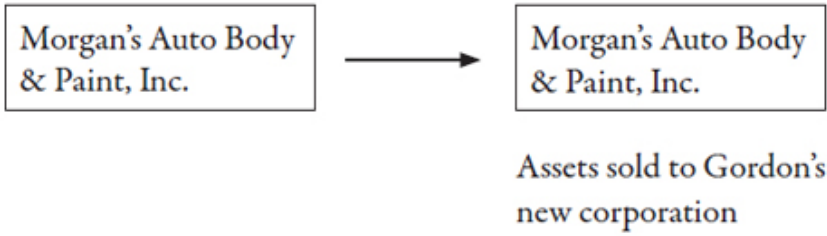
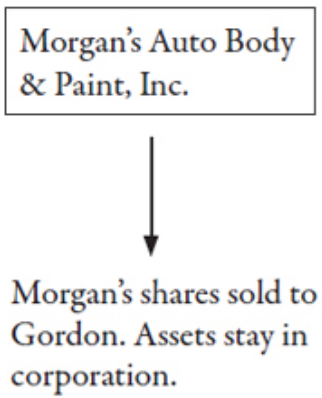


Chapter 8

Asset Sale

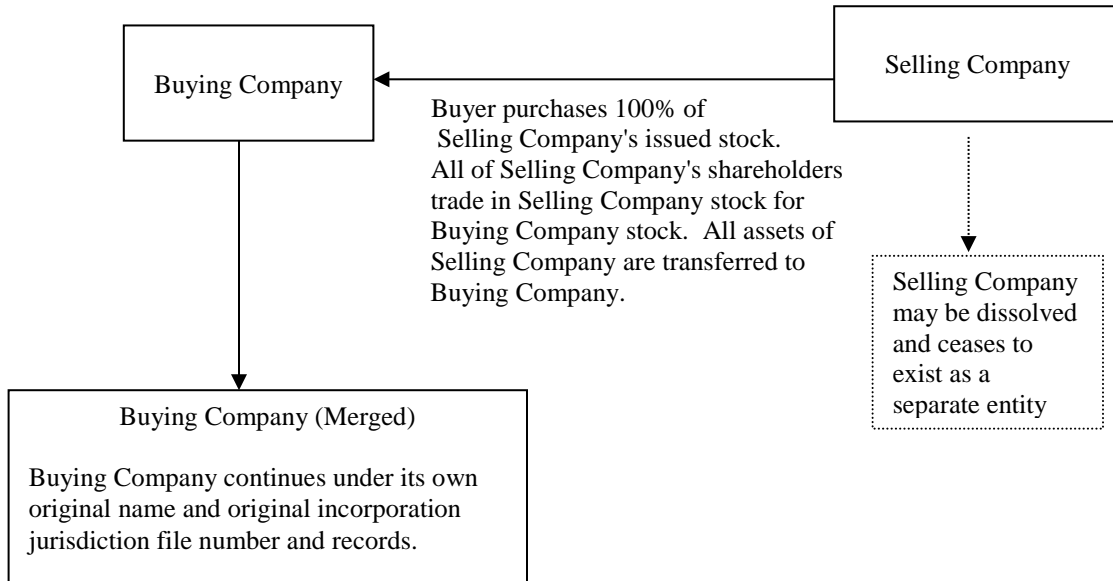


Stock Sale

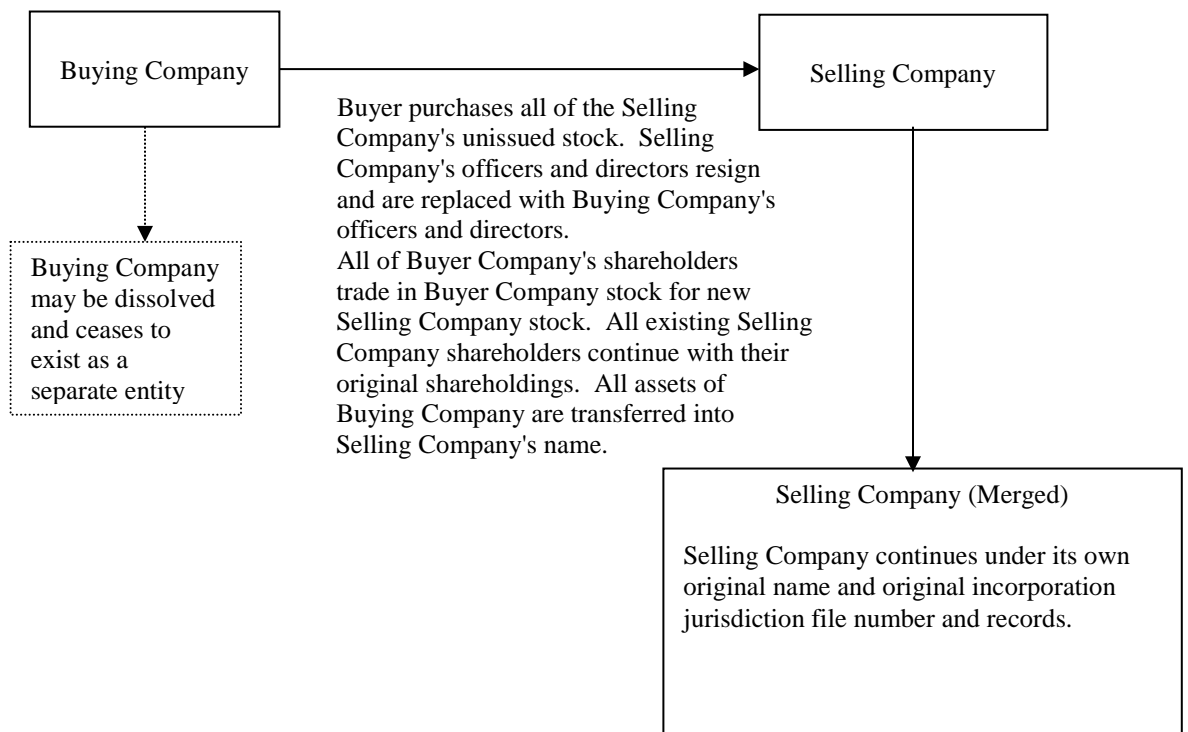


Chapter 11

FORWARD MERGER



REVERSE MERGER



Appendix A

Checklist of Information Needed in Acquiring a Business

1. Business Information

Reasons business is for sale
Amount of business for sale (all or part)
History of business
Description of products and/or services
Address of business
Date and state of incorporation
States in which the company is qualified to do business
Minute books, bylaws, certificate of incorporation, stock certificate book, and shareholders' agreements
Shareholders' agreements
Any special restrictions on the sale
Shareholders and their holdings
Rights of each class of stock and other securities
Capitalization
Fiscal year
Accountants – for each: name, address
Attorneys – for each: name, address
Location of company records
Credit rating
Bank depositaries
Bank references

2. Operations

Description of business, including manufacturing, distribution and marketing activities
Manufacturing history and agreements
Distribution history and agreements
Marketing history and agreements

Advertising history and agreements
Public relations history and agreements
Principal vendors and terms
Government contracts
Seasonal factors
Branch offices and associated operations
Subsidiaries, associated operations, and intercompany dealings

3. Sales

Description of the market
Relative size in the industry
Major competitors
Industry trends and recent developments
Industry advantages and disadvantages
Long range industry prospects
Client name and address
Number of customers
Principal customers
Customer continuity
Pricing policies and fluctuations in the past 4 years
Sales backlog
Sales materials
Sales personnel compensation
Effectiveness of advertising and other sales promotion programs
Gross and net sales for the past 5 years and for the last 12 months
Sales comparison with the industry for the past 5 years and for the past 12 months

4. Personnel

Organization chart
Number of employees and their positions
Employee contracts
Independent Contractor agreements
Condition and accuracy of employee records
Union contracts

Morale and human resource issues

Consultants – terms and payments

Pension, profit sharing, insurance, stock bonus, deferred compensation, and severance plans

Accident history, workers' compensation costs

Industry comparison as to wage rates and number of employees

5. Intellectual Property

Status of patents

Status of trademarks

Status of copyrights

Status of trade secrets

Status of domain names

Use of name issues

Intellectual property ownership – company or individual

Licensing agreements

Infringement and other intellectual property litigation

Protection policies

United States/other countries strategies

Brand management strategies

Research and development strategies

6. Business Facilities

Location

Status of leases

Assignability of leases

Land owned or leased - description, value, taxes, future plans

Buildings owned or leased – description, value, taxes, future plans, depreciation

Furniture, fixtures – description, value, condition, depreciation, useful life

Insurance coverage

Ownership of title

UCC-1 Financing Statements and other encumbrances

7. Computer Systems

Network system – type, setup

Computers networked – how many, description
Computers – condition, value, depreciation, owned or leased
Computer programs installed –leased or owned
Vendor and service arrangements

8. Financial and Related Data

Tax returns for the past five years
Annual and quarterly statements, including balance sheets, income statements
Earnings record, including gross and net profit margins
Earnings record compared to the industry
Break even analysis
Payroll–federal and state(s)
Annual and quarterly Payroll report
Sales Tax payments–proper filings
Nonrecurring income and expenses
Earnings forecast
Pro forma balance sheet
Chart of accounts
Cash and working capital requirements
Interest charges
Annual depreciation and capital additions
Inventory turnover and policies
Market and book value analysis
Accounts Payable and receivable analysis
Accounts Receivable
Notes payable and receivable analysis
Bad debts – collectibility and policies
Analysis of investments or other assets
Deferred expense analysis
Analysis of short term, long term debenture and mortgage debt
Existing and potential liens
Status of leases
Insurance coverage

- Contingent liabilities
- Status of any litigation
- Status of licenses or franchises
- Accounting procedures and practices
- Review of all legal counsel opinion letters related to the business

9. State and Federal Laws and Regulations

- Current federal, state and local tax status
- Qualifications for doing business
- Good standing of corporate or other entity in all states
- Regulatory agency consents and issues
- Antitrust problems
- "Blue Sky" laws
- SEC filings and problems
- Stock exchange, if any, information
- Environmental issues (see Appendix B checklist)

10. Comparison Analysis. A buyer may want to compare certain target companies with those of similar companies for the past five years. Common ratio comparisons include:

- Earnings/book value
- Price/book value
- Price/earnings
- Price/fixed assets
- Sales/accounts receivable
- Sales/fixed assets

11. Structure of Sale

- Sale of corporate stock – unforeseen liabilities, taxation, corporate liquidation
- Sale of assets – purchase price, allocation, taxation, bulk sales laws, corporate liquidation
- Reorganization – mergers

12. Acquisition Issues Purchase price

- Purchase terms
- Financing
- Allocation of acquisition price
- Taxation issues

Default issues and return of business considerations

Brokerage fees

Reasons for buying or selling

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Appendix B
**Checklist for Environmental
Document Review**

Environmental damage cleanup can be a staggering cost for the unsuspecting business buyer. What follows is a suggested, and by no means complete, checklist of records and documents relating to environmental concerns. These, and any other documents your professional advisors suggest, must be carefully reviewed before a business is purchased.

1. General Information

- Ownership and operational records
- Historical aerial and site photographs
- Plot plans, diagrams, schematics and building plans
- Indoor air quality reports
- Industrial hygiene/worker safety records and reports
- Any Phase I or more comprehensive environmental reports and surveys

2. Hazardous Materials Management

- Records and reports for spills/releases/incidents
- Hazardous materials inventory and storage plan
- Emergency response plan and training records
- Community and employee right-to-know records and training documentation
- Local, state and federal government reporting requirements, including all reports to the EPA and related state authorities
- Hazardous waste transportation and disposal records
- Hazardous waste analysis plan and testing results

3. Air Emissions

- Air permits and license/certificates
- Regulatory compliance correspondence file and inspection reports
- Reports on hydrocarbon storage systems

4. Water Quality

- Water usage records
- Water quality reports and records

Water system maintenance and repair records
Well water diagrams and reports

5. Waste and Storm Water

Waste and storm water discharge permits and ordinances
Diagrams of waste and storm water systems
Analytical testing records
Sludge disposal records
Regulatory compliance correspondence and reports
Local treatment plant correspondence and reports

6. Polychlorinated Biphenyls (PCBs)

PCB reports to regulatory agencies
PCB disposal and inspection records
Electrical equipment with PCB inventory
Reports and notifications of spills and releases
Lab reports and correspondence

7. Fuel and Oil Operations

Regulatory compliance correspondence and inspection reports
Spill notification and reports
Tank removal and closure records
Inventory and usage records
Maintenance and repair records
Storage tank diagrams, specifications, and schematics
Spill prevention and emergency plans

8. Incinerators

Operating and inspection logs
Operating permits and regulatory agency reports
Specification and maintenance records
All testing records

9. Boiler and Heating Systems

Boiler operating permits and correspondence file
Boiler inspection records and reports

Heating system inspection records and reports

Monitoring reports, records and charts

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Appendix C

Letter of Intent for Sale of Corporate Assets

[DATE]

[NAME] [ADDRESS]

[CITY, STATE, ZIP CODE]

Re: Purchaser of Assets of [CORPORATE NAME] ("Seller")

Dear [NAME]:

Over the past several months, [PURCHASER'S NAME] ("Purchaser") has worked in good faith with you, the Seller, to submit several offers to acquire certain assets and liabilities of [CORPORATE NAME] ("Seller").

This offer reflects our most recent discussion and is intended to conform with the terms under which we have been advised that the Seller's board of directors is prepared to accept this offer and to recommend it for approval to the Seller's shareholders.

The purpose of this letter is to outline the manner in which the Purchaser proposes to acquire from the Seller substantially all of the outstanding assets ("Assets") and certain liabilities of the Seller. The parties recognize that the transaction will require further documentation and approvals, including the preparation and approval of a formal agreement setting forth the terms and conditions of the proposed purchase ("Asset Purchase Agreement"); nevertheless, the Purchaser is executing this letter to evidence its intention to proceed in mutual good faith to complete work required to negotiate terms of a Asset Purchase Agreement that are consistent with this letter.

The proposed terms and conditions include, but are not limited to, the following:

Purchase of Assets: The Purchaser will purchase from the Seller all the assets, tangible and intangible, owned or used by Corporation in connection with its business as more fully set forth on Exhibit A hereto [ON EXHIBIT A, EITHER LIST ALL ASSETS, OR EXCEPTIONS TO

ALL ASSETS, TO BE ACQUIRED] ("Assets").

Assumption of Liabilities: The Purchaser will assume certain liabilities of the Seller more fully described in Exhibit B hereto. The Purchaser will not assume any other liabilities or obligations of the Seller.

Indemnification: The Seller shall indemnify and hold harmless the Purchaser against each and every liability and obligation of the Seller other than those specifically assumed by the Purchaser.

Basic Price: \$[AMOUNT], payable as follows: [DESCRIBE]. The fees and expenses of the Seller and its broker shall be deducted from the amount otherwise paid to the Seller and said fees and expenses shall be disbursed to the persons entitled thereto at the closing of the transactions contemplated herein ("Closing").

Adjustments: (a) The cash purchase price will be adjusted ("Adjustment") (up or down) to reflect the amount by which the values of the inventories on hand on the Closing Date exceed or fall below \$[AMOUNT]. Inventories shall be valued at the wholesale price of such inventories on the Closing Date.

(b) Expenses, including but not limited to utilities, personal property taxes, rents, real property taxes, wages, vacation pay, payroll taxes and fringe benefits of employees of Seller, shall be prorated between Seller and Purchaser as of the close of business on the Closing Date, the proration to be made and paid, insofar as reasonably possible, on the Closing Date, with settlement of any remaining items to be made within 30 days following the Closing Date.

(c) If an Adjustment is made to the purchase price in the manner described above increasing or decreasing the purchase price, either the Purchaser or the Seller, as the case may be, shall deliver the amount owed upon the later of: (i) 30 days after the Closing Date, or (ii) within 10 days of the date that such amount is finally determined. In the event that such amount is not paid when due: (i) such amount shall begin bearing interest at the rate of 1% per month; and (ii) the party in default will pay the costs of the other party in collecting such increase, including but not limited to attorneys' fees and expenses.

Closing: The parties shall execute the Asset Purchase Agreement and Close the transactions contemplated herein on or before [DATE], subject to the extension contemplated by the section entitled "Exclusivity" herein.

Asset Purchase Agreement: The transaction will be subject to the negotiation and execution of a definitive Asset Purchase Agreement with terms satisfactory to the Seller and the Purchaser. The Asset Purchase Agreement will contain representations, warranties, covenants, conditions and indemnification provisions customary in transactions of this size and type and will provide for allocation of the Purchase Price among the Assets based on each Asset's agreed value.

Access: To permit the Purchaser to conduct its due diligence investigation, as long as this Letter of Intent remains in effect, the Seller will permit the Purchaser and its agents to have reasonable access to the premises in which the Seller conducts its business and to all of its books, records and personnel files and will furnish to Purchaser such financial data, operating data and other information as Purchaser shall reasonably request. The Purchaser agrees to retain all information so obtained from Seller on a confidential basis.

Upon the termination of this Letter of Intent for any reason, the Purchaser shall return promptly to the Seller all printed information received by the Purchaser from the Seller in connection with the proposed transaction.

Ordinary Course of Business: The parties agree that the Seller will be operated from the date hereof and through the Closing Date in the ordinary course of its business, consistent with past practices. Without limiting the foregoing, there shall be no change in accounting policies applied on a consistent basis and no accruals for payment of investment bankers or attorneys' fees with respect to the transaction for the Purchaser or the Seller. There shall not be any change or restrictions placed on the payment of ordinary course payments through the Closing Date. There shall not be any change in the method by which bonuses or other payments are made to officers and directors of the Seller.

Exclusivity: The parties agree to use their best efforts to enter into the Asset Purchase Agreement not later than [DATE] and the period beginning on the date of this letter and ending on such date shall be referred to herein as the "Exclusivity Period." The Purchaser shall have the

right to request the consent of the Seller to a fifteen (15) day extension, and such consent shall not be unreasonably withheld. The parties agree that during the Exclusivity Period the Purchaser shall have the exclusive right to negotiate with the Seller for the purchase of the Assets, and during such Exclusivity Period the Seller agrees not to directly or through intermediaries solicit, entertain or otherwise discuss with any person any offers to purchase all or any portion of the Assets of the Seller out of its ordinary course of business.

Covenant Not to Compete: In the Asset Purchase Agreement, Seller, and each of its officers, directors and shareholders, both individually and as a group, will agree that they will not, directly or indirectly, through a subsidiary or otherwise, compete with the Seller in its business for a period of [NUMBER] years after the Closing Date. In consideration for this covenant, Purchaser will pay to Seller and such officers, directors and shareholders \$[AMOUNT] which shall be divided among them as they shall so agree.

News Release: No party will issue or approve a news release or other announcement concerning the transaction without the prior approval of all parties as to the contents of the announcement and its release, which approval will not be unreasonably withheld.

Break Up Fee: Subject to the satisfactory completion of their due diligence investigation, the Purchaser expects to submit to the Seller within the Exclusivity Period a commercially reasonable Asset Purchase Agreement which reflects the terms described in this letter. In engaging in its diligence review, the Purchaser will expend substantial resources and incur substantial opportunity cost. Accordingly, to induce the Purchaser to enter into this Letter of Intent, the Seller agrees to reimburse the out-of-pocket expenses of the Purchaser if either: (i) the Seller fails to accept any commercially reasonable Asset Purchase Agreement which reflects the terms of this Letter of Intent and is offered by the Purchaser within the Exclusivity Period; or (ii) following execution of the Asset Purchase Agreement, the Seller fails to satisfy any of its obligations to deliver the documents required to close thereunder; provided, however, that under no circumstances shall the Seller be required to reimburse the Purchaser for its out-of-pocket expenses incurred in connection with this transaction in excess of \$[AMOUNT]. The foregoing remedies shall be in addition to whatever other rights the Purchaser may have as a result of any breach of the Seller's obligations under this Letter of Intent.

Reimbursement of Expenses of Seller: In the event that all of the contingencies set forth herein have been satisfied of the Purchaser but the Purchaser is unable to sign the Asset Purchase Agreement or close the transaction due to the inability of the Purchaser to pay the purchase price in full, the Purchaser agrees to reimburse the Seller for all of its out-of-pocket expenses (up to a maximum of \$[AMOUNT]) incurred in connection with the transactions contemplated herein.

Contingencies: This offer is contingent upon: (i) the completion by the Purchaser, to its satisfaction, of due diligence on the Seller, its markets, prospects and potential; (ii) satisfactory completion of legal due diligence, including review of material contracts and due diligence with respect to evaluation of potential liabilities related to [DESCRIBE] and tax matters; (iii) receipt of all required approvals, consents and authorizations of state and federal regulatory authorities; (iv) receipt of all required consents of third parties; (v) the occurrence of no material adverse change in the business or prospects of the Seller and its subsidiaries; and (vi) the completion of satisfactory legal documentation including adequate indemnifications and representations.

None of the parties hereto shall be under any obligation to any other party (except for the Exclusivity and Break-Up Fee provisions hereof) until a definitive Asset Purchase Agreement is executed.

This Letter of Intent may be executed in several counterparts and all so executed shall constitute one letter binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

If the foregoing is acceptable to you, kindly execute a copy of this letter in the place set forth below and return it (by facsimile [FAX #] or mail) to [NAME & ADDRESS].

Very truly yours,

[PURCHASER'S NAME]

ACCEPTED AND AGREED TO:

[CORPORATE NAME]

a [STATE] corporation

by: _____

[OFFICER'S NAME & TITLE]

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Appendix D
Useful Websites

Corporate Direct – www.corporatedirect.com

Sutton Law Center – www.sutlaw.com

Internal Revenue Service – www.irs.gov

Small Business Administration – www.sba.gov

Service Corps of Retired Executives – www.score.org

Business Credit Success – www.businesscreditsuccess.com

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