EDITORS’ PREFACE

Advising Oregon Businesses has been a valuable practice tool for Oregon business lawyers since its initial publication in 1971. Volume 5 (Forms) was revised in 1991 and supplemented in 1998. This 2004 revision of Volume 5 contains both new and revised forms and includes alternative provisions and commentary. The forms in Volume 5 reflect the significant changes in Oregon business law and practice that have occurred over more than a decade.

The forms in Volume 5 are an accompaniment to the legal commentary in Volumes 1–2 and Volumes 3–4, which were published in 2001 and 2003, respectively. Although any form needs to be tailored to the particular transaction, the forms in Volume 5 have been designed to provide standard provisions and to identify potential legal issues.

At least 34 lawyers contributed their time, efforts, and talents to this revision. We gratefully acknowledge their dedication as well as their willingness to share their expertise with Oregon lawyers. As editors, we have been inspired by the insights and experience they have shared in their forms. We also wish to acknowledge the special contributions of David C. Culpepper, Ellen M. Theodorson, and Jeffrey C. Wolfstone, who each authored numerous forms and provided substantial editorial assistance.

Finally, the invaluable assistance of the CLE Publications staff is greatly appreciated.

James M. Kennedy
Jere M. Webb
Andrew H. Ognall
Editors
**ADVISING OREGON BUSINESSES**

**TABLE OF CONTENTS**

**VOLUME 5**

*Introductory Comment*  
*Ellen Theodorson*

<table>
<thead>
<tr>
<th>PARTNERSHIPS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Partnership Agreement Checklist .................. <em>Jeffrey C. Wolfstone</em></td>
</tr>
<tr>
<td>2</td>
<td>Partnership Agreement .................. <em>Jeffrey C. Wolfstone</em></td>
</tr>
<tr>
<td>3</td>
<td>Limited Liability Partnership—Amendment to Partnership Agreement ..... <em>Jeffrey C. Wolfstone</em></td>
</tr>
<tr>
<td>4A</td>
<td>Certificate of Limited Partnership ........... <em>James M. Kennedy</em></td>
</tr>
</tbody>
</table>
| 4B | Agreement of Limited Partnership ............ *James M. Kennedy*  
*David C. Culpepper*

**LIMITED LIABILITY COMPANIES**

| 5 | Limited Liability Company Articles of Organization .................. *David C. Culpepper* |
| 6 | Limited Liability Company Operating Agreement—Safe-Harbor Manager-Managed LLC ..... *David C. Culpepper* |
| 7 | Limited Liability Company Operating Agreement—Simple Member-Managed LLC ........ *David C. Culpepper* |
| 8 | Limited Liability Company Operating Agreement—Single-Member LLC ............ *David C. Culpepper* |

**CORPORATIONS—ORGANIZATION**

| 9 | Letter to Client Regarding Incorporation of a Closely Held Business ........... *Stanley E. Martinson*  
*Paul Migchelbrink*
| 10 | Letter to Client Disclosing Potential Conflicts ...................... *Peter R. Jarvis* |
11 Preincorporation Checklist ........................ Stanley E. Martinson
                      Paul Migchelbrink
12 Articles of Incorporation—
Business Corporation (Short Form) ........ Jeffrey C. Wolfstone
                      Ellen Theodorson
13 Articles of Incorporation—
Business Corporation (Long Form) ........ Jeffrey C. Wolfstone
                      Ellen Theodorson
14 Articles of Incorporation—
Professional Corporation .................... Jeffrey C. Wolfstone
                      Ellen Theodorson
15A Articles of Incorporation—Nonprofit
Public Benefit Corporation ..................... Terrence R. Pancoast
15B Articles of Incorporation—Nonprofit
Mutual Benefit Corporation ..................... Terrence R. Pancoast
16 Bylaws—Business Corporation ............... Jeffrey C. Wolfstone
                      Ellen Theodorson
17 Bylaws—Nonprofit Public
Benefit Corporation ............................. Terrence R. Pancoast
18 Bylaws—Nonprofit Mutual
Benefit Corporation ............................. Terrence R. Pancoast
19 Minutes of Organizational
Meeting of Directors ............................ Kenneth A. Williams
20 Consent in Lieu of Organizational
Meeting of Directors ............................ Kenneth A. Williams

CORPORATIONS—STOCK
21 Subscription Agreement ........................ James M. Kennedy
22 Stock Certificate for Common Stock ........ James M. Kennedy
23 Stock Certificate for Preferred Stock ........ James M. Kennedy
24 Legends for Stock Certificates ............... James M. Kennedy
25 Affidavit of Loss of Stock Certificate
and Indemnity Agreement ...................... Kenneth A. Williams
26 Buy-Sell Agreement ............................ Joshua E. Husbands
                      Mark A. von Bergen
                      James M. Kennedy
                      Jeffrey C. Wolfstone
CORPORATIONS—MEETINGS OF BOARD OF DIRECTORS

30 Notice of Special Meeting of Board of Directors ................................ Steven C. Alberty
31 Waiver of Notice of Meeting of Board of Directors ............................ Steven C. Alberty
32 Minutes of Annual Meeting of Board of Directors ............................. Steven C. Alberty
33 Resolutions for Annual Meeting of Board of Directors .................... Steven C. Alberty

CORPORATIONS—MEETINGS OF SHAREHOLDERS

34 Notice of Meeting of Shareholders .............................. Mary P. Hull
35 Minutes of Meeting of Shareholders .............................. Mary P. Hull
36 Resolutions for Meeting of Shareholders ............................ Mary P. Hull
37 Certificate of Mailing ................................................ Mary P. Hull
38 Proxy Statement for Annual Meeting of Shareholders ....................... Robert J. Moorman
                     Margaret M. Finnerty
39 Proxy for Annual Meeting of Shareholders ............................. Robert J. Moorman
                     Margaret M. Finnerty

OTHER CORPORATE MATTERS

40 Indemnification Agreement .......................... Andrew H. Ognall
41 Articles of Amendment to Articles of Incorporation—Before Shares Issued .... Jeffrey C. Wolfstone
                     Ellen Theodorson
42 Articles of Amendment to Articles of Incorporation—After Shares Issued .... Jeffrey C. Wolfstone
                     Ellen Theodorson
43 Restated Articles of Incorporation and Accompanying Certificate ................ Jeffrey C. Wolfstone
Ellen Theodorson

44 Stock Transfer Agreement .................... Andrew H. Ognall

45 Preferred Stock Purchase Agreement ........ Todd A. Bauman
Ellen Theodorson

46 Designation of Series A Convertible Preferred Stock .................... Jeffrey C. Wolfstone
Benjamin G. Lenhart

47 Employment Agreement ...................... Richard F. Liebman

48 Independent Contractor Agreement ........ Richard F. Liebman

49 Employee or Consultant Confidentiality Agreement ..................... Jere M. Webb

50 Noncompetition, Nonsolicitation, and Nondisclosure Agreement ........ Richard C. Hunt

51 Key Employees’ Stock Option Plan ........ David C. Culpepper

52 Stock Option Agreement .................... David C. Culpepper

SUBCHAPTER S CORPORATIONS

53 Agreement to Preserve S Corporation Status ......................... Joshua E. Husbands
Mark A. von Bergen

54 Statement of Revocation of S Corporation Election .................. Joshua E. Husbands
Mark A. von Bergen

CORPORATE REORGANIZATIONS

55 Type A Reorganizations: Agreement and Plan of Merger ............ David C. Culpepper
Steven L. Christensen

56 Articles of Merger ......................... David C. Culpepper
Steven L. Christensen

57 Type D Reorganizations: Agreement and Plan of Corporate Separation ........ David C. Culpepper
Steven L. Christensen

58 Type E Reorganizations: Agreement and Plan of Recapitalization .......... David C. Culpepper
Steven L. Christensen

59 Notice of Special Meeting of Shareholders to Approve Proposed Merger ........ David C. Culpepper
Plan of Conversion

BUSINESS ACQUISITIONS

Acquisition Due Diligence Checklist

Letter of Intent for Sale of Assets in a Company Acquisition

Letter of Intent for Sale of Stock in a Company Acquisition

Certified Resolutions Authorizing Sale of Business Assets

Agreement for Sale and Purchase of Business Assets

Stock Purchase Agreement

Promissory Note

Guaranty Agreement

Security Agreement

Pledge Agreement

Escrow Agreement for Pledge of Stock

Blank Stock Power

Closing Memorandum—Asset Purchase

Closing Memorandum—Stock Purchase

Steven L. Christensen

Andrew H. Ognall

Carolyn M. Vogt

Kimberly A. Medford

Mary P. Hull
<table>
<thead>
<tr>
<th>Page</th>
<th>Document Title</th>
<th>Authors</th>
</tr>
</thead>
<tbody>
<tr>
<td>74A</td>
<td>Opinion Letter—Sale of Assets</td>
<td>Mark A. Long, R. Cammon Turner</td>
</tr>
<tr>
<td>74B</td>
<td>Opinion Letter—Sale of Shares</td>
<td>Mark A. Long, R. Cammon Turner</td>
</tr>
<tr>
<td>75</td>
<td>Officer’s Certificate to Support Opinion</td>
<td>Mark A. Long, R. Cammon Turner</td>
</tr>
<tr>
<td>76</td>
<td>ABA Illustrative Opinion Letter</td>
<td>Mark A. Long</td>
</tr>
<tr>
<td>77</td>
<td>Bill of Sale for Personal Property</td>
<td>Stanley E. Martinson</td>
</tr>
<tr>
<td>78</td>
<td>Assignment and Assumption Agreement</td>
<td>Andrew H. Ognall</td>
</tr>
<tr>
<td>79</td>
<td>Submitted Idea Agreement (Reverse Confidentiality Agreement)</td>
<td>Jere M. Webb</td>
</tr>
<tr>
<td>80</td>
<td>Agreement Between Submitter of Ideas or Inventions and Prospective Developer or Marketer</td>
<td>Jere M. Webb</td>
</tr>
<tr>
<td>81</td>
<td>Short-Form Confidentiality Agreement</td>
<td>Jere M. Webb</td>
</tr>
<tr>
<td>82</td>
<td>Work-Made-for-Hire Agreement</td>
<td>Jere M. Webb</td>
</tr>
<tr>
<td>83</td>
<td>Patent License Agreement</td>
<td>Martin F. Medeiros</td>
</tr>
<tr>
<td>84</td>
<td>Patent Assignment</td>
<td>Jere M. Webb</td>
</tr>
<tr>
<td>85</td>
<td>Copyright Assignment</td>
<td>Jere M. Webb</td>
</tr>
<tr>
<td>86</td>
<td>Trademark Assignment</td>
<td>Jere M. Webb</td>
</tr>
<tr>
<td>87</td>
<td>Software Publishing Agreement</td>
<td>Paula Holm Jensen</td>
</tr>
<tr>
<td>88</td>
<td>Software End-User License Agreement</td>
<td>John C. Motley</td>
</tr>
<tr>
<td>89</td>
<td>Software Development Agreement</td>
<td>John C. Motley</td>
</tr>
<tr>
<td>90</td>
<td>Web Site Development Agreement</td>
<td>Jere M. Webb</td>
</tr>
<tr>
<td>91</td>
<td>Online Services Agreement</td>
<td>Jere M. Webb</td>
</tr>
<tr>
<td>92</td>
<td>Franchise Agreement</td>
<td>Douglas D. Smith, Ryan D. Smith</td>
</tr>
<tr>
<td>93</td>
<td>Miscellaneous Provisions</td>
<td>James M. Kennedy</td>
</tr>
</tbody>
</table>
INTRODUCTORY COMMENT

This agreement provides for the sale of the stock of a wholly owned subsidiary of the seller to one buyer in an acquisition transaction (rather than an investment transaction). If multiple selling shareholders are involved, all will need to be included in this agreement as “sellers.” If the stock to be sold is held by a significant number of shareholders, the parties may wish to consider structuring the transaction as a merger or a sale of assets. It should be noted that the structure of the transaction should be based on the specific facts facing the lawyer (e.g., tax consequences, liabilities of the seller, and cooperation of the selling shareholders).

The Model Stock Purchase Agreement with Commentary published by the American Bar Association is a useful resource for drafting considerations and alternative provisions for stock purchase agreements.
STOCK PURCHASE AGREEMENT

SECTION 1. PURCHASE OF SHARES AND RELATED MATTERS

1.1 Purchase of Shares
1.2 Purchase Price
1.3 Payment of Purchase Price
1.4 Retained Liability
1.5 Escrow Amount

SECTION 2. REPRESENTATIONS AND WARRANTIES OF THE SELLER AND THE COMPANY

2.1 Organization and Corporate Power
2.2 Capital Stock and Related Matters
[2.3 Subsidiaries]
2.4 Authorization; No Breach
2.5 Conduct of Business; Liabilities
2.6 No Adverse Consequences
2.7 Financial Statements
2.8 No Undisclosed Liabilities
2.9 Absence of Certain Changes
2.10 Title and Related Matters
2.11 Litigation
2.12 Tax Matters
2.13 Compliance with Laws
2.14 Insurance
2.15 Employees and Labor Relations Matters
2.16 Power of Attorney
2.17 Accounts Receivable
2.18 Contracts and Commitments
2.19 Personal Property
2.20 Real Property
2.21 Personnel
2.22 Intellectual Property
2.23 Environment, Health, and Safety Matters
2.24 Certain Interests
2.25 Permits and Licenses
2.26 Certain Payments
2.27 Consents and Approvals
2.28 Records
2.29 Bank Accounts
2.30 Product Warranties; Products Liability
  2.30.1 Product Warranty
  2.30.2 Products Liability
2.31 Inventories
2.32 Accuracy of Representations and Warranties

SECTION 3. REPRESENTATIONS AND WARRANTIES OF THE BUYER
3.1 Organization; Power
3.2 Authorization
3.3 No Conflict with Other Instruments or Agreements
3.4 Governmental Authorities
3.5 Litigation
3.6 Investment Representations
  3.6.1 Investment Purposes
  3.6.2 Shares Have Not Been Registered
3.7 Brokers
3.8 Accuracy of Representations and Warranties

SECTION 4. CONDUCT OF THE COMPANY’S BUSINESS PENDING THE CLOSING
4.1 Regular Course of Business
4.2 Dividends
4.3 Capital Changes
4.4 Property and Assets
4.5 Insurance
4.6 Employees
4.7 No Violations
4.8 Notification

SECTION 5. COVENANTS OF THE SELLER AND THE COMPANY
5.1 Satisfaction of Conditions
5.2 Supplements to Schedules
5.3 No Solicitation
5.4 Covenant Not to Compete
SECTION 6. JOINT COVENANTS
   6.1 Satisfaction of Conditions
   6.2 Public Announcements
   6.3 Action After the Closing

SECTION 7. CONDITIONS PRECEDENT TO THE BUYER’S OBLIGATIONS
   7.1 Representations and Warranties; Performance
   7.2 No Proceeding or Litigation
   7.3 Legal Opinion
   7.4 Material Change
   7.5 Corporate Action

SECTION 8. CONDITIONS PRECEDENT TO THE SELLER’S OBLIGATIONS
   8.1 Representations and Warranties; Performance
   8.2 No Proceeding or Litigation
   8.3 Corporate Action

SECTION 9. CLOSING
   9.1 Time, Place, and Manner of Closing
   9.2 Events of Closing
   9.3 Consummation of Closing

SECTION 10. TERMINATION
   10.1 Rights of Parties to Terminate
   10.2 Effect of Termination

SECTION 11. SURVIVAL; INDEMNIFICATION
   11.1 Survival of Representations and Warranties
   11.2 Indemnification by Seller
       11.2.1 Extent of Indemnification
       11.2.2 Notice of Claim
       11.2.3 Limit on Indemnification
   11.3 Indemnification by Buyer
   11.4 Survival; Indemnification

ALTERNATIVE SECTION 11. SURVIVAL; INDEMNIFICATION
   11.1 Survival of Representations, Warranties, etc.
   11.2 Indemnification by Seller
   11.3 Indemnification by Buyer
SECTION 11. LIMITATION OF LIABILITY

11.4 Defense of Claim by Buyer
11.5 Limits on Indemnification
   11.5.1 Seller’s Liability
   11.5.2 Buyer’s Liability
11.6 Indemnification Procedure
   11.6.1 Third-Party Claims
   11.6.2 Claims Other than Third-Party Claims
11.7 Setoff
11.8 Rights Not Exclusive

SECTION 12. MISCELLANEOUS PROVISIONS

12.1 Waiver of Compliance; Consent
   12.2.1 Waiver of Compliance
   12.2.2 Consent
12.2 Payment of Fees and Expenses

STOCK PURCHASE AGREEMENT

This STOCK PURCHASE AGREEMENT (this “Agreement), dated as of ____________, 20__, is between ___________ (the “Buyer”), an Oregon corporation, __________ (the “Company”), an Oregon corporation, and ____________ (the “Seller”), an Oregon corporation.

RECITALS

A. The Seller owns beneficially and of record ______ shares of Common Stock of the Company (the “Shares”); the Shares are the only issued and outstanding capital stock of the Company.

B. The Buyer desires to purchase from the Seller and the Seller desires to sell to the Buyer all the Shares on the terms and subject to the conditions set forth in this Agreement.

C. The transactions contemplated in this Agreement are referred to as the “Purchase.”

AGREEMENT

COMMENT: Counsel and the parties to the agreement will benefit from the inclusion of a list of schedules and exhibits and an
The parties agree as follows:

SECTION 1. PURCHASE OF SHARES AND RELATED MATTERS

1.1 Purchase of Shares. Subject to the terms and conditions set forth in this Agreement, at the Closing the Seller will sell all the Shares to the Buyer and the Buyer will purchase all the Shares from the Seller, the Shares constituting all the issued and outstanding capital stock of the Company as of the Closing. The Seller will transfer the Shares to the Buyer free and clear of all liens, security interests, encumbrances, pledges, charges, claims, and restrictions on transfer of any nature whatsoever.

1.2 Purchase Price. The Buyer will pay to the Seller $_______ for the Shares, payable [in cash, securities, or other consideration] as set forth in Section 1.3 (the “Purchase Price”).

1.3 Payment of Purchase Price. The Purchase Price will be paid to the Seller as follows:

[(a)] [A cash amount of $_______ / other consideration] will be [paid / delivered] by the Buyer to the Seller at the Closing. The cash payment will be paid at the Closing by cashier’s check or wire transfer of immediately available funds.

COMMENT: If part or all of the purchase price is paid with the buyer’s stock, counsel should obtain tax and securities advice. See 2 ADVISING OREGON BUSINESSES ch 38 (Oregon CLE 2001).

[(b) The balance of the Purchase Price in the amount of $_______ will be paid pursuant to a [secured] promissory note delivered by the Buyer to the Seller in the form attached as Exhibit ___.]

COMMENT: Buyers should consider requiring a portion of the purchase price (either cash or stock) to be paid into an escrow account as a partial source of funds for indemnification of the buyer by the seller if there is a postclosing breach of the seller’s representations, warranties, or covenants. In this case, a separate escrow agreement with the escrow agent (customarily a bank) will be needed.
1.4 **Retained Liability.** The Seller will retain all liability for the __________ claim, and will reimburse the Company and/or the Buyer for any losses, damages, costs, and expenses (including reasonable attorney fees) relating to the __________ claim incurred by the Company and/or the Buyer after the Closing.

**COMMENT:** The parties should list any other liabilities of the seller to be retained by the seller.

1.5 **Escrow Amount.** Pursuant to the terms of an Escrow Agreement in the form attached to this Agreement as Exhibit ___, $_______ (the “Escrow Amount”) will be held in escrow until [one year, e.g.] following the Closing Date. The Escrow Agreement will provide that any balance of the Escrow Amount, other than amounts as to which notice of claim has been given by the Buyer pursuant to the Escrow Agreement, will be released to Seller as specified in the Escrow Agreement.

**COMMENT:** The term of the escrow may be for a fixed period or may be tied to a specific outcome, for example, the final settlement of a specific claim.

**SECTION 2. REPRESENTATIONS AND WARRANTIES OF THE SELLER AND THE COMPANY**

**COMMENT:** The seller may wish to qualify certain representations and warranties with a materiality qualifier. In addition, the parties may define the terms *material, material adverse effect,* or *material adverse change* and include in the definition a specified dollar amount that, at a minimum, will represent “materiality.” These terms may then be used to modify certain representations and warranties. In addition, the seller may also insert references to an attached schedule of exceptions as necessary to allow certain representations and warranties to be true. The exceptions will then be stated in a schedule that is numbered to correspond to the representation to which it relates. The following paragraph could be included as the first paragraph in Section 2 or set forth in a separate list of definitions.