been continued or into which the same shall have been converted in accordance with the provisions of paragraph 7 hereof.

(b) If a certificate for any share or shares of stock of the Surviving Corporation is to be issued in a name other than that in which the certificate for shares surrendered for exchange shall be registered, it shall be a condition of such exchange that the certificate so surrendered shall be properly endorsed for transfer.

(c) The scrip certificates to be issued as hereinabove provided shall be nondividend bearing and nonvoting, shall be exchangeable together with other scrip certificates in amounts aggregating full shares of $1.50 Preferred Stock for a certificate for the full number of such shares called for thereby, and shall be in such form, expire on such date, and otherwise contain such terms and provisions as the Board of Directors of the Surviving Corporation shall approve.

9. *Prohibited actions of constituent corporations and subsidiaries.* Between the date hereof and the effective date of the merger, neither Steeley nor Ironwood will (and neither will permit any of its subsidiaries to), except with the prior written consent of the other: (a) issue or sell any stock, bonds, or other corporate securities (except, in the case of Steeley, the stock dividend referred to in subparagraph (c) of paragraph 7 hereof); (b) incur any obligation or liability (absolute or contingent), except current liabilities incurred, and obligations under contracts entered into, in the ordinary course of business; (c) discharge or satisfy any lien or encumbrance or pay any obligation or liability (absolute or contingent) other than current liabilities shown on their respective balance sheets, on ____________________[date] and ____________________[date], and current liabilities incurred since those dates in the ordinary course of business; (d) make any dividend or other payment or distribution to its shareholders or purchase or redeem any shares of its capital stock (except, in the case of Ironwood, dividends payable on and purchases of $1.25 Preferred Stock and, in the case of Steeley, the regular ____________________[date], dividend of ten cents per share and thereafter the stock dividend referred to in subparagraph (c) of paragraph 7 hereof); (e) mortgage, pledge, create a security interest in, or subject to lien or other encumbrance any of its assets, tangible or intangible (except, in the case of Steeley, factoring of accounts receivable and pledging of inventories in the ordinary course of business); (f) sell or transfer any of its tangible assets or cancel any debts or claims except in each case in the ordinary course of business; (g) sell, assign, or transfer any trademark, trade name, patent, or other intangible asset; (h) waive any right of any substantial value; or (i) enter into any transaction other than in the ordinary course of business.

10. *Effect of merger.* On the effective date of the merger, Ironwood and Steeley shall cease to exist separately and Steeley shall be merged with and into Ironwood in accordance with the provisions of this agreement and in accordance with the provisions of and with the effect provided in Section 79 of Chapter 156B of the General Laws of Massachusetts and Section 31-1-38 of the West Virginia Code.n* As provided therein, on the effective date of the merger the Surviving Corporation shall possess all the rights, privileges, powers, franchises, and trust and fiduciary duties, powers, and obligations, as well of a public as of a private nature, and be subject to all the restrictions, disabilities, and duties of each of the Constituent Corporations, and all and singular, the rights, privileges, powers, and franchises, and trust and fiduciary rights, powers, duties, and obligations, of each of the Constituent Corporations; and all property, real, personal, and mixed, and all debts due to either of the Constituent Corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of the Constituent Corporations shall be vested in the Surviving Corporation; and all property, rights, privileges, powers, and franchises, and all and every other interest shall be thereafter as effectually the property of the Surviving Corporation as they were of the respective Constituent Corporations; and the title to any real estate, whether vested by deed or otherwise, in either of the Constituent Corporations shall not revert or be in any way impaired by reason of the merger; provided, however, that all rights of creditors and all liens upon any property of either of the Constituent Corporations shall be preserved unimpaired, and all debts, liabilities, and duties of the respective Constituent Corporations shall thenceforth attach to the Surviving Corporation, and may be enforced against it to the same extent as if such debts, liabilities, and duties had been incurred or contracted by the Surviving Corporation.

11. *Further instruments.* From time to time, as and when requested by the Surviving Corporation or by its successors or assigns, Steeley will execute and deliver, or cause to be executed and delivered, all such deeds and other instruments; and will take or cause to be taken such further or other action as the Surviving Corporation may deem necessary or desirable in order to vest in and confirm to the Surviving Corporation title to and possession of all its property, rights, privileges, powers, and franchises and otherwise to carry out the intent and purposes of this agreement.

12. *Capital.* On the effective date of the merger:

(a) The 194,116 shares of $1.25 Preferred Stock (including shares held for retirement in the treasury), 229,000 shares of Common Stock, and 204,960 shares of $1.50 Preferred Stock (and scrip certificates in respect thereof) of the Surviving Corporation as the same shall have been continued or into which the outstanding shares of Capital Stock of Steeley shall have been converted, in accordance with the provisions of paragraphs 7 and 8 hereof, shall be issued and outstanding.

(b) There shall be credited to the capital stock accounts of the Surviving Corporation an amount equal to $20 for each share of its $1.50 Preferred Stock then issued and outstanding.

13. *Principal offices.* The location of the principal office of the Surviving Corporation shall be 1000 Broadway, New York, New York, and the location of the office of the Surviving Corporation in the Commonwealth of Massachusetts shall be 10 Post Office Square, Boston, Massachusetts.

14. *Abandonment of merger.* This agreement may be terminated and the merger provided for hereby abandoned: (1) by votes of the Boards of Directors of both the Constituent Corporations at any time prior to the effective date of the merger; (2) by vote of the Board of Directors of either of the Constituent Corporations at any time prior to the effective date of the merger if (a) a material breach shall exist with respect to the written representations and warranties made by the other Constituent Corporation in connection with the merger, or (b) the other Constituent Corporation, without prior written consent of such Constituent Corporation, shall take any action prohibited by this agreement, or (c) the other Constituent Corporation shall not have furnished such certificates and legal opinions in connection with the merger and matters incidental thereto as it shall have agreed to furnish, or (d) if, in the opinion of the Board of Directors of such Constituent Corporation, the merger is impracticable by reason of the number of shares of stock of Ironwood, the holders of which are in a position to perfect appraisal rights under any law or laws, or (e) if, in the opinion of the Board of Directors of such Constituent Corporation, any consent of any third party to the merger is reasonably necessary to prevent a default under any outstanding obligation of either Constituent Corporation, and such consent is not obtainable without penalty; or (3) by vote of the Board of Directors of either of the Constituent Corporations at any time on or after ____________________[date], if the merger contemplated hereby shall not have been effected prior thereto. In the event of any such termination and abandonment, this agreement shall be void and have no effect, and there shall be no liability on the part of either of the Constituent Corporations or any director, officer, or shareholder of either of such Constituent Corporations in respect thereof.

15. *Right of amendment.* The Surviving Corporation hereby reserves the right to amend, alter, change, or repeal any provision contained in its Act of Incorporation, as from time to time amended, and any provision contained in this agreement, in the manner now or hereafter prescribed by law or by such Act, as from time to time amended; and all rights and powers of whatsoever nature conferred in such Act of Incorporation, as from time to time amended, or herein, upon any shareholder, director, officer, or any other person are subject to this reservation.

In witness whereof Ironwood Mills, Inc., and A. B. Steeley & Sons, Inc., have caused this agreement to be signed in their corporate names by their respective Presidents or Vice Presidents and their respective Secretaries under the seals of the corporations, and also by majorities of their respective Boards of Directors, all as of the day and year first above written.

Corporate Seal Ironwood Mills, Inc.

Attest: by ______________________

President

____

Secretary

______________________ ______________________

______________________ ______________________

______________________ ______________________

____

Majority of Board of Directors of Ironwood Mills, Inc.

Corporate Seal A. B. Steeley & Sons, Inc.

Attest: by ______________________

____

Secretary

______________________ ______________________

____

____

____

____

Majority of Board of Directors of A. B. Steeley & Sons, Inc.

(Acknowledgments and Certifications)

FOOTNOTES:

(n1)Footnote *. Arbitrary names, dates, and companies have been added to some forms to promote better understanding of the form.

(n2)Footnote *. Check your local statutes for correlating law.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 23: Dissolution--Reorganization.

37TTT-23 California Legal Forms--Transaction Guide Form T23-2

Form T23-2 "A" Reorganization: Certificate of Merger--Two New York Corporations

Description: This is a copy of the Certificate of Merger of two New York corporations. The form details outstanding shares, effective dates, and authorization.

Form T23-2 "A" Reorganization: Certificate of Merger--Two New York Corporations

CERTIFICATE OF MERGERn1
OF
MANCO
AND
BROOKCO
INTO
MANCO

The undersigned, Louis Mammamia and Catherine Giusepe, being the President and Secretary, respectively, of MANCO, and Louis Mammamia, being the President and Secretary of BROOKCO, said corporations being domestic corporations organized and existing under and by virtue of the laws of the State of New York, and a Plan of Merger having been adopted by the Board of Directors of each of said Constituent Corporation, do hereby certify:

1. The name of each Constituent Corporation is as follows:

MANCO and BROOKCO.

The name of the Surviving Corporation is MANCO.

2. The number of outstanding shares of MANCO is ____________________ shares of no-par value, all of which is entitled to vote. The number of outstanding shares of BROOKCO, is ____________________ shares of no-par value all

of which is entitled to vote. There are no other outstanding shares of stock of either Constituent Corporation.

3. There are no amendments or changes to the Certificate of Incorporation of the Surviving Corporation to be effected by this merger.

4. The effective date of Merger of BROOKCO into MANCO shall be _________________[date].

5. a. The date when the Certificate of Incorporation of MANCO was filed with the Department is ____________________ [date].

b. The date when the Certificate of Incorporation of BROOKCO was filed by the Department of State is ___________________ [date].

6. a. The merger of MANCO and BROOKCO was authorized in respect to MANCO, a Constituent Corporation, by unanimous consent of the directors pursuant to B.C.L. Section 708(b)n* and by unanimous consent of the shareholders pursuant to B.C.L. Section 615 on the ____________________ [date].

b. The merger of MANCO and BROOKCO was authorized in respect to BROOKCO, a Constituent Corporation, by unanimous consent of the shareholders pursuant to B.C.L. Section 615 on ____________________ [date].

7. The plan of merger has not been abandoned.

IN WITNESS WHEREOF, the undersigned have executed and signed this certificate ___________________ [date].

MANCO

____

Louis Mammamia, President

____

Catherine Giusepe, Secretary

BROOKCO

____

Louis Mammamia, President

____

Louis Mammamia, Secretary

)
STATE OF ______________________) ss:
COUNTY OF ______________________)

Louis Mammamia, being sworn, deposes and says that he is the President of MANCO and BROOKCO, and that he is one of the persons described in and who executed the foregoing certificate, that he has read the same and knows its contents, and that the contents contained therein are true.

____

Louis Mammamia

Sworn to before me this

____________________ [date].

____

Notary Public

FOOTNOTES:

(n1)Footnote 1. New York's Certificate of Merger does not include the entire Plan of Merger. Rather, it includes selected portions of that Plan of Merger. There is nothing that prohibits a corporation from including more information in its Certificate of Merger.

(n2)Footnote *. Check your local statutes for correlating law.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 23: Dissolution--Reorganization.

37TTT-23 California Legal Forms--Transaction Guide Form T23-3

Form T23-3 "A" Reorganization: Merger Agreement--Two Corporations; Receipt of Cash and Warrants (boot)

Description: This form is used for a statutory merger, and provides detailed language addressing amendment to charter, conversion of securities, employee plans, and effect of merger.

Form T23-3 "A" Reorganization: Merger Agreement--Two Corporations; Receipt of Cash and Warrants (boot)

ARTICLES OF MERGER of The Essex Machinery Corporation, a Maryland corporation, and The Walker Products Company, a Maryland corporation, dated ____________________.

1. *Merger.* The Essex Machinery Corporation, hereinafter referred to as the Corporation, and The Walker Products Company, hereinafter referred to as Walker, agree to and do hereby effect the merger of Walker into the Corporation on the terms and conditions hereinafter set forth. The corporation which is to survive the merger is The Essex Machinery Corporation which shall continue under the name Essex-Walker Corporation and have all of the purposes and powers of the Corporation.

2. *States of incorporation.* The Corporation was incorporated under the laws of the State of Maryland on ____________________ [date], and Walker was incorporated under the laws of the State of Maryland on ____________________ [date].

3. *Amendment of charter.* The charter of the Corporation as heretofore amended is hereby amended by striking out Article "First" of the charter as restated and amended, and inserting in lieu thereof the following:

"First: The name of the corporation (which is hereinafter called the Company) is Essex-Walker Corporation."

4. *Capital stock.* The total number of shares of stock which the Corporation has authority to issue is 2,500,000 shares of Common Stock, all of which are of the same class and of the par value of $1 each, with an aggregate par value of $2,500,000, of which 1,012,984 shares are issued and outstanding. The total number of shares of stock which Walker has authority to issue is 1,000,000 shares of Capital Stock, all of which are of the same class and of the par value of $1 each, with an aggregate par value of $1,000,000, of which 462,948 shares are issued and outstanding, and 6,270 shares

are reserved for issuance under outstanding options, and 25,000 shares are reserved for issuance under the Walker Restricted Stock Option Plan, dated ____________________ [date].

5. *Conversion of securities on merger.* The manner of converting the stock of the Corporation and the stock and options to purchase stock of Walker into stock and options to purchase stock of the Corporation is as follows:

(a) Each share of Common Stock of the Corporation outstanding on the effective date of the merger shall remain outstanding as one share of Common Stock of the Corporation.

(b) Each share of Capital Stock of Walker outstanding on the effective date of the merger and not owned by the Corporation shall be converted into: (1) 2 1/4 shares of Common Stock of the Corporation (except that no fractional shares of Common Stock of the Corporation shall be issued and in lieu thereof the Corporation will pay in cash the equivalent of any fractional share as hereinafter provided), and (2) an option to purchase a share of Common Stock of the Corporation at the purchase price of $10 per share on or at any time after ____________________ [date] and on or before ____________________ [date], and at a price of $15 per share on or at any time after ____________________ [date], and on or before ____________________ [date], provided, however, that in the event of the liquidation, dissolution, or winding up of the Corporation the right to exercise the option shall terminate at the close of business on the fourth full business day before the earliest date fixed for the payment of any distributable amount on the Common Stock of the Corporation.

(c) On the effective date of the merger, (1) all shares of Capital Stock of Walker owned by the Corporation shall be cancelled and all rights in respect thereof shall cease, and (2) any treasury shares owned by Walker shall be cancelled.

(d) After the effective date of the merger, each holder of an outstanding certificate or certificates theretofore representing shares of Capital Stock of Walker shall, upon surrender of the same to a transfer agent of the Corporation designated for that purpose, be entitled to receive in exchange therefor: (1) a certificate or certificates representing the number of whole shares of Common Stock of the Corporation into which the shares theretofore represented by the certificate or certificates so surrendered shall have been converted as herein set forth; (2) in lieu of fractional shares of Common Stock of the Corporation, a sum in cash equal to the value of any such fractional interest determined on the basis of the last reported sale price for shares of Common Stock of the Corporation on the New York Stock Exchange prior to the effective date of the merger; and (3) a warrant or warrants evidencing the options to purchase a number of shares of Common Stock of the Corporation equal to the number of shares of Capital Stock of Walker theretofore represented by the certificate or certificates so surrendered.

(e) The option to purchase shares of Common Stock of the Corporation shall be evidenced by transferable Warrants in registered form, which shall be in such form and contain such provisions as may be reasonably determined by the Board of Directors of the Corporation (whose determination shall be conclusive) to the effect, among other things, that

(1) while the Warrants are exercisable, the Corporation will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the delivery of stock pursuant to the exercise of the Warrants; and

(2) in the event that the Corporation offers any shares of Common Stock or securities convertible into Common Stock to the holders of the Common Stock as a class for subscription, the holder of the Warrant shall be entitled to subscribe for the same number of shares of Common Stock or amount of securities convertible into Common Stock, and at the same price, as he would have been entitled to subscribe had the Warrant been previously exercised; and

(3) in the event that

(A) the shares of Common Stock of the Corporation at any time outstanding shall be subdivided, by reclassification, recapitalization, or otherwise, into a greater number of shares without the actual receipt by the Corporation of any consideration for the additional number of shares so issued; or the number of shares of Common Stock of the Corporation at any time outstanding shall be reduced, by reclassification, recapitalization, reduction of capital stock, or otherwise; or

(B) the outstanding shares of Common Stock of the Corporation shall be reclassified or changed other than in a manner referred to in clause (A) of this paragraph; or

(C) the Corporation shall merge or consolidate with or into another corporation, or shall sell its property as an entirety or substantially as an entirety;

each holder of Warrants then outstanding shall have the right thereafter, so long as the right to exercise same shall exist, to exercise his Warrant or Warrants and thereby purchase the kind and amount of securities or property, if any, which the holder would have received had the Warrant been exercised in the same manner and to the same extent immediately prior to any such event; and

(4) until the valid exercise of the Warrants, the holder thereof shall not be entitled to any rights of a shareholder; and

(5) the number of shares issuable upon the exercise of Warrants shall be adjusted to the nearest 100th share of Common Stock; and

(6) in the event that any adjustment results in the inclusion of a fraction of a share, no fractions of shares of Common Stock shall be issued upon the exercise of Warrants, but in lieu thereof the Corporation shall pay cash based on current market value as determined by the directors of the Corporation (whose determination shall be conclusive).

(f) On the effective date of the merger, each outstanding option to purchase shares of Capital Stock of Walker shall be converted into an option to purchase a number of shares of Common Stock of the Corporation determined by multiplying the number of shares of Capital Stock of Walker which may be purchased under such option by 2 1/4 (eliminating any resulting fraction of a share), at a price per share determined by dividing the price per share at which shares of Capital Stock of Walker may be purchased pursuant to such option by 2 1/4, and upon such terms and conditions as may be fixed by the Board of Directors of the Corporation substantially similar to those contained in such option to purchase shares of Capital Stock of Walker, provided however, that in accordance with the provisions of the option agreements evidencing such options effective in the event of merger, the outstanding options may be further adjusted to take appropriate account of the value of the Warrants issuable in exchange for shares of stock of Walker, but no such adjustment will be made which, in the opinion of counsel to the corporations, will affect the status of the option as a restricted stock option within the meaning of the Internal Revenue Code.

(g) Except as herein set forth, no other consideration is to be paid, transferred, or issued by the Corporation for shares of either of the corporations party to these Articles.

6. *Directors.* The names of the persons who are to be directors of the Corporation and who shall hold office until their successors are chosen and qualified according to the Bylaws of the Corporation are as follows:

James Barker	67 East Avenue, Dover, Maryland
William Mason	100 Main Street, Rochester, New York
Marvin Sandler	285 Madison Avenue, New York, New York
Benjamin Brown	600 Fifth Avenue, New York, New York
Saul Turner	120 Center Street, Trenton, New Jersey

If, on the effective date of the merger, a vacancy shall exist in the number of directors of the Corporation by reason of the death or inability to act of any of the above named persons or their failure to accept a directorship of the Corporation, such vacancy may be filled in the manner provided in the Bylaws of the Corporation.

7. *Employee plans.* Unless and until otherwise determined by the Board of Directors of the Corporation, all pension and retirement plans of Walker and all other plans, agreements, or arrangements of Walker relating to its employees or any of them, in force on the effective date of the merger, shall be effective with respect to the Corporation in the same manner as if adopted, or made by it, and shall be applicable to the persons who would have been covered thereby if the merger herein provided for were not effected, except that: (a) the employment agreement between Walker and William Barton, effective ___________________ [date], will be modified to provide that it shall be initially effective until ___________________ [date], and that the basic salary shall be $150,000 per year and the percentage compensation shall be based upon adjusted consolidated net earnings as therein defined of the Corporation and its subsidiaries in excess of $4,500,000 for each calendar year beginning with ___________________ [year] (including, however, for the year ___________________ the earnings of Walker from ___________________[date], to the effective date of the merger); (b) the Walker Restricted Stock Option Plan dated ___________________, shall be effective with respect to Common Stock of the Corporation in the same manner as if the Plan had been originally adopted by the Corporation, with the total number of shares of Common Stock of the Corporation which may be sold pursuant to options granted under the Plan adjusted so as not to exceed 56,250 shares; and (c) the amount to be paid into the profit-sharing fund under the Walker Profit Sharing Plan for Executive and Managerial Personnel shall be calculated on the basis of the operations of those divisions of the Corporation that carry on, after the effective date of the merger, the activities theretofore carried on by Walker.

8. *Prohibited actions.* Until the effective date of the merger:

(a) Neither Walker nor the Corporation shall: engage in any activity or transaction other than in the ordinary course of business without first obtaining the approval of the other; issue or sell, or grant or issue any rights or options with respect to, any shares of its stock, except that Walker may issue shares of its stock upon the exercise, in whole or in part, of options heretofore granted; or declare or pay any dividend on its stock, except that (1) the Corporation may pay a quarterly dividend on its Common Stock of 15 cents per share payable ___________________ [date], and (2) if the date for the determination of shareholders entitled to receive such dividend shall precede the effective date of the merger, Walker may declare and pay a dividend, payable to shareholders of record on a date prior to the effective date of the merger, in an amount not exceeding 33 3/4 cents per share.

(b) The Corporation will not sell, transfer, or otherwise dispose of any part of or interest in the 198,975 shares of stock of Walker presently owned by the Corporation.

9. *Effect of merger.* On the effective date of the merger, all of the property, rights, privileges, and franchises, of whatsoever nature and description, of Walker, including subscriptions for shares and other choses in action belonging to it, shall be transferred to, vested in, and shall devolve upon the Corporation, without further act or deed; and all property, rights, privileges, and franchises, and every other interest, shall be as effectually the property of the Corporation as they were of each of the respective corporations party to these Articles, and the title to all real estate vested in either of the corporations shall not be deemed to revert or to be in any way impaired by reason of the merger, but shall be vested in the Corporation.

10. *Principal offices.* (a) The principal office of the Corporation in Maryland is located at 100 State Street, Baltimore, Baltimore County, and the principal office of Walker in Maryland is located at Second Avenue, Baltimore, Baltimore County.

(b) Walker owns property the title to which could be affected by the recording of an instrument among the Land

Records in Baltimore County, Maryland.

11. *Effective date.* The date on which Articles of Merger providing for the merger agreed to herein shall have been accepted for record by the State Tax Commission of the State of Maryland shall be deemed the effective date of the merger and of these Articles.

12. *Authorization.* These Articles of Merger were duly advised and authorized by the Board of Directors of each of the corporations party hereto in accordance with the laws of the State of Maryland.

13. *Expenses.* The Corporation shall pay all expenses of effecting the merger.

14. *Abandonment of merger.* The merger may be abandoned by a majority vote of the entire Board of Directors then in office of either of the corporations party to these Articles at any time prior to the effective date of the merger, but not later than 30 days after the date of the later of the two meetings of shareholders at which the Articles of Merger shall have been approved.

15. *Counterparts.* Any number of counterparts of these Articles may be executed and each such counterpart shall be deemed an original.

In witness whereof The Essex Machinery Corporation and The Walker Products Company, pursuant to authority duly given by their respective Boards of Directors, have by their respective Presidents executed these presents and have caused their corporate seals to be hereunto affixed and attested by their respective Secretaries.

The Essex Machinery Corporation

(Seal) by ______________________

President

Attest:

____

Secretary

The Walker Products Company

(Seal) by ______________________

President

Attest:

____

Secretary

(Acknowledgments)

Statements with respect to approval of Articles of Merger

The Board of Directors of the Essex Machinery Corporation, at a meeting duly convened and held on ___________________ [date], duly recommended the merger of The Walker Products Company into the Essex Machinery Corporation by passing a resolution approving a merger substantially upon the terms and conditions hereinabove set forth and directed that proposed Articles of Merger be submitted for action thereon at a special meeting of the stockholders of The Essex Machinery Corporation. The special meeting of stockholders called by the directors of that corporation, pursuant to notice duly given as provided by law, was held on ____________________ [date], and at that meeting the stockholders by the affirmative vote of more than two-thirds of all the votes entitled to be cast thereon duly approved these Articles of Merger.

The Board of Directors of the Walker Products Company at a meeting duly convened and held on ____________________ [date], duly recommended the merger of The Walker Products Company into The Essex Machinery Corporation by passing a resolution approving a merger substantially upon the terms and conditions hereinabove set forth and directed that proposed Articles of Merger be submitted for action thereon at a special meeting of the stockholders of The Walker Products Company. The special meeting of stockholders called by the directors of that corporation, pursuant to notice duly given as provided by law, was held on ____________________ [date], and at that meeting the stockholders by the affirmative vote of the holders of more than 51% of the shares of stock of The Walker Products Company outstanding and entitled to vote (the charter of the Walker Products Company providing that a merger of that corporation into any other corporation may be approved by the holders of a majority of the total number of outstanding shares of stock) duly approved these Articles of Merger.

In witness whereof The Essex Machinery Corporation has caused these Articles of Merger to be signed in its name and on its behalf by its President and the corporate seal to be attached and attested by its Secretary, ____________________ [date], and The Walker Products Company has caused these Articles of Merger to be signed in its name and on its behalf by its President and the corporate seal to be attached and attested by its Secretary, ____________________ [date].

Corporate Seal	The Essex Machinery Corporation
Attest:	by __________________________
___________________________________	President
Secretary	
Corporate Seal	The Walker Products Company
Attest:	by __________________________
___________________________________	President
Secretary	

(Acknowledgments)

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 23: Dissolution--Reorganization.

37TTT-23 California Legal Forms--Transaction Guide Form T23-4

Form T23-4 "B" Reorganization: Acquisition by One Corporation of Stock of Another Corporation--Application for Tax Ruling

Description: This form is used for a transaction in which one corporation acquires the controlling stock interest in another.

Form T23-4 "B" Reorganization: Acquisition by One Corporation of Stock of Another Corporation--Application for Tax Ruling

(1) Agreement and plan of reorganization

AGREEMENT AND PLANS OF REORGANIZATION, dated as of ____________________ [date], among The Sussex Corporation, a Delaware corporation, hereinafter called Sussex; The Marlboro Corporation, a Delaware corporation, hereinafter called Marlboro; and John Irvine, Robert Edwards, Frederick Blaine, Mark Jones, William Smith, Philip McKay, John Rhodes, Lewis Arnold, Richard Toole, and Robert Niven, hereinafter called the Stockholders.

1. *Plan of reorganization.* The Stockholders are the owners of all of the issued and outstanding stock of Marlboro, which consists of 5,000 shares of common stock of the par value of 25 cents per share. It is the intention of the parties hereto that all of the issued and outstanding capital stock of Marlboro shall be acquired by Sussex in exchange solely for its voting stock.

2. *Exchange of shares.* Sussex and the Stockholders agree that all of the 5,000 shares of Marlboro shall be exchanged with Sussex for 25,000 shares of the common stock of Sussex. The following numbers of Sussex shares will, on the closing date, as hereinafter defined, be delivered to the individual Stockholders in exchange for their Marlboro shares as hereinafter set forth:

Stockholder	No of Shares of Marlboro	No. of Sussex Shares To Be Issued
John Irvine	1,500	7,500

Robert Edwards	700	3,500
Frederick Blaine	700	3,500
Mark Jones	500	2,500
William Smith	500	2,500
Philip McKay	300	1,500
John Rhodes	300	1,500
Lewis Arnold	200	1,000
Richard Toole	200	1,000
Robert Niven	100	500
	5,000	25,000

Such shares shall be issued in certificates of such denominations, amounts, and names as may be requested by the respective Stockholders. The Stockholders represent and warrant that they will hold such shares of common stock of Sussex for investment.

3. *Delivery of shares.* On the closing date, the Stockholders will deliver certificates for the shares of Marlboro duly endorsed with signatures guaranteed and with documentary stamps affixed at the Stockholders' expense so as to make Sussex the sole owner thereof, free and clear of all claims and encumbrances; and on such closing date delivery of the Sussex shares, on which documentary stamp taxes will have been paid by Sussex, will be made to the Stockholders as above set forth. Delivery will be made at such place in or about Los Angeles, California, as may be determined by the parties. Time is of the essence.

4. *Representations of stockholders.* The Stockholders represent and warrant as follows:

(a) As of the closing date they will be the sole owners of the shares appearing of record in their names; such shares will be free from claims, liens, or other encumbrances; and, subject to the escrow of such shares established pursuant to permits heretofore issued to Marlboro by the Commissioner of Corporations of the State of California with respect to the issuance thereof in escrow, they will have the unqualified right to transfer such shares.

(b) The shares constitute validly issued shares of Marlboro, fully paid and nonassessable.

(c) The audited financial statements of Marlboro, as of ____________________ [date], which will be delivered to Sussex prior to the closing date, are true and complete statements of the financial condition of Marlboro as of that date; there are no substantial liabilities, either fixed or contingent, not reflected in such financial statements other than contracts or obligations in the usual course of business; and no such contracts or obligations in the usual course of business are liens or other liabilities which, if disclosed, would alter substantially the financial condition of Marlboro as reflected in such financial statements.

(d) Since ____________________ [date], there have not been, and prior to the closing date there will not be, any material changes in the financial position of Marlboro, except changes arising in the ordinary course of business.

(e) Marlboro is not involved in any pending litigation or governmental investigation or proceeding not reflected in such financial statements or otherwise disclosed in writing to Sussex and, to the knowledge of Marlboro or the Stockholders, no litigation or governmental investigation or proceeding is threatened against Marlboro.

(f) As of the closing date, Marlboro will be in good standing as a Delaware corporation.

5. *Representations of acquiring corporation.* Sussex represents and warrants as follows:

(a) As of the closing date, the Sussex shares to be delivered to the Stockholders will constitute the valid and legally issued shares of Sussex, fully paid and nonassessable, and will be legally equivalent in all respects to the common stock of Sussex issued and outstanding as of the date hereof.

(b) The officers of Sussex are duly authorized to execute this agreement pursuant to authorization of its stockholders.

(c) Sussex's balance sheet dated ____________________ [date], is a true and complete statement, as of that date, of its financial condition, and its Statement of Earnings for the nine months ended ____________________ [date], fairly presents the results of its operations for such period; there are no substantial liabilities, either fixed or contingent, not reflected in such financial statements other than contracts or obligations in the usual course of business; and no such contracts or obligations in the usual course of business are liens or other liabilities which, if disclosed, would alter substantially the financial condition of Sussex as reflected in such financial statements.

(d) Since ____________________ [date], there have not been, and prior to the closing date there will not be, any material changes in the financial position of Sussex, except changes arising in the ordinary course of business.

(e) Sussex is not involved in any pending litigation or governmental investigation or proceeding not reflected in such financial statements or otherwise disclosed in writing to the Stockholders.

(f) As of the closing date, Sussex will be in good standing as a Delaware corporation.

(g) The shares of Marlboro are being acquired by Sussex as an investment, and there is no present intention on the part of Sussex to dispose of such shares.

6. *Agreement as to escrow.* All of the issued and outstanding shares of Marlboro are presently held in escrow pursuant to an order of the Commissioner of Corporations of the State of California, the Stockholders agree that they will cause an Order of such Commissioner of Corporations to issue pursuant to which such shares may be transferred to Sussex within the escrow.

7. *Conditions of closing.* The closing date herein referred to shall be ____________________ [date], or such other date as the parties hereto may mutually agree upon. All representations and covenants herein made shall survive the closing. At the closing the Stockholders hereby designate, nominate, constitute, and appoint Robert Edwards and Mark Jones, and each of them, as their agents and attorneys in fact to accept delivery of the certificates of Sussex stock to be issued in their respective names, and to give a good and sufficient receipt and acquittance for the same, and in connection therewith to make delivery of their stock in Marlboro to Sussex. The obligations of Sussex hereunder are conditioned upon its obtaining a permit of the Commissioner of Corporations of the State of California for the issuance of its common stock to Stockholders as hereinabove provided. The obligations of both Marlboro and Sussex are further conditioned upon the receipt of a favorable tax ruling regarding the tax-free character of the reorganization under *I.R.C.*

§ 368(a)(1)(B); but, if the issuance of such a favorable ruling does not occur before ___________________ [date], then this condition may be waived upon submission of a written statement by Messrs. Edwards and Jones stating that in their opinion such favorable tax treatment should result.

8. *Prohibited acts.* Marlboro agrees not to do any of the following things prior to the closing date, and the Stockholders agree that prior to the closing date they will not request or permit Marlboro to do any of the following things:

(a) Declare or pay any dividends or other distributions on its stock or purchase or redeem any of its stock;

(b) Issue any stock or other securities, including any right or option to purchase or otherwise acquire any of its stock, or issue any notes or other evidences of indebtedness not in the usual course of business;

(c) Make capital expenditures in excess of an aggregate of $25,000 except with the consent of Sussex.

9. *Delivery of records.* The Stockholders agree that on or before the closing date they will cause to be delivered to Sussex such corporate records or other documents of Marlboro as Sussex may request.

10. *Notices.* Any notice which any of the parties hereto may desire to serve upon any of the other parties hereto shall be in writing and shall be conclusively deemed to have been received by the party to whom addressed, if mailed, postage prepaid, United States Registered Mail, to the following addresses:

The Sussex Corporation, 100 Broad Avenue, Los Angeles, California, Attention of Mark Jones, President

Stockholders: c/o Mr. William Smith, The Marlboro Corporation, 100 1st Avenue, San Diego, California.

11. *Successors.* This agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties.

Executed in multiple counterparts, each of which shall be deemed a duplicate original, as of the date first above written.

	The Sussex Corporation
Corporate Seal	by
	___________
	___________
Attest:	President
______________________________	
Secretary	
	The Marlboro Corporation
Corporate Seal	by
	___________
	___________
Attest:	President
______________________________	
Secretary	
Stockholders:	
______________________	___________
	___________

John Irvine	Robert Edwards
______________________	__________
	__________
Frederick Blaine	Mark Jones
______________________	__________
	__________
William Smith	Philip McKay
______________________	__________
	__________
John Rhodes	Lewis Arnold
______________________	__________
	__________
Richard Toole	Robert Niven

(2) Application for tax ruling

[date]

Commissioner of Internal Revenue
Washington, D. C. 20224

Attention: Tax Rulings Division
Reorganization Branch

Re: *Name*	*Address*	*Taxpayer Identification #*	*Filing District*
John Irvine	14 Washington St. San Diego, Cal.	091-28-9000	Los Angeles
Robert Edwards	28 Adams Place San Diego, Cal.	092-18-7000	Los Angeles
Frederick Blaine	7300 Winslow Ave. San Diego, Cal.	092-17-4000	Los Angeles
Mark Jones	59 Penbroke Ave. San Diego, Cal.	091-28-9500	Los Angeles
William Smith	525 Hart Boulevard San Diego, Cal.	105-24-8000	Los Angeles
Philip McKay	3333 West End Ave. San Diego, Cal.	271-19-4567	Los Angeles
John Rhodes	621 Brighton Ave.	345-67-8901	Los Angeles

	San Diego, Cal.		
Lewis Arnold	943 E. 73rd St.	123-45-6789	Los Angeles
	San Diego, Cal.		
Richard Toole	141 Valencia Ave.	415-26-3748	Los Angeles
	San Diego, Cal.		
Robert Niven	123 Ausable Ave.	876-12-5396	Los Angeles
	San Diego, Cal.		
The Sussex Corpor-ation		13-1740000	Los Angeles
The Marlboro Cor-poration		13-1900000	Los Angeles

Dear Sir:

We hereby submit a request for a ruling in behalf of the persons above-named, hereinafter called the Stockholders, with respect to the effect for federal income tax purposes of the transfer by them to The Sussex Corporation, hereinafter called Sussex, in pursuance of a plan of reorganization, of all the stock of The Marlboro Corporation, hereinafter called Marlboro, in exchange solely for common stock of Sussex. The transaction is to be consummated pursuant to an Agreement and Plan of Reorganization, dated as of ____________________ [date], attached as Exhibit 1, hereinafter called the Agreement.

FACTS

The facts upon which this request for a ruling is based are as follows:

1. *Description of Marlboro.* Marlboro is a Delaware corporation which was organized in 1952 and is engaged in the manufacture and sale of nylon fabrics. Its total authorized capital stock consists of 5,000 shares of common stock with a par value of 25cent(s) each, all of which are outstanding. The outstanding shares of Marlboro are owned by the Stockholders and are to be conveyed by them in the following amounts:

Stockholder	No. of Shares of Marlboro	No. of Sussex Shares To Be Issued
John Irvine	1,500	7,500
Robert Edwards	700	3,500
Frederick Blaine	700	3,500
Mark Jones	500	2,500
William Smith	500	2,500
Philip McKay	300	1,500
John Rhodes	300	1,500
Lewis Arnold	200	1,000
Richard Toole	200	1,000

Robert Niven	100	500
	______	_______
	______	_______
	______	______
	__	
	5,000	25,000

Financial statements of Marlboro as of ___________________ [date], are attached hereto as Exhibit 2.

2. *Description of Sussex.* Sussex is a Delaware corporation organized in 1946. Since that time, it has engaged exclusively in the purchase, management, development, and sale of real property. It has an authorized capital stock of 200,000 shares of common stock, of which 100,000 shares are issued and outstanding. Financial statements of Sussex for the period ending ___________________ [date], are attached hereto as Exhibit 3.

3. *Acquisition of stock.* Under the agreement, Sussex will acquire all of the common stock of Marlboro from the Stockholders by issuing to them 25,000 shares of Sussex common stock. Each Stockholder will be issued five shares of Sussex stock for each share of Marlboro conveyed by him (as listed in paragraph 1 above). The common stock of Sussex to be issued to the Stockholders will be legally equivalent in all respects to the common stock of Sussex presently issued and outstanding.

4. *Business purpose.* Sussex' purpose in acquiring the stock of Marlboro is to diversify its investments, which until now have been exclusively in real estate. Sussex warrants that the shares of Marlboro are being acquired as an investment and that there is no present intention to dispose of them. The Stockholders warrant that they will hold the shares of Sussex for investment.

5. *Expenses of reorganization.* No consideration other than that described in paragraph 3 above will be transferred in the reorganization. Sussex and the Stockholders will pay their own expenses in connection with the reorganization.

Representations Required Pursuant to Rev. Proc. 86-42

Legend:	Acquiring	=	the acquiring corporation
Target	=	the corporation whose stock is acquired	

1. The fair market value of the Acquiring stock received by each Target shareholder will be approximately equal to the fair market value of the Target stock surrendered in the exchange.

2. There is no plan or intention by the shareholders of Target who own 1 percent or more of the Target stock, and to the best of the knowledge of the management of Target, there is no plan or intention on the part of the remaining shareholders of Target to sell, exchange, or otherwise dispose of a number of shares of Acquiring stock received in the transaction that would reduce the Target shareholders' ownership of Acquiring stock to a number of shares having a value, as of the date of the transaction, of less than 50 percent of the value of all of the formerly outstanding stock of Target as of the same date. For purposes of this representation, shares of Target stock surrendered by dissenters or exchanged for cash in lieu of fractional shares of Acquiring stock will be treated as outstanding Target stock on the date

of the transaction. Moreover, shares of Target stock and shares of Acquiring stock held by Target shareholders and otherwise sold, redeemed, or disposed of prior or subsequent to the transaction will be considered in making this representation. *(Alternatively, for publicly traded companies, submit the above representation substituting "5 percent" for "1 percent" where it appears.)*

3. Target has no plan or intention to issue additional shares of its stock that would result in Acquiring losing control of Target within the meaning of *Section 368(c) of the Internal Revenue Code*.

4. Acquiring has no plan or intention to liquidate Target; to merge Target into another corporation; to cause Target to sell or otherwise dispose of any of its assets, except for dispositions made in the ordinary course of business; or to sell or otherwise dispose of any of the Target stock acquired in the transaction, except for transfers described in *Section 368(a)(2)(C) of the Internal Revenue Code*.

5. Acquiring has no plan or intention to reacquire any of its stock issued in the transaction.

6. Acquiring, Target, and the shareholders of Target will pay their respective expenses, if any, incurred in connection with the transaction.

7. Acquiring will acquire Target stock solely in exchange for Acquiring voting stock. For purposes of this representation, Target stock redeemed for cash or other property furnished by Acquiring will be considered as acquired by Acquiring. Further, no liabilities of Target or the Target shareholders will be assumed by Acquiring, nor will any of the Target stock be subject to any liabilities.

8. At the time of the transaction, Target will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Target that, if exercised or converted, would affect Acquiring's acquisition or retention of control of Target, as defined in *Section 368(c) of the Internal Revenue Code*.

9. Acquiring does not own, directly or indirectly, nor has it owned during the past five years, directly or indirectly, any stock of Target.

10. Following the transaction, Target will continue its historic business or use a significant portion of its historic business assets in a business.

11. No two parties to the transaction are investment companies as defined in *Section 368(a)(2)(F)(iii)* and *(iv) of the Internal Revenue Code*.

12. Target will pay its dissenting shareholders the value of their stock out of its own funds. No funds will be supplied for that purpose, directly or indirectly, by Acquiring, nor will Acquiring directly or indirectly reimburse Target for any payments to dissenters.

(Alternatively) There will be no dissenters to the transaction.

13. On the date of the transaction, the fair market value of the assets of Target will exceed the sum of its liabilities plus the liabilities, if any to which the assets are subject.

Request for Ruling

Request is hereby made for a ruling which will establish the following results:

1. The acquisition by Sussex, in exchange for 25,000 shares of its common stock, of all of the stock of Marlboro, constitutes a "reorganization" as defined in *I.R.C. § 368(a)(1)(B)*.

2. No gain or loss will be recognized by the Stockholders upon the transfers of their shares of Marlboro in exchange for Sussex stock. *I.R.C. § 354(a)(1)*.

3. The basis of the common stock of Sussex received by the Stockholders will be the same as the basis of the common stock of Marlboro exchanged therefor. *I.R.C. § 358(a)*.

4. The holding period of the common stock of Sussex received by the Stockholders will include the period for which they have held the shares of common stock of Marlboro exchanged therefor. *I.R.C. § 1223(1)*.

Powers of Attorney

Separate Powers of Attorney executed by each of the Stockholders are enclosed.

Conference

We would appreciate your advising us if you should find that a conference would be helpful at any stage of your consideration of this request, or that a conference may be in the interest of the taxpayers. In the event you wish any further information after submission of this request, please telephone the undersigned collect at 212-686-4975.

Respectfully submitted,

____

Counsel

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 23: Dissolution--Reorganization.

37TTT-23 California Legal Forms--Transaction Guide Form T23-5

Form T23-5 "C" Reorganization: Liquidation of Transferor Corporation--Warranties by Individual Shareholders

Description: This form is used for a "C" reorganization with liquidation of transferor corporation. Language includes discussion of transfer of assets, warranties of warrantors, and liquidation of transferor.

Form T23-5 "C" Reorganization: Liquidation of Transferor Corporation--Warranties by Individual Shareholders

(1) Agreement and plan of reorganization

AGREEMENT entered into this ___________________ [date], between Roberts Container Company, Inc., a Maryland corporation, hereinafter called Roberts, and Supreme Foods Corporation, a Maryland corporation, hereinafter called Supreme, and John Roberts, Thomas Roberts, Henry Roberts, and Ralph Winters, being certain shareholders of Roberts, hereinafter referred to as Warrantors.

Whereas it is the desire of Roberts to transfer and of Supreme to acquire all the assets, trademarks, trade names, franchises, licenses, leases, contracts, goodwill, name, and business of Roberts, subject to all Roberts' liabilities, except liabilities to its shareholders, as such, and certain costs and expenses of this agreement, its consummation and the dissolution of Roberts, all of which liabilities, with such exceptions, Supreme agrees to assume, solely in exchange for shares of Supreme's common stock; and

Whereas this agreement and its performance by Roberts and the related requisite Articles of Exchange under the laws of Maryland have been authorized, approved, and found advisable by the Board of Directors of Roberts, subject to the authorization and approval by the requisite affirmative vote of the shares of Roberts; and

Whereas the Board of Directors of Roberts, as part of its approval of and subject to the same conditions as apply to this agreement, as set forth below, has approved a Plan of Complete Liquidation and Dissolution of Roberts pursuant to which the shares of Supreme's common stock received by Roberts will be distributed by Roberts ratably to its shareholders in exchange for and in complete cancellation and retirement of all its issued and outstanding stock (consisting of common stock) and in complete liquidation of Roberts, followed by the dissolution of Roberts immediately thereafter, which Plan of Complete Liquidation and Dissolution will also be submitted to the shareholders of Roberts for their approval; and

Whereas this agreement and its performance by Supreme and the related requisite Articles of Exchange under the laws of Maryland have been authorized and approved by the Board of Directors of Supreme and do not require the approval of Supreme's shareholders; and

Whereas each of the Warrantors, as an inducement to and in consideration of Supreme's entering into this agreement, is willing to warrant to Supreme as hereinafter set forth:

Now, therefore, it is agreed:

1. *Conditions to this agreement.* This agreement and all undertakings herein and the performance thereof by the parties hereto are all conditioned upon the existence or happening of the following events at or within the respective times specified below with respect thereto, namely:

(a) *Approval by transferor's shareholders.* The authorization and approval prior to the time of closing by the requisite affirmative vote of Roberts' shareholders of this agreement and of its execution and performance by Roberts, and of the related requisite Articles of Exchange under the laws of Maryland.

(b) *Ruling by Commissioner of Internal Revenue.* The receipt by Roberts and Supreme prior to the time of closing of a favorable written ruling by the Commissioner of Internal Revenue (in response to a written request for such ruling by Roberts and Supreme immediately following the authorization and approval of Roberts' shareholders, referred to in subparagraph (a) above) or, in lieu of such ruling, the issuance prior to the time of closing of written opinions of counsel for both Roberts and Supreme to the effect, unqualifiedly, that, under the applicable circumstances, the acquisition by Supreme, in exchange for shares of its common stock, of the assets of Roberts, and the assumption of its liabilities by Supreme, as provided in this agreement, will constitute a nontaxable reorganization under the internal revenue laws of the United States, and result in no recognizable gain or loss to Roberts or to Supreme; that under those internal revenue laws the shareholders of Roberts will realize no recognizable gain or loss from the ratable distribution to them of the shares of common stock of Supreme received by Roberts in exchange for its assets and distributed in complete liquidation of Roberts, followed by the dissolution of Roberts; that the common stock of Supreme so received by Roberts stockholders will have the same basis and holding period in their hands as their Roberts stock exchanged therefor; and that Supreme's basis for the assets acquired from Roberts will be the same as Roberts' basis for such assets. In the event such ruling of the Commissioner of Internal Revenue is issued but is conditional, such ruling shall not satisfy the foregoing requirement unless counsel for Roberts and counsel for Supreme both issue their written opinions prior to the time of closing that there is no substantial probability that the conditions of such ruling will not be satisfied.

(c) *No material damage or destruction of property.* No damage to or destruction of the property or assets of Roberts by fire, flood, tornado, explosion, or other casualty shall have occurred between ____________________ [date], and the time of closing which reduces the net book value at the date of such casualty of the property or assets of Roberts by more than $100,000, after first applying, in reduction thereof, the proceeds of all insurance or other sums recoverable by Roberts by reason of such occurrence; and no suit, action, or claim shall have been instituted, taken, or presented in such period which results or reasonably may result in a material loss to or disruption of Roberts' business.

(d) *Transfer of Roberts' assets.* The conveyance, assignment, transfer, and delivery by Roberts to Supreme of the properties and assets which Roberts has herein agreed to transfer, and the transfer and delivery by Supreme to Roberts of the shares of Supreme's stock which Supreme has herein agreed to transfer (other than any such assets and stock as are to be transferred and delivered after the time for closing as provided for herein), both and in all events prior to ____________________ [date].

In the event that any of the above conditions is not satisfied, then this agreement shall forthwith terminate and be of no further force and effect, and no party hereto shall be liable to any other party hereto by reason of this agreement, its negotiation, or its termination, whether for costs, expenses, damages, or otherwise; provided, however, that Supreme may in writing waive noncompliance with the requirements of subparagraph (c) above, in whole or in part, at or prior to the time of closing, and Roberts and Supreme jointly may in writing at any time or repeatedly waive noncompliance with the requirements of subparagraph (d) above, for such additional period or periods as may be specified in such written waiver.

2. *Transfer of assets and assumption of liabilities.* Subject to the conditions above, and at the time and place of closing, Roberts shall convey, assign, transfer, and deliver to Supreme (or a subsidiary of Supreme at the direction of Supreme) by appropriate warranty deeds, bills of sale, assignments, or other instruments, all of Roberts' business, properties, and assets of every kind and description, real or personal, including but not being limited to Roberts' goodwill and all of its right, title, or interest in and to the name, Roberts Container Company, excepting and excluding, however, such amounts of money, if any, as may be required to pay any and all then unpaid costs and expenses of Roberts (including any liabilities to its shareholders as such) of preparing, performing, and consummating this agreement and distributing the stock of Supreme received by Roberts to its shareholders and dissolving (a reasonable reserve for which may be retained by Roberts at the time of closing, any excess portion of which shall be transferred to Supreme when ascertained); but subject nevertheless, to all unpaid and unsatisfied liabilities and obligations of Roberts at the time of closing, except any and all liabilities and obligations of Roberts to its shareholders or any of them, as such, and costs and expenses of preparing, performing, and consummating this agreement and distributing the stock of Supreme received by Roberts to its shareholders and the dissolution of Roberts, all of which liabilities and obligations of Roberts, other than those so excepted, Supreme shall thereupon assume and shall thereafter pay or otherwise satisfy and discharge.

3. *Transfer and delivery of stock.* Subject to the conditions above, and in exchange for the assets of Roberts which shall be transferred to Supreme, Supreme shall transfer and deliver to Roberts at the time and place of closing (a) .421 of a share of common stock of Supreme for each share of Roberts' stock issued and outstanding at the time of closing which is to be exchanged for shares of common stock of Supreme upon the complete liquidation of Roberts, plus (b) such number of shares of the common stock of Supreme as remain after deducting from 10,000 the number of such shares having an aggregate value (at $15.75 a share) equal to the aggregate excess, if any, of what any Roberts shareholders become entitled to receive from Roberts, plus costs incurred by Roberts with respect thereto, over the value (at $15.75 a share) of the shares of Supreme's common stock which would have been deliverable to Roberts pursuant to the preceding clause (a) on account of the shares of Roberts owned by such shareholders of Roberts; provided, however, that to the extent that it cannot be ascertained at the time of closing the number of shares of Supreme's common stock to be delivered to Roberts pursuant to clause (b), such shares shall thereafter be delivered to Roberts when the number, if any, remaining to be delivered can be ascertained. Supreme shall execute and deliver to Roberts at the time and place of closing written instruments or agreements by which Supreme assumes and undertakes to pay or otherwise discharge any specific or other liabilities or obligations of Roberts which Supreme has hereinabove agreed to assume, as Roberts or any of its creditors or obligees may reasonably request.

4. *Time and place of closing.* The time of closing referred to in this agreement shall be ____________________ [date], at 10 a.m., Eastern Daylight Time, or such other time as may be agreed to in writing by Roberts and Supreme. The place of closing shall be the Central Trust Company of Maryland, Baltimore, Maryland.

5. *Consents to assignment and transfer.* Roberts shall obtain, prior to the time of closing, all consents, agreements, and other actions required for the transfer to Supreme (or a subsidiary of Supreme, if Supreme so elects) of all leases, contracts, options, licenses, permits, easements, rights of occupancy, names, and franchises to which Roberts is a party or which it owns or holds or uses at the time of closing.

6. *Execution and filing of articles of exchange.* The requisite Articles of Exchange under the laws of Maryland, relating

to the exchange by Roberts of its assets for the agreed shares of common stock of Supreme shall be executed by Roberts and Supreme prior to the time of closing and will, at the time of closing, be duly filed by Roberts with the State Tax Commission of Maryland; and thereafter Roberts will duly file the required certificate thereafter issued by such State Tax Commission, as required by the laws of Maryland.

7. *Opinion of transferee's counsel.* Supreme shall furnish Roberts at the time and place of closing the opinion of Supreme's counsel (a) that Supreme is duly organized, existing, and in good standing under the laws of Maryland, and is duly authorized in Maryland and the other jurisdictions in which it has qualified to do business to conduct the business it is then engaged in therein; (b) that the shares of Supreme's common stock which are to be transferred and delivered by Supreme to Roberts in exchange for the assets of Roberts constitute duly authorized, issued, and outstanding fully paid and nonassessable shares of the common stock of Supreme, which are then duly listed on the New York Exchange, and that good title to such shares has been, upon the receipt by Supreme of the assets of Roberts and the delivery in exchange therefor of such shares of common stock of Supreme, transferred by Supreme to Roberts; (c) that between ____________________ [date], and the time of closing Supreme has not authorized, declared, paid, or effected any stock dividend or split-up of shares of its common stock or any issuance, pro rata, to its common shareholders, of options or rights to subscribe to shares of its common stock, or any extraordinary cash dividend upon its shares of common stock; and (d) that this agreement and the requisite related Articles of Exchange under the laws of Maryland and the execution, delivery, and performance thereof by Supreme have been properly authorized and approved by the Board of Directors of Supreme and do not require the approval of Supreme's shareholders and will not constitute a violation of any provision of any agreement to which Supreme is a party or of its Charter or Bylaws.

8. *Opinion of counsel for transferor.* Roberts shall furnish Supreme at the time and place of closing the opinion of Roberts' counsel (a) that this agreement has been properly authorized, executed, and delivered by Roberts, and its performance by Roberts properly authorized and approved; that the requisite related Articles of Exchange under the laws of Maryland have been duly advised and approved by the Board of Directors and shareholders of Roberts and have been duly filed with the State Tax Commission of Maryland; and that this agreement constitutes the legally valid and enforceable obligation and undertaking of Roberts in accordance with its terms and provisions, subject to the satisfaction of the conditions set forth in paragraph 1, above; (b) that neither this agreement for the transfer and delivery, nor the transfer and delivery as herein agreed, of shares of Supreme's common stock to Roberts requires any qualification or authorization under the laws of Maryland applicable to the issuance or sale of stock or other securities in the State of Maryland; and (c) that all the assets, leases, contracts (other than this contract), franchises, permits, options, names, trademarks, trade names, copyrights, formulas, trade secrets, and other property to be transferred by Roberts to Supreme (or to the subsidiary of Supreme designated by Supreme) as hereinabove provided, have been validly and effectively transferred to Supreme.

9. *Additional agreements of transferor.* Roberts hereby further agrees with Supreme:

(a) That it will cause its certified public accountants, James & James, as quickly as reasonably possible, to complete their audit of Roberts' balance sheet as of ____________________ [date], and the related statement of income and surplus for the period of ____________________ [date], through ____________________ [date], and to render a certified report thereof, in which audit Supreme's certified public accountants, J. M. Marshall & Co., may participate and collaborate, at Supreme's expense, if Supreme so desires; that such balance sheet will be prepared so as to conform to the warranties of the Warrantors, as set forth below; and that three signed copies of such audit report will be delivered to Supreme immediately upon becoming available.

(b) That prior to the time of closing Roberts will not have changed its name and neither Roberts nor any of the Warrantors will have given permission to any corporation, firm, or organization engaged in the production, distribution, or marketing of foods or food products to use the name "Roberts" alone or in combination with any other word or words; and at the time of closing or immediately thereafter, Roberts will change its name to the Roblin Liquidating Company, or any like name agreed to by Supreme containing neither the word "Roberts" nor the word "Container."

(c) That after the execution of this agreement and prior to the time of closing the officers and directors of Roberts will consult with and give consideration to the advice of any officer or officers of Supreme, or any of its subsidiaries designated from time to time by Supreme for such purpose, with respect to the operations and proposed transactions of Roberts; and that any of Roberts' records and assets may be checked or inspected by representatives of Supreme at any time or from time to time during business hours, and that Roberts will make the same reasonably available for such purpose.

(d) That from the time of the execution of this agreement until the time of closing, Roberts will maintain its usual insurance coverage in reasonably adequate amounts against damage and destruction of its properties and assets and covering its liabilities to others.

(e) That after the time of closing Roberts will file and prosecute such claims or suits for the refund of taxes, and make or file and prosecute such other claims or suits, in each case, for the recovery or collection of any sums which may or could be due it, in its name or otherwise, as Supreme may request, or Supreme may file, present, or prosecute any such claims or suits in the name of "Roberts Container Company, Inc.," or otherwise, but in each case all for the benefit of Supreme, to which all amounts recovered thereby shall be remitted; and Supreme shall hold Roberts harmless of and from all costs, expenses, and liabilities of or resulting from any such claims, or suits or the making, filing, or prosecution thereof.

(f) That Roberts is not acquiring the shares of common stock of Supreme which are to be transferred and delivered to Roberts in exchange for its assets, as hereinabove provided, for the purpose of resale, and that it will not sell or offer for sale any of such shares of stock within a period of five years after the time of closing; provided, however, that the foregoing shall not be considered or construed as preventing the distribution of such shares of stock to Roberts' shareholders ratably in complete liquidation of Roberts.

(g) That Roberts will, as soon as reasonably possible after the execution of this agreement, supply Supreme with a complete description and list of its existing leases, unperformed contracts, and agreements, and its unsatisfied commitments involving, in each case, future payments by it of more than $1,000, and will immediately after the execution of this agreement order, at its cost, title searches and opinions of title or guarantee policies with respect to the title to its real estate.

10. *Warranties of warrantors.* The Warrantors hereby jointly and severally warrant to Supreme as follows:

(a) That the audited balance sheet of Roberts as of ____________________ [date], which is to be prepared and audited as hereinabove agreed, will be prepared in accordance with good accounting practice and in a manner consistent with the preparation of Roberts' prior audited balance sheets (including particularly its audited balance sheet as of ____________________ [date] and will be certified to by James & James by the regular, prescribed form of certificate without exceptions, and will reflect all of the usual reserves in normal amounts customarily set up or reflected in the books of account and financial statements of Roberts, including reserves for depreciation computed at rates employed by Roberts in computing depreciation deductions for federal income tax purposes; and will include no amount on account of incorporation expenses, goodwill, franchises, trademarks, trade names, patents, formulas, or other so-called intangibles.

(b) That Roberts' balance sheet as of ____________________ [date], and its balance sheet as of ____________________ [date], in each case certified to by James & James, are true and correct and correctly set forth the financial condition of Roberts as of the dates of such balance sheets, respectively, to the best information and belief of each and all of the Warrantors; that as of the date of each such certified balance sheet Roberts had good, merchantable title to all the real estate included in such balance sheet, free and clear of all liens and claims except for roads, ways, and easements which do not, in the aggregate, materially interfere with Roberts' operations, and except for liens for current unpaid real estate taxes not due and payable at the date of such balance sheet in an amount, estimated to be correct, included as a liability in such balance sheet; that as of the date of each such audited balance sheet Roberts had good title to all of the remainder of the assets included in such balance sheet, free and clear of any and all liens, except liens and claims the amount of which is included in such balance sheet; that the fixed assets included in each of such audited balance sheets are included therein at the cost thereof to Roberts and the reserves for depreciation thereon included in such balance sheets were computed at the rates used for and in the amounts deducted in computing Roberts' federal income taxes; that the accounts receivable in the amount included in each of such audited balance sheets were all bona fide accounts receivable representing the sale price of merchandise sold and delivered by Roberts in the regular course of business, except for notes and accounts receivable in an amount not exceeding $350,000; that all amounts due from officers or employees of Roberts and included in either of such audited balance sheets will have been paid to Roberts in cash prior to the time of closing; that all other notes receivable included in either of such balance sheets are bona fide obligations of the makers, representing the sale price of property sold and delivered by Roberts; that the value of the inventories of Roberts included in either of such audited balance sheets was the value of Roberts' inventories as of the date of that balance sheet, at cost or market, whichever is lower, on a first-in, first-out basis; and that the cost of the merchandise in transit included in each such balance sheet is reflected in the liabilities included therein.

(c) That on each of ___________________ [date], and ___________________ [date], there existed no liabilities or commitments of Roberts, contingent or absolute, matured or unmatured, except (1) those as to which the full amount is included or provided for as liabilities in Roberts' audited balance sheet as of that date, and except (2) those incurred by Roberts, in the regular course of business, after such date, and except (3) other liabilities or commitments the aggregate amount of which does not exceed by more than $50,000 the aggregate amount of insurance proceeds recoverable by Roberts on account of or applicable to the satisfaction of such liabilities and commitments, if any.

(d) That between ___________________ [date], and the time of closing hereunder (1) all actions and transactions by or on behalf of Roberts will have been in the regular course of business and in normal amounts, except the execution of this agreement and any acts or transactions herein agreed to or contemplated; (2) no dividends or other distributions or loans upon any shares of stock of Roberts will have been made, declared, or paid; (3) Roberts will have continued in force and effect all insurance of the character and in the amounts theretofore carried by it; (4) no legal fees and no other fees, commissions, compensation, or expenses will have been incurred or paid by Roberts for or with respect to this agreement, its negotiation or consummation, other than legal fees in a reasonable amount for the time expended in connection therewith, the cost, not exceeding $10,000, of title searches, opinions, and guarantee policies with respect to the title of Roberts to the real estate owned by it, the cost of Roberts' shareholders' meetings, the delisting of its stock and its dissolution, the cost of Roberts' distributing Supreme stock to its shareholders in exchange for their stock, and stamp taxes on the transfer by Roberts to its shareholders of the shares of Supreme's stock received as herein provided.

(e) That (1) between ___________________ [date] and the time of closing there will have been no increase in the salaries, compensation, bonuses, or wages or benefits paid or agreed to be paid to any officer or director of Roberts; and (2) between ___________________ [date], and the time of closing there will have been no increase in the salary, compensation, bonus, wages, or benefits paid or agreed to be paid to any employee who is not an officer and director and whose rate of aggregate compensation or benefits is or is thereby increased to more than $10,000 a year.

(f) That at the time of closing (1) Roberts will not be in default on or under any indebtedness, lease, franchise, or contract; (2) all income tax and other governmental returns and reports required of Roberts will have been duly and timely filed and it will have given no waivers or extensions of any statute of limitations with respect to any income or other taxes other than waivers or extensions consented to in advance by Supreme; (3) Roberts will be a party to no employment contracts which cannot be terminated on 60 days' notice, except negotiated union contracts; and (4) there will exist no contract or order for the purchase of merchandise or services except those made or placed in the regular course of business.

11. *Contribution between warrantors.* In the event any Warrantor shall make any payment by reason of the warranties

set forth in paragraph 10, such Warrantor shall have the right to contribution from the other signing Warrantors ratably in proportion to their present common stockholdings in Roberts, provided that in determining the present common stockholdings in Roberts for purposes of contribution there shall be included in the holdings of each Warrantor the number of shares now held by the wife or children or trustees of such Warrantor.

12. *Agreements of warrantors with transferee.* Each of the Warrantors for himself, his successors, personal representatives, and assigns, does hereby agree with Supreme as follows:

(a) To use his best efforts to bring about the satisfaction of the conditions to this agreement set forth in subparagraph (a) of paragraph 1, above.

(b) Throughout the period of five years after the time of closing, neither such Warrantor nor his wife, children, trustees, personal representatives, heirs, or legatees will, considered collectively, sell or exchange or dispose of by gift (other than to such Warrantor's wife or children) or offer for sale or exchange, in any one calendar month, more than an aggregate of 500 shares of the common stock of Supreme received by such Warrantor, his wife, children, or trustees from Roberts without the written consent thereto of Supreme, except that any such shares at any time held by the executors or administrators of such Warrantor may be sold without such consent to the extent required to pay death taxes upon the estate of, or to pay debts owed by, such Warrantor. Reference to this undertaking shall be stamped upon all certificates representing shares transferred to Warrantors.

(c) That at the request of Supreme such Warrantor will, at the time of closing, enter into a written employment agreement with Supreme, or any subsidiary of Supreme to whom the business and assets of Roberts are transferred as herein provided, wherein such Warrantor will undertake to render services from the time of closing through ____________________ [date], to Supreme or such subsidiary with respect to the management and operation of the Roberts business, in a comparable position and for the same compensation as such Warrantor occupies with and is receiving from Roberts as of the date of this agreement; and Supreme shall enter or cause its subsidiary to enter into such written employment agreement with such Warrantor at the time of closing. Each such employment contract shall provide that it may be terminated by Supreme or its subsidiary for good cause and shall be in form reasonably acceptable to counsel for Supreme and counsel for the Warrantors.

(d) That in the event such Warrantor refuses at the time of closing to enter into the employment contract referred to in subparagraph (c) above, or in the event such Warrantor refuses to render services to Supreme or to its subsidiary which is operating the Roberts business when Supreme or such subsidiary desires to continue to employ such Warrantor, or in the event such Warrantor is discharged for good cause by Supreme or such subsidiary, then, for a period of one year after the date of such refusal by or such discharge of such Warrantor, such Warrantor will not be or become associated in any capacity with, or have an investment of more than 5% of the total investment in, any firm, corporation, or enterprise (other than Supreme) engaged in the United States in the production or the wholesale or retail distribution of food or food products, without the prior written consent thereto of Supreme.

(e) That the warranties above set forth shall survive the closing hereunder, and shall be binding upon the Warrantors and their respective personal representatives, heirs, legatees, and successors.

13. *Successors.* This agreement shall be binding upon and inure to the benefit of the respective parties hereto, their heirs, representatives, successors, and assigns, provided, however, that neither this agreement nor its rights hereunder may be assigned by Supreme (except to a subsidiary of Supreme) or by Roberts.

14. *Counterparts.* This agreement may be executed in several counterparts, which, taken together, shall constitute one document, which shall become binding when:

(a) Counterparts, which in total contain signatures of Roberts and of each Warrantor, have been delivered to Supreme, and

(b) One counterpart signed by Supreme has been delivered to and signed by Roberts.

In witness whereof the parties hereto have hereunto set their respective hands and seals or have caused these presents to be executed in their respective names and their respective corporate seals to be hereunto affixed and attested by their respective officers thereunto duly authorized, the day and year first hereinabove written.

Supreme Foods Corporation

Attest: by ________________________________

________________________ President

Secretary

Roberts Container Company, Inc.

Attest: by ________________________________

________________________ President

Secretary

________________________ (Seal)

John Roberts

________________________ (Seal)

Thomas Roberts

________________________ (Seal)

Henry Roberts

________________________ (Seal)

Ralph Winters

(2) Articles of exchange

(Under Section 66 of Maryland General Corporation Law)

THIS IS TO CERTIFY:

1. *Exchange.* Roberts Container Company, Inc., agrees to exchange substantially all of its property and assets by transferring the same on or after ____________________ [date], in exchange for shares of common stock of Supreme Foods Corporation, all pursuant to a written agreement between the parties dated ____________________ [date].

2. *Transferor.* The name of the transferor corporation, one of the parties to these articles, is Roberts Container Company, Inc., and its state of incorporation is Maryland.

3. *Transferee.* The name of the transferee corporation, the other party to this agreement, is Supreme Foods Corporation, and its state of incorporation is also Maryland. The principal place of business of the transferee is 100 LaSalle Street, Chicago, Illinois.

4. *Consideration.* The consideration to be transferred by the transferee corporation for the property and assets of the transferor corporation is .421 of a share of Supreme Foods Corporation common stock for each of the 475,000 issued and outstanding shares of stock of Roberts Container Company, Inc., which is to be exchanged for shares of common stock of Supreme Foods Corporation upon the complete liquidation of Roberts Container Company, Inc., plus such number of shares of common stock of Supreme Foods Corporation as remain after deducting from 10,000 the number of such shares having an aggregate value (at $15.75 a share) equal to the aggregate excess, if any, of what any shareholders of Roberts Container Company, Inc., may become entitled to receive from Roberts Container Company, Inc., plus costs incurred by Roberts Container Company, Inc., with respect thereto, over the value (at $15.75 a share) of the shares of Supreme Foods Corporation common stock which would have been deliverable to Roberts Container Company, Inc., on account of its shares owned by such shareholders of Roberts Container Company, Inc., at the rate of .421 of a share of common stock of Supreme Foods Corporation for each share of stock of Roberts Container Company, Inc., all in accordance with the agreement between the parties hereto dated ____________________ [date]. Supreme Foods Corporation also assumed all of the unsatisfied liabilities and obligations of Roberts Container Company, Inc., as of the time of closing, other than those to the shareholders of Roberts Container Company, Inc., as such, and costs and expenses of the agreement dated ____________________ [date], and the consummation thereof and of the exchange herein set forth and the liquidation and dissolution of Roberts Container Company, Inc.

5. *Local offices of parties.* The principal office in the State of Maryland of Roberts Container Company, Inc., is located in Baltimore City, Maryland. The principal office in the State of Maryland of Supreme Foods Corporation is located in Baltimore City, Maryland. Roberts Container Company, Inc., owns property in Dorchester and Caroline Counties in the State of Maryland.

6. *Approval by shareholders of transferor.* These articles were duly advised by the Board of Directors of Roberts Container Company, Inc., at a meeting duly held and convened on ____________________ [date], and were approved by its shareholders in the manner and by the affirmative vote of two-thirds of all the votes entitled to be cast thereon, as required by the laws of Maryland (the Charter of Roberts Container Company, Inc., not requiring any different vote) at a meeting of the shareholders of Roberts Container Company, Inc., duly held and convened on ____________________ [date], of which notice setting forth these articles and the agreement dated ____________________ [date], was duly sent as required by law to all shareholders of Roberts Container Company, Inc., entitled to vote on these articles, and stating that a purpose of such meeting would be to take action thereon.

7. *Approval by board of directors of transferee.* These articles and the transfer to be effected were duly advised, authorized, and approved by the Board of Directors of Supreme Foods Corporation at a meeting duly held and convened on ____________________ [date], being the only authorization and approval required by the Charter of Supreme Foods Corporation and the laws of Maryland.

8. *Conditions of exchange.* The exchange above set forth is conditioned on (1) the receipt, prior to the time of closing, of a favorable ruling by the Commissioner of Internal Revenue that the exchange constitutes a nontaxable reorganization under the internal revenue laws of the United States or, in lieu of such ruling, the issuance of opinions to the same effect by counsel for both Roberts Container Company, Inc., and Supreme Foods Corporation, (2) no damage to or destruction of the property or assets of Roberts Container Company, Inc., by fire, flood, tornado, explosion, or other casualty shall have occurred prior to the time of closing which reduces its net book value by more than $100,000 after first applying in reduction thereof the proceeds of insurance or other sums recoverable by reason thereof, and no suit, action, or claim shall have been instituted, taken, or presented which results or reasonably may result in material loss to or disruption of the business of Roberts Container Company, Inc. (which condition may be waived by Supreme Foods Corporation), and (3) the transfer of substantially all of Roberts Container Company, Inc., properties and assets to Supreme Foods Corporation as agreed must in all events be effected prior to ____________________ [date], but such time may be extended pursuant to the joint agreement of Roberts Container Company, Inc., and Supreme Foods Corporation.

In witness whereof Roberts Container Company, Inc., and Supreme Foods Corporation have each caused these presents to be signed in its name and on its behalf by its President and its corporate seal to be hereunto affixed and attested by its Secretary, on ____________________ [date].

Attest: Roberts Container Company, Inc.

________________________ by ________________________

Secretary President

Attest: Supreme Foods Corporation

________________________ by ________________________

Secretary President

(Acknowledgments)

(3) Plan of complete liquidation and dissolution

The Plan of Complete Liquidation and Dissolution of Roberts Container Company, Inc., hereinafter referred to as the Plan, is as follows:

1. *Exchange of assets for stock.* Roberts Container Company, Inc., herein called Roberts, has entered into a Plan of Reorganization and Agreement between Supreme Foods Corporation and Roberts Container Company, Inc., dated ____________________[date], herein called the Agreement, to transfer substantially all of the business, properties, and assets of Roberts to Supreme Foods Corporation, herein called Supreme, in exchange for shares of common stock of Supreme. Supreme is to assume all of Roberts' liabilities, other than liabilities to Roberts' shareholders, as such, and certain costs and expenses of Roberts with respect to such Agreement and its dissolution as set forth in that Agreement, all conditioned upon the authorization and approval thereof by the requisite affirmative vote of the shareholders of Roberts, among other conditions.

2. *Liquidation of transferor.* Roberts shall by appropriate charter amendment change its name to "Roblin Liquidating Company," cause its stock to be delisted on all security exchanges, surrender its authority to do business in jurisdictions other than Maryland, and cease to do any further business (if and when Roberts has transferred to Supreme the portion of its assets and properties to be transfered at the time of closing provided in such Agreement) other than the completion of Roberts' performance of the Agreement and its liquidation and dissolution pursuant to this Plan.

3. *Distribution of transferor's stock to transferee's shareholders.* After the receipt by Roberts of the greater portion of the common stock of Supreme to be received by Roberts in exchange for its business, properties, and assets, and after payment or making provision for payment of all unpaid expenses and obligations of Roberts not assumed by Supreme, as provided in the Agreement, Roberts shall distribute ratably to its shareholders entitled thereto the shares of common stock of Supreme which Roberts has received, distributing to each such shareholder the proportionate part of the shares of common stock of Supreme which such shareholders' shares of Roberts are of the total shares of Roberts, the holders of which are entitled to have the common stock of Supreme distributed to them in liquidation of Roberts, but without distributing any fractional shares of Supreme's common stock, all as one of a series of distributions in complete liquidation of Roberts, in exchange for and in cancellation and redemption of all the issued and outstanding shares of stock of Roberts. Roberts' shareholders to whom such distribution is made are to surrender the certificates representing their shares of Roberts for endorsement thereon of an appropriate reference to such liquidating distribution to them, but Roberts' shares to remain transferable on its books after such distribution, any new certificates issued therefor to be similarly stamped with an appropriate reference to such liquidating distribution.

4. *Fractional shares.* After the transfer to Supreme by Roberts of all of its business, properties, and assets which it has

agreed to transfer to Supreme in the Agreement, and after the receipt by Roberts of all of the shares of the common stock which Supreme has agreed in the Agreement to transfer to Roberts, and after the payment and satisfaction by Roberts of all of its expenses and obligations which Supreme has not agreed in the Agreement to assume, Roberts shall forthwith distribute to its shareholders entitled thereto any shares of Supreme stock to which they were previously entitled upon a ratable distribution (being fractional shares of Supreme's stock) and otherwise ratably all remaining shares of common stock of Supreme, if any, which are then held by Roberts, to the extent that such shareholders are thereby entitled to receive whole shares of Supreme stock. The aggregate of all fractional shares of Supreme stock shall be transferred and delivered by Roberts to Central Trust Company of Maryland on behalf of the shareholders of Roberts respectively entitled thereto, and such shares shall be sold by the Central Trust Company of Maryland on behalf of the shareholders of Roberts entitled thereto, to whom shall be remitted the net proceeds of their fractional shares of Supreme's stock, respectively, provided, that any such shareholders of Roberts may request the Central Trust Company of Maryland to purchase for his or her account and at his or her cost such fractional share of Supreme's common stock as would be required to bring the fractional share thereof to which such shareholder is entitled up to a whole share of Supreme's common stock, which purchase Central Trust Company of Maryland may consummate, if the desired fractional share of Supreme's common stock is available for purchase, and deliver to the purchaser the resulting whole share of Supreme's common stock. Such further distribution by Roberts of shares of Supreme's common stock to the shareholders of Roberts entitled thereto shall be the final distribution by Roberts in complete liquidation, and in exchange for and in redemption and cancellation of its issued and outstanding capital stock, and the shareholders of Roberts shall thereupon surrender to Roberts their certificates representing their shares in Roberts for cancellation, and no further transfers of such shares shall thereafter be made upon the books of Roberts.

5. *Dissolution of transferor.* Upon the payment and satisfaction by Roberts of all of its expenses and obligations which Supreme has not agreed in the Agreement to assume, and the distribution of shares of Supreme's common stock to the shareholders of Roberts who are entitled thereto, in complete liquidation of Roberts, Roberts shall forthwith dissolve and duly execute and file the requisite Articles of Dissolution with the State Tax Commission of Maryland.

6. *Conditions of plan.* This Plan and its performance are conditioned on (a) its adoption and approval by the requisite affirmative vote of the shareholders of Roberts, (b) the authorization and approval by the requisite affirmative vote of the shareholders of Roberts of the Agreement between Roberts and Supreme, and the requisite related Articles of Exchange, and (c) the transfer by Roberts to Supreme of the assets and properties of Roberts to be transferred by it at the time of closing under the Agreement, and the receipt by Roberts of the shares of Supreme's common stock to be received by it at the time of closing, all as provided in the Agreement.

(4) Resolution for submission to shareholders on approval of agreement, articles of exchange, and plan of liquidation

Resolved that the shareholders of Roberts Container Company, Inc., do hereby approve the adoption of the following resolution passed by the Board of Directors of the Corporation at its meeting on ____________________ [date]:

Be It Resolved that the Board of Directors hereby authorizes, approves, and finds advisable, subject to the approval thereof by the shareholders of the Corporation at a special meeting hereinafter provided for, the execution and delivery by the Corporation of the Plan of Reorganization and Agreement between the Corporation and certain Warrantors and Supreme Foods Corporation, the execution and filing of the related requisite Articles of Exchange under the laws of Maryland, and the carrying out of the Plan of Complete Liquidation and Dissolution, all as set forth in the forms submitted to this meeting.

Further Resolved that the shareholders do hereby affirmatively authorize and approve the Plan of Reorganization and Agreement, the Articles of Exchange, and the Plan of Complete Liquidation and Dissolution as set forth in the exhibits as attached to the notice of this special meeting and as submitted to this meeting.

Further Resolved that the proper officers and directors of the Corporation, for and on behalf of the Corporation, take all steps necessary or advisable and make, execute, acknowledge, deliver, and file all necessary or advisable documents and instruments in order to carry out the purposes and objectives set out in the Plan of Reorganization and Agreement, the Articles of Exchange, and the Plan of Complete Liquidation and Dissolution, as set forth in the exhibits attached to the notice of this special meeting and as submitted to this meeting.

(5) Resolution for submission to shareholders on amendment of charter relating to change of name

Resolved that the shareholders of Roberts Container Company, Inc., do hereby approve the adoption of the amendment of the Charter of the Corporation set forth in the following resolution adopted by the Board of Directors of the Corporation at its meeting on ____________________ [date]:

Resolved that if the shareholders of the Corporation shall approve the proposed Plan of Reorganization and Agreement between the Corporation and Supreme Foods Corporation, the Articles of Exchange, and the Plan of Complete Liquidation and Dissolution hereinbefore declared advisable, at the special meeting of the stockholders of the Corporation hereinafter provided for,

Be it Resolved that the Board of Directors hereby declares it advisable to amend the Charter of the Corporation by striking out Article Second thereof and inserting in lieu thereof a new Article Second to read as follows:

"Second: The name of the Corporation (which is hereinafter called the Corporation) is Roblin Liquidating Company."

(6) Resolution for submission to shareholders on dissolution of the corporation

Resolved that the shareholders of Roberts Container Company, Inc., do hereby approve the adoption of the following resolutions passed by the Board of Directors of the Corporation at its meeting on ____________________[date]:

Resolved that if the shareholders of the Corporation shall approve the proposed Plan of Reorganization and Agreement between the Corporation and Supreme Foods Corporation, the Articles of Exchange, and the Plan of Complete Liquidation and Dissolution hereinbefore declared advisable, at the special meeting of the shareholders of the Corporation hereinafter provided for,

Be it Resolved that the Board of Directors hereby declares the dissolution of the Corporation to be advisable and for the best interest of the Corporation, such dissolution to be effective upon transfer to Supreme Foods Corporation by the Corporation of all of its business, properties, and assets which the Corporation has agreed to transfer to Supreme Foods Corporation in the Agreement and Plan of Reorganization between Supreme Foods Corporation and the Corporation, dated ___________________ [date], and after receipt by the Corporation from Supreme Foods Corporation of all of the shares of common stock of Supreme Foods Corporation which it has agreed to transfer to the Corporation, and after the payment and satisfaction by the Corporation of all of its expenses and obligations which Supreme Foods Corporation has not agreed in such Agreement and Plan of Reorganization to assume, all as provided in the Plan of Complete Liquidation and Dissolution approved by the Board of Directors of the Corporation ___________________ [date].

Further Resolved that the directors of the Corporation be and they hereby are authorized and directed, for and on behalf of the Corporation, to wind up the affairs of the Corporation, and after the satisfaction of all liabilities, except current expenses, to transfer all of the assets of the Corporation in kind, subject to any remaining liabilities, to the shareholders in complete cancellation and redemption of all the outstanding stock of the Corporation.

Further Resolved that the proper officers and directors of the Corporation be and they hereby are authorized and directed to give notice of dissolution of the Corporation to all known creditors, the State Tax Commission of Maryland, the Comptroller of the State of Maryland, and the Collector of Taxes of every county and city to which the State Tax

Commission of Maryland has certified any assessment of personal property, to file all necessary federal and state tax returns upon the due date thereof, to pay or provide for, from sums of money in their hands on the date of dissolution, such cost or other sums as may be required to satisfy taxes and other legal obligations of the Corporation, and to take such other and further steps as may be necessary to effect complete liquidation of the Corporation as provided by law, and as authorized by the foregoing resolutions.

Further Resolved that the proper officers of the Corporation be and they hereby are authorized on behalf of the Corporation to make, execute, acknowledge, and file in the office of the State Tax Commission of Maryland Articles of Dissolution of the Corporation as provided by law.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 23: Dissolution--Reorganization.

37TTT-23 California Legal Forms--Transaction Guide Form T23-6

Form T23-6 "D" Reorganization--Reorganization Agreement

Description: This form is a reorganization agreement designed to accomplish a basic "D" practical merger. The form contemplates a situation in which a corporation with a single shareholder wants to acquire a smaller corporation with a majority shareholder and a minority shareholder.

Form T23-6 "D" Reorganization--Reorganization Agreement

REORGANIZATION AGREEMENT

THIS REORGANIZATION AGREEMENT ("Agreement") is entered into as of ___________________ [date] between R Corporation, a Delaware corporation ("R"), and T Corporation, a Delaware corporation ("T") and Individual C ("C"), the sole stockholder of T.

WHEREAS, R desires to purchase, and T desires to sell, all of the assets of T in exchange for 900 authorized but previously unissued shares of no par common stock of R and 100 authorized but previously unissued shares of non-voting, $100 par value preferred stock of R (the "Stock") and the assumption by R of all of the liabilities of T; and

WHEREAS, in connection with said purchase and sale, C intends to cause T to liquidate and distribute the stock of R acquired by T to C such that the entire transaction contemplated hereunder shall qualify as a reorganization under *Section 368(a)(1)(D) of the Internal Revenue Code of 1986*, as amended;

NOW THEREFORE, the parties agree as follows:

1. ***Purchase of Assets***. On the Closing Date (as hereinafter defined), T will, by instrument or instruments satisfactory to counsel for R, sell, deliver, transfer, assign and convey to R, and R will purchase from T, all of T's assets, properties, rights and interests of T, wherever situated, existing as of the Closing Date (the "Assets").

2. ***Purchase Consideration***. On the Closing Date, R will (a) by instrument or instruments satisfactory to counsel for T, assume all of the liabilities and obligations of T existing as of the Closing Date, accrued or contingent, due or not due, other than expenses, taxes, commissions, charges and costs of T incident to or arising out of this reorganization (the "Liabilities"), and (b) issue the Stock to T. When issued, the Stock shall be duly authorized, validly issued, fully paid and non-assessable.

3. *Closing*. The closing of the purchase and sale of the Assets hereunder shall take place on ____________________ [date] or such other date agreed upon by the parties (the "Closing Date"). At closing, T shall deliver to R duly executed copies of such instruments of conveyance, assignment and transfer as R may deem necessary to transfer any of the Assets to R, and R shall deliver to T duly executed copies of such instruments as T may deem necessary for assumption of the Liabilities by R and a certificate or certificates issued to T representing the Stock.

4. *Representations and Warranties of T.* T represents and warrants to R that the following are true and correct on the date of this Agreement and will be true and correct as of the Closing Date:

A. *Financial Statements*. The balance sheet of T as of ____________________ [date], and the statements of earnings of T for the calendar years ____________________ [year] to ____________________ [year], all certified by ____________________ [public accounting firm], and the balance sheet of T as at ____________________ [date], and the statement of earnings of T for the four month period ended [date], certified by the Treasurer of T (all of which have been delivered to R by T), fairly present, in accordance with sound and generally accepted accounting principles, the financial condition and the results of the operations of T as at the dates and for the periods indicated.

B. *Title to Assets*. T has good, marketable and valid title to the Assets, free and clear of any mortgage, security interest, lease, pledge, hypothecation, lien or other encumbrance.

C. *Condition of Assets*. The Assets are in good condition and repair and in good working order, normal wear and tear prior to the Closing Date excepted.

D. *Compliance with Laws; Litigation*. T's operation of its business has been in conformity with all applicable federal, state and local laws, ordinances and regulations, and Seller has received no notice of alleged noncompliance. There is no litigation pending or threatened (whether or not covered by insurance), nor any order, injunction, or decree outstanding nor any proceeding, or governmental investigation existing or pending, against T or the Assets, nor to the best of T's knowledge, is there any basis for any such litigation.

E. *Taxes; Contributions*. All federal, state, local and foreign tax returns required to be filed by T have been filed on a timely basis, all of which returns are correct and complete and all taxes due and payable on or before the date hereof by T have been paid. There are no claims pending against T for past-due taxes, and there are no threatened claims against T for past-due taxes (including, but not limited to, any claims based upon any theory of transferee liability), and there are not now any matters under discussion with federal, state, local or foreign authorities relating to any additional taxes or assessments against T. All taxes and other assessments and levies which T is or has been required by law to withhold or to collect have been duly withheld and collected, and have been timely paid over to the proper governmental authorities or are properly held by T for such payment. All contributions and payments for workers' compensation, unemployment compensation, and the like which T has been required by law to make or pay have been duly made or paid.

F. *Disclosure*. No representation or warranty made by T in this Agreement contains any untrue statement of material fact or omits to state a material fact required to make the statements made herein not misleading.

G. *Material Fact*. T has disclosed to R all material facts regarding its business, including, without limitation, all material facts which a prudent purchaser would want to know prior to purchasing the Assets to operate such business.

5. *Representations and Warranties of R* . R represents and warrants to T that the following are true and correct on the date of this Agreement and will be true and correct as of the Closing Date:

A. *Financial Statements*. The balance sheet of R as of ___________________ [date], and the statements of earnings of R for the calendar years ___________________ [year] to ___________________ [year], all certified by ___________________ [public accounting firm], and the balance sheet of R as at ___________________ [date], and the statement of earnings of R for the four month period ended ___________________ [date], certified by the Treasurer of R (all of which have been delivered to T by R), fairly present, in accordance with sound and generally accepted accounting principles, the financial condition and the results of the operations of R as at the dates and for the periods indicated.

B. *Compliance with Laws; Litigation*. R's operation of its business has been in conformity with all applicable federal, state and local laws, ordinances and regulations, and Seller has received no notice of alleged noncompliance. There is no litigation pending or threatened (whether or not covered by insurance), nor any order, injunction, or decree outstanding nor any proceeding, or governmental investigation existing or pending, against R, nor to the best of R's knowledge, is there any basis for any such litigation.

C. *Taxes; Contributions*. All federal, state, local and foreign tax returns required to be filed by R have been filed on a timely basis, all of which returns are correct and complete and all taxes due and payable on or before the date hereof by R have been paid. There are no claims pending against R for past-due taxes, and there are no threatened claims against R for past-due taxes (including, but not limited to, any claims based upon any theory of transferee liability), and there are not now any matters under discussion with federal, state, local or foreign authorities relating to any additional taxes or assessments against R. All taxes and other assessments and levies which R is or has been required by law to withhold or to collect have been duly withheld and collected, and have been timely paid over to the proper governmental authorities or are properly held by R for such payment. All contributions and payments for workers' compensation, unemployment compensation, and the like which R has been required by law to make or pay have been duly made or paid.

D. *Disclosure*. No representation or warranty made by R in this Agreement contains any untrue statement of material fact or omits to state a material fact required to make the statements made herein not misleading.

E. *Material Fact*. R has disclosed to T all material facts regarding its business, including, without limitation, all material facts which a prudent purchaser would want to know if such purchaser were to purchase the business of R.

6. *Covenants of T* . T hereby covenants with R as follows:

A. *Access to Information*. From the date hereof until the Closing Date, T shall provide to R's representatives (including legal counsel, accountants, and lenders) full access during normal business hours, upon reasonable request, to all of T's books and records (financial or otherwise), contracts, and properties.

B. *Conduct of the Business Until the Closing Date*. From the date hereof until the Closing Date, except for actions taken with the prior written consent of R, T shall conduct its business in the ordinary course, and will use its best efforts to keep its business organization intact, to keep available the services of its present employees, and to preserve the goodwill of its customers, suppliers, and others having business relations with it. T will not take any action, or fail to take any action, that materially or adversely affects the ongoing operation of its business.

C. *Maintenance of the Assets*. From the date hereof until the Closing Date, T shall maintain the Assets in customary repair, order, and condition, reasonable wear and tear excepted.

D. *Creation of Liabilities or Obligations*. From the date hereof until the Closing Date, T shall not create, incur, assume, guarantee or otherwise become liable with respect to any indebtedness for any reason whatsoever, except in the ordinary course of business.

E. *Notification of R*. From the date hereof until the Closing Date, T shall promptly notify R, in writing, of any threatened lawsuit, claim, or any adverse change, or any projected or threatened adverse change in its financial position, the Assets or the Business.

F. *Insurance*. Through the Closing Date, T shall maintain insurance coverage on the Assets and the Business of the same types and in the same amounts as were in force as of ____________________ [date].

G. *Further Assurances*. T shall execute and deliver to R any and all reasonable documents, instruments and agreements in addition to those expressly provided for herein that may be necessary or appropriate to effectuate the provisions of this Agreement and the other documents to be delivered in connection herewith, whether on or after the Closing Date.

7. *Covenants of R* . R hereby covenants with T as follows:

A. *Access to Information*. From the date hereof until the Closing Date, R shall provide to T's representatives (including legal counsel, accountants, and lenders) full access during normal business hours, upon reasonable request, to all of R's books and records (financial or otherwise), contracts, and properties.

B. *Conduct of the Business Until the Closing Date*. From the date hereof until the Closing Date, except for actions taken with the prior written consent of T, R shall conduct its business in the ordinary course, and will use its best efforts to keep its business organization intact, to keep available the services of its present employees, and to preserve the goodwill of its customers, suppliers, and others having business relations with it. R will not take any action, or fail to take any action, that materially or adversely affects the ongoing operation of its business.

C. *Creation of Liabilities or Obligations*. From the date hereof until the Closing Date, R shall not create, incur, assume, guarantee or otherwise become liable with respect to any indebtedness for any reason whatsoever, except in the ordinary course of business.

D. *Notification of T*. From the date hereof until the Closing Date, R shall promptly notify T, in writing, of any threatened lawsuit, claim, or any adverse change, or any projected or threatened adverse change in its financial position, or its business.

E. *Insurance*. Through the Closing Date, R shall maintain insurance coverage appropriate to its business of the same types and in the same amounts as were in force as of ____________________ [date].

G. *Further Assurances*. R shall execute and deliver to T any and all reasonable documents, instruments and agreements in addition to those expressly provided for herein that may be necessary or appropriate to effectuate the provisions of this Agreement and the other documents to be delivered in connection herewith, whether on or after the Closing Date.

8. *Representation of C*. C represents that he is the sole stockholder of T and that, as such, he has approved of this Agreement and the sale by T of the Assets.

9. *Liquidation and Dissolution of T*. T will not engage in any business after closing and as soon as possible thereafter shall distribute its stock of R to its sole shareholder, C, and shall dissolve.

10. *Bulk Sales Compliance*. R hereby waives compliance by T with the provisions of any bulk sales laws applicable to the transfer of the Assets hereunder.

11. *Expenses*. Each party shall pay such party's own costs and expenses, including attorney's fees, incurred in connection with this Agreement and the transactions described herein.

12. ***Assignment***. Neither party shall assign such party's rights hereunder without the other party's prior written consent.

13. ***Amendment and Waiver***. This Agreement may be amended or modified at any time and in any respect, or any provision may be waived, by an instrument in writing executed by R, T, or either of them in the case of a waiver.

14. ***Notices***. All notices, requests and other communications to any party hereunder will be in writing and, unless otherwise provided in this Agreement, will be deemed to have been duly given upon receipt when delivered in person or when dispatched by electronic facsimile transmission (confirmed by mail or nationally recognized overnight courier service simultaneously dispatched) or dispatched by a nationally recognized overnight courier service to the appropriate party at its address set forth below:

To R:	....
	....
	....
To T:	....
	....
	....

15. ***Governing Law***. This Agreement will be governed by, and construed in accordance with, the law of the State of Delaware, without regard to the conflict of laws rules of such state.

16. ***Entire Agreement***. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings, representations and warranties, both oral and written, between the parties with respect to the subject matter hereof.

17. ***No Third-Party Beneficiaries***. This Agreement is for the sole benefit of the parties hereto and nothing herein express or implied will give or be construed to give to any person or entity, other than the parties hereto, any legal or equitable rights hereunder.

The parties hereto have executed this Agreement as of the day and year first above written.

R Corporation

By: ____________________ ....

Print Name: ____________________ ....

Title: ____________________ ....

T Corporation

By: ____________________ ....

Print Name: ____________________ ....

Title: ____________________ ....

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 23: Dissolution--Reorganization.

37TTT-23 California Legal Forms--Transaction Guide Form T23-7

Form T23-7 "F" Reorganization--Merger Agreement; Change in State of Organization

Description: This form illustrates a transaction involving a change in the state of incorporation. It includes language pertaining to authorized capital, bylaws, conversion of outstanding stock, book entries, and Directors.

Form T23-7 "F" Reorganization--Merger Agreement; Change in State of Organization

AGREEMENT OF MERGER made ___________________ [date], between Powell Products Company, a Delaware corporation, hereinafter called the Delaware Company, and a majority of the directors thereof, and Powell Products Company, a New Jersey corporation, hereinafter called the New Jersey Company, and a majority of the directors thereof.

Whereas the Delaware Company has an authorized capital stock consisting of 1,500,000 shares of Common Stock, par value $1 per share, of which 1,000 shares have been duly issued and are now outstanding, and

Whereas the principal office of the Delaware Company in the State of Delaware is located at 100 State Street, City of Dover and County of Kent, and Registrar and Transfer Company is the agent in charge thereof upon whom process against the Delaware Company may be served within the State of Delaware, and

Whereas the New Jersey Company has an authorized capital stock consisting of 1,500,000 shares of Common Stock, par value $1 per share, of which as of ___________________ [date], 1,100,000 shares were duly issued and outstanding, 26,000 shares were reserved for issuance upon exercise of options granted pursuant to the Restricted Stock Option Plan for Key Executive Employees, and 2,000 shares were held in the Treasury, and

Whereas the principal office of the New Jersey Company in the State of New Jersey is located at 15 Exchange Place, City of Jersey City and County of Hudson, and Registrar and Transfer Company is the agent in charge thereof upon whom process against the New Jersey Company may be served within the State of New Jersey, and

Whereas the Boards of Directors of the Delaware Company and of the New Jersey Company, respectively, deem it advisable and generally to the advantage and welfare of the two corporate parties and their respective shareholders that the New Jersey Company merge with the Delaware Company under and pursuant to the provisions of Subchapter IX of the General Corporation Law of Delaware and of Chapter 10 of Title 14A of the New Jersey Business Corporation Act.

Now, therefore, in consideration of the premises and of the mutual agreements herein contained and of the mutual benefits hereby provided, it is agreed by and between the parties hereto as follows:

1. *Merger.* The New Jersey Company shall be and it hereby is merged into the Delaware Company.

2. *Effective date.* This Agreement of Merger shall become effective immediately upon compliance with the laws of the States of Delaware and New Jersey, the time of such effectiveness being hereinafter called the Effective Date.

3. *Surviving corporation.* The Delaware Company shall survive the merger herein contemplated and shall continue to be governed by the laws of the State of Delaware, but the separate corporate existence of the New Jersey Company shall cease forthwith upon the Effective Date.

4. *Authorized capital.* The authorized capital stock of the Delaware Company following the Effective Date shall be 1,500,000 shares of Common Stock, par value $1 per share, unless and until the same shall be changed in accordance with the laws of the State of Delaware.

5. *Certificate of incorporation.* The Certificate of Incorporation set forth as Appendix A hereto shall be the Certificate of Incorporation of the Delaware Company following the Effective Date unless and until the same shall be amended or repealed in accordance with the provisions thereof, which power to amend or repeal is hereby expressly reserved, and all rights or powers of whatsoever nature conferred in such Certificate of Incorporation or herein upon any shareholder or director or officer of the Delaware Company or upon any other person whomsoever are subject to this reserve power. Such Certificate of Incorporation shall constitute the Certificate of Incorporation of the Delaware Company separate and apart from this Agreement of Merger and may be separately certified as the Certificate of Incorporation of the Delaware Company.

6. *Bylaws.* The Bylaws set forth as Appendix B hereto shall be the Bylaws of the Delaware Company following the Effective Date unless and until the same shall be amended or repealed in accordance with the provisions thereof.

7. *Further assurance of title.* If at any time the Delaware Company shall consider or be advised that any acknowledgments or assurances in law or other similar actions are necessary or desirable in order to acknowledge or confirm in and to the Delaware Company any right, title, or interest of the New Jersey Company held immediately prior to the Effective Date, the New Jersey Company and its proper officers and directors shall and will execute and deliver all such acknowledgments or assurances in law and do all things necessary or proper to acknowledge or confirm such right, title, or interest in the Delaware Company as shall be necessary to carry out the purposes of this Agreement of Merger, and the Delaware Company and the proper officers and directors thereof are fully authorized to take any and all such action in the name of the New Jersey Company or otherwise.

8. *Outstanding debentures.* Forthwith upon the Effective Date, all of the presently outstanding 5% Subordinated Debentures of the New Jersey Company due ___________________ [date], shall be and become obligations of the Delaware Company in the same manner and to the same extent as the same constituted obligations of the New Jersey Company immediately prior to the Effective Date under the terms of the Indenture dated October 1, 1989, and entered into by and between the New Jersey Company and First Trust Company, as Trustee.

9. *Retirement of organization stock.* Forthwith upon the Effective Date, each of the 1,000 shares of the Common Stock of the Delaware Company presently issued and outstanding shall be retired, and no shares of Common Stock or other securities of the Delaware Company shall be issued in respect thereof.

10. *Conversion of outstanding stock.* Forthwith upon the Effective Date, each of the issued and outstanding shares of

Common Stock of the New Jersey Company and all rights in respect thereof shall be converted into one full paid and nonassessable share of Common Stock of the Delaware Company, and each certificate nominally representing shares of Common Stock of the New Jersey Company shall for all purposes be deemed to evidence the ownership of a like number of shares of Common Stock of the Delaware Company. The holders of such certificates shall not be required immediately to surrender the same in exchange for certificates of Common Stock of the Delaware Company but, as certificates nominally representing shares of Common Stock of the New Jersey Company are surrendered for transfer, the Delaware Company will cause to be issued certificates representing shares of Common Stock of the Delaware Company and, at any time upon surrender by any holder of certificates nominally representing shares of Common Stock of the New Jersey Company, the Delaware Company will cause to be issued therefor certificates for a like number of shares of Common Stock of the Delaware Company.

11. *Retirement of treasury stock.* Forthwith upon the Effective Date, 980 shares of Common Stock of the New Jersey Company held in the Treasury of the New Jersey Company on the Effective Date shall be retired and no shares of Common Stock or any other securities of the Delaware Company shall be issued in respect thereof.

12. *Employee stock options.* Forthwith upon the Effective Date, each outstanding option to purchase shares of Common Stock of the New Jersey Company granted under its Restricted Stock Option Plan For Key Executive Employees shall be converted into and become an option to purchase the same number of shares of Common Stock of the Delaware Company, upon the same terms and subject to the same conditions as set forth in such Plan. The same number of shares of Common Stock of the Delaware Company shall be reserved for issuance upon the exercise of restricted stock options as were so reserved for issuance by the New Jersey Company immediately prior to the Effective Date.

13. *Book entries.* The merger contemplated hereby shall be treated as a pooling of interests and as of the Effective Date entries shall be made upon the books of the Delaware Company in accordance with the following:

(a) The assets and liabilities of the New Jersey Company shall be recorded at the amounts at which they are carried on the books of the New Jersey Company immediately prior to the Effective Date with appropriate adjustment to reflect the retirement of the 1,000 shares of Common Stock of the Delaware Company presently issued and outstanding.

(b) There shall be credited to Capital Account the aggregate amount of the par value per share of all of the Common Stock of the Delaware Company resulting from the conversion of the outstanding Common Shares of the New Jersey Company.

(c) There shall be credited to Capital Surplus Account an amount equal to that carried on the Capital Surplus Account of the New Jersey Company immediately prior to the Effective Date.

(d) There shall be credited to Earned Surplus Account an amount equal to that carried on the Earned Surplus Account of the New Jersey Company immediately prior to the Effective Date.

14. *Directors.* The names and post office addresses of the first directors of the Delaware Company following the Effective Date, who shall be five in number and who shall hold office from the Effective Date until the annual meeting of shareholders of the Delaware Company held in ___________________ [year] and until their successors shall be elected and shall qualify, are as follows:

Name:	Post Office Address:
William Peter	17 Battery Place
New York, New York	
....	
Frank Sand	201 North Wells Street

Chicago, Illinois	
....	
Mitchell Williams	1700 Broadway
New York, New York	
....	
Harvey Davids	260 Ninth Avenue
New York, New York	
....	
Harold Holt	23 Wall Street
New York, New York	

15. *Officers.* The names and post office addresses of the first officers of the Delaware Company following the Effective Date, who shall be five in number and who shall hold office from the Effective Date until their successors shall be appointed and shall qualify or until they shall resign or be removed from office, are as follows:

Name:	Offices:	Post Office Address:
William Peter	President	17 Battery Place
New York, New York		
Frank Sand	Vice President	201 North Wells Street
Chicago, Illinois		
Harold Walker	Comptroller	17 Battery Place
New York, New York		
Sam Tryler	Treasurer	17 Battery Place
New York, New York		
William Baker	Secretary	17 Battery Place
New York, New York		

16. *Vacancies.* If, upon the Effective Date, a vacancy shall exist in the Board of Directors or in any of the offices of the Delaware Company as the same are specified above, such vacancy shall thereafter be filled in the manner provided by law and the Bylaws of the Delaware Company.

17. *Termination.* This Agreement of Merger may be terminated and abandoned by action of the Board of Directors of the New Jersey Company at any time prior to the Effective Date, whether before or after approval by the shareholders of the two corporate parties hereto.

In witness whereof each of the corporate parties hereto, pursuant to authority duly granted by the Board of Directors, has caused this Agreement of Merger to be executed by a majority of its directors and its corporate seal to be hereunto affixed.

Powell Products Company (Delaware)

Corporate Seal by ________________________

____

____

____

(A Majority of Its Board of Directors)

Powell Products Company (New Jersey)

Corporate Seal by ________________________

____

____

(A Majority of Its Board of Directors)

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 24: Dissolution--Corporate.

37TTT-24 California Legal Forms--Transaction Guide 24.syn

§ 24.syn Synopsis to Chapter 24: Dissolution--Corporate.

Form T24-9 Affidavit of Adoption of Plan of Liquidation

Form T24-9 Affidavit of Adoption of Plan of Liquidation

Form T24-10 Notice of Intention to Wind Up

Form T24-10 Notice of Intention to Wind Up

Form T24-11 Certificate of Mailing for Notice of Intent to Wind Up

Form T24-11 Certificate of Mailing for Notice of Intent to Wind Up

Form T24-12 Assignment of All Assets to Shareholders

Form T24-12 Assignment of All Assets to Shareholders

Form T24-13 Shareholder's Receipt for Assets Received in Liquidation

Form T24-13 Shareholder's Receipt for Assets Received in Liquidation

Form T24-14 Shareholder's Assumption of Corporate Liabilities

Form T24-14 Shareholder's Assumption of Corporate Liabilities

Form T24-15 Articles of Dissolution for Corporation That Has Commenced Doing Business

Form T24-15 Articles of Dissolution for Corporation That Has Commenced Doing Business

Form T24-16 Articles of Dissolution for Corporation That Has Not Commenced Doing Business

Form T24-16 Articles of Dissolution for Corporation That Has Not Commenced Doing Business

Form T24-17 Revocation by Unanimous Written Consent of Shareholders

Form T24-17 Revocation by Unanimous Written Consent of Shareholders

Form T24-18 Board of Directors' Resolution Revoking Dissolution

Form T24-18 Board of Directors' Resolution Revoking Dissolution

Form T24-19 Shareholders' Resolution Revoking Dissolution

Form T24-19 Shareholders' Resolution Revoking Dissolution

Form T24-20 Articles of Revocation of Dissolution

Form T24-20 Articles of Revocation of Dissolution

Form T24-21 Notice to Claimants

Form T24-21 Notice to Claimants

Form T24-22 Rejection of Claim

Form T24-23 Information Return of Dissolving Corporation--IRS Form 966

Form T24-24 Information Return for Distribution to Shareholders--IRS Form T1099-DIV

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 24: Dissolution--Corporate.

37TTT-24 California Legal Forms--Transaction Guide Form T24-1

Form T24-1 Directors' Resolution Recommending Winding Up

Description: This form is a resolution of the board of directors of a corporation recommending the winding up of the corporation and the submission of the question of winding up to the shareholders.

Form T24-1 Directors' Resolution Recommending Winding Up

DIRECTORS' RESOLUTION RECOMMENDING
WINDING UP OF CORPORATION

After due deliberation, the Board of Directors of ____________________ [name of corporation], a ____________________ [state] corporation, has determined that winding up of the corporation would be in the best interests of the corporation and its shareholders. Accordingly, the following resolution has been approved by the Board:

RESOLVED:

1. The Board of Directors recommends that the corporation be wound up.

2. The question of winding up will be submitted to the shareholders for their approval at a shareholders' meeting to be duly noticed.

3. The shareholders' meeting will be a ____________________ [regular *or* annual *or* specially called] meeting and will be held at ____________________ [address], on ____________________ [date], at ____________________ [time]. Notice will be given accordingly.

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37TTT-24 California Legal Forms--Transaction Guide Form T24-2

Form T24-2 Notice of Shareholders' Meeting

Description: This form is a notice of a shareholders' meeting to be held for the purpose of authorizing the winding up of the corporation.

Form T24-2 Notice of Shareholders' Meeting

NOTICE OF [SPECIAL] SHAREHOLDERS' MEETING
TO WIND UP ____________________ [name of corporation],
A ____________________ [state] CORPORATION

TO ALL SHAREHOLDERS:

This document is your notice of the following information concerning your rights as shareholders in the corporation.

A shareholders' meeting will be held at the principal office of the corporation, ____________________ [address], on ____________________ [date], at ____________________ [time], for the following purposes:

1. To consider and vote on winding up the corporation.

2. To consider and act on any other business that may come before the meeting.

Remote communication of the meeting will also be available through ____________________ [*explain any means of remote communications by which shareholders may be considered present and vote at the meeting*].

Dated: ____________________

__________________ [name of corporation]
By: __________________ [signature of officer]
__________________ [typed name and title]

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37TTT-24 California Legal Forms--Transaction Guide Form T24-3

Form T24-3 Shareholders' Consent to Voluntary Termination

Description: This form is a written consent to the voluntary winding up of a corporation.

Form T24-3 Shareholders' Consent to Voluntary Termination

UNANIMOUS WRITTEN CONSENT OF SHAREHOLDERS
TO VOLUNTARY WINDING UP OF
____________________ [name of corporation], A ____________________ [state] CORPORATION

We, the shareholders of ____________________ [name of corporation], a ____________________ [state] corporation, consent to the voluntary winding up of the corporation [*add if also adopting a plan of liquidation:* according to the following plan of liquidation: ____________________ (*set forth terms of plan of liquidation*)].

Each of the shareholders has signed his or her name below. The shares of those signing this consent constitute all of the issued and outstanding shares of the corporation.

Beside each signature is the date of signing and the number of shares of the corporation held of record by the signing shareholder on that date.

By signature, each shareholder certifies that the information provided in this consent is correct.

	NAME	DATE	NUMBER OF SHARES
1.			
2.			
3.			
4.			

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37TTT-24 California Legal Forms--Transaction Guide Form T24-4

Form T24-4 Shareholders' Resolution to Wind Up Corporation

Description: This form is a shareholders' resolution authorizing the winding up of the corporation. It also provides for an Exhibit to detail the plan of liquidation.

Form T24-4 Shareholders' Resolution to Wind Up Corporation

At a meeting of the Board of Directors of ___________________ [name of corporation], a ___________________ [state] corporation, held on ___________________ [date], the Board of Directors adopted a resolution recommending that the corporation be wound up and that the question of winding up be submitted to the shareholders of the corporation. [*Optional--add if directors also adopted a plan of liquidation at their meeting:* The directors also adopted a proposed plan of liquidation of the corporation and distribution of its assets.] In response to those resolutions, this shareholders' meeting was properly noticed and conducted.

The proposed winding up has been considered fully at this meeting. The shareholders have, by the required vote, adopted the resolution to wind up corporation.

The total number of outstanding shares of the corporation is: ___________________. The vote on the resolution was as follows:

For winding up: ___________________.

Against winding up: ___________________.

[*Optional--add for each class or series of shares entitled to vote as class*]

The shares designated ___________________ are entitled to vote as a class. This class of shares voted in favor of winding up by the following vote:

The total number of shares designated ___________________ [*describe*] is ___________________.

Shares voted for winding up: ___________________.

Shares voted against winding up: ___________________.

[*Optional--use if directors also adopted plan of liquidation*]

The plan of liquidation adopted by the Directors of the corporation at their meeting and attached to this resolution as Exhibit _____ was adopted by the shareholders by the following vote:

___________________ [*repeat appropriate provisions recording vote as shown above*].

[*Continue as follows*]

As a result, the officers and Directors of the corporation are authorized and directed to take those steps necessary to complete the winding up of the corporation [*add, if appropriate:* and to liquidate and distribute the assets of the corporation in accordance with the terms and on the conditions set forth in the plan] and to take such further action as may be necessary or proper to wind up the corporation.

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37TTT-24 California Legal Forms--Transaction Guide Form T24-5

Form T24-5 Minutes of Directors' Meeting Adopting General Plan of Liquidation

Description: This form contains minutes for a board of directors' meeting adopting a general plan of corporate liquidation. It contains an optional clause for shareholder consent to the liquidation plan.

Form T24-5 Minutes of Directors' Meeting Adopting General Plan of Liquidation

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS
OF ____________________ [name of corporation]

A special meeting of the Board of Directors of ____________________ [name of corporation], a ____________________ [state] corporation, was held at ____________________ [address], on ____________________ [date]. Proper notice of the special meeting was given in accordance with the Corporation's bylaws and all other legal requirements.

The following Directors were present:

____________________ [name].

____________________ [name].

____________________ [name].

The following Directors were absent:

____________________ [name].

____________________ [name].

____________________ [name].

____________________ [name of director] acted as Chairman of the meeting, and ____________________ [name of director] acted as Secretary. The Chairman announced that the purpose of the meeting was to adopt a plan for the distribution of the assets in connection with the winding up of the corporation. After discussion, the following resolution was adopted:

RESOLVED

The following plan of liquidation is adopted:

The corporation will gather its assets, satisfy its creditors, resolve claims with its debtors, and apportion any remaining assets among the shareholders according to their respective interests. In particular:

1. All liabilities and obligations of the corporation will be paid or discharged, or other adequate provision will be made for satisfaction of such debts.

2. The officers of the corporation may sell any or all corporate assets on the terms and conditions, and for such consideration, that the officers deem reasonable or expedient, and may execute any instruments that are necessary to transfer title to such assets.

3. After satisfaction of, or provision for, the known debts and liabilities of the corporation, the officers of the corporation will distribute the remaining assets of the corporation to the shareholders of record in the following manner:

A. With respect to any cash, by distributing to each such shareholder of record a proportion of such cash equal to the proportion that the shares owned by such shareholder bears to the total issued and outstanding shares of this corporation.

B. With respect to assets other than cash, by distributing to each shareholder of record an undivided interest in each of such assets equal to the proportion that the shares of this corporation owned by such shareholder bears to the total issued and outstanding shares of this corporation.

4. The distribution of the assets will be made to the shareholders of this corporation on the following conditions:

A. On demand of the Board of Directors, each shareholder must surrender for cancellation the certificate or certificates evidencing his or her ownership of capital stock of this corporation.

B. The acceptance by a shareholder of the distribution of assets described in Paragraph 3, above, will be in complete satisfaction of the rights of that shareholder as a shareholder of this corporation.

5. The officers of this corporation have authority to take any steps that are necessary or convenient to carry this resolution into effect, including, but not limited to, powers of execution of any instruments that may be required to vest title to the assets of this corporation in the shareholders.

[*Optional--when directors want shareholder consent to liquidation plan*]

6. The officers of this corporation will take appropriate measures to obtain the shareholders' approval of this plan of liquidation, by obtaining either the vote of shareholders holding at least two thirds of the shares of this corporation or by obtaining the written consent of all of the shareholders to the plan.

[*Continues as follows*]

7. As soon as the assets of this corporation have been distributed in conformity with these resolutions, the officers of this corporation will execute ____________________ [a Certificate of Termination *or* Articles of Dissolution] pursuant to, and in conformity with, the provisions of the ____________________ [state] ____________________ [Business Organizations Code *or* Business Corporation Act]. The Certificate of Termination will be filed in the office of the secretary of state of ____________________ [state]. The officers and Directors will do all other things necessary or convenient to the winding up of this corporation.

There was no further business to come before the meeting, and the meeting was adjourned on motion duly made, seconded, and unanimously carried.

__________________ [signature]
__________________ [typed name], Secretary
__________________ [signature]
__________________ [typed name], President

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37TTT-24 California Legal Forms--Transaction Guide Form T24-6

Form T24-6 Alternative Plan of Liquidation for Disposition of Specific Assets to Shareholders

Description: This form contains minutes for a board of directors' meeting adopting a general plan of corporate liquidation.

Form T24-6 Alternative Plan of Liquidation for Disposition of Specific Assets to Shareholders

RESOLVED

The following plan of liquidation is adopted:

The corporation will gather its assets, satisfy its creditors, resolve claims with its debtors, and apportion any remaining assets among the shareholders according to their respective interests. In particular:

1. All liabilities and obligations of the corporation will be paid or discharged, or other adequate provision will be made for satisfaction of such debts. The corporation has set aside the amount of $_______ in cash as a reserve fund for the payment of estimated expenses, taxes, unascertained or contingent liabilities, and expenses and costs of winding up, distribution, and termination.

2. On completion of the processes and payments set forth in Paragraph 1, above, the corporation will have remaining on hand the following corporate assets (beside each of which is its equivalent fair market value noted in parentheses):

ASSETS	(FAIR MARKET VALUE)
	($_______)
	($_______)
	($_______)

3. After paying or adequately providing for all of its known debts and liabilities, and setting aside the reserve fund described in paragraph 1, above, those corporate assets remaining on hand described in Paragraph 2, above, will be distributed to the shareholders of record at the close of business on ___________________ [date], as follows:

[*All of following provisions are optional and should be selected to conform to actual agreement for distribution of shareholders*]

A. All of the remaining cash to the holders of the ____________________ [class] stock of this corporation, payable pro rata in accordance with their respective shareholdings.

B. Royalty interests of this corporation in ____________________ [*describe corporate asset that produces royalty income*], to be distributed to the shareholders described in Exhibit ____________________ as provided in Exhibit ____________________, attached to this resolution and incorporated by reference.

C. The shares of ____________________, a subsidiary corporation, will be distributed to the holders of the ____________________ [class] stock of this dissolving corporation, in the following manner: at the rate of ____________________ [number] share(s) of ____________________ [class] stock of ____________________ [name of subsidiary corporation] for ____________________ [number] share(s) of stock of this corporation.

D. That certain real property located in the County of ____________________, State of ____________________, commonly known as ____________________ [street address], and more particularly described as follows:

____________________ [legal description]

together with all buildings and fixtures, and any appurtenances, subject to the following liabilities: ____________________ [*set forth liabilities*] will be distributed to ____________________ [*specify, e.g.,* John Smith *or* each of the holders of the ____________________ (class) stock of this corporation as tenants-in-common with an undivided, equal interest *or as agreed*].

E. All of the merchandise, machinery, furniture and furnishings, supplies, leaseholds, and ____________________ [*specify miscellaneous assets*], a schedule of which is attached to this resolution as Exhibit ____________________ and incorporated by reference, to ____________________ [*specify, e.g.,* Jane Doe *or* the holders of the ____________________ (*class*) stock of this corporation in undivided, equal interests, as tenants-in-common].

4. Disposition of Reserve Fund: When the Board determines that all liabilities of the corporation have been paid or adequately provided for, and that there is no further need for the reserve fund described in Paragraph 1, above, any balance in the reserve fund will be distributed as follows: ____________________ [*specify, e.g.,* to each shareholder in proportion to the number of shares owned by each shareholder in this corporation as of ____________________ (date)].

5. The distribution of the assets will be made to the shareholders of this corporation on the following conditions:

A. On demand of the Board of Directors, each shareholder must surrender for cancellation the certificate or certificates evidencing his or her ownership of capital stock of this corporation.

B. The acceptance by a shareholder of the distribution of assets described in Paragraphs 3 and 4, above, will be in complete satisfaction of the rights of that shareholder as a shareholder of this corporation.

[*Optional--when directors want shareholder consent to liquidation plan*]

6. The Board authorizes the officers of this corporation to take any steps they deem necessary or proper to procure the approval of the shareholders of record to this plan of distribution by unanimous written consent or by vote of the

shareholders. The plan must be approved by the shareholders by the close of business on ____________________ [date] or will be deemed rejected.

[*Continue as follows*]

7. The officers and directors of the corporation are also authorized to take any and all of the following acts:

A. Any steps necessary to implement this plan of distribution. In particular, the President and Secretary of this corporation will execute and deliver all deeds, bills of sale, assignments, and other instruments of transfer as may be deemed necessary or proper in the name of and on behalf of the corporation.

B. Any other steps necessary for winding up corporate affairs generally, including the filing of the Articles of dissolution.

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37TTT-24 California Legal Forms--Transaction Guide Form T24-7

Form T24-7 Notice of Dissent by Director to Proposed Distribution of Assets to Shareholders

Description: This is a form of written dissent by a director to a proposed plan of liquidation.

Form T24-7 Notice of Dissent by Director to Proposed Distribution of Assets to Shareholders

To: ___________________ [name], Secretary of ___________________ [name of corporation]

This document serves as notice, pursuant to [Business Organizations Code Section ___________________ *or* Article ___________________ of Section ___________________ of the ___________________ (state) Business Corporation Act], that I, the undersigned Director of ___________________, a ___________________ [state] corporation, dissent to the plan of liquidation of the corporation adopted at the director's meeting held on ___________________ [date]. In particular, I object to the proposed distribution of the assets of the corporation to the shareholders as specified in that plan of liquidation. I believe that the distribution will occur without the payment and discharge of, or the making of adequate provision for, all known debts, obligations, and liabilities of the corporation. Accordingly, I dissent from that distribution, and require that my dissent be filed of record together with the minutes of the meeting held on ___________________ [date].

Dated: ____________________

_________________ [signature]
_________________ [typed name], Director

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37TTT-24 California Legal Forms--Transaction Guide Form T24-8

Form T24-8 Written Consent of Shareholders to Plan of Liquidation

Description: This form is a written consent of all of the shareholders to the plan of liquidation of the corporation adopted by the board of directors.

Form T24-8 Written Consent of Shareholders to Plan of Liquidation

UNANIMOUS WRITTEN CONSENT OF SHAREHOLDERS
TO PLAN OF LIQUIDATION OF ____________________ [name of corporation],
A ____________________ [state] CORPORATION

We, the undersigned, are the shareholders of record of ____________________ [name of corporation], a ____________________ [state] corporation. Our shares constitute all of the issued and outstanding shares of the corporation. Each of us consents to the plan of liquidation ____________________ [*choose appropriate alternative:* attached to this consent form as Exhibit _____ *or* adopted by the Board of Directors at a special directors' meeting held on ____________________ (date)].

NAME NUMBER OF SHARES

1.

[signature]

[typed name]

2.

[signature]

[typed name]

3.

[signature]

[typed name]

4.

[signature]

[typed name]

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37TTT-24 California Legal Forms--Transaction Guide Form T24-9

Form T24-9 Affidavit of Adoption of Plan of Liquidation

Description: This form is an affidavit that must be filed with the comptroller of public accounts to limit the amount of franchise tax due for the tax year in which the corporation is liquidated.

Form T24-9 Affidavit of Adoption of Plan of Liquidation

AFFIDAVIT OF LIQUIDATION OF ____________________ [name of corporation]

STATE OF ____________________
COUNTY OF ____________________

____________________ and ____________________ [Names of president and secretary] state under oath that:

1. ____________________ [Name] is the President and ____________________ [name] is the Secretary of ____________________, a ____________________ [state] corporation.

2. This corporation is in the process of liquidation within the meaning of ____________________ [state] Tax Code Section ____________________.

[*Choose applicable provision*]

3. No liquidating dividends have actually been paid.

[*OR*]

3. Liquidating dividends in the amount of $_______ have been paid.

4. The plan of liquidation adopted by the corporation and ratified by the shareholders accounts for all assets of the

corporation, and provides for paying or settling debts or claims against the corporation, with subsequent distribution of the remaining assets among the shareholders. A copy of the plan is attached, together with the ratification by the shareholders, and each is incorporated in this affidavit by reference.

__________________ [signature]
__________________ [typed name], President
__________________ [signature]
__________________ [typed name], Secretary

VERIFICATION

STATE OF ____________________
COUNTY OF ____________________

____________________ [Names] personally appeared before me, the undersigned Notary Public, and after being duly sworn stated under oath that they are the President and Secretary of ____________________, a ____________________ [state] corporation; that they have read the above Affidavit of Adoption of a Plan of Liquidation; and that every statement contained in the Affidavit of Adoption of a Plan of Liquidation is within their personal knowledge and is true and correct.

__________________ [signature of President of corporation]
__________________ [signature of Secretary of corporation]

SUBSCRIBED AND SWORN TO BEFORE ME on ____________________ [date]

[Seal] ____________________ [signature]

__________________ [typed name]
Notary Public in and for the State of ____________________ [state]
My commission expires __________________ [date]

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37TTT-24 California Legal Forms--Transaction Guide Form T24-10

Form T24-10 Notice of Intention to Wind Up

Description: This form is a notice of intention to wind up.

Form T24-10 Notice of Intention to Wind Up

ALL CREDITORS OF AND CLAIMANTS AGAINST
___________________ [name of corporation] ARE NOTIFIED THAT:

___________________ [name of corporation], a ___________________ [state] corporation, whose principal office is located at ___________________ [address], ___________________ [city], ___________________ [state] intends to wind up.

Dated: ____________________

_________________ [name of corporation]
By: _________________ [signature]
_________________ [typed name], Secretary

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37TTT-24 California Legal Forms--Transaction Guide Form T24-11

Form T24-11 Certificate of Mailing for Notice of Intent to Wind Up

Description: This is a certificate of mailing of the notice of the intention to wind up. The purpose of executing a certificate of mailing of the notice is to establish that the legal requirement for the notice set forth has been satisfied.

Form T24-11 Certificate of Mailing for Notice of Intent to Wind Up

I, the Secretary of ____________________ [name of corporation], a ____________________ [state] corporation, certify that, on ____________________ [date of mailing of notice] I sent, by ____________________ [registered *or* certified] mail, to all known creditors of and claimants against the corporation, a notice of the intent to wind up the corporation. A copy of the notice that was sent is attached to this document as Exhibit A.

Dated: ____________________

__________________ [signature]
__________________ [typed name], Secretary

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37TTT-24 California Legal Forms--Transaction Guide Form T24-12

Form T24-12 Assignment of All Assets to Shareholders

Description: This form is an assignment of all of the assets to the shareholders in undivided interests in proportion to their interests in the corporation. It represents the simplest form of liquidation for a corporation.

Form T24-12 Assignment of All Assets to Shareholders

____________________ [Name], a ____________________ [state] corporation, assigns all of its property and assets of every kind, real or personal, tangible or intangible, including property known and unknown at the time of these assignments, to its shareholders. Each shareholder listed below receives, by virtue of this assignment, an undivided interest in the assigned property in the proportions specified below:

NAME	INTEREST (%)
1.	__________________ %
2.	__________________ %
3.	__________________ %
	__________________

The corporation makes this assignment in complete satisfaction of the rights of each of its shareholders. By accepting this assignment, the assignees assume all of the liabilities of the corporation to the extent of the property each receives.

Executed on ____________________ [date], at ____________________ [city], ____________________ County, ____________________ [state].

__________________ [name of corporation]
By __________________ [signature]
__________________ [typed name and title]

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37TTT-24 California Legal Forms--Transaction Guide Form T24-13

Form T24-13 Shareholder's Receipt for Assets Received in Liquidation

Description: This form is a receipt that the corporation should have executed by shareholders who receive corporate assets as part of liquidation of the corporation.

Form T24-13 Shareholder's Receipt for Assets Received in Liquidation

I, ____________________ [name], am a shareholder of ____________________ [name of corporation], a ____________________ [state] corporation. By this document, I acknowledge receipt of the following property of the corporation:

____________________ [*describe all property received, whether cash, specific assets, or an undivided percentage of corporate assets*].

I acknowledge that, in return for this distribution, I have surrendered to the corporation all of my interest in the corporation, and have tendered any share certificates held by me or in my name to the corporation for cancellation.

[*Optional--for use when shareholder assumes corporate liabilities in connection with receipt of corporate assets*]

In addition, I acknowledge that, in exchange for this distribution, I have assumed the following corporate liabilities, to the extent of the property received:

____________________ [*describe liabilities assumed by shareholder-distributee*]

Dated: _____________________

__________________ [signature of shareholder]
__________________ [typed name]

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37TTT-24 California Legal Forms--Transaction Guide Form T24-14

Form T24-14 Shareholder's Assumption of Corporate Liabilities

Description: This form is a shareholder's assumption of corporate liabilities as part of the liquidation of a corporation.

Form T24-14 Shareholder's Assumption of Corporate Liabilities

ASSUMPTION OF LIABILITIES OF ____________________ [name of corporation]

I, ____________________ [name], am a shareholder of ____________________ [name of corporation], a ____________________ [state] corporation. By this document, I agree to discharge the following liabilities and obligations of the corporation to the extent that they are not discharged or otherwise adequately provided for by the corporation itself:

____________________ [*Describe the exact liabilities assumed*].

No other liabilities or obligations of ____________________ [name of corporation] have been assumed by me.

Furthermore, this assumption is made in exchange for my receipt of certain property, described in the receipt attached to this document as Exhibit A and incorporated by reference. This assumption of the obligations of ____________________ [name of corporation] is valid only to the extent of the value of the property and assets received by me as described in Exhibit A.

Dated: ____________________

__________________ [signature]
__________________ [typed name]

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37TTT-24 California Legal Forms--Transaction Guide Form T24-15

Form T24-15 Articles of Dissolution for Corporation That Has Commenced Doing Business

Description: This form contains articles of dissolution of a corporation that should be filed after the voluntary dissolution of the corporation has been completed.n*

Form T24-15 Articles of Dissolution for Corporation That Has Commenced Doing Business

Pursuant to the provisions of Article ____________________ of the ____________________ [state] Business Corporation Act, ____________________ [name of corporation] adopts the following Articles of dissolution:

1. The name of the corporation is ____________________, Charter No. ____________________.

2. The names and addresses of the corporate officers are as follows:

NAME	OFFICE HELD	ADDRESS
__________________	__________________	__________________
__________________	__________________	__________________
__________________	__________________	__________________
__________________	__________________	__________________

3. The names and addresses of the directors of the corporation are as follows:

NAME	ADDRESS
__________________	__________________
__________________	__________________
__________________	__________________

[*Choose one of following*]

4. A written consent to dissolve has been signed by all shareholders of the corporation, or by their duly authorized attorneys.

[*OR*]

4. A resolution to dissolve was adopted by the shareholders of the corporation on the ___________________ [date]. The number of shares outstanding, those entitled to vote, and those voting for or against the dissolution were as follows:

CLASS OF SHARES	OUTSTANDING AND ENTITLED TO VOTE	TOTAL VOTED FOR	TOTAL VOTED AGAINST
____________			_____________
_______			_____
____________		_____________	_____________
_______		_____	_____
____________		_____________	_____________
_______		_____	_____
____________		_____________	_____________
_______		_____	_____

[*Choose one of following*]

5. All debts, obligations, and liabilities of the corporation have been paid, satisfied, or discharged, or adequate provision has been made therefore.

[*OR*]

5. The properties and assets of the corporation are not sufficient to pay, satisfy, or discharge all the corporation's debts, liabilities, and obligations. All properties and assets of the corporation have been applied to the corporation's debts, liabilities, and obligations so far as they will go in a just and equitable manner, and no property or assets remain available for distribution to the corporation's shareholders.

[*Choose one of following*]

6. All remaining properties and assets of the corporation have been distributed to its shareholders according to their respective rights and interests.

[*OR*]

6. No properties or assets of the corporation remained for distribution to shareholders after applying the properties and assets of the corporation as far as they would go to the just and equitable payment of the liabilities and obligations of the

corporation.

[*Choose one of following*]

7. There are no suits pending against the corporation in any court.

[*OR*]

7. Adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against the corporation in any pending suit.

Dated: ____________________

_________________ [name of corporation]
By: _________________ [signature]
_________________ [typed name]
_________________ [title of officer]

FOOTNOTES:
(n1)Footnote *. Check your state's requirements for dissolution of a corporation.

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37TTT-24 California Legal Forms--Transaction Guide Form T24-16

Form T24-16 Articles of Dissolution for Corporation That Has Not Commenced Doing Business

Description: This form contains articles of dissolution of a corporation that may be filed by either its incorporators or directors if a corporation has not commenced business and has not issued shares.

Form T24-16 Articles of Dissolution for Corporation That Has Not Commenced Doing Business

ARTICLES OF DISSOLUTION OF ___________________ [name of corporation]

Pursuant to the provisions of Article ___________________ of the ___________________ [state] Business Corporation Act, the ___________________ [incorporators *or* directors] of ___________________ [name of corporation] have voted for and the corporation has adopted the following articles of dissolution:

1. The name of the corporation is ___________________.

2. The date of issuance of the corporation's certificate of incorporation was ___________________ _____, _____.

3. None of the corporation's shares has been issued.

4. The corporation has not commenced business.

5. The amount, if any, actually paid on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled to it.

6. No debts of the corporation remain unpaid.

[*Choose one of following*]

7. As certified by their signatures below, a majority of the directors elect that the corporation be dissolved.

[*OR*]

7. As certified by their signatures below, a majority of the incorporators elect that the corporation be dissolved.

Dated: ____________________

_________________ [name of corporation]
By: _________________ [signature]
_________________ [typed name]
_________________ [title of officer]

SIGNATURES OF ___________________ [INCORPORATORS *or* DIRECTORS]

_________________	_________________ [date]
_________________	_________________ [date]
_________________	_________________ [date]
_________________	_________________ [date]
_________________	_________________ [date]

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37TTT-24 California Legal Forms--Transaction Guide Form T24-17

Form T24-17 Revocation by Unanimous Written Consent of Shareholders

Description: This form is for revoking the voluntary dissolution of a corporation, to be signed by shareholders of record of a company.

Form T24-17 Revocation by Unanimous Written Consent of Shareholders

SHAREHOLDERS' CONSENT TO REVOCATION
OF DISSOLUTION OF ___________________ [name of corporation],
A ___________________ [state] CORPORATION

We, who sign this document, are the shareholders of record of ___________________ [name of corporation], a ___________________ [state] corporation. Our shares constituted all issued and outstanding shares of the corporation. The corporation has pursued voluntary dissolution. By our signatures below, each of us consents to revoke those proceedings and the dissolution of the corporation.

[*Add, if articles of revocation will be filed:* The shareholders further consent to the filing of articles of revocation of dissolution on behalf of the corporation.]

By signature, each shareholder certifies that the information provided in this consent is correct.

NAME	DATE	NUMBER OF SHARES
1.	_________________	_________________
2.	_________________	_________________
3.	_________________	_________________
4.	_________________	_________________

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37TTT-24 California Legal Forms--Transaction Guide Form T24-18

Form T24-18 Board of Directors' Resolution Revoking Dissolution

Description: This form is a directors' resolution for revoking the voluntary dissolution of a corporation by means of a corporate resolution followed by a shareholder vote.

Form T24-18 Board of Directors' Resolution Revoking Dissolution

RESOLUTION

This Board of Directors of ___________________ [name of corporation], a ___________________ [state] corporation, has previously adopted a resolution recommending that the corporation be voluntarily dissolved. The Board now deems that it would be in the best interests of the corporation to revoke the decision to dissolve the corporation and to terminate all voluntary dissolution proceedings. [*Add if revocation comes after issuance of certificate of dissolution:* The ___________________ [state] Secretary of State has issued a certificate of dissolution, but less than 120 days have passed since the certificate was issued.]

THEREFORE, IT IS RESOLVED that the voluntary dissolution of the corporation and all proceedings connected with dissolution are revoked.

[*Add if articles of revocation will be filed:*]

RESOLVED FURTHER, that articles of revocation of dissolution will be prepared and filed with the Secretary of State.]

Notice of a special meeting of the shareholders will be given for the purpose of consideration, by the shareholders, of the revocation of winding up and all related proceedings. The meeting will be held at ___________________ [address], on ___________________ [date], at ___________________ [time].

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PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 24: Dissolution--Corporate.

37TTT-24 California Legal Forms--Transaction Guide Form T24-19

Form T24-19 Shareholders' Resolution Revoking Dissolution

Description: This form is a shareholder's resolution for revoking the voluntary dissolution of a corporation by means of a corporate resolution followed by a shareholder vote. This form deals only with corporate resolution and shareholder vote.

Form T24-19 Shareholders' Resolution Revoking Dissolution

RESOLUTION OF SHAREHOLDERS
TO REVOKE WINDING UP OF CORPORATION

At a meeting of the Board of Directors of ___________________ [name of corporation], a ___________________ [state] corporation, held on ___________________ [date], the Board of Directors adopted a resolution recommending that the winding up of the corporation be revoked and that the question of revocation of winding up be submitted to the shareholders of the corporation. In response to those resolutions, this shareholders' meeting was properly noticed and conducted.

The proposal has been considered fully at this meeting. The shareholders have, by the required vote, adopted the resolution to revoke the dissolution of the corporation and all proceedings commenced in connection with the dissolution of the corporation. This vote also authorized the directors and officers of the corporation to take whatever steps are necessary to revoke dissolution, including, but not limited to filing articles of revocation with the ___________________ [state] Secretary of State. By their vote, the shareholders acknowledge that the corporation will resume its ordinary business immediately after fulfilling any legal prerequisite to the resumption of such business.

The total number of outstanding shares of the corporation entitled to vote on the dissolution is: ___________________. The vote on the resolution was as follows:

For revocation: ___________________.

Against revocation: ___________________.

[*Optional--add for each class or series of shares that is entitled to vote as class*]

The shares designated ____________________ are entitled to vote as a class on the dissolution of the corporation. This class of shares voted in favor of revocation by the following vote:

The total number of shares designated [*describe*] is

Shares voted for revocation:

Shares voted against revocation:

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CHAPTER 24: Dissolution--Corporate.

37TTT-24 California Legal Forms--Transaction Guide Form T24-20

Form T24-20 Articles of Revocation of Dissolution

Description: This form contains articles of revocation of dissolution that should be filed to revoke a corporate dissolution.

Form T24-20 Articles of Revocation of Dissolution

ARTICLES OF REVOCATION OF DISSOLUTION

Pursuant to ___________________ [state] Business Corporation Act Article ___________________, ___________________ [name of corporation], a ___________________ [state] corporation, adopts the following Articles of Revocation of Dissolution for the purpose of revoking its prior winding up:

1. The name of the corporation is ___________________.

2. The revocation of dissolution was authorized on ___________________ [date]. [*Add, if dissolution has become effective:* The now-revoked dissolution became effective on ___________________ (date).]

[*Alternative One. When revocation was by unanimous written consent of shareholders*]

3. The corporation elected to revoke voluntary dissolution proceedings by the written consent of all of its shareholders. A copy of that written consent is attached to these Articles of Revocation of Dissolution as Exhibit A. The written consent was signed by all shareholders of the corporation or was signed in their names by their duly authorized attorneys.

[*Alternative Two. When revocation was by corporate resolution and shareholder vote*]

3. The corporation elected to revoke voluntary dissolution proceedings by an act of the corporation in the manner shown

below:

A. A resolution of the Board of Directors revoking the voluntary dissolution was adopted by a vote of the shareholders on ___________________ [date].

B. The number of shares outstanding and entitled to vote on the revocation was ___________________.

[*Add if any class or series of share was entitled to vote as class:* The shares of ___________________ class were entitled to vote as a class on the revocation. This class of shares consists of ___________________ (number) shares.]

C. The number of shares voting for or against revocation of dissolution was as follows:

CLASS OF SHARES	OUTSTANDING AND ENTITLED TO VOTE	TOTAL VOTED FOR	TOTAL VOTED AGAINST
___________________	_________________	_________________	_________________
___________________	_________________	_________________	_________________
___________________	_________________	_________________	_________________
___________________	_________________	_________________	_________________

Dated: ____________________

_________________ [name of corporation]
By: _________________ [signature]
_________________ [typed name]
_________________ [title of officer]

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PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 24: Dissolution--Corporate.

37TTT-24 California Legal Forms--Transaction Guide Form T24-21

Form T24-21 Notice to Claimants

Description: This form is a notice to be used by a wound up corporation to compel persons with existing claims to present their claims to the corporation or forfeit them.

Form T24-21 Notice to Claimants

____________________ [date]

TO: ____________________ [name of claimant]
____________________ [address of claimant]

NOTIFICATION OF RIGHT TO PRESENT CLAIM
AGAINST ____________________ [name of corporation]

____________________ [name of corporation] has ____________________ [wound up *or* elected to wind up]. You ____________________ [may have *or* are asserting] a claim against the wound up corporation. In order to preserve your claim you must:

1. Present the claim in writing to the wound up corporation on or before ____________________ [date].

2. Describe the claim in sufficient detail to reasonably inform the corporation of your identity and of the amount and nature of your claim. You must make this description as part of the written presentation of your claim.

3. Mail the claim to the wound up corporation at the following address:

____________________ [mailing address].

IF A WRITTEN PRESENTATION OF YOUR CLAIM IS NOT RECEIVED AT THE ADDRESS GIVEN ABOVE ON OR BEFORE ____________________ [date], YOUR CLAIM WILL BE EXTINGUISHED.

The claims procedure set out in this notice is the procedure required by Section ____________________ of the [state] ____________________ Business Organizations Code *or* Article ____________________, Section ____________________ of the ____________________ [state] Business Corporation Act. A copy of the statutory provision is included with this notice.

__________________ [name of corporation]
By: __________________ [signature]
__________________ [typed name]
__________________ [title of officer]

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PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 24: Dissolution--Corporate.

37TTT-24 California Legal Forms--Transaction Guide Form T24-22

Form T24-22 Rejection of Claim

Description: This form is a notice of rejection that may to be used by a dissolved corporation to reject a claim presented to it.

Form T24-22 Rejection of Claim

TO:

____
[name of claimant]

____
[address of claimant]

NOTICE OF REJECTION OF YOUR CLAIM
AGAINST ____________________ [name of corporation]

You have presented a claim against ____________________ [name of corporation], a wound up corporation, under the procedure set out in [____________________ (state) Business Organizations Code Section ____________________ *or* ____________________ (state) Business Corporation Act Article ____________________, Section ____________________]. Your claim was described in your written presentation as follows: ____________________ [*describe claim*].

1. YOUR CLAIM IS REJECTED BY ____________________ [name of corporation].

2. ANY CLAIM YOU HAVE WILL BE EXTINGUISHED UNLESS AN ACTION OR PROCEEDING ON THE CLAIM IS BROUGHT WITHIN 180 DAYS AFTER THE DATE THIS NOTICE IS SENT TO YOU, AND BEFORE THE EXPIRATION OF THE THREE-YEAR PERIOD FOLLOWING THE DATE OF WINDING UP OF THE CORPORATION.

For purposes of computing the period in which you may bring an action or proceeding, please take note that the date of the sending of this notice is ____________________ [date], and the date of the corporate winding up is ____________________ [date].

Dated: ____________________

__________________ [name of corporation]
By: __________________ [signature]
__________________ [typed name]
__________________ [title of officer]

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PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 24: Dissolution--Corporate.

37TTT-24 California Legal Forms--Transaction Guide Form T24-23

Form T24-23 Information Return of Dissolving Corporation--IRS Form 966

Description: IRS Form 966 must be filed within 30 days after the corporation has adopted a resolution or a plan for winding up or for the liquidation of its stock.

Form T24-23 Information Return of Dissolving Corporation--IRS Form 966

Click here to view image.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 24: Dissolution--Corporate.

37TTT-24 California Legal Forms--Transaction Guide Form T24-24

Form T24-24 Information Return for Distribution to Shareholders--IRS Form T1099-DIV

Description: Every corporation making distributions to its shareholders pursuant to its winding up must file a Form T1099-DIV with the IRS for each shareholder receiving distributions totaling $600 or more during a calendar year.

Form T24-24 Information Return for Distribution to Shareholders--IRS Form T1099-DIV

Click here to view image.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 25: Dissolution--General Partnerships (GPs).

37TTT-25 California Legal Forms--Transaction Guide 25.syn

§ 25.syn Synopsis to Chapter 25: Dissolution--General Partnerships (GPs).

Form T25-1 Agreement Winding Up and Terminating General Partnership

Form T25-2 Notice of Termination of Partnership and Continuance of Business by One Partner

Form T25-3 Letter to Creditors and Suppliers as to Partnership's Termination

Form T25-4 Notice of Withdrawal of Partner and Continuance of Business by Two or More Partners

Form T25-5 Notice of Death of Partner and Continuance of Business

Form T25-6 Notice of Termination of Partnership--Partner Authorized to Wind Up Business

Form T25-7 Notice of Termination--No One Authorized to Incur Additional Obligations

Form T25-8 Accounting and Distribution of Partnership Assets Upon Dissolution

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 25: Dissolution--General Partnerships (GPs).

37TTT-25 California Legal Forms--Transaction Guide Form T25-1

Form T25-1 Agreement Winding Up and Terminating General Partnership

Description: This form is an agreement for use when the partners of a general partnership want to enter into a formal written agreement governing the winding up and termination of the partnership. It includes language detailing accounting, disclosure, appointment of a liquidating partner, and settlement of accounts.

Form T25-1 Agreement Winding Up and Terminating General Partnership

AGREEMENT WINDING UP AND TERMINATING
GENERAL PARTNERSHIP

____________________ [Name], referred to in this agreement as the First Partner, and ____________________ [name], referred to in this agreement as the Second Partner, agree as follows:

ARTICLE 1. RECITALS

Partnership

1.01. First Partner, residing at ____________________ [street address, city, and state], and Second Partner, residing at ____________________ [street address, city, and state], have been and now are Partners doing business under the firm name of ____________________ [name], located at ____________________ [street address, city, and state].

Partnership Agreement

1.02. The parties entered into the Partnership and have continued in Partnership under the provisions of a written agreement dated _____________________, a copy of which is attached to this Agreement as Exhibit ____________________.

Desire to Terminate Partnership

1.03. The parties now want to terminate their Partnership and wind up its affairs pursuant to a plan under which First Partner will sell all of the assets of the Partnership and distribute to the Partners any proceeds remaining after the payment of all liabilities of the Partnership.

ARTICLE 2. CESSATION OF PARTNERSHIP BUSINESS

Date; Effect

2.01. The parties will cease the operation of their regular Partnership business effective at the close of business on ____________________ [date], and will thereafter promptly liquidate and wind up the affairs of the Partnership. Except for the purpose of carrying out the winding up and liquidation of the business of the Partnership, ____________________ [neither *or* none] of the parties will transact any further business or incur any further obligations on behalf of the Partnership after that date.

Notice of Winding Up

2.02. The parties will cause a notice of the winding up to be published at least once in a newspaper of general circulation in each county in which the Partnership business has been regularly carried on.

ARTICLE 3. WINDING UP AND TERMINATION

Accounting

3.01. Immediately following the cessation of Partnership business, the parties will cause an accounting to be made by ____________________ [name of accountant or firm] of all the assets, liabilities, and net worth of the Partnership as of the date of cessation of business.

Disclosure

3.02. Except as disclosed in the books and records of the Partnership, each party represents and warrants that the party has not contracted any liability that can or may be charged against the Partnership or any other party, nor has either party received or discharged any of the credits, moneys, or effects of the Partnership.

Settlement of Accounts

3.03. On completion of the accounting, the parties will ____________________ [pay all of the liabilities of the Partnership, including those owing to the Partners who are creditors other than in their capacities as partners *or specify otherwise as appropriate*], in accordance with the rules set forth in ____________________ [*specify appropriate statutory reference*]. All surplus amounts remaining after payment of the above liabilities will be distributed as follows: ____________________ [*specify, e.g.,* to each Partner in an amount equal to that Partner's positive balance in the Partner's capital account *or* to each Partner in the ratio that such Partner's capital account and income account combined bear to the combined capital and income accounts of all Partners].

Appointment of Liquidating Partner

3.04. First Partner is appointed as the Liquidating Partner to carry out the terms and conditions of this Agreement and will have all authority necessary to the performance of the partner's duties in the course of winding up Partnership business.

Inspection of Books and Records

3.05. ____________________ [Second Partner has *or* All other Partners have] the right, directly or through one or more representatives, at all reasonable times, to examine the books of the Partnership, and other pertinent records, for the purpose of establishing and enforcing any rights under partnership law, this Agreement, or the Partnership Agreement referred to in paragraph 1.02.

Termination

3.06. The Partnership will terminate on completion of the winding up and liquidation of the Partnership business.

ARTICLE 4. MISCELLANEOUS PROVISIONS

____________________ [state] Law to Apply

4.01. This Agreement will be construed under and in accordance with laws of the State of ____________________, and all obligations of the parties created by this Agreement will be performed in ____________________ County, ____________________ [state].

Other Instruments

4.02. The parties to this Agreement covenant and agree that they will execute such other instruments and documents that are or may become necessary or convenient to effect and carry out this Agreement.

Headings

4.03. The headings used in this Agreement are used for administrative purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

Parties Bound

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

Strict Construction

4.05. This Agreement will not be strictly construed against any party.

Legal Construction

4.06. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been a part of this Agreement.

Counterparts

4.07. This Agreement may be executed in any number of counterparts, and each of those counterparts will for all purposes be deemed to be an original.

Gender

4.08. Whenever the context requires, all words in this Agreement in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

Prior Agreements Superseded

4.09. This Agreement supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Agreement, including the Partnership Agreement dated ____________________, to the extent that it may conflict with any of the provisions contained in this Agreement.

Survival of Representations and Warranties

4.10. The representations and warranties set forth in this Agreement will be continuous and will survive the taking of any accounting and the winding up and termination of the Partnership as contemplated by this Agreement.

Executed on ____________________ [date].

FIRST PARTNER
_________________ [signature of first partner]
_________________ [typed name]
SECOND PARTNER
_________________ [signature of second partner]
_________________ [typed name]

ACKNOWLEDGMENT

STATE OF ___________________
COUNTY OF ___________________

Before me, ___________________ [name], a Notary Public, on ____________________ [date], on this day personally appeared ___________________ and ___________________ [names], known to me [*or* proved to me on the oath of ___________________ (name)] to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____________________ day of ____________________.

[Seal]
____________________ [signature]

Notary Public in and for the State of ____________________
My commission expires: __________________ [date]

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 25: Dissolution--General Partnerships (GPs).

37TTT-25 California Legal Forms--Transaction Guide Form T25-2

Form T25-2 Notice of Termination of Partnership and Continuance of Business by One Partner

Description: This form is a notice for use when the partnership is terminating or has terminated, and a partner is continuing the business alone and retaining the firm name.

Form T25-2 Notice of Termination of Partnership and Continuance of Business by One Partner

NOTICE OF TERMINATION OF PARTNERSHIP
AND CONTINUANCE OF BUSINESS

Notice is hereby given that the Partnership composed of ____________________ [name of remaining partner] and ____________________ [name of withdrawing partner], previously doing business under the firm name of ____________________, at ____________________ [street address, city, and state], is terminated as of ____________________ [date], by the mutual consent of the Partners.

____________________ [Name of withdrawing partner], residing at ____________________ [street address, city, and state], has withdrawn from and has ceased to be associated in the carrying on of the business. ____________________ [Name of remaining partner], residing at ____________________ [street address, city, and state], will hereafter carry on the business, is entitled to all of the assets of the business, and has assumed and will pay all outstanding liabilities of the business incurred previously or in the future.

Dated: _____________________

__________________ [signature of remaining partner]
__________________ [typed name]
__________________ [signature of withdrawing partner]
__________________ [typed name]

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 25: Dissolution--General Partnerships (GPs).

37TTT-25 California Legal Forms--Transaction Guide Form T25-3

Form T25-3 Letter to Creditors and Suppliers as to Partnership's Termination

Description: This form is a letter to creditors and suppliers of a partnership to provide notice of the partnership's winding up and termination.

Form T25-3 Letter to Creditors and Suppliers as to Partnership's Termination

LETTER TO CREDITORS OF TERMINATED PARTNERSHIP

___________________ [Name and address of creditor]

After ___________________ [specify time period] years of doing business as Partners under the firm name of ___________________ at ___________________ [street address, city, and state], the Partnership composed of ___________________ [name of withdrawing partner] and ___________________ [name of remaining partner] has been terminated by mutual consent as of ___________________ [date].

___________________ [Name of withdrawing partner], residing at ___________________ [street address, city, and state], has withdrawn from and has ceased to be associated in the carrying on of the business because of ___________________ [*specify reason for withdrawal, e.g.*, ill health].

___________________ [Name of remaining partner], residing at ___________________ [street address, city, and state], will carry on the business, is entitled to all of the assets of the business, and has assumed and will pay all outstanding liabilities of the business incurred previously and in the future.

We have enjoyed our business relationship with you in the past and hope that ___________________ [name of remaining partner] and you will maintain that relationship in the future.

Dated: ____________________

[Signatures]

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 25: Dissolution--General Partnerships (GPs).

37TTT-25 California Legal Forms--Transaction Guide Form T25-4

Form T25-4 Notice of Withdrawal of Partner and Continuance of Business by Two or More Partners

Description: This form is a notice of withdrawal of a partner when the business is continued as a partnership by two or more remaining partners; it is to be signed by all parties.

Form T25-4 Notice of Withdrawal of Partner and Continuance of Business by Two or More Partners

NOTICE OF WITHDRAWAL OF PARTNER
AND CONTINUANCE OF BUSINESS

Notice is hereby given by ____________________ [name of first remaining partner], ____________________ [name of second remaining partner], and ____________________ [name of withdrawing partner], previously doing business as Partners under the firm name of ____________________ at ____________________ [street address, city, and state], that [name of withdrawing partner], residing at ____________________ [street address, city, and state], has withdrawn from and has ceased to be associated in the carrying on of the business. ____________________ [Name of first remaining partner] and ____________________ [name of second partner (____________________ and, if applicable, name of new partner)] will conduct the business in the future under the firm name of ____________________ and will pay and discharge all liabilities of the firm and receive all moneys payable to the firm.

Further notice is given that ____________________ [name of withdrawing partner] from this day on, no longer has any authority to act for or otherwise bind the firm, and will not be responsible for any obligation incurred by the other partners in their names or in the name of the firm.

Dated: ____________________

__________________ [signature of withdrawing partner]
__________________ [typed name]
__________________ [signature of first remaining partner]
__________________ [typed name]
__________________ [signature of second remaining partner]
__________________ [typed name]

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PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 25: Dissolution--General Partnerships (GPs).

37TTT-25 California Legal Forms--Transaction Guide Form T25-5

Form T25-5 Notice of Death of Partner and Continuance of Business

Description: This form is a notice for use when one of the partners has died and the business is to be continued as a sole proprietorship by the surviving partner.

Form T25-5 Notice of Death of Partner and Continuance of Business

NOTICE OF DEATH OF PARTNER AND
CONTINUANCE OF BUSINESS

Notice is hereby given that the Partnership composed of ____________________ [name of surviving partner] and ____________________ [name of deceased partner], previously doing business under the firm name of ____________________ at ____________________ [street address, city, and state], is terminated as of ____________________ [date], by reason of the death of ____________________ [name of deceased partner].

____________________ [Name of surviving partner], residing at ____________________ [street address, city, and state], will hereafter carry on the business, is entitled to all of the assets of the business, and has assumed and will pay all outstanding liabilities of the business incurred previously or in the future.

Dated: _____________________

__________________ [signature of surviving partner]
__________________ [typed name]

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PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 25: Dissolution--General Partnerships (GPs).

37TTT-25 California Legal Forms--Transaction Guide Form T25-6

Form T25-6 Notice of Termination of Partnership--Partner Authorized to Wind Up Business

Description: This form is a notice for use when an event requiring winding up has occurred as to a partnership, and the partnership is to be wound up and terminated rather than continued by the remaining partners.

Form T25-6 Notice of Termination of Partnership--Partner Authorized to Wind Up Business

NOTICE OF TERMINATION OF PARTNERSHIP

Notice is hereby given that ___________________ [name of first partner] and ___________________ [name of second partner], formerly doing business as Partners under the firm name of ___________________ at ___________________ [street address, city, and state], are terminating their Partnership and will begin winding up its affairs as of ___________________ [date], ___________________ [by mutual consent *or* pursuant to the terms of the Partnership Agreement]. ___________________ [Name of first partner] has sole authority to sell partnership assets, pay and discharge all liabilities of the partnership, collect and receive all moneys payable to the partnership, perform existing contracts, and act in any manner necessary to wind up the affairs of the partnership.

Dated: ____________________

[Signatures]

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PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 25: Dissolution--General Partnerships (GPs).

37TTT-25 California Legal Forms--Transaction Guide Form T25-7

Form T25-7 Notice of Termination--No One Authorized to Incur Additional Obligations

Description: This form is a notice for use when a partnership has been terminated and that no person has authority to incur any obligations on behalf of the partnership.

Form T25-7 Notice of Termination--No One Authorized to Incur Additional Obligations

NOTICE OF TERMINATION OF PARTNERSHIP

Notice is hereby given that ____________________ [name of first partner] and ____________________ [name of second partner], formerly doing business as Partners under the firm name of ____________________, at ____________________ [street address, city, and state], have terminated their Partnership as of ____________________ [date], ____________________ [by mutual consent *or* pursuant to the Partnership Agreement], and that no person has authority to incur any obligations on behalf of the former firm.

Dated: ____________________

[Signatures]

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 25: Dissolution--General Partnerships (GPs).

37TTT-25 California Legal Forms--Transaction Guide Form T25-8

Form T25-8 Accounting and Distribution of Partnership Assets Upon Dissolution

Description: These clauses provide for the accounting and distribution of partnership assets upon dissolution of the partnership; these provisions represent the ultimate capital return to the partners.

Form T25-8 Accounting and Distribution of Partnership Assets Upon Dissolution

FORM:

Upon the dissolution of the Partnership under any of the provisions of this Agreement, a full and general accounting shall be taken of the Partnership business and the affairs of the Partnership shall be wound up. Any profits or losses incurred since the last previous accounting shall be divided among the Partners in accordance with the provisions of this Agreement, and shall be added to the distributions to be made to each of the Partners.

The proceeds of such liquidation shall be applied and distributed in the following order of priority:

(i) to the payment of any debts and liabilities of the partnership;

(ii) to the setting up of any reserve which the partners shall reasonably deem necessary to provide for any contingent or unforeseen liabilities or obligations of the partnership. At the expiration of such period of time as the partner shall deem advisable, the balance of such reserve remaining after the payment of such contingency shall be distributed in the manner set forth below;

(iii) thereafter, the balance of the proceeds, if any, shall be distributed in accordance with the positive capital account balances of the partners, as determined after taking into account all capital account adjustments for the partnership taxable year during which such liquidation occurs, and shall be made by the end of such taxable year (or, if later, within ninety (90) days after the date of such liquidation). For purposes of this subparagraph, a liquidation of the partnership shall mean a liquidation as set forth in Section 1.704-1(b)(2)(ii)(g) of the Regulations.

If, following liquidation of a partner's interest in the partnership (within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g)) a partner has a deficit balance in his capital account (as determined after taking into account all adjustments to said capital account, including the adjustments for the year during which such liquidation occurs), such partner shall be unconditionally obligated to pay the amount of such deficit balance to the partnership by the end of such taxable year (or, if later, within ninety (90) days after the date of such liquidation), which amount shall be applied and distributed in accordance with the provisions of this paragraph.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 26: Dissolution--Limited Partnerships (LPs).

37TTT-26 California Legal Forms--Transaction Guide 26.syn

§ 26.syn Synopsis to Chapter 26: Dissolution--Limited Partnerships (LPs).

Form T26-1 Agreement Winding Up and Terminating Limited Partnership

Form T26-2 Consent to Winding Up and Termination of Limited Partnership

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 26: Dissolution--Limited Partnerships (LPs).

37TTT-26 California Legal Forms--Transaction Guide Form T26-1

Form T26-1 Agreement Winding Up and Terminating Limited Partnership

Description: This form is an agreement for use when the partners of a limited partnership want to enter into a formal written agreement governing the winding up and termination of the partnership.

Form T26-1 Agreement Winding Up and Terminating Limited Partnership

AGREEMENT WINDING UP AND TERMINATING
LIMITED PARTNERSHIP

____________________ [Name], referred to in this agreement as the First General Partner, ____________________ [name], referred to in this agreement as the Second General Partner, and ____________________ [names], Limited Partners, agree as follows:

ARTICLE 1. RECITALS

Partnership

1.01. First General Partner, residing at ____________________ [street address, city, and state], Second General Partner, residing at ____________________ [street address, city, and state], and ____________________ [names of limited partners and street addresses, cities, and states] have been and now are Partners doing business under the firm name of ____________________, at ____________________ [street address, city, and state].

Partnership Agreement

1.02. The parties entered into the Partnership and have continued in Partnership under the provisions of a written agreement dated ____________________, a copy of which is attached to this Agreement as Exhibit ____________________.

Desire to Terminate Partnership

1.03. The parties now want to terminate their Partnership and wind up its affairs pursuant to a plan under which First General Partner will sell all of the assets of the Partnership and distribute to the Partners any proceeds remaining after the payment of all liabilities of the Partnership.

ARTICLE 2. CESSATION OF PARTNERSHIP BUSINESS

Effective Date

2.01. The parties will cease the operation of their regular Partnership business effective at the close of business on ____________________ [date], and will thereafter promptly liquidate and wind up the affairs of the Partnership. Except for the purpose of carrying out the winding up and liquidation of the business of the Partnership, none of the parties will transact any further business or incur any further obligations on behalf of the Partnership after the date of this Agreement.

Notice of Winding Up

2.02. The parties will cause a notice of the winding up and termination to be published at least once in a newspaper of general circulation in each county in which the Partnership business has been regularly carried on.

ARTICLE 3. WINDING UP

Accounting

3.01. Immediately following the cessation of the Partnership business, the parties will cause an accounting to be made by ____________________ [name of accountant or firm] of all the assets, liabilities, and net worth of the Partnership as of the effective date of the cessation of business.

Disclosure

3.02. Except as disclosed in the books and records of the Partnership, each party represents and warrants that he or she has not contracted any liability that can or may be charged against the Partnership or any other party, nor has either party received or discharged any of the credits, moneys, or effects of the Partnership.

Settling Accounts

3.03. On completion of the accounting, the parties will ____________________ [pay all of the liabilities of the Partnership, including those owing to the Partners other than those liabilities arising solely from their right to receive distributions *or specify otherwise as appropriate*], in accordance with ____________________ [the statutory rules provided by the laws governing limited partnerships *or* the priorities set forth in the Partnership Agreement]. All amounts remaining after payment of the above liabilities will be distributed as follows: ____________________ [*give details*, *e.g.*, to each Partner first in satisfaction of the Partnership's liability for distributions or payments as provided by the laws governing limited partnerships, second for the return of the Partner's capital, and third with respect to the Partner's partnership interest in the proportions specified by the laws governing limited partnerships *or* to each Partner in the ratio that the Partner's capital account and income account combined bear to the combined capital and income accounts of all Partners].

Appointment of Liquidating Partner

3.04. First General Partner is appointed as the liquidating Partner to carry out the terms and conditions of this Agreement and will have all authority necessary to the performance of the Partner's duties in the course of winding up the Partnership business.

Inspection of Books and Records

3.05. All other Partners have the right, directly or through their representatives, at all reasonable times, to examine the books of the Partnership, and other pertinent records, for the purpose of establishing and enforcing any rights under limited partnership law, this Agreement, or the Partnership Agreement referred to in paragraph 1.02.

ARTICLE 4. MISCELLANEOUS PROVISIONS

[*Incorporate miscellaneous provisions*]

Executed on ____________________ [date].

FIRST GENERAL PARTNER
_________________ [signature of first general partner]
_________________ [typed name]
SECOND GENERAL PARTNER
_________________ [signature of second general partner]
_________________ [typed name]
LIMITED PARTNERS
_________________ [signature of limited partner]
_________________ [typed name]
_________________ [signature of limited partner]
_________________ [typed name]
_________________ [signature of limited partner]
_________________ [typed name]

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 26: Dissolution--Limited Partnerships (LPs).

37TTT-26 California Legal Forms--Transaction Guide Form T26-2

Form T26-2 Consent to Winding Up and Termination of Limited Partnership

Description: This form recognizes the consent of all partners to the winding up and termination of a limited partnership.

Form T26-2 Consent to Winding Up and Termination of Limited Partnership

CONSENT TO WINDING UP AND TERMINATION
OF LIMITED PARTNERSHIP

____________________ [Name] and ____________________ [name], General Partners, and ____________________ [(names of all limited partners), Limited Partners *or* the undersigned Limited Partners], referred to in this Consent as Partners, who are all the Partners of ____________________ [name of limited partnership], referred to in this agreement as the Partnership, agree and consent as follows:

Partnership Agreement

1. The Partnership was formed pursuant to a Partnership Agreement by and between the Partners executed on ____________________ [date], and referred to in this Agreement as the Partnership Agreement.

Authority to Wind Up and Terminate

2. The Partners consent to the winding up and termination of the Partnership pursuant to the authority of ____________________ [*specify appropriate statutory reference, e.g.,* Section ____________________ of the Business Organizations Code], providing that a limited partnership may be wound up and terminated with the written consent of all partners.

Winding Up Procedures

3. The General Partners will proceed to wind up the affairs of the Partnership and liquidate and distribute the partnership assets according to the provisions of ____________________ [*list relevant state statute*] [*add, if appropriate:* and according to the provisions of the Winding Up and Termination Agreement by and among the Partners dated _____________________].

Covenant of Cooperation

4. All of the Partners hereby agree and promise to do all things necessary, and to sign all documents necessary, to effect the winding up and termination of the Partnership.

Counterparts

5. This Consent may be executed in several counterparts, and all counterparts so executed will constitute one Consent, which will be binding on all of the parties, notwithstanding that all of the parties are not signatory to the original or the same counterpart.

Dated: _____________________

[Signatures]

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 27: Dissolution--Limited Liability Companies (LLCs).

37TTT-27 California Legal Forms--Transaction Guide 27.syn

§ 27.syn Synopsis to Chapter 27: Dissolution--Limited Liability Companies (LLCs).

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 27: Dissolution--Limited Liability Companies (LLCs).

37TTT-27 California Legal Forms--Transaction Guide Form T27-1

Form T27-1 Notice of Winding Up

Description: This form is a notice of the winding up of a limited liability company.

Form T27-1 Notice of Winding Up

NOTICE OF WINDING UP OF ____________________ [name of company],
A ____________________ [STATE] LIMITED LIABILITY COMPANY

ALL CLAIMANTS AGAINST ____________________ [name of company] ARE NOTIFIED THAT:

____________________ [Name of company], a ____________________ [state] [professional] limited liability company, whose principal office is located at ____________________ [street address, city, state], intends to wind up its business. [Please present any claims you may have against the company promptly.]

Dated: ____________________

__________________ [name of company]
By: __________________ [signature]
__________________ [typed name]
__________________ [title]

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 27: Dissolution--Limited Liability Companies (LLCs).

37TTT-27 California Legal Forms--Transaction Guide Form T27-2

Form T27-2 Consent to Winding Up

Description: This form is a consent that may be used when the limited liability company is voluntarily wound up by written consent.

Form T27-2 Consent to Winding Up

CONSENT TO WIND UP ___________________ [NAME OF COMPANY],
A ___________________ [*list state*] [PROFESSIONAL] LIMITED LIABILITY COMPANY

The undersigned ___________________ [*e.g.*, governing members *or* managers] of ___________________ [name of limited liability company] ___________________ consent to the winding up of the company.

Dated: ____________________

_________________ [signature]
_________________ [typed name and title]
_________________ [signature]
_________________ [typed name and title]

[*Continue with signatures as needed*]

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 27: Dissolution--Limited Liability Companies (LLCs).

37TTT-27 California Legal Forms--Transaction Guide Form T27-3

Form T27-3 Revocation of Winding Up

Description: This form is a revocation of a voluntary decision to wind up a limited liability company.

Form T27-3 Revocation of Winding Up

CONSENT TO REVOCATION OF WINDING UP
OF ____________________ [NAME OF COMPANY], A
____________________ [STATE] LIMITED LIABILITY COMPANY

We, who sign this document, are [governing members *or* managers] of ____________________ [name of company], a ____________________ [state] [professional] limited liability company. The company has pursued voluntary winding up. By our signatures below, each of us consents to revoke those proceedings and the winding up of the company.

By signature, each [governing member *or* manager] certifies that the information provided in this consent is correct.

__________________ [signature]
__________________ [typed name and title]
__________________ [date]
__________________ [signature]
__________________ [typed name and title]
__________________ [date]

[*Continue with signatures as needed*]

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 27: Dissolution--Limited Liability Companies (LLCs).

37TTT-27 California Legal Forms--Transaction Guide Form T27-4

Form T27-4 Articles of Dissolution--No Capital Paid In

Description: This form contains articles of dissolution, stating that the company has not yet acquired any debts, obligations, or liabilities.

Form T27-4 Articles of Dissolution--No Capital Paid In

ARTICLES OF DISSOLUTION

In accordance with the provisions of Article ____________________ of the ____________________ [state] Limited Liability Act, the undersigned [professional] limited liability company adopts the following articles of dissolution:

1. The company name is ____________________ and its file number is _____.

2. The names and respective addresses of ____________________'s [name of limited liability company] managers are as follows:

NAME	ADDRESS
....	....
....	....
....	....

[*OR*]

2. The company has no managers.

3. ____________________ [Name of company] has not yet acquired any debts, obligations, or liabilities.

4. ____________________ [Name of company] has not yet acquired any property or assets, and distributions to members

were therefore not required.

5. The company was dissolved by an act of its ____________________ [organizer *or* managers]. A copy of the resolution of dissolution, adopted on ____________________ [date] is attached as Exhibit A to these articles.

EXECUTED on ____________________ [date]

__________________ [name of company]
By: __________________ [signature]
__________________ [Manager *or* Organizer]

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 28: Dissolution--Non-Profits.

37TTT-28 California Legal Forms--Transaction Guide 28.syn

§ 28.syn Synopsis to Chapter 28: Dissolution--Non-Profits.

Form T28-1 Notice of Present Claims Against Terminated Nonprofit Corporation

Form T28-2 Rejection of Claim Against Terminated Nonprofit Corporation

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 28: Dissolution--Non-Profits.

37TTT-28 California Legal Forms--Transaction Guide Form T28-1

Form T28-1 Notice of Present Claims Against Terminated Nonprofit Corporation

Description: This form is a notice for use by a terminated nonprofit corporation to require persons with existing claims to present their claims to the corporation for consideration or rejection.

Form T28-1 Notice of Present Claims Against Terminated Nonprofit Corporation

___________________ [date]
TO: ___________________ [name and address of claimant]

NOTICE REQUIRING PRESENTATION OF CLAIM AGAINST
___________________ [name of terminated corporation]

___________________ [Name of corporation] has elected to terminate. You ___________________ [may have *or* are asserting] a claim against this corporation. To preserve your claim, you must:

1. Present it in writing to the dissolved corporation on or before ___________________ [*enter date that is no earlier than 120 days after date of notice*].

2. In the written presentation of your claim, describe the claim in sufficient detail to reasonably inform the corporation of your identity and of the amount and nature of your claim.

3. Mail presentation of claim to the terminated corporation at the following address: ___________________ [address].

IF A WRITTEN PRESENTATION OF YOUR CLAIM IS NOT RECEIVED AT THE ADDRESS GIVEN ABOVE ON OR BEFORE ___________________ [date], YOUR CLAIM WILL BE EXTINGUISHED.

The claims procedure set out in this notice is the procedure required by ___________________ [state] [Business Organizations Code Section ___________________ *or* Article ___________________ of the Civil Statutes]. A copy of the statutory provision is included with this notice.

__________________ [name of corporation]
By: __________________ [signature]
__________________ [typed name]
__________________ [title]

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 28: Dissolution--Non-Profits.

37TTT-28 California Legal Forms--Transaction Guide Form T28-2

Form T28-2 Rejection of Claim Against Terminated Nonprofit Corporation

Description: This form is a rejection of claim, detailing dates relevant to extinguishing/preserving the claim.

Form T28-2 Rejection of Claim Against Terminated Nonprofit Corporation

___________________ [date]
TO: ___________________ [name and address of claimant]

NOTICE OF REJECTION OF CLAIM AGAINST
___________________ [name of terminated nonprofit corporation]

You have presented a claim against ___________________ [name of corporation], a terminated nonprofit corporation. Your claim was described in your written presentation as follows: ___________________ [*describe claim*].

This notice serves as your official notification that:

1. Your claim is rejected by ___________________ [name of nonprofit corporation].

2. Any claim you have will be forever extinguished unless an action or proceeding on the claim is brought BOTH within 180 days after the date this notice is sent to you AND before the expiration of the three-year period following the date of terminationd of the nonprofit corporation.

3. For purposes of computing the period in which you must bring an action or proceeding to preserve your claim, the date of sending this notice is ___________________ [date], and the date of the corporate termination is ___________________ [date].

_________________ [name of corporation]
By: _________________ [signature]
_________________ [typed name]
_________________ [title]

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 29: Dissolution--General.

37TTT-29 California Legal Forms--Transaction Guide 29.syn

§ 29.syn Synopsis to Chapter 29: Dissolution--General.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 29: Dissolution--General.

37TTT-29 California Legal Forms--Transaction Guide Form T29-1

Form T29-1 Termination of Business--Partial Liquidation; Distribution in Kind

Description: This form is a detailed plan of liquidation, to be carried out by the directors and officers of the corporation.

Form T29-1 Termination of Business--Partial Liquidation; Distribution in Kind

(1) Waiver of notice of joint special meeting of shareholders and directors

The undersigned Arnold Barton, William Jackson, and Bernard Coons, being the holders of all the outstanding shares of Gilbert Supply Corporationn* and all the directors thereof, do hereby waive notice of the time and place of the joint special meeting of shareholders and directors of the Corporation to be held at the office of the Corporation on ____________________[date] at 10 a.m. at ___________________ [address], ___________________ [city], ___________________ [state] and do hereby consent to the transaction at such meeting of any and all business which may come before such meeting, or any adjournment thereof, including the adoption of a plan for the partial liquidation of the Corporation by the distribution in kind to Bernard Coons of all the assets, subject to all the liabilities, pertaining and applicable to the retail hardware business [*or specify industry*] of the Corporation in redemption of the 30 shares of the Corporation now owned by Bernard Coons, and the adoption of such additional resolutions as may be required or deemed necessary in order to carry out the purposes of such plan in accordance with Section 302(b)(4), and related sections of the Internal Revenue Code and the laws of the State of ___________________.

Dated:

____

Andrew Barton, Shareholder and Director

____

William Jackson,
Shareholder and Director

____

Bernard Coons, Shareholder
and Director

(2) Minutes of special meeting

Minutes of a joint special meeting of the shareholders and directors of Gilbert Supply Corporation held at ____________________ [address], ____________________ [city], ____________________ [state], on _____________________[date] at 10 a.m.

Present: Arnold Barton, William Jackson, and Bernard Coons, being the holders of all the outstanding shares of the Corporation and all the directors thereof. James Harrison, Esq., counsel for the Corporation, and Harold Gordon, Esq., counsel for Mr. Coons, were present at the meeting, by invitation of the directors.

The President, Mr. Barton, called the meeting to order and acted as Chairman. Mr. Jackson, Secretary of the Corporation, acted as Secretary of the meeting.

The Secretary presented the waiver of notice of this joint special meeting signed by the holders of all the shares of the Corporation and by the directors thereof. This waiver was ordered prefixed to the minutes of this meeting.

The Chairman stated that the principal purpose of this meeting was to consider a plan for the partial liquidation of the Corporation, and that under this plan all the assets, subject to all the liabilities, pertaining and applicable to the retail hardware business of the Corporation would be distributed in kind to Bernard Coons in redemption of the 30 shares of the Corporation now owned by Mr. Coons. There was submitted to the meeting a written proposal by Mr. Coons offering to surrender to the Corporation for redemption his 30 shares in the Corporation in return for the assets, subject to the liabilities, of the retail hardware business of the Corporation, as such assets and liabilities are specified in a separate balance sheet prepared by the accountant for the Corporation as at the close of business on _____________________[date], subject only to such changes as may occur in the ordinary course of such business between _____________________[date], and the closing of the redemption transaction. The Chairman stated that the history of the Corporation, especially the facts relating to the origin of the wholesale plumbing supply business and the late expansion into the retail hardware business, had been reviewed by Mr. Harrison, counsel for the Corporation, and that Mr. Harrison had reported that in his option a distribution in kind of the retail hardware business in redemption of Mr. Coon's shares could be qualified as a partial liquidation under *Section 302(b)(4) of the Internal Revenue Code*.

The following plan of partial liquidation, which was prepared at the request of the directors, by Mr. Harrison, with the advice and assistance of Mr. Gordon, counsel for Mr. Coons, was submitted to the meeting:

Plan of Partial Liquidation of Eastern Supply Corporation

This Plan of Partial Liquidation, hereinafter called the Plan, is for the purpose of effecting a partial liquidation of Gilbert Supply Corporation, hereinafter called the Corporation, in accordance with Section 302(b)(4) and related sections of the Internal Revenue Code and the applicable laws of the State of ____________________.

1. The Plan is to be submitted to the shareholders of the Corporation for adoption at a meeting to be called for that purpose. The Plan shall become effective upon its adoption by the affirmative vote of the holders of at least two-thirds of the outstanding shares of the Corporation.

2. Attached hereto as Exhibit A is the written proposal by Bernard Coons offering to surrender to the Corporation for redemption his 30 shares of the Corporation in return for the assets, subject to the liabilities, of the retail hardware business of the Corporation, as such assets and liabilities are specified in a separate balance sheet prepared by the

accountant for the Corporation as at the close of business on ____________________[date], subject only to such changes as may occur in the ordinary course of such business between ____________________[date], and the close of the redemption transaction. Attached hereto as Exhibit B is the separate balance sheet of the retail hardware business of the Corporation as at the close of business on ____________________[date], hereinabove referred to.

3. On ____________________[date], at 10 a.m. at the office of the Corporation, or at such other time and place as may be agreed upon by the President of the Corporation and Bernard Coons, but in no event beyond ____________________[date], the Corporation shall transfer and convey to Bernard Coons all the assets, subject to all the liabilities, of the retail hardware business of the Corporation, as such assets and liabilities are specified in the separate balance sheet attached hereto as Exhibit B, subject only to such changes in the ordinary course of such business between ____________________[date], and ____________________[date], in consideration for the surrender to the Corporation for redemption by Mr. Bernard Coons of the 30 shares of the Corporation now owned by him.

4. At the closing referred to in paragraph 3, Bernard Coons shall deliver to the Corporation: (a) his resignation as a director, officer, and employee of the Corporation; (b) the certificates for 30 shares of the Corporation, duly endorsed in blank; (c) an agreement, in form satisfactory to counsel for the Corporation, assuming all the obligations pertaining and applicable to such retail hardware business, and indemnifying the Corporation against all liability with respect to such obligations; and (d) a covenant, in form satisfactory to counsel for the Corporation, not to use the name of the Corporation, or the words Gilbert Supply or the word Gilbert, as the name, trade name, or business style of such retail hardware business.

5. At the closing referred to in paragraph 3, the Corporation shall deliver to Bernard Coons: (a) instruments of transfer in form satisfactory to counsel for Bernard Coons, transferring and conveying all the assets, subject to all the liabilities, of such retail hardware business; (b) a covenant not to engage in the retail hardware business in the Borough of ____________________, City of ____________________, for a period of ten years from the date of such closing; and (c) a representation by the Corporation that it intends in good faith to engage actively in the conduct of its wholesale plumbing supply business after such closing.

6. It is a condition of the Plan, and of the obligations of the Corporation and Bernard Coons thereunder, that at or before the closing referred to in paragraph 3 there shall have been issued by the Commissioner of Internal Revenue a ruling to the effect: (a) that the distribution in kind of the retail hardware business of the Corporation in redemption of part of the shares of the Corporation in accordance with the Plan shall be treated as in partial liquidation of the Corporation pursuant to *Section 302(b)(4) of the Internal Revenue Code*; and (b) that the distribution in kind of such retail hardware business to Bernard Coons shall be treated as in full payment in exchange for his shares pursuant to *Section 302(a) of the Internal Revenue Code*.

7. Promptly after the closing referred to in paragraph 3, the directors and officers of the Corporation shall execute and cause to be filed a certificate of reduction of the authorized shares of the Corporation in accordance with the law of the State of ____________________ cancelling and extinguishing the shares surrendered by Bernard Coons to the Corporation for redemption.

8. The directors and officers of the Corporation shall in due time execute and file Treasury Department Form 966 and Forms 1096 and 1099L, and all other returns, documents, and information required to be filed by reason of the partial liquidation of the Corporation.

9. The directors and officers of the Corporation shall carry out and consummate the Plan, and shall have power to adopt all resolutions, execute all documents, file all papers, and take all other action they deem necessary or desirable for the purpose of effecting the partial liquidation of the Corporation in accordance with the Plan.

After full discussion, upon motion duly made and seconded, it was unanimously

Resolved that the Plan of Partial Liquidation of Gilbert Supply Corporation, as submitted to this meeting, is hereby adopted and approved in all respects, and the officers and directors of the Corporation are hereby empowered and authorized to put the Plan into effect and to take all necessary and appropriate action to implement the Plan.

There being no further business, the meeting was duly adjourned.

____

Secretary
Approved:

____

Arnold Barton

____

William Jackson

____

Bernard Coons

FOOTNOTES:
(n1)Footnote *. Arbitrary names, dates, and companies have been added to some forms to promote better understanding of the form.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 29: Dissolution--General.

37TTT-29 California Legal Forms--Transaction Guide Form T29-2

Form T29-2 Distribution in Liquidation

Description: This form is used for distribution is liquidation. Because, as a part of the liquidation, a corporation is required to distribute all of its assets remaining after providing for its debts to its shareholders, a document of conveyance to such shareholders is required if assets other than cash are to be distributed.

Form T29-2 Distribution in liquidation

DISTRIBUTION IN LIQUIDATION

This Assignment made ____________________[date], between [A], a ____________________ [state] Corporation ("Corporation") and [B] ("Shareholder").

W I T N E S S E T H:

WHEREAS, Corporation has this day liquidated pursuant to a Plan of Liquidation and Dissolution adopted by the directors and shareholders of the Corporation, a copy of which is attached hereto.

1. Assignment and Assumption. Corporation hereby assigns, sells, transfers and conveys to Shareholder all of its right, title and interest in and to all of its assets, subject to all of its liabilities, and Shareholder hereby accepts this assignment.

2. Cancellation of Stock. All of the shares of stock and other rights of equity held by the Shareholder in and to the Corporation are hereby conveyed to the Corporation for cancellation and they hereby are cancelled.

3. Applicable Laws. This Agreement shall be construed and enforced in accordance with the laws of the State of ____________________.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first written above.

ATTEST: [A] _______________________ WITNESS: _______________________
By: _______________________ _______________________ [B], Shareholder

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California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 29: Dissolution--General.

37TTT-29 California Legal Forms--Transaction Guide Form T29-3

Form T29-3 Promise to Pay Discharged Debt

Description: This form is used for a promise to pay a debt discharged in bankruptcy.

Form T29-3 Promise to Pay Discharged Debt

PROMISE made by ____________________, of ____________________, ____________________, to ____________________, of ____________________, ____________________.

Whereas the undersigned was adjudicated a bankrupt and by order of the United States Bankruptcy Court, ____________________ District of ____________________, dated ____________________, _____________________, was discharged from all liability for his debts, and

Whereas one of the debts so discharged was a claim for _____________________ Dollars ($_____) against the undersigned held by ____________________, and

Whereas the undersigned desires to pay such claim notwithstanding its discharge,

Now, therefore, the undersigned hereby acknowledges that he owes _____________________ _____________________ Dollars ($_____) and promises to pay such amount, plus interest at the rate of _____ percent per year from the date hereof, on or before ____________________, _____________________.

In witness whereof this instrument was signed in ____________________, ____________________, on _____________________ [date].

____

____

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PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 30: Dissolution--Sale of Assets (Corporation).

37TTT-30 California Legal Forms--Transaction Guide 30.syn

§ 30.syn Synopsis to Chapter 30: Dissolution--Sale of Assets (Corporation).

Form T30-1 Directors' Resolutions Recommending Sale of Corporate Assets

Form T30-1 Directors' Resolutions Recommending Sale of Corporate Assets

Form T30-2 Shareholders' Authorization for Sale of All or Substantially All Corporate Assets

Form T30-2 Shareholders' Authorization for Sale of All or Substantially All Corporate Assets

Form T30-3 Shareholders' Written Consent Approving Sale of Corporate Assets

Form T30-3 Shareholders' Written Consent Approving Sale of Corporate Assets

Form T30-4 Cash Liquidation--Notice of Meeting, Plan, and Agreement to Sell Assets

Form T30-4 Cash Liquidation--Contract to Sell All Assets--Notice of Meeting, Plan, and Agreement to Sell

Form T30-5 Agreement for Sale of All Corporate Assets

Form T30-5 Agreement for Sale of All Corporate Assets

Form T30-6 Directors' Resolution Abandoning Sale of Corporate Assets

Form T30-6 Directors' Resolution Abandoning Sale of Corporate Assets

Form T30-7 Resolutions of Selling Corporation's Shareholders Approving Proposed Exchange of Its Assets for Shares of Acquiring Corporation

Form T30-7 Resolutions of Selling Corporation's Shareholders Approving Proposed Exchange of Its Assets for Shares of Acquiring Corporation

Form T30-8 Agreement for Sale of All Stock of Corporation

Form T30-8 Agreement for Sale of All Stock of Corporation

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 30: Dissolution--Sale of Assets (Corporation).

37TTT-30 California Legal Forms--Transaction Guide Form T30-1

Form T30-1 Directors' Resolutions Recommending Sale of Corporate Assets

Description: This form is a resolution by the directors of a corporation that authorizes the sale of all, or substantially all, of the corporate assets.

Form T30-1 Directors' Resolutions Recommending Sale of Corporate Assets

DIRECTORS' RESOLUTIONS

The Directors of ___________________ [name of corporation], a ___________________ [state] corporation, have determined that it is in the best interests of this corporation and its shareholders that substantially all of the property and assets of the corporation be sold.

THEREFORE, IT IS RESOLVED THAT:

1. The officers of this corporation are authorized and directed to take such steps as are necessary to obtain shareholder approval of the sale of substantially all property and assets of the corporation, either by obtaining a vote of at least two-thirds of the shares at a shareholders' meeting or by obtaining written consent signed by all of the shareholders.

2. In the event the shareholders authorize the sale, the Board of Directors will authorize ___________________ [*specify corporation's agent, e.g.*, the President of this corporation] to fix such terms, conditions, and consideration for the sale on their behalf and on behalf of the corporation.

3. In the event the shareholders authorize the sale, the President and Secretary of this corporation are authorized and directed to execute and deliver on behalf of this corporation and in its name an agreement of purchase and sale of substantially all of the property and assets of the corporation, and to execute and deliver in the name of and on behalf of this corporation all deeds, bills of sale, assignments, and other instruments of transfer as may be deemed necessary or proper to effect such sale.

4. The Directors and Officers of this corporation are authorized and directed to do any and all acts and things necessary to carry out, perform, and consummate the sale.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 30: Dissolution--Sale of Assets (Corporation).

37TTT-30 California Legal Forms--Transaction Guide Form T30-2

Form T30-2 Shareholders' Authorization for Sale of All or Substantially All Corporate Assets

Description: This form is an authorization of the results of a shareholders' meeting called for voting on the sale of all or substantially all of the corporate assets.

Form T30-2 Shareholders' Authorization for Sale of All or Substantially All Corporate Assets

RESOLUTION OF SHAREHOLDERS
TO SELL CORPORATION ASSETS

At a meeting of the Board of Directors of ____________________ [name of corporation], a ____________________ [state] corporation, held on ____________________ [date], the Board of Directors adopted a resolution recommending that all or substantially all of the corporation's assets be sold and that the question of such a sale be submitted to the shareholders of the corporation. In response to those resolutions, this shareholders' meeting was properly noticed and conducted.

The proposal has been considered fully at this meeting. The shareholders have, by requisite vote, adopted the resolution to sell all or substantially all of the corporation's assets.

The total number of outstanding shares of the corporation is: ____________________. The vote on the resolution was as follows:

For the sale: ____________________.

Against the sale: ____________________.

[*Optional: add for each class or series of shares that is entitled to vote as class*]

The shares designated ____________________ are entitled to vote as a class. This class of shares voted in favor of the sale by the following vote:

The total number of shares designated ___________________ [*describe*] is ___________________.

Shares voted for winding up: ___________________.

Shares voted against winding up: ___________________.

[*Continue as follows*]

As a result, the Officers and Directors of the corporation are authorized and directed to take those steps necessary to negotiate the terms for and otherwise complete the sale or all or substantially all of the assets of the corporation.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 30: Dissolution--Sale of Assets (Corporation).

37TTT-30 California Legal Forms--Transaction Guide Form T30-3

Form T30-3 Shareholders' Written Consent Approving Sale of Corporate Assets

Description: This form is a consent by which all of the shareholders consent to the sale of substantially all of the assets of the corporation.

Form T30-3 Shareholders' Written Consent Approving Sale of Corporate Assets

UNANIMOUS WRITTEN CONSENT OF SHAREHOLDERS
TO SALE OF ALL OR SUBSTANTIALLY ALL CORPORATE ASSETS

We, the shareholders of ____________________ [name of corporation], a _____________________________________ [state] corporation, consent to the sale of all or substantially all of the corporation's assets.

Each shareholder has signed his or her name below. The shares of those signing this consent constitute all of the issued and outstanding shares of the corporation.

Beside each signature is the date of signing and the number of shares of the corporation held of record by the signing shareholder on that date.

By signature, each shareholder certifies that the information provided in this consent is correct.

NAME	DATE	NUMBER OF SHARES	
1.	__________________	___________________	____________________
2.	__________________	___________________	____________________
3.	__________________	___________________	____________________
4.	__________________	___________________	____________________

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PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 30: Dissolution--Sale of Assets (Corporation).

37TTT-30 California Legal Forms--Transaction Guide Form T30-4

Form T30-4 Cash Liquidation--Notice of Meeting, Plan, and Agreement to Sell Assets

Description: This form illustrates a plan of liquidation under which the corporation has arranged for the sale of all of its assets for cash, and for the assumption of liabilities by the purchaser. It includes notice for the shareholders' meeting, the plan of complete liquidation, and the agreement of sale of all the corporate assets.

Form T30-4 Cash Liquidation--Contract to Sell All Assets--Notice of Meeting, Plan, and Agreement to Sell

(1) Notice of special meeting of shareholders

To The Shareholders
of Standard Wire Corporation:

Notice is hereby given that a Special Meeting of Shareholders of Standard Wire Corporationn* will be held at the office of the Corporation, ___________________________________ [address], on ____________________[date], at 2 p.m., for the following purposes:

1. To take action upon a proposal that the shareholders consent to and ratify the Board of Directors' adoption of the Plan of Complete Liquidation of the Corporation, dated ____________________[date], a copy of which is attached hereto.

2. To take action upon a proposal that the Corporation be dissolved.

3. To take action upon a proposal that the shareholders authorize and approve the sale of all the assets, properties, and business of the Corporation to Loomis Corporation, a ___________________ [state] corporation, for the price of $2,250,000 and the assumption by Loomis Corporation of liabilities and obligations of the Corporation as set forth in the agreement of sale attached hereto, and upon the terms and conditions therein stated.

4. To take action upon a proposal to change the name of the Corporation from "Standard Wire Corporation" to "S. W. Liquidating Corp."

5. To transact such other business as may properly come before the meeting or any adjournments thereof.

By resolution of the Board of Directors and (with respect to some of the proposals) pursuant to the laws of the State of ___________________, the proposals stated in "1" through "4" above require approval by the votes of the holders of record of at least two-thirds of the outstanding shares of the Corporation entitled to vote thereon. These proposals will be presented to the meeting in the above order, and each will be submitted only if the preceding proposal has been approved.

The stock transfer books of the Corporation will not be closed. Pursuant to the provisions of the Bylaws, the Board of Directors has fixed ____________________[date], as the date as of which the shareholders entitled to receive notice of and to vote at such meeting will be determined. Only shareholders of record at the close of business on that date will be entitled to notice of or to vote at such meeting or any adjournments thereof.

If you do not expect to attend the meeting, please date and sign the enclosed proxy and return it promptly in the business reply envelope.

By order of the Board of

Directors,

____

Secretary

____________________[date]

(2) Plan of complete liquidation

1. *Plan of liquidation.* Standard Wire Corporation, hereinafter called Standard, shall be completely liquidated in the manner stated in this plan.

2. *Approval and ratification.* This plan shall be deemed adopted by Standard upon its approval by Standard's Board of Directors. The Board's action in adopting this plan shall thereafter be submitted to the shareholders of Standard for ratification by the vote of the holders of record of two-thirds of the outstanding shares of Standard entitled to vote thereon, at a shareholders' meeting duly called and held.

3. *Sale of assets.* After this plan has been adopted, and the adoption ratified in accordance with the foregoing procedure, Standard shall accomplish its liquidation by a sale of all of its properties and assets of every description, real and personal, for such consideration and upon such terms and conditions as may be determined to be in the best interests of Standard and its shareholders. The proposed terms and conditions of any such sale shall be submitted to a vote of Standard's shareholders, and no agreement for such sale shall be final or binding on Standard unless and until authorized and approved by the affirmative vote of the holders of record of two-thirds of the outstanding shares of Standard entitled to vote thereon, at a shareholders' meeting duly called and held.

4. *Cessation of business.* Standard shall cease doing business immediately upon the closing of any such sale of its assets, except to the extent required to wind up its affairs, and as soon thereafter as practicable shall make one or more substantial partial distributions of the proceeds of such sale pro rata to or for the account of its shareholders.

5. *Dissolution.* As soon as practicable after the closing of such sale, Standard shall be dissolved and its corporate existence terminated in accordance with the laws of the State of ___________________, and the balance of the proceeds of the sale and all of Standard's other assets, if any, after the payment of Standard's liabilities, and less any

amounts reasonably required to meet claims or contingent liabilities, shall be distributed pro rata to or for the account of Standard's shareholders, such distribution to be made prior to ____________________[date].

6. *Authorization of necessary acts.* The officers of Standard and its Board of Directors, both as directors and as trustees in dissolution for Standard, are hereby authorized to do and perform such acts, execute and deliver such documents, and do all other things as may be reasonably necessary or advisable to accomplish this plan of liquidation.

(3) Sale and purchase agreement

AGREEMENT dated ____________________ [date], between Loomis Corporation, a ___________________ [state] corporation, hereinafter called Loomis, and Standard Wire Corporation, a ___________________ [state] corporation, hereinafter called Standard.

Whereas Loomis desires to buy, and Standard desires to sell to Loomis, all the assets, properties, and business of Standard for a purchase price of $2,250,000 and the assumption by Loomis of certain liabilities and obligations, all upon the terms and conditions hereinafter set forth, and

Whereas Standard has provided for the winding up and settling of its affairs in voluntary dissolution and for the distribution to its shareholders of its net assets in complete liquidation of Standard,

Now, therefore, in consideration of the premises and of the mutual promises herein contained, Loomis and Standard represent, warrant, and agree as follows:

1. *Representations and warranties of seller.* Standard hereby represents and warrants to Loomis as follows:

(a) *Corporate existence.* Standard is a corporation duly organized and validly existing in good standing under the laws of the State of ___________________, and is entitled to own its properties and to carry on its business in the State of ___________________, all in the manner such properties are now owned and such business is presently conducted.

(b) *Authorized shares.* The aggregate number of shares that Standard is authorized to issue consists of 750,000 common shares of the par value of $1 each, all of which have been validly issued and are now outstanding.

(c) *Subsidiaries.* Standard does not have any subsidiaries or affiliated companies of any kind.

(d) *Financial statements.* The statements of financial position of Standard as of ____________________ [date], and as of each _____ [year] thereafter, to and including _____ [year], and the related statements of income and earned surplus for each of the five years ended ____________________ [date], certified by Messrs. Martin & Hull, and unaudited statements of financial condition of Standard as of ____________________[date], and of income and earned surplus of Standard for the nine months then ended are correct and complete and present fairly the financial position of Standard as of the respective dates of such statements and the results of operations of Standard for each of the periods covered thereby, subject in the case of the unaudited statements to audit and the usual year-end adjustments. All of such statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout each of the periods covered thereby, except that the estimated inventory as of ____________________[date], has not been based on a physical check of the inventory.

(e) *Liabilities.* As of ____________________[date], Standard had no material liabilities of any nature or kind, whether direct or indirect, absolute or contingent, which are not shown or provided for in the unaudited statement of financial position of Standard as of ____________________[date].

(f) *Title to properties.* Standard has heretofore furnished to Loomis a brief description of all real properties owned by

Standard. Standard has good and marketable title in fee simple to such properties and owns outright all the machinery and equipment in the plants referred to in such description, and owns outright all other assets and properties reflected in the unaudited statement of financial position of Standard as of ____________________ [date], or acquired by it after that date (other than assets or properties sold or otherwise disposed of in the ordinary course of business subsequent to such date, or not involving material amounts when considered in relation to properties of Standard as a whole), in each case free and clear of all mortgages, liens, security interests, and encumbrances; except that the following, none of which materially affect the present use of the property, shall not be deemed objections to marketable title: current state and local taxes, assessments, easements, defects, encumbrances, restrictions, and rights of the public or the City of ___________________, covenants and conditions or other rights of record, or zoning regulations or ordinances or building restrictions and regulations of the city, town, or village in which the premises lie, or any state of facts that an accurate survey may show.

(g) *Patents.* Standard owns no patents or patent applications other than *patent No. 1,920,520* issued ____________________ [date], which has not been renewed. Standard is not a licensor nor a licensee in respect of any patents, trademarks, trade names, copyrights, or applications therefor. Standard has not received any notice of conflict with asserted rights of others with respect to patents, trademarks, trade names, and copyrights, if any, necessary to conduct its business as now operated.

(h) *Insurance.* Standard has heretofore furnished to Loomis a complete and correct list and brief description of all policies of fire, liability, and other forms of insurance held by Standard.

(i) *Contracts.* Standard is not a party to any written or oral (1) contract for the employment of any officer or individual employee; (2) continuing contract for the future purchase of materials, supplies, or equipment over a period of more than one year from the date hereof; (3) continuing contract for the future sale of Standard products over a period of more than one year from the date hereof; or (4) pension, profit-sharing, retirement, or stock purchase plan in effect with respect to Standard employees or others, except a Profit-Sharing Plan dated ____________________ [date], a true copy of which has been furnished by Standard to Loomis.

(j) *Litigation.* There are no actions, suits, proceedings, or investigations pending or, to the knowledge of Standard, threatened against or affecting Standard, or any of its properties, at law or in equity or before or by any federal, state, municipal, or other governmental department, commission, board, agency, or instrumentality, domestic or foreign.

(k) *Reserve for taxes.* The amounts set up as provisions for taxes on the unaudited statement of financial position of Standard as of ____________________[date], are sufficient for the payment of all accrued and unpaid federal, state, county, and local taxes of Standard, whether or not disputed, for the nine months ended on such date and for all years prior thereto, except that no reserve has been established for any possible additional (1) income and franchise tax assessments relating to the years ____________________[date] to _____[year], inclusive, or (2) state, county, and local taxes in jurisdictions other than ___________________, the taxes under (2) not being deemed material in amount. All deficiencies proposed as a result of the examination of the federal income tax returns through the year ended December 31, _____[year], have been settled and paid.

(l) *No unusual transactions.* Since ____________________[date], Standard has not (1) issued any stock, bonds, or other corporate securities; (2) incurred any obligation or liability (absolute or contingent) except current liabilities and obligations under contracts entered into in the ordinary course of business and except obligations or liabilities entered into or incurred in connection with, or in anticipation of, the execution and performance of this agreement; (3) discharged or satisfied any lien or encumbrance or paid any obligation or liability (absolute or contingent) other than obligations or liabilities referred to in (2) above; (4) declared or made any payment or distribution to shareholders, or purchased or redeemed any of its common shares; (5) mortgaged, pledged, created a security interest in, or subjected to lien, charge, or any other encumbrance, any of its assets, tangible or intangible; (6) sold or transferred any of its tangible assets or cancelled any debts or claims, except in each case in the ordinary course of business; (7) sold, assigned, or transferred any patents, trademarks, trade names, or copyrights; (8) suffered any extraordinary losses or waived any rights of substantial value; or (9) entered into any transaction other than in the ordinary course of business except as any of the foregoing matters may be hereinabove specifically referred to in this agreement.

(m) *No adverse change in condition.* Since ____________________ [date], there has been no material adverse change in the condition, financial or otherwise, of Standard, as shown in the unaudited statement of financial position of Standard as of _____________________ [date], other than changes occurring in the ordinary course of business.

(n) *Inventories.* The items included in Standard's inventories consist solely of raw materials, work-in-process, or finished goods that are suitable and merchantable for filling orders in the normal course of business, or items and supplies regularly used in Standard's business, except in quantities not deemed to be material.

(o) *Accounts receivable.* The trade accounts receivable of Standard (disregarding the applicable reserve for doubtful accounts) shown on the unaudited statement of financial position as of _____________________ [date], or thereafter acquired by it prior to the date hereof have been collected or are collectible in amounts not less than 96% of the face amount thereof.

(p) *Approval of board of directors.* The Board of Directors of Standard has duly approved a Plan of Liquidation and this agreement and the transactions contemplated herein and, subject to the approval thereof by the shareholders of Standard as required under the laws of the State of ____________________, has authorized the execution and delivery hereof by Standard.

4. *Representations and warranties of purchaser.* Loomis represents and warrants to Standard as follows:

(a) *Corporate existence.* Loomis is a corporation duly organized and existing and in good standing under the laws of the State of ____________________.

(b) *Authorization.* The execution and delivery of this agreement by Loomis and the transactions contemplated herein have been duly authorized by all proper corporate action.

(c) *Inspection.* Loomis has inspected the various properties of Standard and conducted an investigation of its accounts, business, and the status of its tax returns.

5. *Sale of assets.* On the terms and subject to the conditions herein set forth, Standard shall convey, transfer, assign, and deliver to Loomis, and Loomis shall acquire and accept, as hereinafter provided, all the assets, properties, and business, except goodwill, of every kind and description, wherever located, including, without limitation, all property, tangible or intangible, real, personal, or mixed, accounts receivable, bank accounts, cash and securities, claims and rights under contracts of Standard, rights to use the name "Standard Wire Corporation," and all books and records of Standard relating to the business to be continued by Loomis; provided, however, that Standard shall have the right to retain its books of account (except accounts receivable ledger cards and accounts payable ledger), checkbooks, cancelled checks, bills and vouchers in support thereof, minute books, stock transfer books and records, and all records relating to taxes not assumed by Loomis hereunder, anything herein to the contrary notwithstanding; and provided, further, that each party hereto shall have free access to and the right to make extract copies of all books and records received or retained by the other party hereunder. The assets and property to be transferred and delivered to Loomis on the Closing Date as herein provided shall, without limitation, include all assets and property of Standard shown on or reflected in the unaudited statement of financial position of Standard as of _____________________ [date], and all assets and property thereafter acquired by Standard prior to the Closing Date, except such of those assets and property as prior to the Closing Date (1) may have been disposed of in the ordinary course of business or in the payment and discharge of liabilities or obligations as hereinafter provided; and (2) may have been otherwise disposed of at the request or with the consent in writing of Loomis.

6. *Liabilities of seller.* On or before the Closing Date, Standard will, so far as practicable, pay and discharge all its liabilities shown on the unaudited statement of financial position as of ____________________ [date], or thereafter incurred by it in the ordinary course of business, which shall then be due or accrued. At the Closing hereunder, Loomis (and such subsidiary of Loomis as may be designated pursuant to paragraph 23 hereof) shall execute and deliver to Standard an instrument, in form satisfactory to Standard's counsel, by which Loomis (and such subsidiary, if any) expressly assumes and guarantees the payment and performance of, and agrees to indemnify and hold harmless Standard, its officers, shareholders, and directors (both as directors and as trustees in dissolution), against, all debts, liabilities, obligations, contracts, and commitments of Standard, accrued to or existing at the time of the Closing, of whatsoever nature or character, whether absolute, contingent or otherwise, and whether or not reflected or reserved against on Standard's balance sheets, books of account, and records (including but not by way of limitation, all tax obligations and liabilities of Standard, whether resulting from additional assessments or otherwise) other than the following liabilities and obligations:

(a) any liabilities and obligations of Standard to its shareholders, as such;

(b) any liabilities and obligations of Standard which may be incident to or result from the sale of its assets, properties, and business to Loomis, the dissolution and liquidation of Standard, and the distribution of its assets among its shareholders, including, without limitation, tax liabilities (other than those mentioned in paragraph 10), printing and mailing expenses, fees and expenses of counsel, accountants, engineers, transfer agents and registrars, and the expense of maintaining such organization as Standard deems necessary between the Closing Date and the completion of its liquidation, dissolution, and distribution of its assets among shareholders; and

(c) liabilities and obligations for taxes (and any interest and penalties thereon) in excess of an amount equal to the sum derived from the addition of (1) the amount of the provisions made for taxes on the unaudited statement of financial position of Standard as of ___________________ [date], (2) $50,000, (3) the taxes mentioned in paragraph 10 hereof, and (4) all normal accruals and additions of taxes for the period from ___________________ [date], to the Closing Date hereunder, it being understood that Loomis (and such designated subsidiary, if any) shall be liable pursuant to the foregoing for such sum, but not in excess thereof, without regard to the source or basis of the taxes assessed or levied.

Loomis shall have the right at all times to contest in good faith and at its own cost and expense any liabilities and obligations asserted by others against Standard which are assumed by Loomis hereunder.

7. *Instruments of transfer.* The transfer, and delivery of Standard's assets to Loomis as herein provided, shall be effected by deeds, bills of sale, endorsements, assignments, drafts, checks, and other instruments of transfer and conveyance in such form as the attorney for Loomis shall reasonably request; provided, however, that such instruments of transfer and conveyance shall not contain any warranties, express or implied, other than a warranty by Standard against any one claiming by, through, or under Standard and a provision for full subrogation of Standard's rights under warranties of title made by others. Appropriate forms of such instruments of transfer and conveyance in conformity with this agreement shall be submitted to Loomis by Standard's counsel for examination within a reasonable time in advance of the Closing Date. Standard will, at any time and from time to time after the Closing Date, upon the reasonable request of Loomis, execute, acknowledge, and deliver any instrument of further assurance as may be necessary or desirable for perfecting in Loomis, or its successors and assigns, title to the assets and property to be sold to Loomis as provided herein.

8. *Information as to liabilities.* At Standard's request, Loomis will at any time and from time to time, for a period of three years after the Closing Date, furnish Standard with such information as it may reasonably require and which may be available to Loomis with respect to any liabilities and obligations not assumed by Loomis hereunder. Loomis shall pay all liabilities and obligations that are assumed by Loomis hereunder if not contested by Loomis as between Loomis and the creditors, and will furnish Standard with information with respect thereto.

9. *Name of seller.* Standard consents to the use of its name or one similar thereto on or prior to the Closing Date by a ____________________ [state] subsidiary to be formed by Loomis, and as of the Closing Date or promptly thereafter Standard shall change its name to a dissimilar one; provided, however, that Loomis will cause the name of such subsidiary to be changed to a dissimilar one if the transactions contemplated hereunder are not consummated at the Closing Date. As used herein, the word "Standard" refers not only to the ____________________ [state] corporation bearing that name but also to the same corporation after it has changed its name in accordance with the provisions of this agreement.

10. *Purchase price.* On the terms and subject to the conditions herein set forth, Loomis shall pay Standard on the Closing Date $2,250,000 by certified check or bank cashier's check, ____________________ [state] funds. In addition, Loomis shall pay to Standard any and all ____________________ State Sales and Compensating Use Taxes arising out of the sale of the properties referred to in paragraph 5, and all taxes of a similar nature payable to federal, state, municipal, or other governmental authorities, such payments to be made, in whole or in part, either at the Closing or at such time thereafter as such taxes may become due or payable.

11. *Access.* From and after the date hereof, Standard shall continue to afford to the officers and accredited representatives of Loomis free access to the properties and records of Standard in order that Loomis may have full opportunity to make such investigation as it shall desire of the affairs of Standard provided that such investigation shall not interfere with Standard's normal business operations.

12. *Closing.* The Closing under this agreement shall take place at 11 a.m. on ____________________[date], at the office of Standard in ____________________ [address], or at such other time and place as the parties hereto shall agree upon.

13. *Consents to assignments.* To the extent that the assignment of any contract, license, lease, commitment, sales order, or purchase order to be assigned to Loomis as provided herein is not permitted without the consent of the other party thereto, this agreement shall not constitute an agreement to assign the same if such consent is not given. Until six months after the Closing Date Standard will use its best efforts to obtain the consent of the other parties to all such contracts, licenses, leases, commitments, sales orders, or purchase orders to the assignment thereof to Loomis. If such consent is not obtained, Standard will, until six months after the Closing Date, cooperate with Loomis in any reasonable arrangement designed to provide to Loomis the benefits under any such contracts, licenses, leases, commitments, sales orders, or purchase orders.

14. *Collection of receivables.* After the Closing Date, Loomis shall have the right and authority to collect, for the account of Loomis, all receivables and other items which shall be transferred to Loomis as provided herein, and to endorse with the name of Standard any checks received on account of any such receivables or other items. Standard will transfer and deliver to Loomis any cash or other property that Standard may receive in respect of such receivables or other items.

15. *Liquidation and dissolution of seller.* Standard shall call a meeting of its shareholders to be held on ____________________ [date], or as soon thereafter as may be practicable, for the purpose of (a) ratifying the Plan of Liquidation of Standard heretofore adopted by its Board of Directors, (b) authorizing the conveyance, assignment, transfer, and delivery of all the assets, properties, and business of Standard (except goodwill) to Loomis upon the terms and conditions provided hereunder, and (c) authorizing the change in Standard's name. Promptly upon its receipt of the purchase price from Loomis as provided in paragraph 10 hereof, and in any event within six months after the Closing Date, Standard shall commence its liquidation, except for the maintenance of such reserve for estimated liabilities as may be required by the laws of the State of ____________________. From and after the Closing Date, Standard shall not engage in any business or other activity except as required to complete its liquidation and dissolution; and Standard shall cause to be furnished to Loomis the written agreement of John Brown, Max Strong, and Robert Doane not to

engage in any business or other activity which is the same or similar to that conducted by Standard, other than as an employee of Loomis, for a period of ten years from the Closing Date.

16. *Conditions of obligations of purchaser.* Loomis' obligations hereunder are, at its option, subject to the conditions that, on or before the Closing Date:

(a) At the meeting of the shareholders of Standard provided for in paragraph 15 hereof, the holders of at least two-thirds of the outstanding shares of Standard entitled to vote thereat shall have voted in favor of the matters specified in the first sentence of paragraph 15.

(b) All instruments and documents required of Standard under this agreement shall have been in a form approved by Rogers and Pope, counsel for Loomis, provided, however, that such approval shall not be unreasonably withheld.

(c) Loomis shall have received an opinion of Marvin, Hays, and Storm, counsel for Standard, dated the Closing Date, in form and substance satisfactory to Loomis to the effect that: (1) Standard is a corporation duly organized and validly existing in good standing under the laws of the State of ____________________ and entitled to own its properties and qualified to do business in those places where it does business; (2) Standard has full power and authority to convey, assign, transfer, and deliver its assets, properties, and business to Loomis as herein provided; and (3) all corporate and other proceedings required to be taken by or on the part of Standard to authorize it to carry out this agreement and so to convey, assign, transfer, and deliver its assets, properties, and business (except goodwill) have been duly and properly taken.

(d) Standard shall have furnished to Loomis title company searches or other evidence covering the good and marketable title in fee simple of Standard in and to its real properties, free and clear of all mortgages, liens, or encumbrances of any nature whatsoever, except as stated in subparagraph (f) of paragraph 1 hereof, and the due authorization, execution, and delivery of all instruments of conveyance, transfer, and assignment from Standard to Loomis.

(e) Loomis shall not have discovered any material error, misstatement, or omission in the representations and warranties made by Standard in paragraph 1 hereof, and all the terms and conditions of this agreement to be complied with and performed by Standard on or before the Closing Date shall have been substantially complied with and performed.

(f) Prior to the Closing Date, the plants and physical properties of Standard have not been so damaged by fire, flood, or other casualty as to cause any interruption or suspension of a substantial volume of Standard's production.

(g) The representations and warranties made by Standard herein shall be true and correct, on and as of the Closing Date, with the same force and effect (except as affected by the transactions contemplated herein and changes occurring in the ordinary course of business) as though such representations and warranties had been made on and as of the Closing Date; and Standard shall have delivered to Loomis a certificate to such effect and as to the compliance by Standard as of the Closing Date, with the terms and conditions hereof.

(h) No action, suit, or proceeding against Standard or Loomis under the antitrust law is pending.

(i) The Closing Date referred to in paragraph 12 occurs in all events prior to _____________________[date].

17. *Conditions of obligations of seller.* The obligations of Standard hereunder are, at the option of Standard, subject to the conditions that, on or before the Closing Date:

(a) Standard shall have received an opinion of Rogers and Pope, counsel for Loomis, dated the Closing Date, in form and substance satisfactory to Standard, to the effect that: (1) Loomis is a corporation duly organized and existing and in good standing under the laws of the State of ____________________; and (2) all corporate and other proceedings required to be taken by or on the part of Loomis to authorize it to carry out this agreement have been duly and properly taken.

(b) Standard shall not have discovered any material error, misstatement, or omission in the representations and warranties made by Loomis in paragraph 4 hereof, and all the terms and conditions of this agreement to be complied with and performed by Loomis on or before the Closing Date shall have been substantially complied with and performed.

(c) At the meeting of the shareholders of Standard provided for in paragraph 15, the holders of at least two-thirds of the outstanding shares of Standard entitled to vote thereat shall have voted in favor of the matters specified in the first sentence of paragraph 15; and the number of common shares of Standard the holders of which shall have objected to the sale described in this agreement and shall have demanded payment for their shares in the manner provided by the ___________________ [state] Business Corporation Law shall not be greater than 7% of the 750,000 common shares of Standard issued and outstanding.

(d) No action, suit, or proceeding against Standard or Loomis under the antitrust law is pending.

(e) The Closing Date referred to in paragraph 12 occurs in all events prior to ____________________ [date].

18. *Notice required.* The options granted to each party by paragraphs 16 and 17 of this agreement shall be exercisable only by written notice delivered to the other party at or prior to the Closing Date; and if any such option is not so exercised, for any reason whatsoever, it shall expire and be deemed irrevocably waived.

19. *Representations and warranties to survive closing.* All representations and warranties contained in paragraphs 1 and 2 and in subparagraph (g) of paragraph 16 of this agreement shall survive the Closing hereunder and shall continue until ____________________ [date]; provided that no such representations or warranties shall survive beyond such date, nor shall Loomis nor any person claiming through or under Loomis thereafter have any claim or right against Standard or any of its shareholders, officers, or directors (both as directors and as trustees in dissolution) in respect thereof. All such representations and warranties shall expire with and be terminated and extinguished on ____________________ [date], such passage of time to be conclusive evidence that each party, after full investigation, is satisfied with the facts constituting the basis thereof. The representations and warranties contained in paragraph 20 shall survive beyond the Closing Date and beyond ____________________[date].

20. *Brokers.* Each party represents and warrants to the other party that no third party brought about this sale except the National Investing Corporation. Standard represents that it has agreed to pay to National Investing Corporation the sum of $40,000 in full compensation for its services, in accordance with the terms of an agreement heretofore entered into with such corporation.

21. *Dividends.* Between the date hereof and the Closing Date, Standard will not declare or pay any dividends on shares of its common stock.

22. *Expenses incident to agreement.* Each party hereto shall pay its own expenses incident to preparation for carrying this agreement into effect and consummating the contemplated transactions, whether or not such transactions are consummated.

23. *Substitution of subsidiary as purchaser.* This agreement shall not be assigned by either party, but Loomis may substitute for itself as purchaser hereunder any wholly owned subsidiary corporation formed by it, and duly qualified to do business in ___________________ [state], by sending written notice thereof to Standard; and thereupon such subsidiary shall be deemed to have been substituted in the place and stead of Loomis, provided, however, that at all times Loomis shall remain fully liable hereunder and does hereby guarantee payment and performance by such

subsidiary of each obligation undertaken by Loomis under this agreement. Except as stated in this paragraph, nothing in this agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto, any rights or remedies under or by reason of this agreement.

24. *Notices.* Any notice, request, instruction, or other document to be given hereunder by either party hereto to the other shall be in writing and delivered personally or sent by registered mail, if to Loomis, addressed to Loomis at ____________________ [address], and if to Standard, addressed to ____________________ [address].

25. *Extension of time and waivers.* This instrument contains the entire agreement between the parties hereto with respect to the transactions contemplated herein. The parties hereto may by mutual agreement, in writing, (a) extend the time for the performance of any of the obligations of the parties hereto, (b) waive any inaccuracies in the warranties and representations contained in this agreement, and (c) waive compliance with any of the covenants contained herein and so waive performance of any of the obligations of the parties hereto. Any such agreement on the part of Standard for any such extension or waiver shall be validly and sufficiently authorized for the purposes of this agreement if authorized or ratified by the Board of Directors of Standard and Loomis.

In witness whereof Loomis Corporation and Standard Wire Corporation have caused this agreement to be executed, in their respective corporate names, by their respective Presidents thereunto duly authorized and their respective corporate seals to be hereunto affixed and attested by their respective Secretaries as of the day and year first above written.

Corporate Seal	Loomis Corporation
Attest:	by ________________________
	President
Secretary	
Corporate Seal	Standard Wire Corporation
Attest:	by
	President
Secretary	

FOOTNOTES:
(n1)Footnote *. Arbitrary names, dates, and companies have been added to some forms to promote better understanding of the form.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 30: Dissolution--Sale of Assets (Corporation).

37TTT-30 California Legal Forms--Transaction Guide Form T30-5

Form T30-5 Agreement for Sale of All Corporate Assets

Description: This form is an agreement for the sale of all of the corporate assets by the corporation to one purchaser for cash.

Form T30-5 Agreement for Sale of All Corporate Assets

AGREEMENT FOR PURCHASE AND SALE OF ASSETS

THIS AGREEMENT is made at ____________________ [address], on ____________________ [date], between ____________________ [name of purchaser], called the Purchaser in this agreement, and ____________________ [name of selling corporation], a ____________________ [state] corporation, called the Seller in this agreement.

Purchase and Sale

1. The Purchaser agrees to purchase from the Seller, and the Seller agrees to sell and deliver to the Purchaser, on the Closing Date, all of the Seller's properties, assets, and business as a going concern, other than its corporate books, records, and seal, all of which will be retained by the Seller. The properties, assets, and business to be conveyed and delivered include the properties and assets described or referred to in Exhibit A. Exhibit A is attached to this agreement and incorporated by reference.

Purchase Price

2. On delivery of the Seller's properties, assets, and business to the Purchaser on the Closing Date, the Purchaser will deliver to the Seller a cashier's check in the sum of $_______. The Purchaser will also assume the indebtedness owed by the Seller to ____________________ [name of creditor], as evidenced by a promissory note in the principal amount of $_______. A copy of this promissory note is attached to this agreement as Exhibit B and incorporated by reference.

Allocation of Purchase Price

3. The purchase price is apportioned among the properties, assets, and business being sold by the Seller as follows:

PROPERTY	PRICE
____________________ [*describe*, *e.g.*, Inventory]	$________
____________________ [*describe*, *e.g.*, Fixtures]	$________
____________________ [*describe*, *e.g.*, Utility Deposits]	$________
____________________ [*describe*, *e.g.*, Covenant Not to Compete]	$________
____________________ [*describe*, *e.g.*, Goodwill]	$________
Total	$________

Assumption of Certain Obligations by Purchaser

4. On the Closing Date, the Purchaser will assume and agree to discharge the Seller's obligations to ____________________ [name of creditor] as described in Paragraph 2, above. Except as expressly provided in this Paragraph 4, the Purchaser will not assume and will not discharge or be liable for any debts, liabilities, or obligations of the Seller, including, without limitation, any (a) liabilities or obligations of the Seller to its creditors or shareholders; (b) liabilities or obligations of the Seller with respect to any transactions occurring after the Closing; (c) sales or income tax or other liabilities or obligations of the Seller incurred in connection with the sale of its properties, assets, or business pursuant to this Agreement, or in connection with its liquidation or winding up; or (d) any contingent liabilities or obligations of the Seller.

Closing Date

5. The Closing Date is ____________________ [date] unless, before that date, the parties mutually agree, in writing, to another date. The time and place of the Closing will be as the parties will mutually agree.

Instruments of Conveyance and Transfer at Closing

6. (a) *Title Documents.* At Closing, the Seller will deliver to the Purchaser such deeds, bills of sale, indorsements, assignments, and other good and sufficient instruments of conveyance and transfer in a form satisfactory to the Purchaser's counsel, ____________________ [name of attorney]. These documents will contain full warranties of title, so as to be effective to vest in the Purchaser good, absolute, and marketable title to the properties, assets, and business being transferred to the Purchaser by the Seller, free and clear of all liens, charges and encumbrances, and restrictions.

(b) *Business Documents.* At closing, the Seller will deliver to the Purchaser all the contracts, dealer franchises, and agreements, commitments, and rights pertaining to the Seller's business and other data relating to its assets, business, and operation, including its books of account and supporting records, except the corporate minute books, stock transfer records, and corporate seal of the Seller.

Possession of Property

7. Simultaneous with the delivery of the documents described in paragraph 6, above, the Seller will take all steps as may

be needed to put the Purchaser in actual possession, operation, and control of the properties, assets, and business to be transferred.

Sales and Transfer Taxes and Fees

8. ___________________ [*Specify, e.g.,* The Seller] will bear all applicable sales, transfer, documentary, use, filing, and other taxes and fees that may be due or payable as a result of the conveyance, assignment, transfer, or delivery of the property, assets, or business transferred under this agreement, regardless of whether these taxes or charges are levied on the Seller or the Purchaser. The obligation on the part of the ___________________ [*specify, e.g.,* Seller] to pay these obligations or charges is subject to its right in good faith to contest their validity or amount by proper proceedings at its expense.

Further Assurances to Purchaser

9. From time to time, after the Closing Date, at the request of the Purchaser, the Seller will execute and deliver to the Purchaser such other instruments of conveyance and transfer and take such other action as the Purchaser may reasonably require to more effectively convey, transfer, vest in the Purchaser, and to put the Purchaser in possession of, any of the properties or assets to be conveyed, transferred, and delivered to the Purchaser under this Agreement.

Representations and Warranties by Seller

10. As a material inducement to the Purchaser to execute and perform its obligations under this Agreement, the Seller represents and warrants to the Purchaser as follows:

(a) *Organization of Seller.* The Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of ___________________ and has all requisite corporate power and authority to carry on its business as it is presently being conducted. Furthermore, the Seller has authority to enter into this Agreement, and to carry out and perform the terms and provisions of this Agreement. Seller has no subsidiaries and has no direct or indirect interest (other than as a creditor under accounts receivable), either by way of stock ownership or otherwise, in any other firm, corporation, association, or business enterprise.

(b) *Capitalization.* The Seller is duly and lawfully authorized by its ___________________ [Certificate of Formation *or* Articles of Incorporation], to issue ___________________ [number] shares of ___________________ [*specify, e.g.,* common stock], ___________________ [no par value *or* $_______ par value]. There are ___________________ [number] shares validly issued and outstanding as of the date of this Agreement. The Seller has no other class or series of authorized capital stock. There are in existence no outstanding options, contracts, commitments, warrants, agreements, or rights of any character or nature whatever affecting or relating in any manner to the issuance of the Seller's capital stock.

(c) *Financial Statements.* The Seller has delivered to the Purchaser an ___________________ [audited *or* unaudited] balance sheet of the Seller as of ___________________ [date]. A copy of this balance sheet is attached to this agreement as Exhibit C and incorporated by reference. To the best of the Seller's knowledge and belief, the balance sheet fairly presents the condition of the Seller as of its date and discloses all of the debts, liabilities, and obligations of the Seller, whether accrued, absolute, contingent, or otherwise due or to become due (including without limitation liabilities for taxes of any kind whatsoever) or arising out of transactions occurring, or any state of facts existing, on or before the date of the balance sheet. The balance sheet was prepared in accordance with generally accepted accounting principles, applied on a basis consistent with prior periods.

(d) *Changes.* Between ____________________ [date of balance sheet] and the date of this agreement, the Seller has not:

(1) Incurred any obligations or liabilities, absolute, accrued, contingent, or otherwise, except current liabilities incurred in the ordinary course of business.

(2) Mortgaged, pledged, subjected to lien, charge, or encumbrance, or granted a security interest in any of its assets, tangible or intangible.

(3) Canceled any debt or claim or sold or transferred any of its assets or properties, except sales out of inventory in the ordinary course of business.

(4) Suffered any damage, destruction, or loss (whether or not covered by insurance) affecting its properties, business, or prospects, or waived any rights of substantial value.

(5) Entered into any transaction other than in the ordinary course of business.

(e) *Litigation.* There are no actions, suits, or proceedings, pending or threatened, against the Seller or affecting any of its properties or rights, at law or in equity or before any federal, state, municipal, or other governmental agency or instrumentality, domestic or foreign, nor is the Seller or any of its officers or directors aware of any facts that, to its or their knowledge, might result in any such action, suit, or proceeding. The Seller is not in default with respect to any order or decree of any court or of any such governmental agency or instrumentality.

(f) *Compliance With Law and Other Instruments.* The Seller is not in violation of any term or provision of any charter, bylaw, mortgage, indenture, contract, agreement, instrument, judgment, decree, order, statute, rule, or regulation. The execution and delivery of and performance and compliance with this agreement will not result in the violation of, be in conflict with, or constitute a default under any such term or provision, or result in the creation of any mortgage, lien, encumbrance, or charge on any of the properties or assets of the Seller.

(g) *Corporate Acts and Proceedings.* The sale and transfer of assets by the Seller, as provided for in this agreement, have been approved and consented to by the Board of Directors of the Seller and by the requisite number of holders of its outstanding capital stock. All action required by any applicable law or otherwise by shareholders of the Seller with regard to this sale and transfer of assets by the Seller have been appropriately authorized and accomplished.

(h) *Title to Properties and Assets.* The Seller has good, absolute, and marketable title to all of its properties and assets being sold to the Purchaser pursuant to this agreement, including those reflected in the balance sheet (other than inventory since sold or disposed of in the ordinary course of business) and those described or referred to in Exhibit A. In each case, the property is subject to no lease, mortgage, pledge, lien, charge, security interest, encumbrance, or restriction whatsoever. The furniture, fixtures, and equipment of the Seller are in good condition and repair, reasonable wear and tear excepted.

(i) *Patents and Trademarks.* The Seller has no knowledge of any claim or reason to believe that it is or may be infringing or otherwise acting adversely to the rights of any person under or in respect of any patent, trademark, service mark, trade name, copyright, license, or other similar intangible right. The Seller is not obligated or under any liability whatever to make any payments by way of royalties, fees, or otherwise to any owner or licensee of or other claimant to the patent, trademark, trade name, copyright, or other intangible asset with respect to its use in connection with the conduct of its business.

(j) *No Default.* The Seller is not in default in any way under any of the contracts, agreements, leases, documents, or other commitments to which it is a party.

(k) *Absence of Certain Changes or Events.* Since the date of the balance sheet, there has not been any adverse change in, or event or condition adversely affecting the condition (financial or otherwise) of properties, assets, liabilities, business, or prospects of the Seller.

(*l*) *Brokers.* The introduction of the Seller to the Purchaser, and all negotiations on the part of the Seller relative to this agreement have been effected and carried on by the Seller directly with the Purchaser, without the intervention of any broker, finder, or other person.

(m) *Disclosure.* No representation or warranty by the Seller in this agreement, or in any writing attached to this agreement, contains or will contain any untrue statement of material fact, or omits or will omit to state any material fact (of which the Seller or any of its directors or shareholders has knowledge or notice) required to make the statements made in this agreement and its attachments not misleading.

Purchaser's Conditions Precedent to Closing

11. The obligation of the Purchaser to consummate this agreement is subject to and conditioned on the satisfaction, at or before the Closing Date, of each of the following conditions:

(a) *Compliance With Agreement.* The Seller must have complied with all the terms and conditions of this agreement that the Seller is required to comply with on or before the Closing Date, including the delivery to the Purchaser of all schedules, documents, and instruments required to be delivered to Purchaser by this Agreement.

(b) *Approval of Legal Matters by Purchaser's Counsel.* The Purchaser's counsel, ____________________ [name of attorney], must have approved the validity or legality of all actions, proceedings, instruments, and documents required to carry out this agreement, and all other related legal matters. For this purpose, the Seller will furnish to such counsel all corporate and other records of the Seller as counsel may request.

(c) *Seller's Counsel's Opinion.* The Seller must have delivered to the Purchaser an opinion from its counsel, ____________________ [name of attorney], to the effect that:

> (1) The Seller is a duly organized and validly existing corporation in good standing under the laws of the State of ____________________.
>
> (2) The Seller has the corporate power to carry on its business as it is presently being conducted, to enter into this agreement, to assign, transfer, and deliver to the Purchaser the properties, assets, and business of the Seller as contemplated by this agreement and to carry out the provisions of this agreement.
>
> (3) All corporate proceedings required by law or by the provisions of this agreement to be taken by the Board of Directors and shareholders of the Seller on or before the Closing Date have been duly and validly taken.
>
> (4) This agreement and the instruments executed and delivered to the Purchaser pursuant to this agreement have been fully and properly authorized, executed, and delivered and constitute the binding obligation of the Seller and the shareholders of the Seller, enforceable in accordance with their terms.
>
> (5) The performance of this agreement will not result in any breach or violation of any of the terms or provisions of, or constitute a default under, the Seller's Certificate of Formation or Bylaws, or any agreement or instrument to which the Seller is a party or by which it is bound or to which any of its

property is subject.

(6) Seller's counsel has no knowledge of any litigation, proceeding, or governmental investigation (whether state or federal), or labor dispute or labor trouble pending or threatened against or relating to the Seller or its properties, assets, or business.

(d) *Consent to Assignment of Lease.* The Purchaser must have obtained from the lessor of the premises located at ___________________ [address], the lessor's consent to the assignment of the rights of the Seller under the lease agreement dated ____________________ between ___________________ [name of lessor], as lessor, and the Seller, as Lessee, and the lessor's agreement to substitute the Purchaser as the primary lessee under the terms of the lease agreement.

(e) *Delivery of Certain Instruments by Stockholders.* The shareholders of the Seller must have executed and delivered to the Purchaser a joint and several Guaranty and Agreement of Indemnity, dated the date of the Closing, and in the form attached to this agreement as Exhibit D and incorporated by reference.

(f) *Representations and Warranties.* The representations and warranties of the Seller in Paragraph 10 of this agreement will be deemed to be made again on the Closing Date and must then be true and correct, subject to any changes contemplated by this agreement.

Nature and Survival of Representations and Warranties

12. The representations and warranties contained in or made pursuant to this agreement will survive the execution and delivery of this agreement and all inspections, examinations, and audits made at any time by or on behalf of any of the parties.

Indemnification

13. The Seller agrees to indemnify and hold the Purchaser harmless at all times from and after the Closing Date against any damages. "Damages," as used in this agreement, include any claims, actions, demands, losses, costs, expenses, liabilities (joint or several), penalties, and damages, including attorney's fees resulting to the Purchaser from (a) any inaccurate representation made by the Seller in or under this Agreement, (b) any breach of any of warranties made by the Seller in this Agreement, (c) any breach or default in the performance by the Seller of any of the covenants to be performed by the Seller under this agreement, and (d) any debts, liabilities, or obligations of the Seller, whether accrued, absolute, contingent, or otherwise, due or to become due, except those obligations specifically assumed by the Purchaser in Paragraph 2 of this Agreement.

Demands and Actions

14. The Purchaser agrees that, on receipt by it of notice of any demand, assertion, claim, action, or proceeding, judicial or otherwise, with respect to any matter as to which the Seller and its shareholders have agreed to indemnify the Purchaser under the provisions of this agreement, the Purchaser will give prompt notice of all such demands and claims in writing to the Seller. The Seller reserves the right to contest and defend any demand, assertion, claim, action, or proceeding with respect to which it or its shareholders have agreed to indemnify the Purchaser under the provisions of this agreement. The Purchaser agrees to cooperate with the Seller in contesting any demand, assertion, or claim that the Seller elects to contest. If, after notice, the Seller does not defend against any claim or demand, or elects not to participate in the defense asserted by any other person, the Seller and its shareholders will be bound by the results

obtained by the Purchaser, including any out-of-court settlement or compromise of the claim or demand. If Seller elects to contest any demand, assertion, or claim, neither it nor its shareholders will be obligated to make any payments to the Purchaser until the legal remedies available to the Seller or Purchaser, as the case may be, are exhausted.

Covenant Not to Compete

15. The Seller and all of its shareholders agree that, for a period of ____________________ [*e.g.*, three years] from the date of this agreement, they will not, directly or indirectly, own, manage, operate, join, control, or participate in the ownership, management, operation, or control of, or be connected with, in any manner, any business that is in competition with the business of the Seller presently being conducted, within the area of ____________________ [reasonable area no larger than necessary to protect the business sold].

Satisfaction of Debts

16. The Seller further covenants that, as promptly as practicable after the Closing Date, it will satisfy in full all of its debts, liabilities, and obligations. After the Closing Date, the Seller will not engage in any business or other activity, except as required to wind up and dissolve the corporation.

Fire or Casualty

17. The Seller assumes all risk of destruction, loss, or damage due to fire or other casualty up to the Closing Date. If the property listed in Exhibit A is destroyed, lost, or damaged due to fire or other casualty, the Purchaser is entitled to terminate this agreement. If the Purchaser elects to terminate this agreement, all rights of the Purchaser and the Seller under the agreement terminate.

The Purchaser must notify the Seller within ____________________ [*e.g.*, seven] days after receiving written notice of destruction, loss, or damage to the property of its decision to terminate this Agreement. If the Purchaser does not timely notify the Seller of termination, this agreement will remain in full force and effect, provided, however, the purchase price will be adjusted at the Closing Date to reflect the destruction, loss, or damage to the property. If the Purchaser and Seller are unable to agree on the amount of the adjustment, the dispute must be determined by an independent appraiser and such determination will be binding on both the Purchaser and Seller.

Assignment

18. Neither the Seller nor the Purchaser may assign this agreement without the consent of the other. Nothing in this agreement, expressed or implied, is intended to confer on any person, other than the parties to this agreement and their successors, any rights or remedies under or by reason of this agreement.

Expenses

19. Each of the parties will bear all expenses incurred by them in connection with this agreement, in the consummation of the transactions contemplated by this agreement, and in preparation of this agreement.

Amendment and Waiver

20. This agreement may be amended or modified at any time, or any provision may be waived, but only by means of an instrument in writing executed by the Purchaser and the Seller.

Notices

21. Any notices or other communications required or permitted under this agreement are sufficiently given if delivered personally or sent by registered or certified mail, postage prepaid, addressed to the Seller or its shareholders at ____________________ [address] or to the Purchaser at ____________________ [address], or at such other address furnished in writing by any party to the others. Notice will be deemed given as of the date so delivered or on the date of deposit in the United States mail, as the case may be.

Choice of Law

22. The laws of the State of ____________________ will govern the validity of this agreement, the construction of its terms, and the interpretation of the rights and duties of the parties.

Section and Other Headings

23. Section, paragraph, and other headings contained in this agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.

Counterpart Execution

24. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument.

Gender

25. All personal pronouns used in this agreement include the other genders, whether used in the masculine or feminine or neuter gender, and the singular includes the plural whenever and as often as may be appropriate.

Parties in Interest

26. All the terms and provisions of this agreement are binding on and inure to the benefit of, and may be enforced by, the Seller and the Purchaser and their successors and assigns.

Integrated Agreement

27. This agreement constitutes the entire agreement between the parties. There are no agreements, understandings, restrictions, warranties, or representations between the parties other than those set forth in this agreement.

SELLER

__________________ [name of corporation]
By: __________________ [signature of corporate offier]
__________________ [typed name and title]
PURCHASER
__________________ [name of corporation]
By: __________________ [signature of corporate officer]
__________________ [typed name and title]

EXHIBIT D

GUARANTY BY STOCKHOLDERS

IN ORDER to induce the execution by the Purchaser, ____________________ [name of purchaser], of the Agreement for Purchase and Sale of Assets dated _____________________, we, all of the shareholders of the Seller, ____________________ [name of seller], guarantee:

1. Each of the representations, warranties, and agreements of the Seller is accurate and complete and will be accurate and complete at the time the Purchaser acquires the Seller's assets and properties.

2. We ____________________ [have voted *or* will vote] all shares of the Seller's stock in favor of the Agreement for Purchase and Sale of Assets and the transactions contemplated in that agreement, and will take every action within our power to cause the Seller to carry out all of its undertakings pursuant to that agreement.

3. To the extent provided for in Paragraph 13 the Agreement for Purchase and Sale of Assets, we will indemnify and hold the Purchaser harmless against any losses, damages, costs, or expenses that the Purchaser may sustain as a result of a breach of any of the foregoing representations, warranties, or agreements by the undersigned, or a breach by the Seller of any of the representations, warranties, or agreements contained in the agreement.

4. We will comply with the terms of the covenant not to compete provided for in Paragraph 15 of the Agreement for Purchase and Sale of Assets dated _____________________.

Shareholders:
1. __________________ [signature]
__________________ [typed name]
__________________ [date]
2. __________________ [signature]
__________________ [typed name]
__________________ [date]
3. __________________ [signature]
__________________ [typed name]
__________________ [date]
4. __________________ [signature]
__________________ [typed name]
__________________ [date]

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 30: Dissolution--Sale of Assets (Corporation).

37TTT-30 California Legal Forms--Transaction Guide Form T30-6

Form T30-6 Directors' Resolution Abandoning Sale of Corporate Assets

Description: This form is a directors' resolution abandoning a proposed sale of substantially all of the corporate assets.

Form T30-6 Directors' Resolution Abandoning Sale of Corporate Assets

RESOLUTION ABANDONING SALE OF CORPORATE ASSETS

The Board of Directors previously recommended the sale of substantially all of the property and assets of the corporation [*add, if appropriate:* and that recommendation was approved by the shareholders]. The Board of Directors has subsequently determined that it would be in the best interests of the corporation and its shareholders to abandon the proposed sale.

THEREFORE, IT IS RESOLVED THAT:

The proposed sale of substantially all of the property and assets of the corporation, which had previously been recommended by the Board of Directors [and authorized by the shareholders], is abandoned.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 30: Dissolution--Sale of Assets (Corporation).

37TTT-30 California Legal Forms--Transaction Guide Form T30-7

Form T30-7 Resolutions of Selling Corporation's Shareholders Approving Proposed Exchange of Its Assets for Shares of Acquiring Corporation

Description: This form is a resolution for use by selling corporation's shareholders to approve a Type C reorganization.

Form T30-7 Resolutions of Selling Corporation's Shareholders Approving Proposed Exchange of Its Assets for Shares of Acquiring Corporation

The Board of Directors of this corporation on ___________________ [date], adopted a resolution approving a written plan and agreement of reorganization, referred to in this Resolution as the "Agreement," submitted to the Board of Directors on that date. The Agreement, which provides that this corporation would exchange all of its assets for voting common shares of ___________________ [name of acquiring corporation], a ___________________ [state] corporation and then dissolve, has been submitted to this meeting of shareholders.

THEREFORE, IT IS RESOLVED, that:

1. The proposed exchange by this corporation of all of its assets for voting common shares of ___________________ [name of acquiring corporation], a ___________________ [state] corporation, pursuant to the Agreement submitted to this meeting and approved by the Board of Directors of this corporation on ___________________ [date], is approved by the outstanding shares of this corporation as required by the ___________________ [state] Business Organizations Code.

2. On completion of the transaction contemplated by the Agreement submitted to this meeting, this corporation be dissolved, its affairs wound up, and its assets distributed to its shareholders in the following manner: ___________________ [*specify manner of distribution to shareholders*]

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 30: Dissolution--Sale of Assets (Corporation).

37TTT-30 California Legal Forms--Transaction Guide Form T30-8

Form T30-8 Agreement for Sale of All Stock of Corporation

Description: This form is a contract for sale of all the stock of a corporation to another corporation for cash and a promissory note on an installment basis.

Form T30-8 Agreement for Sale of All Stock of Corporation

AGREEMENT FOR PURCHASE AND SALE OF STOCK

THIS AGREEMENT is entered into in ____________________ [city], ____________________ [state], as of ____________________ [date], between ____________________ [name of purchaser], referred to as the Purchaser in this agreement, and ____________________ [name of seller], referred to as the Seller in this agreement.

RECITALS

1. The Seller is the owner of all of the issued and outstanding capital stock of ____________________ [name of corporation], a ____________________ [state] corporation, referred to as the Corporation in this agreement.

2. The Seller desires to sell to the Purchaser, and the Purchaser desires to purchase from the Seller, all of the issued and outstanding capital stock of the Corporation on the terms and conditions contained in this agreement.

THEREFORE, the parties agree as follows:

AGREEMENT

Purchase and Sale of Stock

1. The Seller agrees to sell to the Purchaser, and the Purchaser agrees to purchase, at the Closing Date, ____________________ [number] shares of ____________________ [*specify, e.g.*, Common] Stock of the Corporation.

These shares constitute all of the issued and outstanding capital stock of the Corporation.

At the Closing Date, the Seller will deliver to the Purchaser a certificate or certificates evidencing the Corporation's stock in a form ready for transfer and duly indorsed to the Purchaser. Thereafter, the Seller will execute and deliver such other documents and instruments, and take such other actions, as the Purchaser may reasonably request, in order more fully to vest in the Purchaser perfect title to the Corporation's stock and any and all other right, title, interest, claim, or demand of any kind that the Seller may have in the properties, assets, or business of the Corporation.

Purchase Price

2. The total price to be paid by the Purchaser to the Seller for the stock of the Corporation being sold by this agreement is $_______ [purchase price].

Payment of Purchase Price

3. The purchase price described in Paragraph 2 must be paid as follows:

(a) $_______ by a bank cashier's or certified check at the Closing on the Closing Date.

(b) $_______ by the Purchaser's promissory note in the principal amount of $_______, bearing simple interest at the rate of ____________________ percent per annum, with all principal and interest payable in ____________________ [*specify number, e.g.,* 24 semiannual] installments, the first such payment being due ____________________ [date]. The note must be in the form attached to this agreement as Exhibit A and incorporated by reference.

Security for Promissory Note

4. The Purchaser represents and warrants to the Seller that, until such time as all indebtedness under the note referred to in Subparagraph 3(b) is paid in full, the Purchaser will maintain all of the shares of stock purchased under this agreement in escrow with the ____________________ [name] Bank, and will also assure that the Corporation will have a net worth equal to the unpaid principal amount of the indebtedness. If, on the last day of any quarter the net worth of the Corporation is less than the unpaid portion of such indebtedness, the Purchaser has ____________________ [number, *e.g.,* 90] days to correct such condition through capital generated by the operations of the Corporation, by the contribution of sufficient capital to the Corporation to correct the deficit, or by the prepayment of principal on the indebtedness in an amount equal to the deficit. If at the end of the ____________________ [number, *e.g.,* 90]-day period, the Purchaser has not corrected the deficit, the Seller may require a prepayment of principal in an amount equal to the deficit.

Closing and Closing Date

5. The Closing Date under this agreement must be ____________________ [date] unless, before that date, the parties mutually agree, in writing, to a different date. The Closing will be held at the offices of ____________________ [name of attorney] at ____________________ [time, *e.g.,* 10:00 a.m.] on the Closing Date.

Representations and Warranties by Seller

6. The Seller represents and warrants to the Purchaser as follows:

(a) *Title to Corporation's Stock.* The Seller has good, absolute, and marketable title to the Corporation's stock, free and clear of all liens, claims, encumbrances, and restrictions of every kind. The Seller has the complete and unrestricted right, power, and authority to sell, transfer, and assign the Corporation's stock pursuant to this agreement. The delivery of the Corporation's stock to the Purchaser will vest the Purchaser with good, absolute, and marketable title to all of the Corporation's stock, free and clear of all liens, claims, encumbrances, and restrictions of every kind.

(b) *Organization.* The Corporation is a duly organized and validly existing ___________________ [state] corporation, in good standing, with all requisite corporate power and authority to carry on its business as presently conducted. The Corporation is duly qualified as a foreign corporation in good standing in each jurisdiction where the nature of its activities or its properties owned or leased makes such qualification necessary. The Corporation has no subsidiaries and has no direct or indirect equity interest in any other firm, corporation, or business enterprise.

(c) *Capitalization*. The Corporation is authorized by its ___________________ [Certificate of Formation *or* Articles of Incorporation] [*add, if appropriate:*, as amended,] to issue the stock covered by this agreement. The Corporation has no authority to issue any other capital stock or other security. There are no outstanding options, contracts, commitments, warranties, agreements or other rights of any character affecting or relating in any manner to the issuance of the Corporation's stock or other securities or entitling anyone to acquire the Corporation's stock or other securities.

(d) *Long-Term Indebtedness.* The Seller has delivered to the Purchaser true copies of all instruments relating to the Corporation's long-term and short-term indebtedness, and the Corporation is not in any default or violation of any provision of its outstanding long-term or short-term indebtedness.

(e) *Financial Statements.* The Seller has furnished the Purchaser with a balance sheet of the Corporation dated ____________________, and the related statement of income and retained earnings for the year ended ___________________ [end of fiscal year]. These documents were prepared by ___________________ [names], Certified Public Accountants. These financial statements are in accordance with the books and records of the Corporation, fairly present the financial condition of the Corporation at the dates mentioned, and the results of its operations for the periods specified, were prepared in accordance with generally accepted accounting principles, and reflect adequate reserves for all reasonably anticipated losses and costs in excess of anticipated income. Specifically, the balance sheet discloses all of the debts, liabilities, and obligations of any nature (whether absolute, accrued, contingent, or otherwise, and whether due or to become due) of the Corporation at the balance sheet date and includes appropriate reserves for all taxes and other liabilities accrued or due at such dates but not yet payable.

(f) *Present Status.* Since the balance sheet date, the Corporation has not incurred any obligations or liabilities, absolute, accrued, contingent, or otherwise, except current liabilities in the ordinary course of business; discharged or satisfied any liens or encumbrances, or paid any obligations or liabilities, except in the ordinary course of business; declared or made any shareholder payment or distribution or purchased or redeemed any of its securities or agreed to do so; mortgaged, pledged, or subjected to lien, encumbrance, or charge any of its assets; canceled any debt or claim; sold or transferred any assets except sales from inventory in the ordinary course of business; suffered any damage, destruction, or loss (whether or not covered by insurance) materially affecting its properties, business, or prospects; waived any rights of substantial value; nor entered into any transaction other than in the ordinary course of business.

(g) *Tax Returns and Audits.* The Corporation has duly filed all federal, state, and local tax returns required to be filed by it and has paid all federal, state, and local taxes required to be paid with respect to the periods covered by such returns. The Corporation has not been delinquent in the payment of any tax, assessment, or governmental charge. The Corporation has not had any tax deficiencies proposed or assessed against it and has not executed any waiver of the statute of limitations on the assessment or collection of any tax. In the event that, after the Closing Date, a deficiency is determined in the amount of federal or state tax payable by the Corporation, which relates to periods before the Closing date, the Seller will be fully responsible for the payment of the deficiency.

(h) *Litigation.* There are no legal actions, suits, arbitrations, or other legal administrative or other governmental proceedings pending or threatened against the Corporation, its properties, assets, or business. Neither the Seller nor the Corporation is aware of any facts that might result in any such action, suit, arbitration, or other proceeding.

(i) *Compliance With Law and Other Instruments.* The business and operation of the Corporation have been and are being conducted in accordance with all applicable laws, rules, and regulations of all authorities, except those that do not materially and adversely affect the Corporation or its properties, assets, businesses, or prospects.

Performance of this agreement will not result in any breach of, or constitute a default under, or result in the imposition of any lien or encumbrance on any property of the Corporation under any arrangement, agreement, or other instrument to which the Corporation or the Seller is a party, and will not violate the Certificate of Formation, as amended, or the Bylaws of the Corporation.

The Corporation is not in violation of its [Certificate of Formation *or* Articles of Incorporation], as amended, its Bylaws, or of any indebtedness, mortgage, contract, lease, or other agreement or commitment.

(j) *Title to Property.* The Corporation has good, absolute and marketable title to all its properties and assets, including all those reflected on the balance sheet and those used or located on property controlled by the Corporation in its business, except inventory sold in the ordinary course of business. These properties are subject to no mortgage, pledge, lien, charge, security interest, encumbrance, or restriction except those which are disclosed on the balance sheet, or are disclosed in the Schedule of Assets referred to in Subparagraph 6(k), below. All the equipment of the Corporation is in good condition and repair, reasonable wear and tear excepted. The Corporation has not been threatened with any action or proceeding under any building or zoning ordinance, regulation, or law.

(k) *Schedule of Assets.* Within ____________________ [number, *e.g.*, 10] days after the execution of this Agreement, the Seller will deliver to the Purchaser a separate Schedule of Assets that specifically refers to this paragraph, and that contains:

> (1) A true and complete legal description of all real properties owned and held by the Corporation.
>
> (2) A true and complete legal description of all real properties in which the Corporation has a leasehold interest, together with a description of each indenture, lease, sublease, or other instrument under which the Corporation claims or holds such leasehold interest.
>
> (3) A true and complete list of all patents, patent applications, patent licenses, trademarks, trademark registrations, and applications therefor, trade names, copyrights, and copyright registrations and applications owned by the Corporation.
>
> (4) A complete schedule of all fire and other casualty and liability policies of the Corporation in effect at the date of this agreement.
>
> (5) A true and complete list of all accounts receivable of the Corporation as of ____________________ [date], together with information as to the aging of each such account.

(*l*) *Patents and Trademarks.* To the best of the Seller's knowledge and belief, the Corporation owns, possesses, and has good title to all copyrights, trademarks, trademark rights, patents, patent rights, and licenses necessary in the conduct of its business. To the best of the Seller's knowledge and belief, the Corporation is not infringing on or otherwise acting adversely to the rights of any person under, or in respect to, any copyrights, trademarks, trademark rights, patents, patent rights, or licenses owned by any person or persons. There is no claim or pending or threatened action with respect to such rights. The Corporation is not obligated to pay any royalties or fees to any licensee or other claimant to any patent, trademark, trade name, copyright, or other intangible asset. The Corporation has the unrestricted right to use (free and clear of any rights or claims of others) all trade secrets, customer lists, manufacturing and other processes incident to the manufacture, use or sale of any and all products presently sold by it.

(m) *Contracts.* Except as disclosed by letter presented to the Purchaser before Closing, the Corporation is not a party to, or otherwise bound by: any written or oral contract not made in the ordinary course of business; employment or consultant contract not terminable at will without cost or other liability; labor union contract; bonus, pension, profit sharing, retirement, share purchase, stock option, hospitalization, group insurance, or similar employee benefits plan; real or personal property lease, as lessor or lessee; advertising or public relations contract; purchase, supply, or service contract in excess of $_______ each, or that is not terminable without cost or expense on less than ___________________ [number, *e.g.,* 30] days' notice; deed of trust, mortgage, conditional sales contract, security agreement, pledge agreement, trust receipt, or any other agreement or arrangement under which any of the assets or properties of the Corporation are subject to a lien, encumbrance, charge, or other restriction; license agreement, whether as licensee or licensor; contract or agreement involving any expenditure by it of more than $_______; contract or agreement that is not terminable by it on less than ___________________ [number, *e.g.,* 30] days' notice; distribution agreement with respect to any of its products, or contract that provides for a redetermination of price or contains a similar provision or provides for cost reimbursement; or contract (other than routine purchase orders received by the Corporation) to be performed in whole or in part more than ___________________ [number, *e.g.,* 90] days from the date thereof and that is not terminable without cost or liability.

To the best of the Seller's knowledge and belief, the Corporation has in all respects performed all obligations required to be performed to date and is not in material default in any respect under any of the contracts, agreements, leases, documents, or other commitments to which it is a party or otherwise bound or affected. All parties having contracts with the Corporation are in material compliance with such contracts and are not in material default.

(n) *Compensation of Officers and Others.* Since the balance sheet date, there has not been any change in any compensation, commission, bonus, or other remuneration payable to any officer, director, agent, employee, or consultant of the Corporation, except for increases in the ordinary course of business consistent with prior practice.

(o) *Inventories.* The inventories of the Corporation reflected in the balance sheet, and all inventory items that have been acquired since the balance sheet date, consist of goods of a quality and in quantities as are salable in the ordinary course of its business with normal markup at prevailing market prices. These inventories were determined at the lower of cost or market value. Since the balance sheet date, the Corporation has continued to replenish its inventory in a normal and customary manner consistent with prior practice and prudent practice prevailing in the business of the Corporation.

(p) *Records.* The respective books of account and minute books of the Corporation are complete and correct, and reflect all those transactions involving its business that should have been set forth in such books.

(q) *Absence of Certain Changes or Events.* Since the balance sheet date, there has not been any change in or any event or condition (financial or otherwise) affecting the properties, assets, liabilities, operations, or prospects of the Corporation, other than changes in the ordinary course of its business, none of which has (either when taken by itself or when taken in conjunction with all other such changes) been materially adverse.

(r) *No Brokers or Finders.* Neither the Corporation nor the Seller will be obligated in any way for any commission, fee, or other remuneration to any finder, broker, or the like in connection with this Agreement or its negotiation, execution, or performance.

(s) *Accounts Receivable.* All of the accounts receivable of the Corporation that are reflected in the balance sheet, and all the accounts receivable that have arisen since the balance sheet date (except such accounts receivable as have been collected since the balance sheet date), are valid and enforceable claims. Such accounts receivable are fully collectible except to the extent of the amount of the reserve for bad debts set forth in the balance sheet.

(t) *Purchase Commitments and Outstanding Bids.* No purchase commitments of the Corporation are in excess of normal, ordinary, and usual requirements of its business, or were made at any price in excess of the then current market price, or contain terms and conditions more onerous than those usual and customary in the industry.

(u) *Insurance Policies.* There are in full force all policies of fire, liability, and other forms of insurance described in the Schedule of Assets referred to in Subparagraph (k) of this Paragraph 6. Such policies are in amounts and against such losses and risks as are generally maintained by comparable businesses.

(v) *Disclosure.* No representation or warranty by the Seller in this agreement, or in any writing furnished or to be furnished pursuant this agreement, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact required to make the statements not misleading.

Actions of Corporation Pending Closing

7. The Seller agrees that, from the date of this agreement until the Closing Date:

(a) *Operations.* The Seller will cause the Corporation to operate only in the ordinary course of business unless the Purchaser consents in writing to the contrary. In addition, the Seller will not enter into any transaction or perform any act that would constitute a breach of the representations, warranties, or agreements contained in this agreement.

(b) *Access to Records.* The Seller will cause the Corporation to allow the Purchaser access, during normal business hours, to all its business operations, properties, books, files, and records, and will cooperate in the Purchaser's examination of these things. No examination, however, constitutes a waiver or relinquishment by the Purchaser of its right to rely on the Seller's covenants, representations, and warranties as made in this agreement. Until the Closing Date, the Purchaser will hold in confidence all information obtained by its examinations.

(c) *Compliance.* The Seller will cause the Corporation and its officers and employees to comply with all applicable provisions of this agreement.

Conditions Precedent to Obligations of Purchaser

8. The following conditions must be satisfied before the Purchaser has an obligation to complete this agreement on the Closing Date:

(a) *No Material Errors.* The representations and warranties of the Seller in Paragraph 6 of this agreement will be deemed to be made again on the Closing Date, and must then be true and correct.

(b) *Certificate of Officers.* The Corporation must have delivered to the Purchaser a certificate dated as of the Closing Date, executed by its President and Secretary, certifying that the conditions specified in Subparagraphs (a), (c), and (e) of this Paragraph 8 have been fulfilled.

(c) *Resignation of Directors and Officers.* The Seller must have delivered to the Purchaser the written resignations of the directors and officers of the Corporation.

(d) *Minimum Tangible Net Worth.* On the Closing Date, the Corporation must have a tangible net worth of at least $_______.

(e) *Opinion of Seller's Counsel.* The Seller must deliver to the Purchaser an opinion, of the Seller's counsel, ___________________ [name], dated as of the Closing Date, in a form and substance satisfactory to the Purchaser and the Purchaser's counsel, to the effect that:

(1) The Corporation is a duly and validly organized and existing corporation in good standing under the laws of the State of ___________________, with full corporate power to carry on the business in which it is engaged, and is legally qualified to do business as a foreign corporation in good standing in each jurisdiction where the nature of its activities or of its properties owned or leased makes qualification necessary.

(2) The performance of this agreement and the consummation of the transactions contemplated in this agreement will not result in any breach or violation of any of the terms or provisions of, or constitute a default under, the Corporation's Certificate of Formation or Bylaws, or any order, rule, or regulation of any court or governmental agency or body having jurisdiction over the Corporation or any of its activities or properties, or any statute, indenture, mortgage, deed of trust, lease, loan agreement, security agreement, or other agreement or instrument known to counsel, to which the Corporation is a party or by which it is bound.

(3) No provision of the Certificate of Formation [*add if appropriate:*, as amended], Bylaws, minutes, or share certificates of the Corporation, or of any contract to which the Corporation or the Seller is a party prevents the Seller from delivering absolute and marketable title to the Corporation's stock to the Purchaser as contemplated by this agreement.

(4) The Corporation is authorized by its Certificate of Formation to issue ___________________ [number] shares of ___________________ [*specify type, if appropriate, e.g.,* common] stock, of which there are ___________________ [number] shares issued and outstanding, all of which are duly authorized, validly issued, and outstanding, fully paid and nonassessable. Furthermore, to the knowledge of counsel, the issuance and sale of these shares did not violate the Securities Act of 1933, or the rules and regulations of the Securities and Exchange Commission, or any applicable state securities or Blue Sky laws.

(5) Seller's counsel has no knowledge of any litigation, proceeding, governmental investigation, labor dispute, or labor trouble pending or threatened against or relating to the Corporation, its properties, or business, except as set forth in the opinion.

(f) *Key Employees.* The Purchaser must have been able to agree in writing on the terms of an employment agreement with the following key employees of the Corporation: ___________________ [*list names*].

(g) *Franchises.* The Purchaser must have been able to reach a satisfactory arrangement with all franchisors and suppliers of the Corporation regarding continuation of business relationships.

Covenant Not to Compete

9. The Seller will agree in writing that, for ___________________ [number, *e.g.,* two] years following the Closing Date, the Seller will not, directly or indirectly, within the existing marketing area of the Corporation in ___________________ [names] Counties, ___________________ [state] enter into or engage generally in direct

competition with the Corporation in the business of ____________________ [*describe business*], either directly or as a partner, joint venturer, or officer or director of a competitor.

Nature and Survival of Representations and Warranties

10. All statements of fact contained in any memorandum, certificate, instrument, or other document delivered by or on behalf of the Seller for information or reliance pursuant to this agreement will be deemed representations and warranties by the Seller under this agreement. All representations and warranties of the parties will survive the Closing and all inspections, examinations, or audits on behalf of the parties, and will expire ____________________ [number, *e.g.*, five] years following the Closing Date.

Indemnification

11. The Seller agrees to indemnify and hold the Purchaser harmless at all times from and after the Closing Date against any damages. "Damages," as used in this agreement, include any claims, actions, demands, losses, costs, expenses, liabilities (joint or several), penalties, and damages, including attorney's fees resulting to the Purchaser from (a) any inaccurate representation made by the Seller in or under this agreement, (b) any breach of any of warranties made by the Seller in this agreement, (c) any breach or default in the performance by the Seller of any of the covenants to be performed by the Seller under this agreement, and (d) any debts, liabilities, or obligations of the Seller, whether accrued, absolute, contingent, or otherwise, due or to become due. "Damages" also include: all debts, liabilities, and obligations of any nature whatsoever (whether absolute, accrued, contingent, or otherwise and whether due or to become due) of the Corporation at the balance sheet date that are not reflected in the balance sheet, whether known or unknown by the Seller; all claims, actions, demands, losses, costs, expenses, and liabilities resulting from any litigation involving the Corporation, whether or not disclosed to the Purchaser; all claims, actions, demands, losses, costs, expenses, liabilities, and penalties resulting from (i) the Corporation's failure to own, possess, and have good title to all copyrights, trademarks, trademark rights, patents, or business; or (ii) the Corporation's infringement or claimed infringement on or acting adversely to the rights or claimed rights of any person under or in respect to any copyrights, trademarks, trademark rights, patents, patent rights, or patent licenses; all claims, actions, demands, losses, costs, expenses, liabilities, or penalties resulting from any default of the Corporation under any of the contracts, agreements, leases, documents, or other commitments to which it is a party or otherwise bound or affected.

The Seller will reimburse Purchaser on demand for any payment made by the Purchaser at any time after the Closing Date that is based on the judgment of any court of competent jurisdiction or pursuant to a bona fide compromise or settlement of claims, demands, or actions, in respect of any damages to which the foregoing indemnity relates. The Purchaser agrees to give the Seller prompt written notice of any litigation threatened or instituted against the Corporation that might constitute the basis of a claim for indemnity by the Purchaser against the Seller.

Records of the Corporation

12. For a period of ____________________ [number, *e.g.*, five] years following the Closing Date, the Seller, in connection with tax audits, is entitled to inspect the books of account and records of the Corporation pertaining to all periods before the Closing Date.

Expenses

13. Each of the parties will bear all expenses incurred by it in connection with this agreement.

Amendment and Waiver

14. This agreement may be amended or modified at any time, but only by means of an instrument in writing executed by both the Purchaser and the Seller.

Assignment

15. The Seller, its successors in interest, and the Purchaser may not assign this agreement nor any right under this agreement without the prior written consent of the other, except for an assignment incident to a merger, consolidation, or reorganization of either party. Nothing in this agreement, expressed or implied, is intended to confer on any person, other than the parties and their successors, any rights or remedies under or by reason of this agreement.

Notices

16. Any notice, communication, or request under this agreement must be in writing and may be given or be served by depositing the notice in the United States mail or by personal delivery. In the case of notice served by mail, the notice will be effective on deposit in the mails so long as it is addressed to the party to be notified, postage prepaid, and is registered or certified with return receipt requested. For purposes of notice, the addresses of the parties will, until changed, be as follows:

SELLER
__________________ [name of seller]
__________________ [street address]
__________________ [city], ____________________ [state]
PURCHASER
__________________ [name of purchaser]
__________________ [street address]
__________________ [city], [state]

Headings

17. Headings contained in this agreement are for reference purposes only, and do not affect the meaning or interpretation of this agreement.

Counterpart Execution

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

Integrated Agreement

19. This agreement constitutes the entire agreement between the parties. There are no agreements, understandings,

restrictions, warranties, or representations between the parties other than those set forth in this agreement. This agreement supersedes all prior agreements and understandings between the parties.

Choice of Law

20. The laws of ____________________ [state] will govern the validity of this agreement, the construction of its terms, and the interpretation of the rights and duties of the parties.

SELLER
__________________ [name of corporation]
By __________________ [signature of corporate officer]
__________________ [typed name and title]
PURCHASER
__________________ [name of corporation]
By __________________ [signature of corporate officer]
__________________ [typed name and title]

EXHIBIT A

PROMISSORY NOTE

$_______ [amount]
____________________, ____________________ [state]
____________________ [date]

For value received, I, ____________________ [name of purchaser], make this note and promise to pay to ____________________ [name of seller], or order, the principal sum of $_______ [amount], with interest on unpaid principal from the date of this note at the rate of ____________________ [number, *e.g.,* 6] percent per annum.

Principal and interest are payable in installments as follows:

____________________ [*Specify payment terms, e.g.,* 24 equal semiannual installments of $_______. The first installment is due and payable ____________________ [date, *e.g.,* six months from the date of this note *or* on ____________________ (date)].

Time is of the essence of this note. The failure to pay any installment of principal or interest when due gives the holder of the note the right to declare the entire unpaid principal and all earned interest due and payable immediately.

As the maker of this note, I retain the right to prepay the principal in whole or in part before its due date [*Add if desiring to qualify transaction as installment sale for tax purposes:*, except that no prepayment in excess of $_______ may be made in the calendar year ____________________]. Any prepayment will be credited first on interest then due, and the balance on principal. Interest will cease on the principal so credited, except that no prepayment will relieve me as the Maker from the obligation to pay principal and interest on each successive regular semiannual installment date following prepayment until all of the unpaid principal with interest has been paid in full.

I, as Maker, and any sureties, grantors, and indorsers of this note, all waive demand, presentment for payment, notice of dishonor, protest and notice of protest, diligence in collecting or in bringing suit against any party, and agree to all extensions and partial payments, with or without notice, before or after maturity.

If, after maturity, this note is placed in the hands of an attorney for collection, or if it is collected through judicial proceedings, I agree to pay the holder of this note reasonable attorney's fees and all costs and other expenses incurred by the holder in enforcing the terms of this note.

MAKER

[*Alternative One. For individual purchaser*]

__________________ [signature]
__________________ [typed name]

[*Alternative Two. For business entity purchaser*]

__________________ [typed name of business entity]
By: __________________ [signature]
__________________ [typed name and title]

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 31: Dissolution--Sale of Assets (Partnership).

37TTT-31 California Legal Forms--Transaction Guide 31.syn

§ 31.syn Synopsis to Chapter 31: Dissolution--Sale of Assets (Partnership).

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 31: Dissolution--Sale of Assets (Partnership).

37TTT-31 California Legal Forms--Transaction Guide Form T31-1

Form T31-1 Agreement of Sale of Partnership Assets and Business

Description: This form is an agreement for use when the partners intend to sell all of the assets and business of the partnership as a going concern. It details schedules, title and condition of assets, compliance, and performance.

Form T31-1 Agreement of Sale of Partnership Assets and Business

AGREEMENT OF SALE OF
PARTNERSHIP ASSETS AND BUSINESS

This Agreement is made on ____________________ [date], by and between ____________________ [name of first partner] and ____________________ [name of second partner], individually and doing business as ____________________ [name of partnership], a ____________________ [state] general partnership, referred to in this Agreement as the Sellers, and ____________________ [purchasing corporation], a ____________________ [state] corporation, referred to in this Agreement as the Buyer. Sellers and Buyer agree as follows:

ARTICLE 1. PLAN OF SALE

Plan

1.01. On the closing date specified in Paragraph 1.02 of this Agreement, and subject to the performance of all conditions precedent contained in this Agreement:

(a) The Sellers will assign to the Buyer all of their interest in the Partnership business and assets, subject to all of the liabilities of the Partnership.

(b) Except for costs and expenses incurred by the Sellers in carrying out the provisions of this Agreement, the Buyer will assume all of the liabilities of the Partnership at the closing date.

(c) For and in consideration of the transfer of the business and assets of the Partnership, the Buyer agrees to pay and deliver to the Sellers at closing a bank's cashier's check in the amount of $_______.

(d) The Sellers will thereafter liquidate and wind up the Partnership affairs, and distribute to themselves in proportion to their respective interests in the Partnership the cash paid by the Buyer at the closing.

Closing Date

1.02. The closing under this Agreement will take place at the hour of ___________________ [time] on ____________________ [date], at ___________________ [office, street address, city, and state], or at such other time and place as the Sellers and the Buyer fix by agreement in writing signed by the Sellers and Buyer. The date and time of closing constitute the closing date referred to in this Agreement.

ARTICLE 2. COVENANTS, REPRESENTATIONS,
AND WARRANTIES OF SELLERS

Legal Status

2.01. The Sellers, residing at ___________________ [specify street address, city, and state], have been and now are Partners doing business under the firm name of ___________________, with their principal place of business at ___________________ [street address, city, and state]. The Sellers entered into and have continued in the Partnership under the provisions of a partnership agreement in writing dated ____________________. A copy of the partnership agreement is attached to this Agreement as Exhibit ___________________.

Interest in Partnership

2.02. (a) ___________________ [Name] and ___________________ [name] are the sole general partners of the Partnership, and there are no limited partners.

(b) As of the date of this Agreement there are not any options or other rights outstanding representing any interest in the Partnership business or affecting the business and assets to be transferred under this Agreement or rights to purchase any such interest in the Partnership business, whether exercisable against the Partnership or the individual partners.

Financial Statements

2.03. There ___________________ [are attached to this Agreement as Exhibits ___________________ through ___________________ *or* have been delivered previously to the Buyer] the ___________________ [audited *or* unaudited] balance sheet of the Sellers as of ____________________ [date], and the related statements of income for the ___________________ [*specify time period, e.g.,* preceding five years]. All such financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis and present fairly the financial position of Sellers as of ____________________ [date], and the results of operations for the period then ended [*add if statements are unaudited* subject, however, to normal changes or adjustments resulting from year-end audit of the financial statements].

Schedules Furnished

2.04. The Sellers have delivered to the Buyer the schedules enumerated below. To the extent that any schedule identifies any contract, agreement, or other instrument in general terms in lieu of specific descriptions, the schedule will be supplemented by setting forth such specific descriptions as the Buyer may request. If after the date of this Agreement there will be any change in the matters reflected in any such schedule, the Sellers will deliver to the Buyer before the closing date appropriate supplements to the schedule so affected, making such deletions, modifications, and additions as may be required in order that the Buyer will have received currently complete and correct information as to the matters to be reflected in each such schedule.

(a) First Schedule (restrictions of transfer of properties): This schedule lists any of the assets, the transfer of which as contemplated in this Agreement is subject to any restriction, or which requires the consent of any third party, pursuant to a preferential or other right of purchase or otherwise, and describes in detail each such restriction, consent requirement, or purchase right.

(b) Second Schedule (certain material contracts): This schedule lists all agreements, contracts, and other instruments, to the extent not listed in any other schedule, not subject to cancellation by the Sellers on ____________________ [*specify time period, e.g.,* 90] days' notice without penalty which involve a payment or payments to be made by or to the Sellers, or a liability or liabilities of or to the Sellers, in excess of $_______ in any year.

(c) Third Schedule (pending litigation): This schedule lists all litigation and proceedings pending or threatened in courts and governmental commissions and bureaus affecting the assets or the Sellers' right to convey them.

(d) Fourth Schedule (insurance): This schedule lists all fire, liability, and other insurance now in effect with respect to any of the assets of the Sellers.

(e) Fifth Schedule (guarantees): This schedule lists all indebtedness or liabilities of any person, firm, or corporation that the Sellers have guaranteed or otherwise become liable for, absolutely or contingently.

(f) Sixth Schedule (employment and deferred compensation contracts): This schedule lists all employment, deferred compensation, and similar contracts by which the Sellers are bound.

Title to, Condition, and Location of Assets

2.05. (a) The Sellers have, and on the closing date will have, good and marketable title to all of the assets reflected as being owned by them on the balance sheet as of _____________________ [date], and to all assets thereafter acquired, free and clear of all mortgages, liens, pledges, charges, or encumbrances of any nature, except as follows:

(i) The line of current taxes not yet due and payable.

(ii) Minor exceptions, not in the aggregate material.

(iii) Such imperfections of title or easements as do not materially detract from or interfere with the operations, value, or use of the assets subject to such imperfections or affected by such imperfections, or materially affect title to such assets.

(iv) Such liens, charges, or encumbrances as are set forth in the balance sheet.

(b) All leases included among the assets, or to which any of the assets are subject, are in good standing, valid, and effective and, to the best of the Sellers' knowledge, information, and belief, after reasonable investigation by the Sellers, there is not, under any of such leases, any existing material default, event of default, or event that with notice or lapse of time or both would constitute a material default.

(c) The plant and equipment included among the assets are in good operating condition and repair, subject only to ordinary wear and tear.

(d) Except as set forth in the First Schedule, there exists no restriction on the right of the Sellers to assign and transfer all of the assets and convey good title to the assets, as contemplated by this Agreement.

(e) All of the assets are in the possession of the Sellers and are located at ____________________ [street address, city, and state].

No Material Change

2.06. Since _____________________ [date], except as previously disclosed to the Buyer in writing, the Sellers have not:

(a) Suffered any change in their financial condition or the operations of their business materially and adversely affecting the assets or the earning power of such assets, nor suffered any damage, destruction, or loss, whether covered by insurance or not, materially and adversely affecting the assets or the earning power of such assets.

(b) Sold, exchanged, or otherwise disposed of, or entered into any agreement or arrangement to sell, exchange, or otherwise dispose of, any of the assets or any interest in such assets.

(c) Except to the extent reflected on the balance sheet as of _____________________ [date], incurred or agreed to incur any contractual liability, absolute or contingent, with respect to the assets.

(d) Waived any right or claim having value relating to the assets.

(e) Mortgaged or pledged any of the assets, or except in the ordinary course of business, subjected any of the assets to a lien, charge, or other encumbrance.

(f) Entered into any transaction the effect of which, considered as a whole, would be to cause their net ownership in any of the assets to be materially less than it was at such a date.

(g) Had any labor troubles, other than routine grievance matters, none of which is material.

(h) Entered into any transaction other than in the ordinary course of business with respect to the assets.

Compliance With Laws and Regulations

2.07. The Sellers have complied with all laws, regulations, and orders applicable to their business.

No Default

2.08. The Sellers have not received any notice of default and to their knowledge they are not in default under:

(a) Any order, writ, injunction, or decree of any court or of any commission or other administrative agency.

(b) Any agreement or obligation to which they are parties, by which they are bound, or to which they may be subject.

Agreement Not Violative of Law or Contract

2.09. The execution and carrying out of this Agreement and compliance with the provisions of this Agreement by the Sellers will not violate, with or without the giving of notice or passage of time, any provision of law applicable to the Sellers, and will not conflict with, or result in the breach or termination of any provision of, or constitute a default under, or result in the creation of any lien, charge, or encumbrance on any of the assets, pursuant to any indenture, mortgage, deed of trust, or other agreement or instrument to which the Sellers are parties or by which the Sellers or any of their assets are bound.

Compliance With Contracts and Commitments

2.10. Except as set forth in the Second Schedule, the Sellers have no contract or commitment, written or oral, relating to any of the assets, and the Sellers have duly complied with all provisions of each such contract or commitment set forth in the Second Schedule and are not in default with respect to any of them.

Litigation

2.11. Except for any claims fully covered by insurance and except as set forth in the Third Schedule, there is no litigation, proceeding, or governmental investigation pending, or to the knowledge of the Sellers threatened, affecting the Sellers or any of the assets, or the Sellers' right to enter into this Agreement or to perform their obligations under this Agreement, nor do the Sellers know of any ground for any such litigation, proceeding, or investigation.

Insurance

2.12. The Sellers now have in force fire, liability, and other insurance with respect to their assets as set forth in the Fourth Schedule, and the Sellers agree that pending the closing date, except in accordance with the written approval of the Buyer, they will not change the terms, or increase or decrease the limits, of any such insurance.

Comply With Terms and Conditions

2.13. The Sellers will comply with all applicable terms and conditions of this Agreement.

ARTICLE 3. COVENANTS, REPRESENTATIONS,
AND WARRANTIES OF BUYER

Legal Status

3.01. The Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the ____________________ [state], with corporate power to carry on its business as it is now being conducted.

Capitalization

3.02. The Buyer has authorized capitalization of $_______ divided into ___________________ shares of common stock of the par value of $_______ per share. As of the date of this Agreement, ___________________ shares of the common stock are validly issued and outstanding, fully paid, and nonassessable.

Financial Statements

3.03. ___________________ [There are attached to this Agreement as Exhibits ___________________ through ___________________ *or* There have been delivered previously to the Sellers] the ___________________ [audited *or* unaudited] balance sheet of the Buyer as of ____________________ [date], and the related statements of income and retained earnings for the ___________________ [*specify time period, e.g.*, five] years then ended. All such financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis and present fairly the financial position of the Buyer on ____________________ [date], and the results of operations for the period then ended [*add if statements are unaudited* subject, however, to normal changes and adjustments from year-end audit of the financial statements].

Approval by Board

3.04. The Board of Directors of the Buyer has duly approved the transactions contemplated by this Agreement and has authorized the execution and delivery of this Agreement and the performance of this Agreement by the Buyer.

ARTICLE 4. CONDUCT OF BUSINESS PENDING CLOSING

Access to Information and Documents

4.01. From the date of this Agreement until the closing date, the Sellers will give to the Buyer full access, during normal business hours, to all properties, books, records, contracts, and commitments of Sellers, and will furnish to the Buyer, within ___________________ [*specify time period, e.g.*, 10] days after demand, all such documents and copies of documents, schedules of assets and liabilities, and other information with reference to the affairs of the Sellers as the Buyer may from time to time reasonably request.

Carry on Business as Usual

4.02. Pending consummation of the sale, the Sellers will:

(a) Carry on their business in substantially the same manner as it was previously carried on.

(b) Use their best efforts to maintain their business organization intact, to retain their present employees, and to maintain their relationships with suppliers and others having business relationships with them.

(c) Maintain in full force insurance coverage comparable in amount and scope of coverage to that now maintained by them and, to the extent requested by the Buyer, cause all policies of insurance and bonds to be endorsed to include the Buyer as a party insured or beneficiary under such policies as its interests may appear.

(d) Exercise due diligence in safeguarding and maintaining confidential reports and data on their business.

Best Efforts of Sellers

4.03. The Sellers will use their best efforts to cause the satisfaction of all conditions precedent to the transactions covered by this Agreement.

Negative Covenants

4.04. From the date of this Agreement until the closing date, except with prior written consent of the Buyer, the Sellers will not:

(a) Except in the ordinary course of business and consistent with prior practice, grant any general or uniform increase in rates of pay to employees, or any substantial increase in salary, employment, or retirement benefits to any officer, employee, or agent.

(b) Enter into any employment contracts, bonus arrangements, pension plan, profit-sharing plan, or any other incentive or deferred compensation contracts.

(c) Waive any of their rights or claims having material value.

(d) Enter into any transaction outside the ordinary course of business.

ARTICLE 5. CONDITIONS PRECEDENT TO OBLIGATIONS OF PARTIES TO CLOSE

Conditions Precedent to Obligations of Sellers

5.01. The obligations of the Sellers under this Agreement are, at their option, subject to the conditions that on or before the closing date:

Approval of Proceedings and Instruments

(a) All actions, proceedings, instruments, and documents required to carry out this Agreement or incidental to this Agreement and all other related legal matters will have been approved by ____________________ [name of attorney], counsel for the Sellers.

Opinion of Counsel to Buyer

(b) The Sellers will have received the opinion of ____________________ [name of attorney], counsel for the Buyer, dated the closing date, in form satisfactory to the Sellers and their counsel, to the effect that:

> (i) The Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the ____________________ [state].
>
> (ii) All corporate acts and other proceedings required to be taken by or on the part of the Buyer to authorize it to carry out this Agreement have been duly and properly taken, and this Agreement has been duly executed by the Buyer and is the valid and binding obligation of the Buyer enforceable in accordance with its terms.

Compliance With Terms and Conditions

(c) The Buyer will have fully complied with all of the terms and conditions of this Agreement to be complied with by it on or before the closing date, and the Buyer will have delivered a certificate to the Sellers to that effect.

Correctness of Representations and Warranties

(d) The representations and warranties made by the Buyer in this Agreement will be correct, as of the closing date, with the same force as though such representations and warranties had been made on the closing date, and the Buyer will have delivered a certificate signed by its chief executive officer to the Sellers to such effect and as to such other matters as the Sellers may reasonably request.

Conditions Precedent to Obligations of Buyer

5.02. The obligations of the Buyer under this Agreement are, at its option, subject to the conditions that on or before the closing date:

Approval of Proceedings and Instruments

(a) All actions, proceedings, instruments, and documents required to carry out this Agreement or incidental to this Agreement and all other related legal matters will have been approved by ____________________ [name of attorney], counsel to the Buyer.

Opinion of Counsel to Sellers

(b) The Buyer will have received the opinion of ____________________ [name of attorney], counsel for the Sellers, dated the closing date, in a written form and substance satisfactory to the Buyer and its counsel, to the effect that:

> (i) The Sellers are Partners doing business under the firm name of ____________________, with principal place of business at ____________________ [street address, city, and state], pursuant to the provisions of an agreement in writing dated ____________________, a copy of which is attached to this Agreement as Exhibit ____________________.
>
> (ii) To the knowledge of counsel, the Sellers have complied with all laws, regulations, and orders applicable to the business.
>
> (iii) To the knowledge of counsel, the Sellers have not received any notice of default and are not in default under any order, writ, injunction, or decree of any court, commission, or other administrative agency, or under any agreement or obligation to which they are parties or by which they are bound or to which they may be subject.
>
> (iv) To the knowledge of counsel, except as set forth in the Second Schedule, the Sellers have no contract or commitment, written or oral, relating to any of the assets, and the Sellers have duly complied with all provisions of each contract or commitment set forth in the Second Schedule and are not in default with respect to any of them.

(v) To the knowledge of counsel, there is no action, proceeding, or governmental investigation pending or threatened against, by, or affecting the Sellers in any court or before any domestic or foreign governmental agency that, if decided adversely to the Sellers, would materially and adversely affect the conditions or operations, financial or otherwise, of the Sellers.

(vi) This Agreement has been duly executed by the Sellers and is the valid and binding obligation of the Sellers enforceable in accordance with its terms.

(vii) There is no provision of any indenture, mortgage, or other agreement known to counsel or known to the Sellers that prevents the Sellers from transferring good title to the assets in the manner contemplated by the Agreement, or has or will result in a breach of the Sellers' warranties contained in Article 2.

(viii) Except as set forth in the balance sheet as of ___________________ [date], good and marketable title to all of the assets of the Sellers to be transferred will at the closing be duly vested in the Buyer, free of all claims, liens, and encumbrances.

Compliance With Terms and Conditions

(c) The Sellers will have complied with all of the terms and conditions of this Agreement to be complied with by them, and will have delivered a certificate to that effect to the Buyer.

Correctness of Representations and Warranties

(d) The representations and warranties made by the Sellers in this Agreement will be correct, as of the closing date, with the same force as though such representations and warranties had been made on the closing date, and Sellers will have delivered a certificate to the Buyer to that effect and as to any other matters as the Buyer may reasonably request.

ARTICLE 6. CONSUMMATION OF TRANSACTION

Consideration of Sellers

6.01.(a) On the closing date, except for cash in such amount not exceeding $_______, as the Sellers will deem necessary to pay all costs and expenses incurred by them in carrying out this Agreement, the Sellers will deliver to the Buyer instruments of transfer, in a form satisfactory to counsel for the Buyer, for all of the Sellers' assets, business, and goodwill of every kind and description, tangible or intangible, real, personal, or mixed.

(b) The Sellers will use the retained funds to pay only the costs and expenses incurred in carrying out this Agreement and will pay over to the Buyer at the expiration of a period of ___________________ [*specify time period, e.g.,* 120] days following the closing date any balance remaining.

(c) On the closing date, the Sellers will deliver to the Buyer possession of the assets, business, and goodwill transferred to the Buyer.

Consideration of Buyer

6.02.(a) On the closing date, the Buyer will deliver to the Sellers a bank's cashier's check in the amount of $_______ in payment for all of Sellers' assets, business, and goodwill.

(b) On receipt of the assets of the Sellers, except for costs and expenses of the Sellers incurred in carrying out the terms and conditions of this Agreement, the Buyer will assume, pay, satisfy, perform, discharge, and indemnify and hold the Sellers harmless against any loss, cost, claim, or demand of any kind arising out of or resulting from the debts, obligations, agreements, and liabilities of the Sellers of every kind and description as the same exist on the closing date.

Allocation of Purchase Price

6.03. The foregoing purchase price will be apportioned among the properties, assets, and business being sold by Sellers to the Buyer under this Agreement as follows:

(a) Inventory: $_______

(b) Fixtures: $_______

(c) Accounts Receivable: $_______

(d) Office Building: $_______

(e) Deposits, Prepaid Expenses: $_______

TOTAL: $_______

Cessation of Sellers' Business

6.04. After the closing date, except for such activities as may be incident to the liquidation and winding up of the Partnership affairs, the Sellers will not carry on any further business activities.

ARTICLE 7. EXECUTION AND ENFORCEMENT

Provision of Additional Documents

7.01. The Sellers will provide the Buyer with such additional consents, releases, authorizations, transfers, and other documents as may be reasonably required to carry out the provisions of the planned sale and to fully accomplish its purposes and intents.

Counterparts

7.02. This Agreement may be executed in ____________________ [number] counterparts, and each counterpart will be deemed to be an original instrument.

Survival of Covenants, Representations, and Warranties

7.03. All covenants, representations, and warranties made under this Agreement and in any certificates delivered at the closing will be deemed to be material and to have been relied on by the Sellers and the Buyer, notwithstanding any investigation made by the Sellers or the Buyer on their respective behalfs, and such covenants, representations, and warranties will survive the closing.

Specific Performance

7.04. The Sellers acknowledge that the assets to be transferred to the Buyer pursuant to this Agreement are unique and that the Buyer will not have an adequate remedy at law if the Sellers will fail to perform any of their obligations under this Agreement. In that event, the Buyer will have the right, in addition to all other rights and remedies, to compel specific performance of this Agreement.

Notices

7.05. Any notice, request, instruction, or other communication required or permitted under this Agreement will be deemed to be properly given when deposited in the United States mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed:

(a) In the case of the Sellers, to ____________________ [name, street address, city, and state].

(b) In the case of the Buyer, to ____________________ [name, street address, city, and state].

Construction

7.06. This Agreement will be construed and enforced in accordance with the laws of the State of ____________________.

Nonassignability

7.07. Except with the written consent of the other, the rights and obligations under this Agreement will not be assignable by any party. Nothing expressed or implied in this Agreement is intended to confer on any person, other than the parties to this Agreement or their respective successors, assigns, heirs, and legal representatives, any rights, remedies, obligations, or liabilities under or by reason of this Agreement.

Executed on _____________________ [date], at ____________________ [city and state].

SELLERS
__________________ [signature of seller]
__________________ [typed name]
__________________ [signature of seller]
__________________ [typed name]
BUYER
__________________ [typed name]
By: __________________ [signature]
__________________ [typed name and title]

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PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 31: Dissolution--Sale of Assets (Partnership).

37TTT-31 California Legal Forms--Transaction Guide Form T31-2

Form T31-2 Sale of Partnership Interest to Third Party--Approval of All Other Partners

Description: This form is used for the sale of a partnership interest to a third party. It details transfer of interest, prior agreements, and releases.

Form T31-2 Sale of Partnership Interest to Third Party--Approval of All Other Partners

AGREEMENT made ____________________ [date], between Guy Harris and Anthony Pole.n*

Recitals

Guy Harris has been a partner in the firm of Royalton Spinning Company, under a partnership agreement dated ____________________ [date].

Guy Harris has secured the approval of the remaining members of the partnership to the sale of his entire partnership interest to Anthony Pole, and Anthony Pole has agreed to purchase the partnership interest for the sum of $15,000.

It is therefore agreed:

1. *Transfer of interest.* Guy Harris hereby sells and transfers his entire partnership interest in Royalton Spinning Company to Anthony Pole for the sum of $15,000, receipt of which by Guy Harris is hereby acknowledged.

2. *Prior agreement.* Anthony Pole is hereby bound by all the terms of the partnership agreement dated ____________________ [date], as if he had been originally named therein in the place of Guy Harris.

3. *Releases.* In consideration of the approval of all the remaining members of the partnership to this sale, Guy Harris hereby releases the remaining members and the partnership from all claims, and represents and warrants that he has taken no action affecting the partnership business which is not now reflected on the books of the partnership.

The remaining members and the partnership hereby release Guy Harris from all claims, and represent and warrant that none of them has taken any action affecting the partnership business which is not now reflected on the books of the partnership.

In witness whereof the parties have signed this Agreement on the date first written above.

____

Guy Harris

____

Anthony Pole

Approved:

____

William Smith

____

Marvin Makin

____

Richard Wexler

FOOTNOTES:

(n1)Footnote *. Arbitrary names, dates, and companies have been added to some forms to promote better understanding of the form.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 31: Dissolution--Sale of Assets (Partnership).

37TTT-31 California Legal Forms--Transaction Guide Form T31-3

Form T31-3 Sale of Partnership Interest to Remaining Partners

Description: This letter agreement is used when one partner in a partnership is selling his interest to the remaining partners.

Form T31-3 Sale of Partnership Interest to Remaining Partners

____________________ [address]

_____ [date]

To: Thomas Kenyon
Paul Worth
William James

Gentlemen:

In consideration of the sum of $50,000 which you paid to me, the receipt of which is acknowledged, I agree with each of you, the remaining partners of Kenyon, Worth & Co., as follows:

1. *Assignment of interest.* I hereby sell and transfer to each of you, a one-third share of all my right, title, and interest as a partner in the firm of Kenyon, Worth & Co.

2. *Continuation of Partnership Business.* You may continue to carry on the business of Kenyon, Worth & Co. under its firm name.

3. *Responsibility for taxes on share of profits.* I shall be responsible for and pay all income taxes on my share of the profits of the firm for its fiscal year ending ____________________ [date], which profits are included in the above consideration.

4. *Removal of personal property.* I shall remove my personal property from the firm premises as promptly as may be

convenient, but in any event no later than 60 days after the date hereof.

5. *Right to compete.* I may engage, alone or with others, in a line of business similar to that of the firm's. I shall have the right, until ____________________ [date], to inspect the books and records of the firm for, among other things, the purpose of making a list of persons and corporations with which the firm may presently be doing business.

6. *Announcement.* You shall make an appropriate announcement to the effect that I have completely disposed of my interest as a partner in the firm. You shall effect appropriate withdrawal of my registration as a member of the firm under the Fictitious Names Act and for that purpose I will execute the necessary documents.

7. *Mutual release.* My execution and delivery of this Agreement and your acceptance thereof shall operate as a full mutual release and discharge of all past and present claims and obligations whatsoever as between the firm, each of you, and myself.

In witness whereof I have hereunto set my hand as of ____________________ [date].

____

Howard Banner

Accepted:

____

Thomas Kenyon

____

Paul Worth

____

William James

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PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 31: Dissolution--Sale of Assets (Partnership).

37TTT-31 California Legal Forms--Transaction Guide Form T31-4

Form T31-4 Sale of Partnership Interests by All Partners

Description: This form is used when all of the partners in a partnership desire to sell their partnership interest; it details the general terms of the sale, as well as providing language regarding firm liabilities and restrictive covenants.

Form T31-4 Sale of Partnership Interests by All Partners

FORM

AGREEMENT made ____________________ [date], between John Shane, Martin Stern, and William Machlin (hereinafter collectively called the "Sellers"), and Ben Walsh and Thomas Ball (hereinafter collectively called the "Purchasers").

Recitals

The Sellers are partners in the retail furniture business in Norwalk, Connecticut, under the trade name of Royal Furniture Company.

The Purchasers desire to purchase from each of the Sellers their respective one-third partnership interest in Royal Furniture Company, upon the terms hereinafter set forth.

It is therefore agreed:

1. *Representations.* Each of the Sellers warrants and represents that:

(a) The assets and liabilities of the business operated by them under the trade name of Royal Furniture Company are correctly and fully set forth in the attached Schedule A, dated as of ____________________ [date], subject only to those changes that have taken place in the regular course of business since that date.

(b) None of them has withdrawn any capital or income, nor borrowed any money, from the firm since _____________________ [date].

(c) The affairs of the firm have been operated only in their regular course since _____________________ [date].

(d) There are no contracts relating to the business of the firm, except as shown in Schedule B.

(e) The firm has paid to date, or set up reserves for the payment of, all social security, withholding, sales and unemployment insurance taxes to the city, state, and federal governments.

(f) There are no judgments, liens, actions, or proceedings pending in any court against the firm or its property, or against any of the Sellers.

2. *Sale.* The aggregate purchase price for all of the Seller's interests in the partnership is $75,000. Each Seller hereby sells his entire one-third interest in the partnership to the Purchasers for the sum of $25,000 and acknowledges the receipt and sufficiency thereof.

3. *Additional documents.* The Sellers shall execute and deliver any additional documents that may be reasonably required to assure the Purchasers possession of all of the assets of Royal Furniture Company, together with the exclusive right to its goodwill, trade name, customer lists, books of account, contracts, correspondence files, and all similar items used in connection with the operation of the business of the firm, but the Sellers shall be given access to the books of account, for the transactions prior to this date, whenever reasonably required for the purpose of their own income tax returns.

4. *Firm liabilities.* The Purchasers jointly and severally agree that they will promptly pay when due all of the liabilities set out in the attached Schedule A, that they will indemnify and hold the Sellers harmless from all such liabilities, and that they will assume and duly discharge the obligations under the contracts set out in the attached Schedule B.

5. *Restrictive covenants.* The Sellers agree that none of them will engage in the retail furniture business in the City of Norwalk for a period of five years from the date hereof, and each acknowledges that he has no claim whatsoever against Royal Furniture Company or against its assets including its goodwill, trade name, or other intangible values.

6. *Publication of transaction.* Each of the parties shall have the right to publish a notice announcing the sale or purchase of the partnership interests in Royal Furniture Company, and to advise the trade of this transaction. The Sellers have executed and delivered for filing a certificate cancelling the fictitious trade name registration heretofore filed by them.

In witness whereof the parties have signed this Agreement on the date first written above.

____

John Shane

____

Martin Stern

____

William Machlin

____

Ben Walsh

____

Thomas Ball

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PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 31: Dissolution--Sale of Assets (Partnership).

37TTT-31 California Legal Forms--Transaction Guide Form T31-5

Form T31-5 Liquidation of Partnership--Sale of Assets and Distribution of Cash

Description: This form is used for the liquidation of a partnership; it addresses the sale of assets and distribution of cash. It details distributions, audits, and claims.

Form T31-5 Liquidation of Partnership--Sale of Assets and Distribution of Cash

AGREEMENT made ____________________ [date], by James Milton, Henry Carver, and Sidney Pelton, all residing in ____________________ [city], ____________________ [state].

Whereas the parties have been engaged in business as partners under an agreement dated ____________________ [date], and

Whereas the parties desire to dissolve and terminate the partnership, and

Whereas the parties have agreed upon a program of liquidation and distribution,

It is therefore agreed as follows:

1. *Dissolution.* The partnership, under the agreement dated ____________________ [date], is hereby dissolved. No further business shall be done by the partnership and no further obligations shall be incurred on its behalf except for the purpose of carrying out the liquidation and termination of the partnership as herein provided.

2. *Liquidation sale.* Immediately after the execution of this Agreement, arrangements shall be made by the parties for a "liquidation sale" of all the assets of the partnership. Such sale shall be conducted on the premises of the partnership in accordance with the requirements of the applicable ordinances and the necessary permits issued pursuant thereto. Prior to the commencement of such sale, an inventory shall be taken of all the assets of the partnership, and sale prices fixed for such assets as will insure as complete a sale as is possible prior to ____________________ [date].

3. *Final disposition.* All assets of the partnership unsold on ____________________ [date], shall be promptly disposed of in such manner and to such persons as may be for the best interests of the parties. Such disposition may be by private

or public auction or by private sale, or by any other method, and any of the parties hereto may become a purchaser.

4. *Bank account.* Until the final liquidation of the affairs of the partnership, the partnership shall continue to maintain its bank account in the Central Bank and Trust Company, and all moneys received on the sale of any of the partnership assets shall be deposited therein.

5. *Payment of debts.* The partnership shall pay its debts and obligations, and the expenses of liquidation, as funds therefor become available to it.

6. *Audit.* As soon as possible after ____________________ [date], the books and records of the partnership shall be audited by the accountant regularly employed by the partnership. The books and records of the partnership shall be left in the custody of such accountant, but each of the parties shall have free access thereto at all times.

7. *Contributions or distributions.* The proceeds of such liquidation shall be applied and distributed in the following order of priority:

(i) to the payment of any debts and liabilities of the partnership;

(ii) to the setting up of any reserve which the parties shall reasonably deem necessary to provide for any contingent or unforeseen liabilities or obligations of the partnership. At the expiration of such period of time as the parties shall deem advisable, the balance of such reserve remaining after the payment of such contingency shall be distributed in the manner set forth below;

(iii) thereafter, the balance of the proceeds, if any, shall be distributed in accordance with the positive capital account balances of the parties, as determined after taking into account all capital account adjustments for the partnership taxable year during which such liquidation occurs, and shall be made by the end of such taxable year (or, if later, within ninety (90) days after the date of such liquidation). For purposes of this subparagraph, a liquidation of the partnership shall mean a liquidation as set forth in Section 1.704-1(b)(2)(ii)(g) of the Regulations.

If, following liquidation of a partner's interest in the partnership (within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g)) any party has a deficit balance in his capital account (as determined after taking into account all adjustments to said capital account, including the adjustments for the year during which such liquidation occurs), such party shall be unconditionally obligated to pay the amount of such deficit balance to the partnership by the end of such taxable year (or, if later, within ninety (90) days after the date of such liquidation), which amount shall be applied and distributed in accordance with the provisions of this paragraph.

8. *Certificate of dissolution.* The parties shall execute and cause to be filed an appropriate certificate of partnership dissolution, a certificate of cancellation of the fictitious trade name certificate heretofore filed, and shall execute, file, and publish all other certificates and notices suggested by counsel for the partnership.

9. *Control over liquidation.* All questions or disputes that may arise between the parties in the course of this program of liquidation shall be decided by a vote of a majority of the parties, and all such decisions shall be binding on each of the parties hereto.

10. *Claims.* Each of the parties acknowledges that, except for his rights under this Agreement, he has no claims whatsoever against either of the other parties. If any of the parties hereto shall hereafter be held individually liable for a partnership debt or obligation not paid or provided for under this Agreement, such party shall have a claim over against the other parties in accordance with the intent and purpose of this Agreement.

11. *Benefit.* This Agreement shall benefit and be binding upon the respective heirs, executors, administrators, and

assigns of the parties hereto.

In witness whereof the parties have signed this Agreement on the date first written above.

____

James Milton

____

Henry Carver

____

Sidney Pelton

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PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 31: Dissolution--Sale of Assets (Partnership).

37TTT-31 California Legal Forms--Transaction Guide Form T31-6

Form T31-6 Liquidation of Partnership--Distribution to Partners

Description: This agreement provides for the liquidation of a partnership and the proportionate distribution of all of its assets among the partners.

Form T31-6 Liquidation of Partnership--Distribution to Partners

AGREEMENT made ____________________ [date], between Richard Rowe and Sam Brown.

Whereas the parties have been engaged in business as partners under an agreement dated ____________________ [date], and

Whereas the parties have agreed to terminate the partnership, and to distribute the partnership assets between them,

It is therefore agreed:

1. *Dissolution.* The partnership is hereby dissolved.

2. *Payment of debts.* The partnership books shall be closed and an accounting completed within the next ten days. Upon the completion of the accounting, all debts of the partnership shall be promptly paid, including all tax liabilities payable by the partnership.

3. *Distribution of cash and property.* Thereafter, the property of the partnership shall be distributed as follows:

(a) One half of the cash shall be paid to each of the parties.

(b) The accounts receivable shall be divided in as equitable a manner as possible, and one half transferred to each of the parties.

(c) The inventory, machinery, equipment, and furniture shall also be divided in as equitable a manner as possible, and one half transferred to each of the parties.

(d) All policies of insurance shall be cancelled and all deposits recovered, and the proceeds divided equally between the parties.

(e) The factory building shall be offered for sale through the brokerage firm of Barney & Co., with instructions to accept any offer in excess of $100,000. If the property is not sold within 60 days, it shall be offered for sale at public auction to be arranged by the firm of Barney & Co. Neither of the parties will acquire the building, directly or indirectly. The net proceeds of sale shall be divided equally between the parties.

4. *Arbitration.* Any dispute between the parties relating to the division of the partnership property shall be submitted for arbitration to John Marks, the accountant for the partnership, and his decision shall be binding upon and enforceable against the parties.

5. *Restrictive covenant.* Neither party shall ever, directly or indirectly, use the partnership trade name, but each shall have the right to engage in the same business in any territory.

6. *Mutual release.* Each party acknowledges that except for his rights under this Agreement, he has no claim whatsoever against the other party.

7. *Partnership books.* The books of the partnership shall be deposited with John Marks, who has agreed to retain them for a period of six years. Each party shall have free access to these books during this six-year period.

In witness whereof the parties have signed this Agreement on the date first written above.

____

Richard Rowe

____

Sam Brown

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CHAPTER 31: Dissolution--Sale of Assets (Partnership).

37TTT-31 California Legal Forms--Transaction Guide Form T31-7

Form T31-7 Liquidation of Partnership--Disproportionate Distribution to Partners

Description: This form illustrates a disproportionate liquidation of a partnership and the disproportionate distribution of all of its assets among partners.

Form T31-7 Liquidation of Partnership--Disproportionate Distribution to Partners

AGREEMENT made ____________________ [date], between Charles Adams and Henry Seitz.

Whereas the parties have agreed to terminate their partnership, and have agreed upon a formula for the distribution of the partnership assets,

It is therefore agreed:

1. *Valuation of property.* The two parcels of property, including the value of all insurance policies covering these parcels, have an agreed net value as follows:

Parcel A $28,000

Parcel B $10,000

2. *Transfer of property.* Simultaneously with the execution of this Agreement, the partnership shall convey each of these parcels, by quit-claim deed, to Charles Adams, who shall assume all mortgage and tax liabilities affecting these parcels, and shall indemnify and hold Henry Seitz harmless from any obligation to pay such liabilities. All leases, insurance policies, mortgage documents, receipts, and other papers and documents relating to these parcels shall be delivered to Charles Adams.

3. *Payment of cash.* All current debts of the partnership have been paid. Simultaneously with the execution of this agreement, the remaining assets of the partnership, consisting of $22,000 in cash, shall be paid to Henry Seitz, and in addition Charles Adams shall pay to Henry Seitz $8,000 out of his own funds.

4. *Dissolution.* Upon making the transfers provided in paragraph 2, and the payments provided in paragraph 3, the partnership shall be dissolved and terminated.

5. *Mutual release.* Each party acknowledges that he has no claim whatsoever against the other party by reason of the partnership, except for such obligations as are contained in this Agreement.

In witness whereof the parties have executed this instrument on the date first written above.

____

Charles Adams

____

Henry Seitz

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PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 32: Dissolution--Sale of Assets (Sole Proprietor).

37TTT-32 California Legal Forms--Transaction Guide 32.syn

§ 32.syn Synopsis to Chapter 32: Dissolution--Sale of Assets (Sole Proprietor).

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 32: Dissolution--Sale of Assets (Sole Proprietor).

37TTT-32 California Legal Forms--Transaction Guide Form T32-1

Form T32-1 Contract for Sale by Sole Proprietor--Compliance with Original Bulk Transfer Provisions of Uniform Commercial Code

Description: This agreement provides for the sale of a sole proprietorship in an all cash sale. The agreement is in a rather simplified format in view of the modest purchase price and the nature of the business.

Form T32-1 Contract for Sale by Sole Proprietor--Compliance with Original Bulk Transfer Provisions of Uniform Commercial Code

(1) Contract of sale

AGREEMENT made January 10, 20_____, between Bernard Simonn* doing business as "The Main Street Boutique" ("Seller"), and Robert Ryan ("Purchaser"), both residing in the City of ___________________, State of ___________________.

1. *Sale of business.* Seller shall sell to Purchaser and Purchaser shall purchase from Seller, free from all liabilities and encumbrances, the following described property: the entire ladies' dress business and assets owned and operated by Seller at the store premises known as ___________________ [address], City of ___________________, State of ___________________. The sale includes stock-in-trade, merchandise, furniture, fixtures, equipment, transferable insurance policies, Seller's rights, title, and interest as lessee under the lease to such premises, Seller's rights under or to all contracts, licenses, and deposits made by or granted to Seller in connection with such business, phone number, trade name, and all other property owned and used by Seller in such business (other than accounts and bills receivable), all as more specifically enumerated in the attached schedule of property which has been prepared and signed by both parties.

2. *Purchase price and allocation.* The purchase price for all of the business and property referred to in paragraph 1 shall be $20,000, plus the price of the stock-in-trade and merchandise as determined in accordance with the provisions of paragraph 3. The purchase price shall be adjusted, as of the date of closing, for prorations of insurance premiums, utilities, rent, and payroll and payroll taxes. The net amount of the foregoing adjustment shall be added to or subtracted from the purchase price, as the case may be. The purchase price shall be allocated as follows:

Furniture, Fixtures, Equipment.....................$12,000

Motor Vehicles......................4,000

Goodwill......................1,000

Covenant Not to Compete......................3,000

3. *Stock-in-trade and merchandise.* Seller and Purchaser shall take a physical inventory of the stock-in-trade and merchandise at the close of business on the day before the date set for closing in this agreement. Such inventory shall set forth all items of stock-in-trade and merchandise in detail, and Seller's cost of each item as invoiced to Seller adjusted for the cash discount available to him on ten days' payment (regardless of whether Seller availed himself of such discount). The total Seller's cost, as herein adjusted, shall be the price of the stock-in-trade and merchandise. After such inventory is completed, the store premises in which the business is conducted shall remain closed until after the time provided for the closing of this transaction.

4. *Payment of purchase price.* Purchaser shall pay Seller the purchase price, as provided in paragraphs 2 and 3, as follows: $4,000 by check, subject to collection, to John Harmon, Esq., attorney for Seller, to be held by him as escrow agent until the closing hereunder, and to be paid by the escrow agent to Seller at the closing. The balance of the purchase price shall be paid by certified check or checks to the order of Seller at the closing.

5. *Place of property.* Seller warrants and represents that all of the items of property listed in the attached schedule of property are located at the store premises referred to in paragraph 1. Seller will not remove any of such property from such location without Purchaser's written consent, except as may be required in the ordinary course of trade or business up to the date of closing.

6. *List of creditors, schedule of assets.* Seller has furnished to Purchaser, in accordance with the requirements of the Uniform Commercial Code, a list of his existing creditors, signed and sworn to by Seller, and containing the names and business addresses of all Seller's existing creditors, with the amounts due to each creditor, and also the names of all persons who are known to Seller to assert claims against him even though such claims are disputed. Seller and Purchaser have prepared a schedule of property to be transferred, sufficient to identify such property, in accordance with the requirements of the Uniform Commercial Code. If any conflict exists between the schedule of property and the terms of this agreement, the terms of this agreement shall prevail, and the schedule of property shall be amended accordingly.

7. *Business name.* Seller warrants and represents that within the past three years he has used no business name and has had no business address other than his own name and the business address set forth in paragraph 1. At closing Seller will furnish Purchaser with proof that he has relinquished his rights to use the name "The Main Street Boutique," and thereafter Purchaser shall be permitted to utilize that name.

8. *Notice to creditors.* Seller understands that, in accordance with the provisions of the Uniform Commercial Code, Purchaser intends to deliver or send appropriate notice to all the persons shown on the list of creditors furnished by Seller and to all other persons who are known to Purchaser to hold or assert claims against Seller. Seller will cooperate with Purchaser in all matters relating to such notice and will furnish any additional information that Purchaser may require to satisfy the statutory provisions in this regard. Such additional information shall include, but not be limited to, the names and business addresses of persons who become creditors of Seller before the closing of this agreement, as well as persons who assert claims, even if disputed, against Seller.

9. *Covenant not to compete.* If this transaction closes at the time specified, or at any adjourned date agreed upon in writing by the parties, Seller will refrain, directly or indirectly, from carrying on a business similar to that involved in this transaction in the City of ____________________ for a period of three years from the date of closing. If a court of

competent jurisdiction determines that the restrictions contained in this paragraph are too broad to be enforced, it shall be permitted to modify such provisions to the extent necessary to permit their enforceability.

10. *Closing.* The closing shall take place at the office of John Harmon, Esq., at ____________________ [address], City of ____________________, State of ____________________, on January 24, 20_____ at 10 a.m. Time is of the essence. At the time of the closing, Seller shall execute and deliver to Purchaser all bills of sale and other instruments that are necessary to transfer to Purchaser the business and property referred to in paragraph 1, and shall deliver possession thereof to Purchaser, together with the keys to the store premises. All such bills of sale and other instruments will contain the usual warranties and affidavit of title and will effectively transfer to Purchaser full title to the business and property referred to in paragraph 1, free and clear of all liens, security interests, and encumbrances. Seller shall also deliver all releases, subordinations, or waivers of security interests, liens, encumbrances, or other claims against the business or assets that Purchaser may reasonably require.

11. *Tax claims.* At the closing, Seller shall deliver to Purchaser documents, affidavits, or other evidence, satisfactory to Purchaser's attorney, demonstrating that no taxes are outstanding against the business or assets, other than those for which adjustment in the purchase price are made. For this purpose taxes shall not include Seller's personal income tax, but shall include all business related taxes, including, but not limited to, sales tax, state and federal employee income tax withholding, Federal Social Security Tax (FICA) withholding, employment taxes, and business or license fees.

12. *Representations by seller.* Seller makes the following representations and warranties to Purchaser, all of which shall survive the closing:

(a) Seller is the owner of and has good and marketable title to the business and property referred to in paragraph 1, free of all debts, liens, security interests, and encumbrances (except the debts to creditors set forth in the list of creditors referred to in paragraph 6).

(b) Seller has entered into no contract relating to the business and property referred to in paragraph 1, except as shown on the attached schedule of property.

(c) No judgments, liens, actions, or proceedings are pending or threatened against Seller anywhere.

(d) No violations of any kind are pending or threatened against the business and property referred to in paragraph 1.

(e) Seller has to his knowledge complied with all laws, rules, and regulations relating to the business and property referred to in paragraph 1.

(f) Seller has paid in full, or will arrange for the payment in full at the date of closing, all state and federal employee income tax withholding, Federal Social Security Tax (FICA) withholding, employment taxes, unemployment insurance, sales and use taxes, business or license fees, and all other business related taxes or governmental charges.

(g) The lease of the store premises referred to in paragraph 1 and made available to Purchaser for examination has not been modified in any respect, and will be in full force and effect, and without any default by Seller, at the time of the closing.

(h) Seller has not established or participated in any pension or retirement plan or program for the benefit of any present or former employees of the business to be transferred to Purchaser.

(i) Seller is not insolvent, and will not be rendered insolvent by the transfer contemplated by this agreement. Seller is able to meet the business obligations as they become due.

(j) All of Seller's inventory is merchantable, and consists of types, sizes, and styles which are suitable for resale without discount.

13. *Conduct of business.* Seller will conduct the business referred to in paragraph 1 up to the date of the physical inventory provided in paragraph 3, in the normal and regular manner, and will not enter into any contract except as may be required in the regular course of business.

14. *Risk of loss.* Seller assumes all risk of loss due to fire or other casualty up to the time of closing. If any such loss occurs before the closing date, or if Seller's business is closed or interrupted by reason of any event not in the ordinary course of business, Purchaser may terminate this agreement by giving Seller written notice thereof. Upon such termination, neither party shall have any liability hereunder, except that the amount paid to the escrow agent, in accordance with the provisions of paragraph 4, shall be promptly returned to Purchaser.

15. *Business contracts and lease.* Purchaser assumes no responsibility for any contract made by Seller not listed in the attached schedule of property. Purchaser, however, shall assume all responsibility for contracts listed in the attached schedule, with respect to Seller's obligations accruing thereunder from and after the closing date, and shall indemnify and hold Seller harmless from all such obligations and the Lease, provided that Seller is not in default under any of such contracts or the Lease at the closing date.

16. *Consent to assignments.* This agreement is contingent upon Purchaser obtaining the landlord's consent to the assignment of the Lease to Purchaser, to the extent required by its terms, and the assumption of any business contract. Such consent shall be in writing and delivered by Seller to Purchaser at or before the closing.

17. *Inspection of books.* At any time up to the closing date, Purchaser may, either alone or with a certified public accountant, examine Seller's books of account and business records and make extracts from them. Such inspection shall be at the store premises referred to in paragraph 1 and be conducted only during regular business hours.

18. *Broker.* Seller and Purchaser each represent to the other that no broker was involved in this transaction.

19. *Binding effect.* This agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

20. *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.

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

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

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

24. *Time of essence.* Time is of the essence of this agreement.

25. *Entire agreement.* This agreement supersedes all prior agreements and embodies the entire agreement between the parties with respect to the subject matter hereof.

26. *Notices.* All notices hereunder shall be in writing and delivered personally or mailed by certified mail, postage

prepaid, addressed to the parties at their last known addresses.

In witness whereof the parties have signed this agreement.

____

Seller

____

Purchaser

(2) List of creditors

The following is the list of all existing creditors of Bernard Simon, doing business as "The Main Street Boutique," as of January 10, 20_____, prepared by Bernard Simon, as Seller, and furnished to Robert Ryan, as Purchaser, in accordance with the provisions of the contract of sale dated January 10, 20_____, and the requirements of the Uniform Commercial Code relating to bulk transfers:

Name of creditor	Business address	Amount
______________________	______________________	________________

Seller's total debts are $14,000. Seller does not know of any person who is asserting a disputed claim against him. Purchaser shall retain this list of creditors and the schedule of property for at least six months after the contemplated transfer.

Dated: January 10, 20______________________

____

Seller

State of ____________________ County of ____________________)) ss.)

Bernard Simon, being duly sworn, deposes and says: that he is the Seller who prepared the foregoing list; that the foregoing list is a full, accurate, and complete list of all his existing creditors; that to the best of his knowledge and belief there are no persons who are asserting claims against him which are being disputed; and that the foregoing list was prepared at the request of, and is being furnished to, Robert Ryan, as Purchaser, in accordance with the provisions of the contract of sale dated January 10, 20_____, and the requirements of the Uniform Commercial Code relating to bulk transfers.

____

Bernard Simon

Sworn to before me this

10th day of January, 20______________________

____

Notary Public

(3) Schedule of property

The following is the schedule of property of Bernard Simon, doing business as "The Main Street Boutique," as of January 10, 20_____, prepared by Bernard Simon, as Seller, and Robert Ryan, as Purchaser, in accordance with the provisions of the contract of sale dated January 10, 20_____, and the requirements of the Uniform Commercial Code relating to bulk transfers:

[Description of property transferred
sufficient to identify it]

Dated: January 10, 20______________________

____

Seller

____

Purchaser

(4) Notice to creditors

To:

[Name] [Address]

A bulk transfer is about to be made by Bernard Simon, doing business as "The Main Street Boutique," as Seller, to Robert Ryan, as Purchaser, in accordance with the terms of a contract of sale dated January 10, 20_____.

The name and business address of the Seller are Bernard Simon, doing business as "The Main Street Boutique," 100 Main Street, City of ___________________, State of ___________________. The name and business address of Purchaser are Robert Ryan, 60 Elm Street, City of ___________________, State of ___________________. So far as is known to Purchaser, Seller has used no other business name and has had no other business address within the last three years.

Purchaser has not assumed, and Seller has not expressly agreed, to pay all of Seller's debts in full as they fall due as a result of the transaction or the contract between the parties.

The location of the property to be transferred is Seller's premises, 100 Main Street, City of ___________________, State of ___________________ (unless otherwise specified in the following description of the property). The general description of the property to be transferred is:

[Describe property transferred sufficient to identify it, or attach copy of schedule of property.]

Seller's estimated total debts are $14,000.

Any of Seller's creditors may inspect and copy the schedule of property and list of creditors at all reasonable hours, at: 60 Elm Street, City of ____________________, State of ____________________.

The transfer is not being made to pay Seller's existing debts.

The transfer is being made for new consideration. The total consideration is $20,000 plus Seller's cost of the stock-in-trade and merchandise. The time and place of payment are: January 24, 20_____, at 10 a.m., at the office of John Harmon, Esq., 100 Court Square, City of ____________________, State of ____________________.

This notice is being delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by Seller to Purchaser, and to all other persons who are known to Purchaser to hold or assert claims against Seller. This notice is being delivered or sent, as the case may be, at least 10 days before Purchaser takes possession of the goods or pays for them, whichever happens first.

Dated: January 12, 20______________________

____

Purchaser

FOOTNOTES:

(n1)Footnote *. Arbitrary names, dates, and companies have been added to some forms to promote better understanding of the form.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 32: Dissolution--Sale of Assets (Sole Proprietor).

37TTT-32 California Legal Forms--Transaction Guide Form T32-2

Form T32-2 Contract for Sale of Retail Sole Proprietorship Business--Proceeds to Be Applied to Debts of Seller

Description: This agreement provides for the payment of the seller's debts from funds which would otherwise be paid directly to the seller for the purchase of the business.

Form T32-2 Contract for Sale of Retail Sole Proprietorship Business--Proceeds to Be Applied to Debts of Seller

AGREEMENT made June 23, 20_____, between Alan Carney, doing business as "Alan's Music Shoppe," having a place of business located at 1643 Kennedy Boulevard, City of ____________________, State of ____________________ ("Seller"), and Brian Comstock, residing at 432 Lincoln Place, City of ____________________, State of ____________________ ("Buyer").

1. *Sale of business.* Seller shall sell and Buyer shall purchase, free from all encumbrances and liabilities, the retail musical specialty business being conducted by Seller at the store premises known as 1643 Kennedy Boulevard, City of ____________________, State of ____________________. This sale shall include the lease to the premises together with the lease security deposit, stock-in-trade, furniture, fixtures, equipment, liability and transferable insurance policies, all contracts or deposits made by Seller in connection with the business, all other property owned by Seller in connection with the business (except accounts receivable and cash), phone number, trade name, and all other property owned by Seller and used in connection therewith, all as more specifically set forth in the schedule of assets annexed. This sale shall not include any accounts receivable or other debts or proceeds of any outstanding insurance claims due to Seller, nor has Buyer agreed to assume any of Seller's debts or accounts payable, except as provided below.

2. *Purchase price and adjustments.* (a) The purchase price for the business, not including the stock-in-trade, shall be $40,000. The parties shall jointly take a physical inventory of the stock-in-trade, after business hours on the evening preceding the day of the closing. The inventory shall specify all items of stock-in-trade and merchandise in detail and the cost to Seller as shown by invoice or, if none is available, by trade publication or other sources which reflect wholesale cost. Any dispute regarding the inventory shall be resolved by Samuel Weller, CPA, whose determination shall be final.

(b) The purchase price shall be increased by an amount equal to the value of the stock-in-trade computed in accordance with the provisions of paragraph 2(a).

(c) The purchase price shall be increased by an amount equal to the prepaid unearned insurance premiums on transferable policies held by Seller on the date of this agreement as of the date of the closing.

(d) The purchase price shall be increased by any rent, utilities, payroll, and payroll taxes paid before the date of the closing attributable to the period after such date, or shall be decreased by any unpaid rent, utilities, payroll, sales and payroll taxes accrued on the date of closing attributable to the period before the date of the closing.

(e) Seller shall prepare a separate schedule of any musical equipment which has been repaired or is in the process of being repaired. The items upon which repairs have been completed shall be for Seller's account. The items which are repaired after the closing shall be for Buyer's account. Any repaired items returned under a standard guarantee for further repair shall be chargeable to the Seller if the repairs were initially made prior to the closing. Such cost shall be the actual amount of labor under prevailing rates and the cost of any required parts.

3. *Payment of purchase price and allocation.* The purchase price shall be paid as follows:

(a) $4,000 by check, subject to collection, upon the execution of this agreement, the proceeds of which shall be held in escrow by John R. Reilly, Esq., Seller's attorney, under the terms and conditions of this agreement;

(b) $16,000 by certified check, payable to the order of Seller at the time of the closing; and

(c) The balance of $20,000 (subject to adjustments under this agreement) shall be represented by Buyer's negotiable promissory note, dated the date of the closing, and bearing interest of 12 percent per annum. The promissory note shall be amortized over a period of three years, with payments of principal and interest due and payable every 90 days, with the first payment being due 90 days after closing. The promissory note shall contain customary provisions, satisfactory to Seller's attorney, for acceleration and payment of attorney's fees upon default. As security for payment of the promissory note, Buyer shall grant Seller a security interest in all of Buyer's assets and inventory, including after-acquired assets and inventory. The form of the security agreement shall contain customary provisions and be in a form acceptable to Seller's attorney.

The purchase price shall be allocated as set forth on Exhibit A, which is attached hereto and incorporated herein by reference.

4. *Restrictive covenant.* Seller shall not, directly or indirectly, as owner, partner, shareholder, or in any other capacity, engage in a business similar to the one involved in this transaction in the City of ____________________, State of ____________________ for a period of three years from the date of the closing. Because the breach or anticipated breach of this restrictive covenant will result in immediate and irreparable injury to Buyer for which it will not have an adequate remedy at law, Seller agrees that Buyer shall be entitled to sue in equity to enjoin such breach or anticipated breach and to seek all legal and equitable remedies to which it is entitled. If a court of competent jurisdiction determines that the restrictions contained in this paragraph are too broad to be enforced, it may modify such provisions to the extent necessary to permit their enforceability. If Buyer defaults under the terms of the promissory note described in the preceding paragraph 3(c), and such default is not cured within ten days after written notice thereof, the restrictive covenant contained in this paragraph shall lapse and be of no further force and effect.

5. *Lease.* Seller represents that he is the tenant under a lease to the premises where the business being transferred is located, and that a true copy of such lease is annexed. Seller further represents that he has the right to assign such lease without the landlord's prior written consent, and that at the closing Seller shall execute and deliver an assignment of the lease and the lease security deposit in form satisfactory to Buyer's attorney. At the closing, Buyer shall execute and deliver an assumption of the obligations of the lease in form satisfactory to the landlord's attorney.

6. *Representations by the seller.* Seller represents and warrants, in connection with the business being sold, that:

(a) He is not a party to any contract, and at the closing will not be a party to any contract, which may not be cancelled by Seller or Seller's assignee upon 30 days' notice except the lease referred to in paragraph 5 and the service contracts set forth in the schedule annexed hereto and made a part hereof.

(b) He does not have any commitments to, or for the benefit of, past or present employees for expenses, profit sharing, pension or retirement plans, or compensation in addition to regular salary arrangements.

(c) He is not liable, and at the time of the closing will not be liable, for any amounts not reflected on the books of the business and has no creditors, and at the time of the closing shall have no creditors, other than those set forth on the list referred to in paragraph 7.

(d) He is not a party to any lawsuits, claims, or proceedings, and has no knowledge of any threatened actions.

(e) From the date hereof to the date of the closing, he will conduct the business in a normal and regular manner.

(f) The lease referred to in paragraph 5 is now, and at the closing will be, in full force and effect.

(g) He has good title, free and clear of all liens and encumbrances except those referred to in paragraph 7, to all assets reflected on the books of the business.

(h) He has not used any other business name or conducted a business at any other address for the past three years.

(i) He is not insolvent, nor will the transfer contemplated by this agreement render him insolvent. He is able to meet his obligations as they become due.

(j) All of Seller's inventory is merchantable, and consists of types, sizes, and styles which are suitable for resale without discount.

All of the foregoing representations and warranties shall survive the closing, and shall be true as of the date of closing.

7. *Schedule of property and list of creditors.* In order to comply with the Bulk Transfer Article of the Uniform Commercial Code, the parties shall do the following:

(a) Seller shall furnish Buyer, at least 35 days before the date of the closing, with a list of his existing creditors. Such list shall be signed and sworn to or affirmed by Seller and shall contain the names and business addresses of all of Seller's creditors, with the amounts when known, and also the names of all persons who are known to the Seller to assert claims against him even though such claims are disputed.

(b) The parties shall prepare a schedule of the items of property being transferred in sufficient detail to identify such items.

(c) Buyer shall preserve the list of creditors and the schedule of property for at least six months from the day of the closing, and shall permit inspection and copying from such list or schedule at all reasonable hours by any creditor of Seller.

8. *Notice to creditors.* In further compliance with the Bulk Transfer Article of the Uniform Commercial Code, Buyer shall give notice at least 30 days before the day of the closing by personal delivery, or by certified or registered mail, to

all persons shown on the list of creditors and to all other persons who are known to Buyer to hold or assert claims against Seller of the following:

(a) that a bulk transfer is about to be made;

(b) the names and business addresses of Seller and Buyer;

(c) that the Buyer is in doubt as to whether Seller's debts are to be paid in full as they fall due;

(d) the location and a general description of the property to be transferred and the estimated total of Seller's debts;

(e) the address where the schedule of property and list of creditors may be inspected;

(f) that the proceeds of the transfer are to be used to pay existing debts, the amount of such debts, and to whom owing;

(g) that the transfer is for new consideration, its amount, and the time and place of payment; and

(h) the time and place where Seller's creditors are to file their claims for purposes of application of the new consideration to Seller's debts.

9. *Application of proceeds of sale.* (a) In compliance with Section 6-106 of the Uniform Commercial Code,n* the proceeds of the sale shall be used to pay Seller's debts shown on the list of creditors or filed in writing in accordance with paragraph 8(h) within 30 days after the notice provided for therein has been personally delivered or mailed. To this end, the total amount paid under this agreement, which shall include the escrowed amount paid on contract and the balance of the purchase price as adjusted, shall be deposited in a checking account in the ___________________ Bank of Commerce in the names of Seller and Buyer, and checks for payment from that account shall require Seller's signature and Buyer's countersignature. The parties shall pay Seller's debts shown on the list of creditors, or filed as set forth above, within five days after the closing.

(b) If any of Seller's debts are disputed, an amount sufficient to pay all debts in dispute shall be withheld from distribution until the dispute is settled or adjudicated.

(c) If the proceeds of the sale are not enough to pay all of Seller's debts in full, distribution shall be made pro rata.

10. *Deposit of funds into court.* Buyer may deposit all or part of the sales proceeds with an appropriate court, in which case he shall give Seller written notice of his intention with regard thereto. Immediately upon receipt of such notice, Seller shall execute whatever instruments and documents are required to effectuate the deposit with the court. Buyer shall have ten days after the closing to deposit the consideration with the Clerk of the Superior Court, or as otherwise directed by a Judge of the Superior Court in ___________________ County. Buyer's duty with respect to application of the new consideration to Seller's debts shall be discharged by giving notice by registered or certified mail, to all persons to whom the duty runs, that the consideration has been paid into the Superior Court and that they should file their claims there.

11. *Risk of loss.* If any property being sold hereunder is substantially damaged or destroyed by fire, casualty, or other cause before the time of closing, Seller shall immediately notify Buyer thereof and furnish to Buyer a written statement of the amount of any insurance payable on account thereof. For purposes of this transaction, property shall be deemed to be substantially damaged if the cost of replacement or repair of all damage before completion of this transaction will exceed $1,000. Within ten days after receipt of notice of any such damage or destruction and the written statement of insurance payable on account thereof, Buyer may elect to terminate this agreement by written notice of termination to Seller. Upon such termination, any part of the purchase price paid by Buyer or deposited in escrow shall be refunded to

him, and thereafter neither party shall have any further obligation hereunder, nor shall Buyer have any obligation to Seller's creditors. If Buyer fails to make such election to terminate, this transaction shall be completed in accordance with the terms hereof and Seller shall apply all insurance proceeds payable by reason of such damage or destruction to the payment of the purchase price, including payments to Seller's creditors hereunder, and, if paid in full, shall pay any excess proceeds to Buyer. If property is not substantially damaged, it shall be repaired or replaced at Seller's expense before completion of this transaction and the time for such completion shall be extended, if necessary, for a reasonable period in order to permit such repairs or replacement. All insurance proceeds payable by reason of the damage which Seller is obligated to repair or replace shall be paid to him.

12. *Closing.* The closing shall be held in the office of John R. Reilly, Esq., 15 Journal Square, City of ____________________, State of ____________________, on August 15, _____, at 10 a.m. Each party shall execute and deliver at the closing all instruments reasonably required to effectuate the terms and conditions of this agreement and the intent thereof.

13. *No broker.* Both parties acknowledge that all negotiations relative to this agreement have been carried on by them directly and that no broker brought about the sale of this business.

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

15. *Non-waiver.* No delay or failure by either party to exercise any right hereunder, and no partial or single exercise of any such right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

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

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

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

19. *Time of essence.* Time is of the essence of this agreement.

20. *Entire agreement.* This agreement supersedes all prior agreements and constitutes the entire agreement between the parties with respect to the subject matter hereof.

21. *Notices.* All notices hereunder shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at their last known addresses.

____

Alan Carney

____

Brian Comstock

EXHIBIT A

Allocation of Purchase Price

Goodwill......................$ 2,000

Restrictive Covenant......................$ 8,000

Furniture, Fixtures, and Equipment......................$ 25,000

Motor Vehicles......................$ 5,000

FOOTNOTES:
(n1)Footnote *. Review your state's statutory version of U.C.C. Section 6-106, as it may include variances from the model U.C.C. version.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 33: Sale and Purchase of Assets--General.

37TTT-33 California Legal Forms--Transaction Guide 33.syn

§ 33.syn Synopsis to Chapter 33: Sale and Purchase of Assets--General.

Form T33-1 Notice Letter--Personal Property Foreclosure

Form T33-2 Agreement for Services of Auctioneer

Form T33-3 Factoring Agreement

Form T33-4 Agreement for Purchase and Sale of Assets--Computer Hardware and Software Included (Terms More Favorable to Buyer)

Form T33-5 Agreement for the Purchase and Sale of Assets--Computer Hardware and Software Included (Benefits and Liabilities Distributed Substantially Equally Between Seller and Buyer)

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 33: Sale and Purchase of Assets--General.

37TTT-33 California Legal Forms--Transaction Guide Form T33-1

Form T33-1 Notice Letter--Personal Property Foreclosure

Description: This form may be used by an attorney to notify a consumer debtor of the immediate sale of collateral and the debtor's right to redeem it.

Form T33-1 Notice Letter--Personal Property Foreclosure

Dear ____________________ [name of debtor]:

Your default in payment under a promissory note for $____________________ dated ____________________, has previously resulted in an acceleration of the entire unpaid amount. ____________________ [Name of secured creditor] intends to proceed with foreclosure by private sale of the personal property provided as collateral, namely ____________________ [description of collateral].

The private sale will take place on or after ____________________ [date], at ____________________ [time] at [location].

You may redeem the property before the sale by tendering the full amount due under the note plus accrued interest, attorneys' fees, and the expense incurred in the taking and holding the property and preparing for sale of the property. The tender must be made before the scheduled sale, in cash or by a cashier's check or certified check.

If you do not fully discharge the debt and redeem the property subject to sale, proceeds from the sale will be applied to the entire indebtedness, including fees and expenses, due at the time of sale. If sale proceeds are not sufficient to discharge the indebtedness, you will be liable for any deficiency.

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.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 33: Sale and Purchase of Assets--General.

37TTT-33 California Legal Forms--Transaction Guide Form T33-2

Form T33-2 Agreement for Services of Auctioneer

Description: This form provides for the sale of personal property by auction, and details terms, compensation, and obligations.

Form T33-2 Agreement for Services of Auctioneer

AGREEMENT made on ____________________ [date] at ____________________ [place], between ____________________ [name and address of owner] (the "Owner") and ____________________ [name and address of auctioneer] ("the Auctioneer").

Recitals

The Auctioneer is engaged in the business of selling personal property at auction, has its principal place of business in the City of ____________________, State of ____________________, and is licensed by the State of ____________________ to perform auctioneering services. The Owner desires to engage the services of the Auctioneer to sell at auction certain enumerated items of personal property on the terms and conditions provided in this Agreement.

IT IS THEREFORE AGREED:

Engagement of Services

1. The Owner hires the Auctioneer to publicize and sell by action certain personal property belonging to the Owner and described as follows: [*describe property to be sold*]. The Auctioneer accepts the engagement and agrees to use professional best efforts to advertise and sell the personal property at the highest price obtainable.

Time and Place of Auction

2. The auction will take place on or about the ____________________ [date], at ____________________ [*specify, e.g.,* the offices of the Auctioneer, located at ____________________].

Terms of Auction

3. The items of personal property specified above will be sold at public auction to the highest bidder. The successful bidder will be required ____________________ [*specify payment terms, e.g.,* to put up a deposit of ____________________ (*specify, e.g.,* fifty percent (50%)) of the sale price on the conclusion of the bidding and to pay the balance of the purchase price within _____________________ days after the date of the action *or* to pay one hundred percent (100%) of the purchase price, in cash, at the conclusion of the bidding]. All items will remain in the possession of the Auctioneer until full payment has been received from the purchaser. The auction will be ____________________ [*specify pricing policy, e.g.,* conducted without reserve, so that there will be no reserve price on any item offered for sale, and all items placed for sale will be sold to the highest bidder unless no bids are received within a reasonable time *or* an auction with reserve, so that the goods offered for sale will not be sold at less than the reserve price specified by the Owner in the attached schedule, and any goods offered for sale may be withdrawn at any time prior to the completion of the sale]. The Owner ____________________ [does *or* does not] reserve the right to bid on the property, or to have bids made on ____________________ [his *or* her] behalf. [*Add, if owner does reserve right to bid on property:* Notice of this reservation will be given to all prospective buyers by ____________________ (*specify, e.g.,* announcement at the time of auction and notice in all printed materials pertaining to the auction, including advertisements and catalogs).]

Compensation

4. As compensation for services rendered in conducting the auction, the Auctioneer is entitled to receive ____________________ percent (_____________________%) of the gross receipts from the sale of the personal property at auction under this agreement, and, in addition, costs and expenses for ____________________ [*specify, e.g.,* advertising the property for a period of two weeks prior to the auction in a general circulation newspaper]. The Auctioneer has the right to deduct this compensation from the receipts of auction sales before remitting the receipts to the Owner.

Warranties of Owner

5. The Owner warrants that ____________________ [he *or* she] is the owner of and has merchantable title to the items of personal property offered for sale under this agreement and grants to the Auctioneer the right to convey a merchantable title to the property to successful buyers at the auction.

Obligation of Auctioneer

6. The Auctioneer agrees, for the compensation provided in this agreement, to advertise and sell at public auction the property specified above and to remit to the Owner, within _____________________ days after the completion of the auction and receipt of payment from the respective purchasers, the gross sales price of the property less amounts deducted for compensation and expenses as provided in this agreement.

Entire Agreement

7. This Agreement contains the complete agreement between the parties with respect to this subject matter and may not be modified except by an agreement in writing signed by both parties.

Assignment

8. This Agreement may not be assigned by either party without the written consent of the other party, but, subject to the foregoing limitation, will inure to the benefit of and be binding on the successors and assigns of the respective parties.

Governing Law

9. This agreement is governed by the laws of the State of ____________________, and all obligations of the parties to this agreement are performable in ____________________ County, ____________________ [state].

Executed at ____________________ [city], ____________________ [state], on ____________________ [date]

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 33: Sale and Purchase of Assets--General.

37TTT-33 California Legal Forms--Transaction Guide Form T33-3

Form T33-3 Factoring Agreement

Description: This form provides a sample factoring agreement between a client and factor for the purchase of accounts receivable.

Form T33-3 Factoring Agreement

FACTORING AGREEMENT

THIS FACTORING AGREEMENT ("Agreement") made and executed this ____________________ day of ___________________, 20_____ by and between ___________________ ("Client") and ___________________ ("Factor")

1. Purchase of Accounts Receivable:

1.1. Appointment as Factor. Client hereby appoints Factor to act as its sole factor. Client hereby agrees to assign and sell, and does hereby assign and sell, to Factor, and Factor hereby agrees to purchase all of Client's Receivables whether now existing or hereafter arising without any further act or instrument. For all purposes hereof, the term "Receivables" shall mean and include all accounts, contract rights, general intangibles, chattel papers, instruments, documents and all forms of obligations owing to Client arising from or out of the sale of merchandise and/or the rendition of services, all proceeds thereof, all Client's: a) rights to merchandise represented thereby; b) rights under insurance policies covering merchandise or services; c) rights against carriers of said merchandise; and d) right, title, security interests and guarantees with respect to each Receivable, including all rights of replevin and reclamation and stoppage in transit and all other rights of an unpaid seller of merchandise or services.

1.2. Written Credit Approval. Client shall submit to Factor the principal terms of each customers' orders for written credit approval. Factor may, in its discretion, approve in writing all or a portion of Client's customers' orders either by establishing a credit line limited to a specific amount for a specific customer, or by approving all or a portion of a proposed purchase order submitted by Client ("Approved Receivables"). No credit approval shall be effective unless in writing and unless the goods are shipped or the services rendered within the time specified in the written credit approval or within 30 days after the approval is given, if no time is specified. No written credit approval or terms of sale shall be changed without Factor's written approval. Factor shall have the right to withdraw its credit approval or withdraw or adjust a credit line at any time before delivery of merchandise or rendition of services. Factor shall not be liable to any person or in any manner for refusing to approve the credit of any customer.

1.3. Written Schedules. Client shall execute and deliver to Factor written schedules of all Receivables sold or assigned hereunder in form satisfactory to Factor, together with copies of customer's invoices or the equivalent and upon Factor's request, conclusive evidence of delivery for all goods sold or rendition of services and all other information or documents Factor may require. Client's failure to execute and deliver such schedule of Receivables shall not affect the assignment of such Receivables hereunder.

1.4. Remittances. All customers' invoices shall be marked indicating that the Receivable evidenced by the invoice is owned by and payable to Factor in a manner satisfactory to Factor. All remittances, checks, bills and other proceeds of sales shall be property of Factor and Client authorizes Factor to endorse its name on any and all checks or other forms of remittances received in payment of Receivables whenever such endorsement is deemed to be necessary by Factor to effect collection thereof. If any remittances are made directly to Client, Client shall hold the same in trust for the benefit of Factor and will immediately deliver to Factor the identical checks, documents, instruments or moneys received in the same form as received by Client. Client has been advised that Factor may employ a lockbox account for the deposit of remittances received in payment of Receivables, and Client consents thereto.

1.5. Credit Limits. Factor may limit its purchase of Receivables arising from sales to any one customer, and in such event, and in any instance in which Factor does not approve the credit standing of that customer or the terms of sale, Factor nevertheless agrees to purchase such Receivables from Client and Client shall sell and assign the same to Factor hereunder, but with full recourse to Client in the event of nonpayment thereof for any reason whatsoever ("Non-Approved Receivables").

1.6. Minimum Amounts. All sample sales or invoices in the amount of $100 or less shall be with full recourse to Client in the event of nonpayment thereof for any reason whatsoever regardless of whether or not the same was approved as to credit. As to Non-Approved Receivables, Factor shall have the right to charge the same back at any time, together with interest, if any.

2. Representations and Warranties.

2.1. Receivables. Client represents and warrants that each and every Receivable now or hereafter assigned to Factor: a) represents a bona fide sale and delivery of merchandise or rendition of services to customers in the ordinary course of its business; b) represents merchandise or services which have been received and accepted by Client's customers without dispute or claim of any kind and shall be free and clear of any offset, deduction, counterclaim, lien, encumbrance or any other claim or dispute (real or claimed), including, without limitation, claims or disputes as to price, terms, delivery, quantity or quality and claims of release from liability or because of any act of God, or a public enemy, or war, or because of the requirements of law or of rules, orders or regulations having the force of law; c) will be for an amount certain payable in United States funds in accordance with the terms of the invoice covering said sale, which shall not be changed without Factor's written approval; d) except for Factor's security interest therein, there are no security interests, liens or encumbrances thereon and it will at all times be kept free and clear of same except in Factor's favor; e) Client has title thereto and Client has the legal rights to sell, assign, transfer and set over the same to Factor; f) all documents to be delivered to Factor in connection therewith will be genuine and be enforceable. Client agrees to indemnify Factor against any liability, loss or expense caused by or arising out of the rejection of merchandise or services or claims or deductions of every kind and nature by Client's customers, other than those resulting from the financial inability of Client's customer, whose credit standing Factor has approved, to make payment.

2.2. Chargebacks. In the event of Client's breach of any of the foregoing representations and/or warranties, Factor shall have, in addition to all other rights under this Agreement, the right to chargeback to Client immediately the full amount of the Receivables affected thereby together with interest, but such chargeback shall not be deemed a reassignment thereof, and Factor shall retain a security interest in such Receivable and in the merchandise represented thereby until such Receivable is fully paid, settled or discharged and all Client's Obligations (as hereinafter defined) to Factor are fully satisfied. Factor shall not, however, have the right to chargeback to Client any Approved Receivable which is unpaid solely because of such customer's financial inability to pay.

3. Purchase Price

3.1. Calculation of Purchase Price. The purchase price ("Purchase Price") of Receivables sold and assigned hereunder shall be the net amount thereof, as herein defined, less the amount of Factor's commission on the purchase of such Receivables as provided in Section 4 hereof. As used herein, the term "net amount" of Receivables shall mean the gross amount of Receivables less returns, allowances and discounts to, or taken by, customers upon shortest or longest selling terms, as Factor may elect. Such Purchase Price, less: a) any reserves which Factor may have established; b) any sums advanced, remitted or otherwise paid to Client or for Client's account or debited to Client's account; and c) any other charges authorized hereunder, shall be payable by Factor to Client five (5) business days after collection of the Receivables (the "Payable Date"). However, if any Approved Receivable as to which Factor has approved the credit standing of the customer shall not be paid by reason of the customer's bankruptcy or insolvency, Factor will pay Client the Purchase Price thereof on the first business day of the month following such customer's bankruptcy or insolvency.

3.2. Advances. Factor may, at Client's request but in Factor's sole discretion, make advance payments to Client with respect to the Purchase Price of Receivables prior to the aforesaid time or times of Factor's obligation to make payment thereof in an amount up to ____________________% of the net amount thereof. Such advance payments, which shall be debited by Factor to Client's account with Factor, shall bear interest at the Contract Rate (as that term is defined in Section 4.5 hereof) from the date of such advance until the Payable Date.

3.3. Reserves. Factor may reserve out of the Purchase Price of all Receivables sold and assigned an amount which, in Factor's judgment, is sufficient to protect it against possible returns, claims, allowances, expenses and recourse to Client on Receivables sold and assigned to Factor and against other contingencies for which Client may be chargeable hereunder.

-or-

3.4. Overadvances. From time to time Client may request advances from Factor in excess of the advance formula set forth in Section 3.2, or as from time to time adjusted by Factor. Factor may in its sole discretion make such advances (hereinafter called "Overadvances"). It is understood that for purposes of calculating an Overadvance, Factor may consider the face amount of any outstanding acceptances guaranteed by Factor as an advance which has been debited to Client's account with Factor. If Overadvances are outstanding on each of ten (10) or more days in a month, the interest payable hereunder for all advances, and other obligations owed by Client to Factor during said month, shall bear interest for said month at the "Overadvance Rate" (as hereinafter defined) rather than the Contract Rate for such month. The Overadvance Rate shall be equal to the Contract Rate in effect for such month PLUS ____________________% per annum. The making of all Overadvances are discretionary by Factor, may be terminated at any time, and are payable on demand. Nothing herein shall limit or restrict Factor's right to adjust advance formulas upward or downward based upon Factor's lending criteria and collateral evaluations which are established in Factor's sole discretion.

4. Commissions and Interest

4.1. Factoring Commission. For its services hereunder, (a) Factor shall receive a commission equal to ___________________ (____________________) percent of the gross amount of Receivables; and (b) in the case of any Receivables from a customer that is a debtor-in-possession, Factor shall receive an additional commission equal to no less than one (1%) percent for 15 day selling terms and two (2%) percent for 30 day selling terms, of the gross invoice amount of each Receivable, which commission shall be due and payable as of the date a Receivable arises, and shall then be chargeable to Client's account. The minimum factoring commission on each invoice in respect of any Receivable shall be $4.50.

4.2. Extended Terms. The commission specified in Section 4.1 hereof is based upon maximum selling terms of ____________________ days, and no more extended terms or additional dating shall be granted by Client to any customer without Factor's prior written approval. If such approval is given by Factor, Factor's commission with respect to the Receivables covered thereby shall be increased by an additional one-quarter of one (1/4%) percent for each additional thirty (30) days or portion thereof of extended terms or additional dating.

4.3. Minimum Commissions. The minimum aggregate factoring commissions payable under this Agreement for each contract [year] [quarter] [month] hereof shall be $____________________, which, to the extent of any deficiency (after giving effect to commissions payable under subparagraph (a)), shall be chargeable to Client's account with Factor [yearly] [quarterly] [monthly].

4.4. Monthly Statement and Calculation of Interest. Factor will send Client a monthly account current as of the end of each month. Unless Factor receives a written objection to any account current rendered by Factor within thirty (30) days after the mailing of such account current, it shall be deemed accepted by Client and shall become conclusive and binding upon Client. All debit balances shall be payable to Factor on demand and shall bear interest at the rate of interest then in effect as hereinafter provided (herein called the "Contract Rate"); such interest is payable daily but shall be charged to Client's account monthly as a cash advance. The Contract Rate of interest hereunder shall be equal to the Prime Rate (as hereinafter defined) plus ____________________% per annum. Such Contract Rate is based upon the highest announced prime, base or reference rate charged by ____________________ to substantial and responsible corporate commercial borrowers ("Prime Rate") which is now ____________________% per annum, and is neither tied to any external rate of interest or index, nor does it necessarily reflect the lowest rate of interest actually charged to any particular class or category of customers by such bank. Such Contract Rate shall be increased or decreased as the case may be, as such Prime Rate is increased or decreased and to the extent thereof; each such change to be effective as at the first of the month following the month the related change in such Prime Rate occurs; but in no event shall the Contract Rate of interest hereunder be less than 6% per annum nor in excess of the maximum rate Factor is permitted to charge by law.

4.5. Credit Balances. On the last day of each month, Factor shall credit Client's account with interest on the average daily balance of matured funds and cash collateral in Client's account, if any, at the Prime rate minus 3% per annum.

5. Security Interest

5.1. Grant of Security Interest. As security for all "Obligations" (as herein defined), Client hereby grants to Factor a continuing security interest in, and, as applicable, a general lien upon and/or a right of setoff against, all of Client's presently existing and hereafter created Receivables, General Intangibles (as such term is defined in the Uniform Commercial Code), including, without limitation, any claims for tax refunds from any governmental authority due or to become due to Client which claims are hereby assigned to Factor, all proceeds of letters of credit, the following commercial tort claims [____________________], all credit balances with Factor, all instruments, all deposit accounts all computer programs, software, licenses and permits and all Client's property of every kind and description, tangible or intangible, at any time in Factor's possession or subject to Factor's control, whether now or hereafter arising or now owned or hereafter acquired and wherever located and all proceeds of the foregoing. As used herein, the term "Obligations" means and includes all loans, advances, indebtedness, liabilities, obligations, debit balances, covenants and duties owing by Client or any of Client's subsidiaries or affiliates to Factor or Factor's parent, subsidiary or affiliate of every kind and description (whether now or hereafter existing and whether arising under this Agreement or otherwise), direct or indirect, absolute or contingent, due or to become due, including, without limitation, any indebtedness, liabilities or obligations owing by Client to others which Factor has acquired by assignment, participation or otherwise, and further including, without limitation, all interest, fees, charges, expenses and attorneys' fees for which Client may be obligated hereunder. Amounts owing to Factor in respect of Client's purchases from other persons, firms or corporations factored by Factor or its parent, subsidiary or affiliate are to be considered Obligations and as advances against Client's account and may be charged by Factor to Client's account at any time whether before or after the maturity of such amounts.

5.2. Cooperation. Client agrees to execute such further instruments as may be required by any law in connection with the transactions contemplated hereby and to cooperate with Factor in the filing or recording and renewal thereof. Client hereby authorizes Factor to file financing statements containing the following collateral description: "All of Debtor's Assets now owned or hereafter acquired" or such lesser amount of assets as Factor may determine, and hereby ratifies the filing of any financing statement filed before the effective date hereof. Recourse to security shall not be required and Client shall at all times remain liable for the repayment on demand of all Obligations.

6. Customer Disputes and Claims: Returned Goods

6.1. Disputes and Claims. Client shall immediately notify Factor in each instance of the return, rejection, loss of or damage to merchandise represented by any Receivable, of any request for extension of time to pay or request for credit or adjustment, or of any merchandise dispute or other dispute or claim relating to any Receivable or to the merchandise or services covered thereby or tending in any way to diminish the sum certain payable thereon. If any such dispute, controversy or claim is not promptly settled by Client, Factor may, if it so elects, settle, compromise, adjust or otherwise enforce or dispose of by litigation or otherwise, any such dispute, controversy or claim, at Client's expense, and upon such terms and conditions as Factor in its sole discretion shall deem proper, but Factor shall have no obligation to do so. Client shall not grant any allowances, credits or adjustments to customers, nor accept any return of merchandise, without Factor's prior written consent in each instance

6.2. Returned Merchandise. If any merchandise shall be returned by or recovered from the customer or held subject to bill and hold invoices, Client shall forthwith pay Factor the full amount of such Receivable, either in cash or by the assignment of new Receivables hereunder, and until such payment or assignment, such merchandise shall be held by Client in trust for the benefit of Factor, shall be segregated and identified by Client as property held in trust for benefit of Factor, and upon Factor's request Client shall, at its expense, deliver the same to Factor or for Factor's account or upon its order to such place or places as Factor may designate. Factor may sell or cause the sale of any such merchandise, at such prices and upon such terms as it may deem proper, and in the event of any public sale thereof, Factor may be the purchaser. The proceeds of any such sale or sales shall first be charged with the costs and expenses of any incident to such sale, and the balance, if any, shall be credited to Client's account.

6.3. Credit Memoranda. Copies of all credit memoranda to be issued to any customer shall be furnished by Client to Factor and only the customer shall be entitled to the benefit thereof. Factor may charge $4.50 to Client's account for each invoice in respect of any credit memoranda or change of terms.

7. Fees and Expenses

7.1. Monitoring Fees and Other Expenses. Upon Factor's performance of any collateral monitoring function, any field examination, or other business analysis, ("Monitoring") there shall be charged to Client's account, an amount equal to $750 per day, per person, for each person employed to perform such Monitoring together with all costs, disbursements and expenses incurred by Factor during such Monitoring. In addition, Client shall pay to Factor all costs, expenses and liabilities incurred, in connection with: (a) the execution and delivery of this Agreement and any agreement, instrument or document delivered pursuant hereto or in connection herewith (collectively, the "Other Agreements"), including (i) a reasonable allowance for attorneys' fees and (ii) a documentation fee in the amount of $1,000; (b) any waiver, amendment, supplement, consent or modification hereof or thereof; and (c) the filing or perfecting of any security interest in any collateral securing the Obligations or any guaranty therefor. Factor shall also be entitled to charge

Client's account for all costs and expenses incurred (including reasonable attorneys fees) in connection with: (i) obtaining or enforcing payment of any Obligation; (ii) the prosecution or defense of any action or proceeding concerning any matter arising out of or connected with this Agreement, any Other Agreement, or any of the Receivables assigned hereunder, including, without limitation, effecting collection of Receivables whether by adjustments, litigation or otherwise, and realization upon recovered or returned merchandise and defending successfully in whole or in part any and all actions or proceedings brought by Client; (ii) obtaining performance of the Obligations under this Agreement or any Other Agreement, including, but not limited to, the enforcement or defense of Factor's security interests, assignments of rights and liens as valid perfected security interests; (iii) any attempt to inspect, verify, protect, collect, sell, liquidate or otherwise dispose of any collateral for the Obligations; (iv) any appraisals or re-appraisals of any property (real or personal) pledged to Factor as collateral for the Obligations; and (v) any consultations in connection with any of the foregoing. In addition to the foregoing, Factor shall charge Client's account with fees relating to copying, faxes, wire transfers, special or additional reports and other services at such rates as shall be charged by Factor to its clients from time to time. All such costs and expenses together with all filing, recording and search fees, taxes and interest payable by Client to Factor shall be payable on demand may be charged to Client's account and shall constitute Obligations hereunder and shall be secured by the collateral therefor.

8. Indemnities

8.1. Indemnification. Client hereby indemnifies and holds Factor and its affiliates, and their respective employees, attorneys and agents (each, an "Indemnified Person"), harmless from and against any and all suits, actions, proceedings, claims, damages, losses, liabilities and expenses of any kind or nature whatsoever (including attorneys' fees and disbursements and other costs of investigation or defense, including those incurred upon any appeal) which may be instituted or asserted against or incurred by any such Indemnified Person as the result of any financial accommodation having been extended, suspended or terminated under this Agreement or any Other Agreement or with respect to the execution, delivery, enforcement, performance and administration of, or in any other way arising out of or relating to, this Agreement or any Other Agreement, and any actions or failures to act with respect to any of the foregoing, except to the extent that any such indemnified liability is finally determined by a court of competent jurisdiction to have resulted solely from such Indemnified Person's gross negligence or willful misconduct. NO INDEMNIFIED PERSON SHALL BE RESPONSIBLE OR LIABLE TO CLIENT OR TO ANY OTHER PARTY FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF ANY FINANCIAL ACCOMMODATION HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER AGREEMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

8.2. Taxes. If any tax by any governmental authority (other than income and franchise taxes) is or may be imposed on or as a result of any transaction between Client and Factor, or in respect to sales or the merchandise affected by such sales, which Factor is or may be required to withhold or pay, Client agrees to indemnify and hold Factor harmless in respect of such taxes, and Client will repay Factor the amount of any such taxes, which shall be charged to Client's account, and until Client shall furnish Factor with indemnity therefor (or supply Factor with evidence satisfactory to Factor that due provision for the payment thereof has been made), Factor may hold without interest any balance standing to Client's credit and Factor shall retain its security interest in any and all collateral held by Factor.

9. Termination and Default

9.1. Term. The term of this Agreement shall begin as of the effective date hereof and continue until the last day of the twenty-fourth month hereafter and thereafter shall be automatically renewed from year to year unless terminated on such last day of such month or any anniversary thereof by Client giving Factor at least sixty (60) days prior written notice by registered or certified mail, return receipt requested. Factor shall have the right to terminate this Agreement at any time by giving Client sixty (60) days prior written notice.

9.2. Defaults. Notwithstanding the foregoing, Factor may terminate this Agreement without notice and all Obligations shall, unless and to the extent that Factor otherwise elects, become immediately due and payable without notice or demand upon the occurrence and during the continuance of any one or more of the following events (each an "Event of Default"): a) Client fails to pay any Obligation when due; b) Client commits any breach of or default in the performance of its representations, warranties or covenants whether contained herein or in any instrument or document delivered pursuant hereto or in any other Agreement, instrument, or document under which it is obligated to Factor; c) Client or any Guarantor, surety or other party liable upon any Obligation (i) makes any false or untrue representation to Factor in connection with this Agreement or any transaction relating thereto; (ii) become(s) unable to pay its debts as they mature; (iii) make(s) a general assignment for the benefit of creditors, suspend(s) the transaction of Client's or any Guarantor's usual business, convene(s) or cause(s) to be convened a meeting of Client or any Guarantor's creditors or principal creditors or take(s) advantage of the insolvency laws of any State, or a case is commenced or a petition in bankruptcy or for an arrangement or reorganization under the Federal Bankruptcy Code is filed by or against Client or any such other party or a custodian or receiver (or other court designee performing the functions of a receiver) is appointed for or takes possession of Client's or any such other party's assets or affairs or an order for relief in a case commenced under the Federal Bankruptcy Code is entered; or d) any Guarantor, surety or other party liable upon any Obligations, if an individual, shall die; e) Client shall be dissolved; f) there shall be issued or filed against Client, any Guarantor, surety or other party liable upon any Obligations, any tax lien; g) any Guarantor challenges the effectiveness of or seeks or purports to terminate the effectiveness of the applicable Guaranty; h) any Guarantor fails to comply with the provisions of the applicable Guaranty; (i) or there shall be issued or filed against Client any attachment, injunction, execution, or judgment which is not removed within thirty (30) days after same was issued or filed.

9.3. Continuing Obligations. Notwithstanding any termination of this Agreement Client shall continue to deliver Receivables information to Factor and turn over all collections to Factor as herein provided until all Obligations shall have been fully paid and satisfied, and until then this Agreement shall remain in full force and effect as to and be binding upon Client, and Factor shall be entitled to retain its security interest in all existing and future Receivables and other security and collateral.

9.4. Remedies. Upon the occurrence of any of the Events of Default specified in Section 9.2 hereof, Factor shall have all the rights and remedies of a secured party under the Uniform Commercial Code and other applicable laws with respect to all collateral in which it has a security interest, such rights and remedies being in addition to all of its other rights and remedies provided for herein. Factor may sell or cause to be sold any or all of such collateral, in one or more sales or parcels, at such prices and upon such terms as it may deem best, and for cash or on credit or for future delivery, without its assumption of any credit risk, and at a public or private sale as it may deem appropriate. Unless the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Factor will give Client reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. At any such sale, Factor may disclaim warranties of title, possession, quiet enjoyment and the like to the extent permitted by *Uniform Commercial Code § 9-610*,n* and any such disclaimer shall not effect the commercial reasonableness of the sale. The requirements of reasonable notice shall be met if any such notice is mailed, postage prepaid, to Client's address shown herein, at least five (5) days before the time of the sale or disposition thereof. Factor may be the purchaser at any such public sale and thereafter hold the property so sold at public sale, absolutely, free from any claim or right of any kind, including any equity of redemption. The proceeds of sale shall be applied first to all costs and expenses of, and incident to, such sale, (including attorneys' fees), and then in the manner specified by *Uniform Commercial Code § 9-615*n* Factor will return any excess to Client and Client shall remain liable for any deficiency.

10. Miscellaneous

10.1. No Pledge of Credit. Client shall not be entitled to pledge Factor's credit for any purpose whatsoever.

10.2. Waivers. Client waives presentment and protest of any instruments and all notices thereof, notice of default and all other notices to which it might otherwise be entitled. Client shall maintain, at its expense, proper books of account.

10.3. Right of Inspection. Factor shall have the right to inspect and make extracts from such books and all files, records and correspondence at all reasonable times.

10.4. No Pledge or Sale of Receivables. During the term of this Agreement Client shall not sell or assign, negotiate, pledge or grant any security interest in any Receivables or Goods (as said term is defined in Article 9 of the Uniform Commercial Code) to any one other than Factor.

10.5. Organization and Locations. Client certifies that its address as set forth in this Agreement is its mailing address, its chief place of business, and the office at which its records relating to Receivables are kept. Client further certifies that its state of incorporation or organization is the State of ___________________ and it shall not change its state of incorporation or organization without Factor's written consent. Client shall not effect any change of its mailing address, its chief place of business, or the office in which its records relating to Receivables are kept, without first giving Factor thirty days prior written notice thereof. Client shall provide to Factor, upon request, a Certificate of Good Standing from the Secretary of State of the state of incorporation or organization of the undersigned and from every state where the undersigned is qualified to do business.

10.6. Financial Statements. Client shall furnish to Factor, and Client shall cause all, corporate guarantors of the Obligations, if any, to furnish quarterly financial statements within 60 days after the end of each of its fiscal quarters, and annual financial statements within 90 days after the end of each of its fiscal years, all in form and substance acceptable to Factor and reviewed, in the case of quarterly statements, and audited, in the case of annual statements, by an independent certified public accountant acceptable to Factor. Client shall cause all individual guarantors of the Obligations, if any, to furnish to Factor his/her personal financial statement in form and substance acceptable to Factor within 30 days after each anniversary of the date on which he/she furnishes to Factor the first such statement.

10.7. Solvency; Governing Law; Jurisdiction. Client warrants that it is solvent, knows of no present or pending situation which could render it insolvent and it will use its best efforts to remain solvent during the term of this Agreement. This Agreement is made and is to be performed under the laws of the State of ___________________ and shall be governed by and construed in accordance with said law. Each of the parties to this Agreement expressly submits and consents to the jurisdiction of the Supreme Court of the State of ___________________ in the County of ___________________, with respect to any controversy arising out of or relating to this Agreement or any amendment or supplement thereto or to any transactions in connection therewith and each of the parties to this Agreement hereby waives personal service of any summons or complaint or other process or papers to be issued in any action or proceeding involving any such controversy and hereby agrees that service of such summons or complaint or process may be made by registered or certified mail to the other party at the address appearing herein.

10.8. Waiver of Jury Trial. **FACTOR AND CLIENT DO HEREBY WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND ARISING ON, OUT OF, BY REASON OF, OR RELATING IN WAY TO, THIS AGREEMENT OR THE INTERPRETATION OR ENFORCEMNT THEREOF OR TO ANY TRANSACTIONS THEREUNDER.**

10.9. No Waiver of Rights. No failure or delay by Factor in exercising any of its powers or rights hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such power or right preclude other or further exercise thereof or the exercise of any other right or power. Factor's rights, remedies and benefits hereunder are cumulative and not exclusive of any other rights, remedies or benefits which Factor may have. This Agreement may only be modified in writing and no waiver by Factor will be effective unless in writing and then only to the extent specifically stated.

10.10. Notices. All notices and other communications by either party hereto shall be in writing and shall be sent to the other party at the address specified herein.

10.11. Assignment. Factor shall have the right to assign this Agreement and all of Client's rights hereunder shall inure to the benefit of Factor's successors and assigns; and this Agreement shall inure to the benefit of and shall bind Client's respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

[CLIENT]

By: ______________________

Name: ______________________

Title: ______________________

Address: ______________________

____

[FACTOR]

By: ______________________

Name: ______________________

Title: ______________________

Address: ______________________

____

FOOTNOTES:

(n1)Footnote *. Review your state's statutory version of U.C.C. Section 9-610, as it may include variances from the model U.C.C. version.

(n2)Footnote *. Review your state's statutory version of U.C.C. Section 9-615, as it may include variances from the model U.C.C. version.

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 33: Sale and Purchase of Assets--General.

37TTT-33 California Legal Forms--Transaction Guide Form T33-4

Form T33-4 Agreement for Purchase and Sale of Assets--Computer Hardware and Software Included (Terms More Favorable to Buyer)

Description: This agreement provides for the purchase and sale of certain assets, including computer hardware and software. The form details transfer of assets (as well as excluded assets), purchase price and adjustments, conditions, and closing obligations.

Form T33-4 Agreement for Purchase and Sale of Assets--Computer Hardware and Software Included (Terms More Favorable to Buyer)

AGREEMENT made and entered into as of ____________________ [date], by and between ____________________ [company], a ____________________ [state] corporation, with its principal place of business at ____________________ [address], ____________________ [city], ____________________ [state and zip code] ("Seller") and ____________________ [company], a ____________________ [state] corporation, with its principal place of business at ____________________[address], ____________________ [city], ____________________ [state and zip code], ("Buyer").

W I T N E S S E T H

Whereas Seller desires to sell certain of its assets, including certain computer hardware, software and know-how related thereto, in accordance with the terms and conditions of this Agreement; and

Whereas Buyer desires to purchase such assets in accordance with the terms and provisions hereof.

Now, therefore, in consideration of the premises and of the mutual promises herein contained, the parties agree as follows;

1. *Sale and Purchase of Assets*

1.1 *Transfer of assets.* Subject to the terms and provisions hereof, Buyer, in reliance upon Seller's warranties and representations herein made, shall purchase and acquire from Seller, and Seller shall sell, transfer and convey to Buyer, with the exceptions set forth herein and in the schedules annexed hereto, all of the assets, properties and rights of Seller, of every type and description, whether tangible or intangible, including the following:

(a) All designs, drawings, procedures (including design, manufacturing, test and maintenance procedures), specifications, software (other than as described in Subparagraph (b) hereof), printed circuit board art work, integrated circuit masks, test equipment, tools, fixtures, documentation, training materials, and information, in whatever form, related to, useful, utilizable or necessary in the design, manufacture, test and/or maintenance of the computer system commonly known as the Model XT-II; the foregoing being more specifically defined and described in the Schedule of Computer Technology, Schedule A, attached hereto and made a part hereof (hereinafter collectively referred to as "Computer Technology").

(b) All software (including object and source code, in machine readable and listing form), documentation (including internal documentation, documentation made available to customers and training materials), flowcharts, source code notes, software tools, compilers, test routines and information, in whatever form, and all revisions, release levels and versions of the foregoing, used on or with the Computer Technology, offered for sale or license by Seller, developed by or for Seller, or in the possession of Seller; the foregoing being more specifically defined and described in the Schedule of Software, Schedule B, attached hereto and made a part hereof (hereinafter collectively referred to as "Software").

(c) All patents, patent applications, copyrights, trade secrets, trademarks, trade names, and other proprietary rights based, in whole or in part, or included in or covering the Computer Technology, Software or any portion thereof; the foregoing being more specifically defined and described in the Schedule of Proprietary Rights, Schedule C, attached hereto and made a part hereof (hereinafter collectively referred to as "Proprietary Rights").

(d) All inventories of Computer Technology, Software, or any portions thereof; the foregoing being more specifically defined and described in the Schedule of Inventories, Schedule D, attached hereto and made a part hereof (hereinafter collectively referred to as "Inventories").

(e) All rights of Seller under sales agreements, franchises, license agreements, lease agreements, maintenance agreements, procurement agreements, consultant agreement, employee agreements, invention agreements and all other agreements of whatever nature or kind relating to Computer Technology, Software or Proprietary Rights specifically defined and described in the Schedule of Contract Rights, Schedule E, attached hereto and made a part hereof (hereinafter collectively referred to as "Contract Rights").

All assets of Seller to be transferred to the Buyer pursuant hereto, including the Computer Technology, Software, Proprietary Rights, Inventories and Contract Rights, are sometimes hereinafter collectively referred to as "Seller's Assets."

1.2 *Excluded assets.* The following shall be excluded from Seller's Assets being sold and transferred to Buyer hereunder:

(a) Seller's cash on hand and bank deposits at the time of Closing.

(b) All accounts receivable, refundable income taxes, prepaid interest, investments in marketable securities, loans and exchanges; and loans receivable.

(c) All stock or securities, in whatever form, of Seller.

(d) All liabilities or obligations of Seller, in existence at the time of Closing, including, accounts payable, but excluding the obligations expressly included in Contract Rights.

(e) All leases for land and/or buildings.

1.3 *Encumbrances.* The sale and transfer of Seller's Assets shall, at the time of Closing, be free and clear of all obligations, security interests, liens, infringements and encumbrances whatsoever, except to the extent expressly included in the Schedule of Encumbrances, Schedule F, attached hereto and made a part hereof.

1.4 *Purchase price.* Subject to the provisions of Paragraph 1.5, the purchase price for the sale and transfer of Seller's Assets to Buyer is the sum of $3 million. The purchase price shall be allocated among Seller's Assets in accordance with the Schedule of Allocations, Schedule G, attached hereto and made a part hereof. The purchase price shall be payable as follows:

(a) Deposit paid herewith by Buyer to be held by ____________________ , Seller's attorneys, in escrow, until fulfillment of contingencies set forth herein or default by Buyer: $1 million.

(b) At the time of Closing, by wire transfer to Seller's account at ____________________ [bank]: $1.5 million.

(c) At the time of Closing, by wire transfer, to the ____________________ [bank], in escrow, until a period of six (6) months after the Closing, unless reduced by any breach of warranties by Seller hereunder or claim thereof by Buyer in accordance with the Schedule of Allocations: $500,000.

1.5 *Adjustments.* There shall be adjustments in the purchase price at the Closing, or as soon thereafter as practicable, for the following:

(a) As credits to Seller, prepaid amounts to suppliers of Inventories to be delivered under contracts after the Closing.

(b) As credits to Buyer, prepaid amounts by customers of Seller pursuant to Contract Rights where Buyer has obligations that continue after the Closing.

(c) Any other adjustments provided elsewhere in this Agreement.

1.6 *Closing.* The completion of the contemplated transactions is herein designated as the Closing, which shall take place on _____________________ [date], or such later date as may be mutually agreed upon by the parties.

1.7 *Access and information.* Seller shall give to Buyer, Buyer's accountants, technical personnel, counsel and other representatives access, during normal business hours, from the date hereof to Closing, to Computer Technology, Software, Inventories, books, records, contracts and commitments of Seller (including Contract Rights) and shall furnish Buyer, during such period, with information concerning Seller's Assets as Buyer may reasonably request. Such information shall be subject to the provisions of Paragraph 8.15.

1.8 *Conduct of business.* Seller warrants and represents to and covenants and agrees with Buyer that, pending completion of the Closing, unless otherwise agreed in writing by Buyer:

(a) Seller shall not sell, license, contract, commit or otherwise encumber Seller's Assets, other than in the ordinary course of business.

(b) Seller shall carry and continue in force and effect through the Closing, such fire and extended coverage insurance on the Inventories as is in existence of the date of this Agreement.

(c) Seller shall not amend, modify or terminate any agreement to which it is a party and which in any way relates to Seller's Assets, without the prior written consent of Buyer.

(d) There will be no increase in any compensation payable or to become payable by Seller to any employee, agent or consultant.

(e) Seller and its officers and employees shall use their best efforts to preserve the business organization, the Computer Technology, Software and Proprietary Rights in good order, including, retaining all of the present employees of Seller identified in the Schedule of Employees, Schedule H, attached hereto and made a part hereof, and to preserve for Buyer the good will of suppliers, customers and others having any business relationship with Seller that relates to Seller's Assets or any portion thereof.

2. *Warranties and Representations of Seller*

Seller warrants and represents to Buyer as follows:

2.1 *Corporate organization.* Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of ____________________ and is duly qualified to do business in the State of ____________________ and has full power and authority to carry on its current business and to own, use and sell its assets, including Seller's Assets, and properties.

2.2 *Corporate authority.* The execution and delivery of this Agreement to Buyer and the carrying out of the provisions hereof have been duly authorized by the Board of Directors of Seller and authorized by Seller's shareholders, and at Closing, Seller shall furnish Buyer duly certified copies of the authorizing resolutions of Seller's Board of Directors and its shareholders.

2.3 *Labor issues.* To the best of Seller's knowledge and belief, no strike, picketing or similar action is pending or threatened against Seller by its employees or any labor union. To the best of its knowledge and belief, Seller is not engaged in any unfair labor practices in connection with the operation of the business of Seller relating to Seller's Assets. Seller will not be responsible for any violations arising or determined subsequent to Closing that have been caused by any act of Buyer or any failure to act by Buyer. Seller represents and warrants that it has not had any solicitation by any labor organization within the preceding three years.

2.4 *Non-infringement.* The Computer Technology, Software, Proprietary Rights, and Inventories, in whole or in part, do not infringe any patents, copyrights, trade secrets, trademarks or other proprietary rights of any third parties and no rights or licenses are required from third parties to exercise any rights with respect to Seller's Assets or any portion thereof.

2.5 *Proprietary rights.* The Proprietary Rights are in full force and effect and there are no liens, claims, proceedings or causes of actions that in any way affect the validity or enforceability of such Proprietary Rights. Except for licenses granted in the ordinary course of business to purchasers/licensees of Seller's products, no rights or licenses, express or implied, have been granted to any third parties under Proprietary Rights or any portion thereof.

2.6 *Contracts, licenses, permits and approvals.*

(a) Seller has no presently existing contracts or commitments extending beyond the execution date hereof that in any way relate to Seller's Assets that are not included in the Schedule of Contract Rights, Schedule E hereto.

(b) Seller does not have any obligation under any collective bargaining agreement or any other contract with a labor union. Except to the extent set forth in the Schedule of Contract Rights, Schedule E hereto, Seller is not a party to any executive or employee compensation plan or agreement or compensatory plan or agreement with any independent contractors, or employees or agents of Seller, including, without limitation, any pension, retirement, profit sharing, stock purchase, stock option, bonus or savings plan. Seller agrees to pay or allow as a credit to Buyer any vacation or sick pay accrued to Seller's employees at Closing.

(c) Seller agrees to update Buyer of any changes in status of the Paragraph 2.6 representations.

2.7 *Compliance.* Neither the execution and delivery of this Agreement, nor any instrument or agreement to be delivered by Seller to Buyer at the Closing pursuant to this Agreement, nor the compliance with the terms and provisions thereof by Seller, will result in the breach of any applicable statute or regulation promulgated thereunder, or any administrative or court order or decree, nor will such compliance conflict with, or result in the breach of, any of the terms, conditions or provisions of the Certificate of Incorporation or bylaws of Seller, as amended, or any agreement or other instrument to which Seller is a party, or by which Seller is or may be bound, or constitute an event of default or default thereunder, or with the lapse of time or the giving of notice or both constitute an event of default thereunder.

2.8 *Financial statements.* Seller has delivered to Buyer the financial statements of Seller for the period ending ____________________ [date], a copy of which is annexed as the Schedule of Financial Statements, Schedule I, attached hereto and made a part hereof.

2.9 *Fitness of Inventories.* The Inventories as of the date hereof consist, and at Closing will consist of items of a quality and quantity usable or salable in the ordinary course of business of Seller and are currently used by Seller in the ordinary course of business.

2.10 *Litigation.* There is no suit or action, or legal, administrative, arbitration or other proceeding or governmental investigation affecting Seller's Assets pending, or to the best knowledge and belief of Seller, threatened against Seller that materially or adversely affects the business of Seller relating to Seller's Assets or Seller's Assets. Seller further warrants and represents that there is nooutstanding judgment, decree or order against Seller that affects Seller or Seller's Assets in any way.

2.11 *Effect of Agreement.* The terms and conditions of this Agreement and all other instruments and agreements to be delivered by Seller to Buyer pursuant to the terms and conditions of this Agreement are valid, binding and enforceable against Seller in accordance with their terms, subject only to the applicable bankruptcy, moratorium and other laws generally affecting the rights and remedies of creditors.

2.12 *Good title.* Seller has and shall transfer to Buyer at Closing good and marketable title to Seller's Assets, free and clear of any and all security interests, encumbrances or liens.

2.13 *Representations and warranties.* No representation or warranty by Seller in this Agreement or any documents provided hereunder contains or will contain any untrue statement or omissions or will omit to state any material fact necessary to make the statements contained herein or therein not misleading. All representations and warranties made by Seller in this Agreement and any documents provided hereunder shall be true and correct as of the date of Closing with the same force and effect as if they had been made on and as of such date.

2.14 *Due performance.* Seller has in all material respects performed all obligations required to be performed by it under, and is not in default in any material respect under, or in violation in any material respect of, its Certificate of Incorporation or bylaws, as amended, or any agreement, lease, mortgage, note, bond, indenture, license or other documents or undertaking, oral or written, to which it is a party or by which it is bound, or by which it or any of its properties or assets may be materially affected. Seller is not in violation or default in any material respect of any order, regulation, injunction or decree of any court, administrative agency or governmental body. The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby will not result in any of the violations or defaults referred to in this paragraph.

2.15 *Subsidiaries.* Seller does not have any subsidiaries nor does it have any interest in any business enterprise not disclosed herein relating to or competing with Seller's Assets or any portion thereof.

2.16 *Computer technology.* Schedule A, Computer Technology, is a complete listing of all items used and required by Seller to design, manufacture, test, market and support the computer system known as Model XT-II.

2.17 *Software.* Schedule B, Software, is a complete schedule of all software marketed by Seller for use on or with the Computer Technology, there are no known errors, malfunctions and/or defects in the Software; there is no known unauthorized use of the Software or any portion thereof by any third party; and the Software and all portions thereof have been licensed for use by third parties only in accordance with the terms and conditions of Seller's Software License Agreement, Schedule J, attached hereto and made a part hereof.

2.18 *Rights of Seller in Computer Technology and Software.* Computer Technology and Software have been created solely be employees of Seller who are under an obligation to assign all right, title and interest therein to Seller pursuant to the terms and conditions of the Employee Agreement, Schedule K, attached hereto and made a part hereof.

2.19 *Date and Time Compliance of Computer Technology and Software.* Seller represents and warrants that the computer technology and software does and shall operate in a well-defined, correct, and predictable manner when using any date or time, and does and shall not cause errors related to any date or time.

3. *Warranties and Representations of Buyer*

Buyer warrants and represents to Seller as follows:

3.1 *Corporate organization.* Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of ____________________ and is duly qualified to do business in the State of ____________________ and has full power and authority to carry on its current business and to purchase, own, use and sell its assets and properties.

3.2 *Corporate authority.* The execution and delivery of this Agreement to Seller and the carrying out of the provisions hereof have been duly authorized by the Board of Directors of Buyer and authorized by Buyer's shareholders, and at Closing, Buyer shall furnish Seller duly certified copies of the authorizing resolutions of Buyer's Board of Directors and its shareholders.

3.3 *Binding nature.* This Agreement shall be, when duly executed and delivered, a legal and binding obligation of Buyer, enforceable in accordance with its terms.

3.4 *Representations and warranties.* No warranties or representations of Buyer in this Agreement contains or will contain any untrue statement or omissions, or will omit to state a material fact necessary to make the statements contained herein not misleading. All representations and warranties made by Buyer in this Agreement shall be true and correct as of Closing with the same force and effect as if they had been made on and as of such date.

3.5 *Compliance with securities laws.* To the best of Buyer's knowledge and belief, neither Buyer nor any officer, director, affiliate, or controlling person of Buyer has committed any violation, or been in any way in contravention, of anylaw, rule or regulation governing transactions in securities, in connection with the transactions herein.

3.6 *Inspection and value.* Buyer has formed its own opinion as to the value of Seller's Assets being purchased hereunder. Seller's warranties include only such express written warranties as are contained in this Agreement. Any other express warranties, oral or written, not contained in this Agreement are of no force and effect. Seller hereby disclaims all implied warranties, including without limitation, implied warranties of merchantability and implied warranties of fitness for special or ordinary uses or purposes. Buyer has inspected Seller's Assets to the full extent of

Buyer's desire, and Seller has given Buyer ample opportunity to conduct such inspections. Seller's Assets, except as expressly warranted or represented herein, are purchased "AS IS" and "With All Faults."

3.7 *Litigation.* There are no pending, or to the best knowledge and belief of Buyer, threatened actions or proceedings before any court or administrative agency or other authority that might or will materially or adversely affect Buyer's ability or right to perform all of Buyer's obligations hereunder.

4. *Liabilities*

4.1 *No assumption of liabilities.*

(a) Seller acknowledges that Buyer is acquiring Seller's Assets hereunder without any assumption of Seller's liabilities, except to the extent expressly set forth in Schedule of Contract Rights, Schedule E hereto.

(b) Seller will indemnify and hold Buyer harmless from and against any and all claims for products, service, and professional liability against Seller arising out of sales of products or services or grants of licenses rendered by Seller prior to Closing.

4.2 *Bulk sales law.* Buyer and Seller hereby waive compliance by Seller with the provisions of the ____________________ [state] Uniform Commercial Code--Bulk Transfers. Seller agrees to hold a sufficient amount of the net cash proceeds in trust to pay all of Seller's creditors as and when their claims come due and to indemnify and hold Buyer harmless from and against any loss, damage or expense, including a reasonable attorneys' fees and court costs, incurred by Buyer as a result of or attributable to the Seller's failure to comply with said provisions.

5. *Conditions Precedent*

5.1 *Conditions precedent to Seller's obligations.* The obligations of Seller to complete the Closing hereunder are, at Seller's option, subject to the following conditions:

(a) All representations and warranties by Buyer contained in this Agreement shall be true in all material respects as of and at the Closing.

(b) Buyer shall have performed and complied with all agreements, terms and conditions required by this Agreement to be performed and complied with by Buyer on or before the Closing.

(c) Seller shall have received an opinion of counsel for Buyer, dated the Closing date, in form and substance reasonably satisfactory to counsel for Seller, stating that:

(i) Buyer is a corporation duly organized and existing in good standing under the laws of the State of ____________________ and is duly qualified to do business in the State of ____________________.

(ii) Buyer has full power and authority to make, execute, deliver and perform this Agreement, and all corporate and other proceedings required to be taken by Buyer, its directors and shareholders to authorize Buyer to enter into and carry out this Agreement and the transactions contemplated hereby have been duly and properly taken, and this Agreement constitutes a valid obligation binding upon Buyer in accordance with its terms, and that Buyer has the corporate power to conduct the type of business presently conducted by Seller relating to Seller's Assets.

(iii) The execution and delivery of this Agreement, and the consummation hereof, do not conflict with, or result in breach of, or constitute a default under, the Article of Incorporation or bylaws of Buyer, as amended, or any material agreement or instrument of which such counsel has knowledge and to which Buyer is a party or by which it is bound.

(d) Seller shall not be in bankruptcy or similar proceedings.

5.2 *Conditions precedent to Buyer's obligations.* The obligations of Buyer to complete the Closing under this Agreement are, at Buyer's option, subject to fulfillment by Seller, or otherwise, of each of the following conditions:

(a) All representations and warranties of Seller contained in this Agreement shall be true in all material respects as of and at the Closing with the same effect as if said representations and warranties had been made on and as of Closing, except and to the extent otherwise specifically provided by the terms and conditions of this Agreement.

(b) Seller shall have performed and complied with all agreements, terms and conditions required by this Agreement to be performed and complied with by Seller on or before the Closing.

(c) The employees of Seller listed on the Schedule of Employees, Schedule H, attached hereto and made a part hereof, have accepted employment with Buyer on terms, conditions and compensation no less favorable than those being extended by Seller on the effective date of this Agreement, and such employees shall commence employment with Buyer on the date of Closing.

(d) Buyer shall have received an opinion of counsel for Seller, dated the Closing date, in form and substance reasonably satisfactory to counsel for Buyer, stating that:

(i) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of ____________________, has full corporate power to own, lease and sell its assets, including Seller's Assets, and to conduct its then current business and is duly qualified to do business and is in good standing in the State of ____________________ and every other jurisdiction where such qualification may be necessary.

(ii) Seller has the full power and authority to make, execute, deliver and perform this Agreement. All corporate and other proceedings required to be taken by Seller, its directors and shareholders to authorize Seller to enter into and carry out this Agreement and the transactions contemplated hereby have been duly and properly taken, and this Agreement constitutes a valid obligation binding upon Seller in accordance with its terms.

(iii) At the Closing, Buyer shall receive good and marketable title to all of Seller's Assets, free and clear of any and all security interests, encumbrances, liens, infringements, licenses in favor of others (except and to the extent expressly provided herein) or other interests.

(iv) After diligent investigation, counsel does not know of any litigation, proceeding or governmental investigation pending or threatened against or relating to Seller that would adversely affect, in any way, the business of Seller's Assets or Seller's Assets.

(v) The execution and delivery of this Agreement and consummation hereof do not conflict with, or result in the breach of, or constitute a default under the Certificate of Incorporation or bylaws of Seller, or any material agreement or instrument of which counsel has knowledge and to which Seller is a party or by which Seller is bound.

(vi) The business of Seller and Seller's Assets shall not have been materially and adversely affected as a result of any transaction or labor dispute or discussion.

(vii) Seller does not have any subsidiary corporations or other undisclosed business enterprises.

(viii) All corporate and other proceedings and actions required by this Agreement or by law or any rules or regulations promulgated thereunder, to be taken by or on the part of Seller, its Board of Directors or its shareholders to authorize

Seller to execute, deliver and perform its duties and obligations arising under this Agreement have been duly and validly taken.

(ix) Seller has complied with all applicable statutes, the provisions of its Certificate of Incorporation and bylaws, as amended, and all other laws and regulations applicable to the transactions contemplated by this Agreement to be performed by Seller.

(x) Seller's Assets are free and clear of all perfected, filed and/or recorded liens, charges, and encumbrances. The instruments of assignment, transfer and conveyance of Seller's Assets to Buyer comply in all respect with the terms of this Agreement and are sufficient to vest in Buyer all right, title and interest in respect to all of Seller's Assets.

(xi) Neither the execution and delivery of this Agreement, nor any instrument or agreement delivered by Seller to Buyer at the Closing pursuant to this Agreement, nor the compliance with the terms and provisions hereof by Seller resulted in or will result in the breach of any applicable statute or regulation promulgated thereunder, or any administrative or court order or decree, nor will such compliance conflict with or result in the breach of any of the terms, conditions, or provisions of the Certificate of Incorporation or bylaws, as amended, of Seller, or any agreement or other instrument to which Seller is a party, or by which Seller is or may be, bound, or constitute an event of default or, with the lapse of time or the giving of notice, or both, constitute an event of default thereunder.

(xii) This Agreement and all of the instruments and agreements delivered by Seller to Buyer on the date hereof are legal, valid, and binding obligations of Seller, enforceable in accordance with their terms.

(xiii) There is no suit, action or legal, administrative, arbitration or other proceeding or governmental investigation, or any material change affecting any of Seller's Assets pending or, to the best of counsel's knowledge, after due inquiry, threatened against Seller, which might materially or adversely affect the financial condition of Seller or the conduct of Seller's business related in any way to Seller's Assets.

(xiv) There is no suit, action or claim that the Computer Technology, Software, Proprietary Rights or Inventories infringe any patents, copyrights, trade secrets, trade marks or other proprietary rights of any third parties, and that the Computer Technology, Software, Proprietary Rights, Inventories or any portion thereof or the exercise of any rights related thereto or to Seller's Assets do not infringe any patents, copyrights, trade secrets, trademarks or other proprietary rights of third parties.

(e) Seller shall have delivered to buyer such other instruments and documents as Buyer shall reasonably request for the purpose of further perfecting the title of Buyer in Seller's Assets.

(f) Seller shall not be in bankruptcy or similar proceedings.

5.3 *Waivers and consents.* Promptly following the execution of this Agreement, Seller shall use its best efforts to obtain such written waivers and consents as may be required, or reasonably requested by Buyer, in connection with the sale and assignment of Seller's Assets by Seller to Buyer in accordance with the terms of this Agreement.

6. *Closing Obligations*

6.1 *Seller's obligations at Closing.* At the Closing, Seller shall execute and deliver to Buyer:

(a) A bill of sale, assignments, and such other instruments, and documents of conveyance and transfer to Buyer all of Seller's Assets.

(b) Appropriate original instruments of consent or waiver executed by third parties with respect to all Contract Rights being transferred to Buyer hereunder in order more fully to effect transfer of Seller's Assets hereunder, including, without limitation, consents by all appropriate governmental agencies, if any.

(c) Possession of the originals of all Seller's Assets and all copies thereof; it being understood and agreed that no Seller's Assets or any portion thereof shall remain in the possession or control of Seller after the Closing.

(d) True and complete copies of resolutions duly accepted by Seller's board of Directors and all shareholders entitled to vote hereon confirming this Agreement, authorizing the carrying out of all transactions contemplated herein and the execution and delivery by Seller of all instruments then or thereafter required to do so; said resolutions to be duly certified by the Secretary of Seller.

(e) Opinion of Seller's counsel as hereinabove provided.

(f) Such other instruments and documents as may be elsewhere herein required.

(g) A certificate signed by the President and by the Secretary of Seller, dated the date of Closing, certifying that all of Seller's representations and warranties set forth in this Agreement continue to be true on the Closing date as if originally made on such date, except and to the extent otherwise expressly provided or permitted in this Agreement.

6.2 *Seller's further assurances.* From time to time, at Buyer's request and expense, whether at or after the Closing and without further consideration, Seller shall:

(a) Execute and deliver to Buyer such instruments as may reasonably be required to carry out the intent and purpose of this Agreement.

(b) Deliver to Buyer such other data, papers and information as may be requested by Buyer to assist Buyer in the use of Seller's Assets.

6.3 *Buyer's obligations at Closing.* At Closing, Buyer shall execute and deliver to Seller:

(a) The payments provided for herein, including the payments to the escrow account.

(b) An opinion of counsel for Buyer as hereinabove required.

(c) True and complete copies of resolutions duly adopted by Buyer's Board of Directors and shareholders and duly certified by the Secretary of Buyer, which provide all necessary corporate authorization for the execution and carrying out of this Agreement and the provisions hereof.

(d) A certificate signed by the President and by the Secretary of Buyer, dated the date of Closing, certifying that all of representations and warranties set forth in this Agreement continue to be true on the Closing date as if originally made on such date and the fulfillment of the covenants and agreements as of the Closing.

(e) Appropriate instruments assuming obligations of Seller in the Contract Rights and indemnifying Seller.

7. *Employees*

7.1 *Continuity.* Buyer shall use reasonable efforts to retain the employees of Seller, but shall have no legal obligation to do so.

7.2 *Data on employees.* Before Closing, Seller shall have delivered to Buyer a true and complete listing of all persons employed by Seller, and Seller shall comply with whatever reasonable requests Buyer may make for additional information relating to such employees.

8. *Miscellaneous*

8.1 *Brokerage.* Each party hereto represents and warrants to the other that no broker or finder is entitled to any commission, or similar fee, in connection with the making and carrying out of this Agreement.

8.2 *Sales taxes.* Any sales taxes that may be payable in connection with the transfer of any of Seller's Assets shall be borne solely by Seller, who shall certify to Buyer that all such taxes have been paid and hold Buyer harmless therefor.

8.3 *Indemnification.* Seller covenants and agrees to defend, indemnify, and hold Buyer harmless against any loss, damage, claim of third parties, actions, suits, demands, judgments, or expense (including legal and other fees, costs and charges) incurred or sustained by Buyer as a result of or attributable, in whole or in part, to any misrepresentation or breach of any representation, warranty, covenant, or agreement herein (including, without limitation, provisions on applicable bulk transfer laws) given or made by Seller. Buyer covenants and agrees to defend, indemnify, and hold Seller harmless against any loss, damage, claim of third parties, actions, suits, demands, judgments, or expenses (including legal and other fees, costs and charges) incurred or sustained by Seller as a result of or attributable, in while or in part, to any misrepresentation or breach of any representation, warranty, covenant, or agreement herein (including, without limitation, provisions with respect to applicable bulk transfer sales laws and Buyer's representations of compliance with securities laws, rules and regulations) given or made by Buyer.

8.4 *Effectiveness.* This Agreement supersedes any and all agreements, if any, previously made between the parties relating to the subject matter hereof, and there are no understandings or agreements other than those included herein.

8.5 *Notices and communications.* Any notice, payment, request, instruction, or other document to be delivered hereunder shall be deemed sufficiently given if in writing and delivered personally or mailed by certified mail, postage prepaid, if to Buyer addressed to Buyer at the address first set forth above, with one copy to:

____________________ [legal counsel]
____________________ [address],
____________________[city],
____________________ [state and zip code]

and if addressed to Seller, addressed to Seller at the address first set forth above, with one copy to:

____________________ [legal counsel]
____________________ [address],
____________________[city],
____________________ [state and zip code]

unless in each case Buyer or Seller shall have notified the other in writing of a different address.

8.6 *Non-waiver.* No delay or failure on the part of either party in exercising any right hereunder, and no partial or single exercise thereof, will constitute a waiver of such right or of any other right hereunder.

8.7 *Headings.* Headings in this Agreement are for convenience only and are not to be used for interpreting or construing any provision hereof.

8.8 *Governing law.* This Agreement shall be construed in accordance with and governed by the laws of the State of ____________________.

8.9 *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.

8.10 *Binding nature.* The provisions of this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

8.11 *Survival of representations and warranties.* Except as otherwise expressly provided in this Agreement or the Schedules annexed, the representations and warranties of Buyer and Seller extended hereunder shall survive the Closing. Each party against whom liability is asserted under the provisions of this Agreement shall be given the opportunity to participate, directly or through its authorized representative, at its cost and expense, in the conduct of any negotiations relating to the settlements of any liability or any other proceeding instituted by any third party against either Seller or Buyer, as the case may be, giving rise to the alleged breach.

8.12 *Expenses.* Except as otherwise expressly provided herein, each party shall pay all of its own expenses incidental to the negotiation and preparation of the documentation and financial statements relating to this Agreement and for entering into and carrying out the terms and conditions of this Agreement and consummating the transactions, irrespective of whether the transactions contemplated shall be consummated.

8.13 *Payment of taxes.* All fees, costs, charges, and expenses payable to any federal, state, or municipal authority, including without limitation all filing fees, documentary stamps and transfer, sales and other taxes required to be paid, or imposed in connection with the transfer of any of Seller's Assets pursuant to the terms of this Agreement shall be paid by Seller.

8.14 *Amendment; successors and assigns.* This Agreement may be amended only by an instrument signed by the authorized representatives of the parties hereto. Neither party may assign any of its rights, obligations, or liabilities arising hereunder without the prior written consent of the other, except as otherwise provided herein, and any such assignment or attempted assignment shall be null and void.

8.15 *Confidentiality.* Prior to the Closing of the transactions contemplated hereunder, the parties hereto shall keep confidential the existence of this Agreement, the transactions described herein and all information obtained from the other concerning Seller's Assets or the business plans of Buyer; provided, however, the covenants contained in this Paragraph 8.15 shall not apply in respect to any information that (a) was already known to either of the parties at the time of receipt thereof from the other, (b) was readily available to the general publicat the time of receipt thereof from the other, (c) subsequently becomes known to the general public through no fault or omission on the part of the party receiving such information, (d) is subsequently disclosed by a third party that has the bona fide right to make such disclosure, or (e) is required to be disclosed by applicable law, regulation or court order.

8.16 *Third party beneficiaries.* Except for their proper successors and assigns, the parties hereto intend that no third party shall have any rights or claims by reason of this Agreement.

In witness whereof, the parties hereto have cause this Agreement to be duly executed by their authorized representatives as of the date first above written.

____________________	____________________
____________________	____________________
("Seller")	("Buyer")
By: _______________________	By: _______________________
Title: _______________________	Title: _______________________
Date: _______________________	Date: _______________________
Attest	Attest
By: _______________________	By: _______________________
Title: _______________________	Title: _______________________

California Legal Forms--Transaction Guide

PART III: Transactions in Turbulent Times - Reorganization and Dissolution.
CHAPTER 33: Sale and Purchase of Assets--General.

37TTT-33 California Legal Forms--Transaction Guide Form T33-5

Form T33-5 Agreement for the Purchase and Sale of Assets--Computer Hardware and Software Included (Benefits and Liabilities Distributed Substantially Equally Between Seller and Buyer)

Description: This agreement provides for the purchase and sale of certain assets, including computer hardware and software, where benefits and liabilities are distributed substantially equally between seller and buyer.

Form T33-5 Agreement for the Purchase and Sale of Assets--Computer Hardware and Software Included (Benefits and Liabilities Distributed Substantially Equally Between Seller and Buyer)

AGREEMENT made and entered into as of ____________________ [date], by and between ____________________ [company], a ____________________ [state] corporation, with its principal place of business at ____________________ [address], ____________________ [city], ____________________ [state and zip code], ("Seller") and ____________________ [company], a ____________________ corporation, with its principal place of business at ____________________ [address], ____________________ [city], ____________________ [state and zip code], ("Buyer").

W I T N E S S E T H

Whereas Seller desires to sell certain of its assets, including certain computer hardware, software and know-how related thereto, pursuant to the terms and conditions hereof; and

Whereas Buyer desires to purchase such assets in accordance with the terms and provisions hereof.

Now, therefore, in consideration of the premises and of the mutual promises herein contained, the parties hereto agree as follows:

1. *Sale and Purchase of Assets*

1.1 *Transfer of assets.* Subject to the terms and conditions of this Agreement, Buyer, in reliance upon Seller's warranties and representations herein made, shall purchase and acquire from Seller, and Seller, shall sell, transfer and convey to Buyer, with the exceptions set forth herein and in the schedules annexed hereto, all of the assets, properties and rights of

Seller, of every type and description, whether tangible or intangible, including the following:

(a) All designs, drawings, procedures (including design, manufacturing, test and maintenance procedures), specifications, software (other than as described in Subparagraph (b) hereof), printed circuit board art work, integrated circuit masks, test equipment, tools, fixtures, documentation, training materials, and information, in whatever form, related to, useful, utilizable or necessary in the design, manufacture, test and/or maintenance of the computer system commonly known as the Model XT-II; the foregoing being more specifically defined and described in the Schedule of Computer Technology, Schedule A, attached hereto and made a part hereof (hereinafter collectively referred to as "Computer Technology").

(b) All software (including object and source code, in machine readable and listing form), documentation (including internal documentation, documentation made available to customers and training materials), flowcharts, source code notes, software tools, compilers, test routines and information, in whatever form, and all revisions, release levels and versions of the foregoing, used on or with the Computer Technology, offered for sale or license by Seller, developed by or for Seller, or in the possession of Seller; the foregoing being more specifically defined and described in the Schedule of Software, Schedule B, attached hereto and made a part hereof (hereinafter collectively referred to as "Software").

(c) All patents, patent applications, copyrights, trade secrets, trademarks, trade names, and other proprietary rights based, in whole or in part, or included in or covering the Computer Technology, Software or any portion thereof; the foregoing being more specifically defined and described in the Schedule of Proprietary Rights, Schedule C, attached hereto and made a part hereof (hereinafter collectively referred to as "Proprietary Rights").

(d) All inventories of Computer Technology, Software, or any portions thereof; the foregoing being more specifically defined and described in the Schedule of Inventories, Schedule D, attached hereto and made a part hereof (hereinafter collectively referred to as "Inventories").

(e) All rights of Seller under sales agreements, franchises, license agreements, lease agreements, maintenance agreements, procurement agreements, consultant agreements, employee agreements, invention agreements and all other agreements of whatever nature or kind relating to Computer Technology, Software or Proprietary Rights; the foregoing being more specifically defined and described in the Schedule of Contract Rights, Schedule E, attached hereto and made a part hereof (hereinafter collectively referred to as "Contract Rights").

All assets of Seller to be transferred to the Buyer pursuant hereto, including the Computer Technology, Software, Proprietary Rights, Inventories and Contract Rights, are sometimes hereinafter collectively referred to as "Seller's Assets."

1.2 *Excluded assets.* The following shall be excluded from Seller's Assets being sold and transferred hereunder:

(a) Seller's cash on hand and bank deposits at the time of Closing.

(b) All accounts receivable, refundable income taxes, prepaid interest, investments in marketable securities, loans and exchanges, and loans receivable.

(c) All stock or securities, in whatever form, of Seller.

(d) All liabilities or obligations of Seller, in existence at the time of Closing, including, accounts payable, but excluding the obligations expressly included in Contract Rights.

(e) All leases for land and/or buildings.

1.3 *Encumbrances.* The sale and transfer of Seller's Assets shall, at the time of Closing, be free and clear of all obligations, security interests, liens, infringements and encumbrances whatsoever, except to the extent expressly included in the Schedule of Encumbrances, Schedule F, attached hereto and made a part hereof.

1.4 *Purchase price.* Subject to the provisions of Paragraph 1.5, the purchase price for the sale and transfer of Seller's Assets hereunder is the sum of $3 million. The purchase price shall be allocated among Seller's Assets in accordance with the Schedule of Allocations, Schedule G, attached hereto and made a part hereof. The purchase price shall be payable as follows:

(a) Deposit paid herewith by Buyer to be held by ____________________, Seller's attorneys, in escrow, until fulfillment of contingencies set forth herein or default by Buyer: $1 million.

(b) At the time of Closing, by wire transfer to Seller's account at ____________________ [bank]: $1.5 million.

(c) At the time of Closing, by wire transfer, to the ____________________ [bank], in escrow, until a period of six (6) months after the Closing, unless reduced by any breach of warranties by Seller hereunder or claim thereof by the Buyer in accordance with the Schedule of Allocations: $500,000.

1.5 *Adjustments.* There shall be adjustments in the purchase price at the Closing, or as soon thereafter as practicable, for the following:

(a) As credits to Seller, prepaid amounts to suppliers of Inventories to be delivered under contracts after the Closing.

(b) As credits to the Buyer, prepaid amounts by customers of Seller pursuant to Contract Rights where Buyer has obligations that continue after the Closing.

(c) Any other adjustments provided elsewhere in this Agreement.

1.6 *Closing.* The completion of the contemplated transactions is herein designated as the Closing, which shall take place on _____________________ [date], or such other date as the parties shall mutually agree upon.

1.7 *Access and information.* Seller shall give to Buyer, Buyer's accountants, technical personnel, counsel and other representatives access, during normal business hours, from the date hereof to Closing, to Computer Technology, Software, Inventories, books, records, contracts and commitments of Seller (including Contract Rights) and shall furnish the Buyer, during such period, with information concerning Seller's Assets as the Buyer may reasonably request. Such information shall be subject to the provisions of Paragraph 8.15.

1.8 *Conduct of business.* Seller warrants and represents to, and covenants and agrees with Buyer that, pending completion of the Closing, unless otherwise agreed in writing by the Buyer:

(a) Seller shall not sell, license, contract, commit or otherwise encumber Seller's Assets, other than in the ordinary course of business.

(b) Seller shall carry and continue in full force and effect through the Closing, such fire and extended coverage insurance on the Inventories as is in existence on the date of this Agreement.

(c) Seller shall not amend, modify or terminate any agreement to which it is a party and which in any way relates to Seller's Assets, without the prior written consent of the Buyer.

(d) There will be no increase in any compensation payable or to become payable by Seller to any employee, agent or consultant.

(e) Seller and its officers and employees shall use their best efforts to preserve the business organization, the Computer Technology, Software and Proprietary Rights in good order, including, retaining all of the present employees of Seller identified in the Schedule of Employees, Schedule H, attached hereto and made a part hereof, and to preserve for the Buyer the good will of suppliers, customers and others having any business relationship with Seller that relates to Seller's Assets or any portion thereof.

2. *Warranties and Representations of Seller*

Seller warrants and represents to Buyer as follows:

2.1 *Corporate organization.* Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of ____________________ and is duly qualified to do business in the State of ____________________ and has full power and authority to carry on its current business and to own, use and sell its assets, including Seller's Assets, and properties.

2.2 *Corporate authority.* The execution and delivery of this Agreement to Buyer and the carrying out of the provisions hereof have been duly authorized by the Board of Directors of Seller and authorized by Seller's shareholders, and at Closing, Seller shall furnish Buyer duly certified copies of the authorizing resolutions of Seller's Board of Directors and its shareholders.

2.3 *Labor issues.* To the best of Seller's knowledge and belief, no strike, picketing or similar action is pending or threatened against Seller by its employees or any labor union. Seller further represents and warrants that to the best of its knowledge and belief, Seller is not engaged in any unfair labor practices in connection with the operation of the business of Seller relating to Seller's Assets. Seller will not be responsible for any violations arising or determined subsequent to Closing that have been caused by any act of Buyer or any failure to act by Buyer. Seller warrants and represents that it has not had any solicitation by any labor organization within the preceding three years.

2.4 *Non-infringement.* The Computer Technology, Software, Proprietary Rights, and Inventories, in whole or in part, do not infringe any patents, copyrights, trade secrets, trademarks or other proprietary rights of any third parties and, to the best of Seller's knowledge and belief, no rights or licenses are required from third parties to exercise any rights with respect to Seller's Assets or any portion thereof.

2.5 *Proprietary Rights.* The Proprietary Rights are in full force and effect and there are no liens, claims, proceedings or causes of actions that in any way affect the validity or enforceability of such Proprietary Rights. Except for licenses granted in the ordinary course of business to purchasers/licensees of Seller's products, no rights or licenses, express or implied, have been granted to any third parties under Proprietary Rights or any portion thereof.

2.6 *Contracts, licenses, permits and approvals.*

(a) Seller has no presently existing contracts or commitments extending beyond the execution date hereof that in any way relate to Seller's Assets that are not included in the Schedule of Contract Rights, Schedule E hereto.

(b) Seller does not have any obligation under any collective bargaining agreement or any other contract with a labor union. Except to the extent set forth in the Schedule of Contract Rights, Schedule E hereto, Seller is not a party to any executive or employee compensation plan or agreement or compensatory plan or agreement with any independent contractors, or employees or agents of Seller, including, without limitation, any pension, retirement, profit sharing, stock purchase, stock option, bonus or savings plan. Seller agrees to pay or allow as a credit to the Buyer any vacation or sick pay accrued to Seller's employees at Closing.

(c) Seller agrees to update Buyer of any changes in status of the Paragraph 2.6 representations.

2.7 *Compliance.* Neither the execution and delivery of this Agreement, nor any instrument or agreement to be delivered by Seller to the Buyer at the Closing pursuant to this Agreement, nor the compliance with the terms and provisions thereof by Seller, will result in the breach of any applicable statute or regulation promulgated thereunder, or any administrative or court order or decree, nor will such compliance conflict with, or result in the breach of, any of the terms, conditions or provisions of the Certificate of Incorporation or bylaws of Seller, as amended, or any agreement or other instrument to which Seller is a party, or by which Seller is or may be bound, or constitute an event of default or default thereunder, or with the lapse of time or the giving of notice or both constitute an event of default thereunder.

2.8 *Financial statements.* Seller has delivered to the Buyer the financial statements of Seller for the period ending ____________________ [date], a copy of which is annexed as the Schedule of Financial Statements, Schedule I, attached hereto and made a part hereof.

2.9 *Fitness of Inventories.* The Inventories as of the date hereof consist, and at Closing will consist, of items of a quality and quantity usable or salable in the ordinary course of business of Seller and are currently used by Seller in the ordinary course of business.

2.10 *Litigation.* There is no suit or action, or legal, administrative, arbitration or other proceeding or governmental investigation affecting Seller's Assets pending, or to the best knowledge and belief of Seller, threatened against Seller that materially or adversely affects the business of Seller relating to Seller's Assets or Seller's Assets. Seller further warrants and represents that there is no outstanding judgment, decree or order against Seller that affects Seller or Seller's Assets in any way.

2.11 *Effect of agreement.* The terms and conditions of this Agreement and all other instruments and agreements to be delivered by Seller to Buyer pursuant to the terms and conditions of this Agreement are valid, binding and enforceable against Seller in accordance with their terms, subject only to the applicable bankruptcy, moratorium and other laws generally affecting the rights and remedies of creditors.

2.12 *Good title.* Seller has and shall transfer to Buyer at Closing good and marketable title to Seller's Assets, free and clear of any and all security interests, encumbrances or liens.

2.13 *Representations and warranties.* No representation or warranty by Seller in this Agreement or any document provided hereunder contains or will contain any untrue statement or omissions, or will omit to state any material fact necessary to make the statements contained herein or therein not misleading. All representations and warranties made by Seller in this Agreement and any document provided hereunder shall be true and correct as of the date of Closing with the same force and effect as if they had been made on and as of such date.

2.14 *Due performance.* Seller has in all material respects performed all obligations required to be performed by it under, and is not in default in any material respect under, or in violation in any material respect of, its Certificate of Incorporation or bylaws, as amended, or any agreement, lease, mortgage, note, bond, indenture, license or other documents or undertaking, oral or written, to which it is a party or by which it is bound, or by which it or any of its properties or assets may be materially affected. Seller is not in violation or default in any material respect of any order, regulation, injunction or decree of any court, administrative agency or governmental body. The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby will not result in any of the violations or defaults referred to in this paragraph.

2.15 *Subsidiaries.* Seller does not have any subsidiaries nor does it have any interest in any undisclosed business enterprise relating to or competing with Seller's Assets or any portion thereof.

2.16 *Computer Technology.* Schedule A, Computer Technology, is a complete listing of all items used by Seller to design, manufacture, test, market and support the computer system known as Model XT-II.

2.17 *Software.* Schedule B, Software, is a complete schedule of all software marketed by Seller for use on or with the Computer Technology, there are no known errors, malfunctions and/or defects in the Software; and the Software and all portions thereof have been licensed for use by third parties substantially in accordance with the terms and conditions of Seller's Software License Agreement, Schedule J, attached hereto and made a part hereof.

2.18 *Rights of Seller in Computer Technology and Software.* Computer Technology and Software have been created solely by employees of Seller who are under obligation to assign all right, title and interest therein to Seller pursuant to the terms and conditions of the Employee Agreement, Schedule K, attached hereto and made a part hereof.

2.19 *Date and Time Compliance of Computer Technology and Software.* Seller represents and warrants that the computer technology and software does and shall operate in a well-defined, correct, and predictable manner when using any date or time, and does and shall not cause errors related to any date or time.

3. *Warranties and Representations of Buyer*

Buyer warrants and represents to Seller as follows:

3.1 *Corporate organization.* Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of ____________________ and is duly qualified to do business in the State of ____________________ and has full power and authority to carry on its current business and to purchase, own, use and sell its assets and properties.

3.2 *Corporate authority.* The execution and delivery of this Agreement to Seller and the carrying out of the provisions hereof have been duly authorized by the Board of Directors of Buyer and authorized by Buyer's shareholders, and at Closing, Buyer shall furnish Seller duly certified copies of the authorizing resolutions of Buyer's Board of Directors and its shareholders.

3.3 *Binding nature.* This Agreement shall be, when duly executed and delivered, a legal and binding obligation of Buyer, enforceable in accordance with its terms.

3.4 *Warranties and representations.* No representation or warranty by Buyer in this Agreement contains or will contain any untrue statement or omission, or will omit to state a material fact necessary to make the statements contained herein not misleading. All representations and warranties made by Buyer in this Agreement shall be true and correct as of Closing with the same force and effect as if they had been made on and as of such date.

3.5 *Compliance with securities laws.* To the best of Buyer's knowledge and belief, neither Buyer nor any officer, director, affiliate, or controlling person of Buyer has committed any violation, or been in any way in contravention, of any law, rule or regulation governing transactions in securities, in connection with the transactions herein.

3.6 *Inspection and value.* Buyer has formed its own opinion as to the value of Seller's Assets being purchased hereunder. Seller's warranties include only such express written warranties as are contained in this Agreement. Any other express warranty, oral or written, not contained in this Agreement are of no force and effect. Seller hereby disclaims all implied warranties, including without limitation, implied warranties of merchantability and implied warranties of fitness for special or ordinary uses or purposes. Buyer has inspected Seller's Assets to the full extent of Buyer's desire, and Seller has given Buyer ample opportunity to conduct such inspections. Seller's Assets, except as expressly warranted or represented herein, are purchased "AS IS" and "With All Faults."

3.7 *Litigation.* There are no pending, or to the best knowledge and belief of the Buyer, threatened actions or proceedings before any court or administrative agency or other authority that might or will materially or adversely affect Buyer's ability or right to perform all of Buyer's obligations hereunder.

4. *Liabilities*

4.1 *No assumption of liabilities.*

(a) Seller acknowledges that Buyer is acquiring Seller's Assets hereunder without any assumption of Seller's liabilities, except to the extent expressly set forth in Schedule of Contract Rights, Schedule E hereto.

(b) Seller will indemnify and hold Buyer harmless from and against any and all claims for products, service, and professional liability against Seller arising out of sales of products or services or grants of licenses rendered by Seller prior to Closing.

4.2 *Bulk sales law.* Buyer and Seller hereby waive compliance by Seller with the provisions of the ____________________ [state] Uniform Commercial Code--Bulk Transfers. Seller agrees to hold a sufficient amount of the net cash proceeds in trust to pay all of Seller's creditors as and when their claims come due and to indemnify and hold Buyer harmless from and against any loss, damage or expense, including a reasonable attorneys' fees and court costs, incurred by Buyer as a result of or attributable to the Seller's failure to comply with said provisions.

5. *Conditions Precedent*

5.1 *Conditions precedent to Seller's obligations.* The obligations of Seller to complete the Closing hereunder are, at Seller's option, subject to the following conditions:

(a) All representations and warranties by Buyer contained in this Agreement shall be true in all material respects as of and at the Closing.

(b) Buyer shall have performed and complied with all agreements, terms and conditions required by this Agreement to be performed and complied with by Buyer on or before the Closing.

(c) Seller shall have received an opinion of counsel for Buyer, dated the Closing date, in form and substance reasonably satisfactory to counsel for Seller, stating that:

(i) Buyer is a corporation duly organized and existing in good standing under the laws of the State of ____________________ and is duly qualified to do business in the State of ____________________.

(ii) Buyer has full power and authority to make, execute, deliver and perform this Agreement, and all corporate and other proceedings required to be taken by Buyer, its directors and shareholders to authorize Buyer to enter into and carry out this Agreement and the transactions contemplated hereby have been duly and properly taken, and this Agreement constitutes a valid obligation binding upon Buyer in accordance with its terms, and that Buyer is and has the corporate power to conduct the type of business presently conducted by Seller relating to Seller's Assets.

(iii) The execution and delivery of this Agreement, and the consummation hereof, do not conflict with, or result in breach of, or constitute a default under, the Article of Incorporation or bylaws of Buyer, as amended, or any material agreement or instrument of which such counsel has knowledge and to which Buyer is a party or by which it is bound.

(d) Seller shall not be in bankruptcy or similar proceedings.

5.2 *Conditions precedent to Buyer's obligations.* The obligations of Buyer to complete the Closing under this Agreement are, at Buyer's option, subject to fulfillment by Seller, or otherwise, of each of the following conditions:

(a) All representations and warranties of Seller contained in this Agreement shall be true in all material respects as of and at the Closing with the same effect as if said representations and warranties had been made on and as of Closing, except and to the extent otherwise specifically provided by the terms and conditions of this Agreement.

(b) Seller shall have performed and complied with all agreements, terms and conditions required by this Agreement to be performed and complied with by Seller on or before the Closing.

(c) The employees of Seller listed on the Schedule of Employees, Schedule H, attached hereto and made a part hereof, have accepted employment with the Buyer on the effective date of this Agreement, and such employees shall commence employment with the Buyer on the date of Closing.

(d) Buyer shall have received an opinion of counsel for Seller, dated the Closing date, in form and substance reasonably satisfactory to counsel for Buyer, stating that:

(i) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of ____________________, has full corporate power to own, lease and sell its assets, including Seller's Assets, and to conduct its then current business and is duly qualified to do business and is in good standing in the State of ____________________ and every other jurisdiction where such qualification may be necessary.

(ii) Seller has the full power and authority to make, execute, deliver and perform this Agreement. All corporate and other proceedings required to be taken by Seller, its directors and shareholders to authorize Seller to enter into and carry out this Agreement and the transactions contemplated hereby have been duly and properly taken, and this Agreement constitutes a valid obligation binding upon Seller in accordance with its terms.

(iii) At the Closing, Buyer shall receive good and marketable title to all of Seller's Assets, free and clear of any and all security interests, encumbrances, liens, infringements, licenses in favor of others (except and to the extent expressly provided herein) or other interests.

(iv) After diligent investigation, counsel does not know of any litigation, proceeding or governmental investigation pending or threatened against or relating to Seller that would adversely affect, in any way, the business of Seller's Assets or Seller's Assets.

(v) The execution and delivery of this Agreement and consummation hereof do not conflict with, or result in the breach of, or constitute a default under the Certificate of Incorporation or bylaws of Seller, or any material agreement or instrument of which counsel has knowledge and to which Seller is a party or by which Seller is bound.

(vi) The business of Seller and Seller's Assets shall not have been materially and adversely affected as a result of any transaction or labor dispute or discussion.

(vii) Seller does not have any subsidiary corporations or other undisclosed business enterprises.

(viii) All corporate and other proceedings and actions required by this Agreement or by law or any rules or regulations promulgated thereunder, to be taken by or on the part of Seller, its Board of Directors or it shareholders to authorize Seller to execute, deliver and perform its duties and obligations arising under this Agreement have been duly and validly taken.

(ix) Seller has complied with all applicable statutes, the provisions of its Certificate of Incorporation and bylaws, as amended, and all other laws and regulations applicable to the transactions contemplated by this Agreement to be performed by Seller.

(x) Seller's Assets are free and clear of all perfected, filed and/or recorded liens, charges, and encumbrances. The instruments of assignment, transfer and conveyance of Seller's Assets to Buyer comply in all respect with the terms of this Agreement and are sufficient to vest in Buyer all right, title and interest in respect to all of Seller's Assets.

(xi) Neither the execution and delivery of this Agreement, nor any instrument or agreement delivered by Seller to Buyer at the Closing pursuant to this Agreement, nor the compliance with the terms and provisions hereof by Seller resulted in or will result in the breach of any applicable statute or regulation promulgated thereunder, or any administrative or court order or decree, nor will such compliance conflict with or result in the breach of any of the terms, conditions, or provisions of the Certificate of Incorporation or bylaws, as amended, of Seller, or any agreement or other instrument to which Seller is a party, or by which Seller is or may be, bound, or constitute an event of default or, with the lapse of time or the giving of notice, or both, constitute an event of default thereunder.

(xii) This Agreement and all of the instruments and agreements delivered by Seller to Buyer on the date hereof are legal, valid, and binding obligations of Seller, enforceable in accordance with their terms.

(xiii) There is no suit, action or legal, administrative, arbitration or other proceeding or governmental investigation, or any material change affecting any of Seller's Assets pending or, to the best of counsel's knowledge, after due inquiry, threatened against Seller, which might materially or adversely affect the financial condition of Seller or the conduct of Seller's business related in any way to Seller's Assets.

(xiv) There is no suit, action or claim that the Computer Technology, Software, Proprietary Rights or Inventories infringe any patents, copyrights, trade secrets, trade marks or other proprietary rights of any third parties, and that, after due inquiry and to the best of counsel's knowledge and belief, the Computer Technology, Software, Proprietary Rights, Inventories or any portion thereof or the exercise of any rights related thereto or to Seller's Assets do not infringe any patents, copyrights, trade secrets, trademarks or other proprietary rights of third parties.

(e) Seller shall have delivered to buyer such other instruments and documents as Buyer shall reasonably request for the purpose of further perfecting the title of Buyer in Seller's Assets.

(f) Seller shall not be in bankruptcy or similar proceedings.

5.3 *Waivers and consents.* Promptly following the execution of this Agreement, Seller shall use its best efforts to obtain such written waivers and consents as may be required, or reasonably requested by Buyer, in connection with the sale and assignment of Seller's Assets by Seller to Buyer in accordance with the terms of this Agreement.

6. *Closing Obligations*

6.1 *Seller's obligations at Closing.* At the Closing, Seller shall execute and deliver to Buyer:

(a) A bill of sale, assignments, and such other instruments, and documents of conveyance and transfer to Buyer of all of Seller's Assets.

(b) Appropriate original instruments of consent or waiver executed by third parties with respect to all Contract Rights being transferred to Buyer hereunder in order more fully to effect transfer of Seller's Assets hereunder, including, without limitation, consents by all appropriate governmental agencies, if any.

(c) Possession of the originals of all Seller's Assets and all copies thereof; it being understood and agreed that no Seller's

Assets or any portion thereof shall remain in the possession or control of Seller after the Closing.

(d) True and complete copies of resolutions duly accepted by Seller's board of Directors and all shareholders entitled to vote hereon confirming this Agreement, authorizing the carrying out of all transactions contemplated herein and the execution and delivery by Seller of all instruments then or thereafter required to do so; said resolutions to be duly certified by the Secretary of Seller.

(e) Opinion of Seller's counsel as hereinabove provided.

(f) Such other instruments and documents as may be elsewhere herein required.

(g) A certificate signed by the President and by the Secretary of Seller, dated the date of Closing, certifying that all of Seller's representations and warranties set forth in this Agreement continue to be true on the Closing date as if originally made on such date, except and to the extent otherwise expressly provided or permitted in this Agreement.

6.2 *Seller's further assurances.* From time to time, at Buyer's request and expense, whether at or after the Closing and without further consideration, Seller shall:

(a) Execute and deliver to Buyer such instruments as may reasonably be required to carry out the intent and purpose of this Agreement.

(b) Deliver to Buyer such other data, papers and information as may be requested by the Buyer to assist the Buyer in the use of Seller's Assets.

6.3 *Buyer's obligations at Closing.* At Closing, Buyer shall execute and deliver to Seller:

(a) The payments provided for herein, including the payments to the escrow account.

(b) An opinion of counsel for Buyer as hereinabove required.

(c) True and complete copies of resolutions duly adopted by Buyer's Board of Directors and shareholders and duly certified by the Secretary of the Buyer, which provide all necessary corporate authorization for the execution and carrying out of this Agreement and the provisions hereof.

(d) A certificate signed by the President and by the Secretary of the Buyer, dated the date of Closing, certifying that all of representations and warranties set forth in this Agreement continue to be true on the Closing date as if originally made on such date and the fulfillment of the covenants and agreements as of the Closing.

(e) Appropriate instruments assuming obligations of Seller in the Contract Rights and indemnifying Seller.

7. *Employees*

7.1 *Continuity.* Buyer shall use reasonable efforts to retain the employees of Seller, but shall have no legal obligation to do so.

7.2 *Data on employees.* Before Closing, Seller shall have delivered to Buyer a true and complete listing of all persons employed by Seller, and Seller shall comply with whatever reasonable requests Buyer may make for additional information relating to such employees.

8. *Miscellaneous*

8.1 *Brokerage.* Each party hereto represents and warrants to the other that no broker or finder is entitled to any commission, or similar fee, in connection with the making and carrying out of this Agreement.

8.2 *Sales taxes.* Any sales taxes that may be payable in connection with the transfer of any of Seller's Assets shall be borne solely by Seller, who shall certify to the Buyer that all such taxes have been paid and shall indemnify and hold Buyer harmless therefor.

8.3 *Indemnification.* Seller covenants and agrees to defend, indemnify, and hold Buyer harmless against any loss, damage, claim of third parties, actions, suits, demands, judgments, or expense (including legal and other fees, costs and charges) incurred or sustained by Buyer as a result of or attributable, in whole or in part, to any misrepresentation or breach of any representation, warranty, covenant, or agreement herein (including, without limitation, provisions on applicable bulk transfer laws) given or made by Seller. Buyer covenants and agrees to defend, indemnify, and hold Seller harmless against any loss, damage, claim of third parties, actions, suits, demands, judgments, or expenses (including legal and other fees, costs and charges) incurred or sustained by Seller as a result of or attributable, in while or in part, to any misrepresentation or breach of any representation, warranty, covenant, or agreement herein (including, without limitation, provisions with respect to applicable bulk transfer sales laws and Buyer's representations of compliance with securities laws, rules and regulations) given or made by Buyer.

8.4 *Effectiveness.* This Agreement supersedes any and all agreements, if any, previously made between the parties relating to the subject matter hereof, and there are no understandings or agreements other than those included herein.

8.5 *Notices and communications.* Any notice, payment, request, instruction, or other document to be delivered hereunder shall be deemed sufficiently given if in writing and delivered personally or mailed by certified mail, postage prepaid, if to Buyer addressed to Buyer at the address first set forth above, with one copy to:

____________________ [legal counsel]
____________________ [address],
____________________[city],
____________________ [state and zip code]

and if addressed to Seller, addressed to Seller at the address first set forth above, with one copy to:

____________________ [legal counsel]
____________________ [address],
____________________[city],
____________________ [state and zip code]

unless in each case Buyer or Seller shall have notified the other in writing of a different address.

8.6 *Non-waiver.* No delay or failure on the part of either party in exercising any right hereunder, and no partial or single exercise thereof, will constitute a waiver of such right or of any other right hereunder.

8.7 *Headings.* Headings in this Agreement are for convenience only and are not to be used for interpreting or construing any provision hereof.

8.8 *Governing law.* This Agreement shall be construed in accordance with and governed by the laws of the State of ___________________.

8.9 *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.

8.10 *Binding nature.* The provisions of this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

8.11 *Survival of representations and warranties.* Except as otherwise expressly provided in this Agreement or the Schedules annexed, the representations and warranties of Buyer and Seller extended hereunder shall survive the Closing. Each party against whom liability is asserted under the provisions of this Agreement shall be given the opportunity to participate, directly or through its authorized representative, at its cost and expense, in the conduct of any negotiations relating to the settlements of any liability or any other proceeding instituted by any third party against either Seller or Buyer, as the case may be, giving rise to the alleged breach.

8.12 *Expenses.* Except as otherwise expressly provided herein, each party shall pay all of its own expenses incidental to the negotiation and preparation of the documentation and financial statements relating to this Agreement and for entering into and carrying out the terms and conditions of this Agreement and consummating the transactions, irrespective of whether the transactions contemplated shall be consummated.

8.13 *Payment of taxes.* All fees, costs, charges, and expenses payable to any federal, state, or municipal authority, including without limitation all filing fees, documentary stamps and transfer, sales and other taxes required to be paid, or imposed in connection with the transfer of any of Seller's Assets pursuant to the terms of this Agreement shall be paid by Seller.

8.14 *Amendment; successors and assigns.* This Agreement may be amended only by an instrument signed by the authorized representatives of the parties hereto. Neither party may assign any of its rights, obligations, or liabilities arising hereunder without the prior written consent of the other, except as otherwise provided herein, and any such assignment or attempted assignment shall be null and void.

8.15 *Confidentiality.* Prior to the Closing of the transactions contemplated hereunder, the parties hereto shall keep confidential the existence of this Agreement, the transactions described herein and all information obtained from the other concerning Seller's Assets or the business plans of the Buyer; provided, however, the covenants contained in this Paragraph 8.15 shall not apply in respect to any information that (a) was already known to either of the parties at the time of receipt thereof from the other, (b) was readily available to the general public at the time of receipt thereof from the other, (c) subsequently becomes known to the general public through no fault or omission on the part of the party receiving such information, (d) is subsequently disclosed by a third party that has the bona fide right to make such disclosure, or (e) is required to be disclosed by applicable law, regulation or court order.

8.16 *Third party beneficiaries.* Except for their proper successors and assigns, the parties hereto intend that no third party shall have any rights or claims by reason of this Agreement.

In witness whereof, the parties hereto have cause this Agreement to be duly executed by their authorized representatives as of the date first above written.

____________________	____________________
____________________	____________________

("Seller")	("Buyer")
By: ________________________	By: ________________________
Title: ________________________	Title: ________________________
Date: ________________________	Date: ________________________
Attest	Attest
By: ________________________	By: ________________________
Title: ________________________	Title: ________________________