

WRITING SAMPLE

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Name: Joshua M. Nosal

Background: This is a contract written for my transactional drafting course facilitating a complete asset transfer between two corporations. The parties are fictional based on an extensive fact pattern provided by the professor.

Asset Purchase Agreement

This **Asset Purchase Agreement**, dated April 1, 2015, is between Hammerseal Corporation, a Kentucky corporation (the “**Seller**”), and Alpharat, Inc., a [Texas] corporation (the “**Buyer**” and together with the Seller, the “**Parties**”).

Background

1. The Seller is a sales-and-marketing firm located in Louisville, Kentucky.
2. The Buyer is located in [Austin, Texas].
3. The Buyer desires to purchase, and the Seller desires to sell, substantially all of the assets of the Seller’s Business, excluding the Real Property and connected Fixtures upon which the Seller currently conducts Business, upon the terms and conditions set forth bellow.

Accordingly, the Parties agree as follows:

Article 1. Definitions

1.1 Definitions. As used in this Agreement, terms defined in the preamble have their assigned meanings, and the following terms shall have the meanings set forth bellow:

- (a) “**Agreement**” means this Asset Purchase Agreement and all Schedules and Exhibits hereto, as the same may be amended from time to time.
- (b) “**Assets**” means all tangible and intangible assets of Seller used in Seller’s sales-and-marketing Business as set forth in **Schedule 1.1**.
- (c) “**Best Efforts**” means reasonable business effort considering the current financial standing and business expertise of the Seller.
- (d) “**Business**” means the Seller’s business and operating activity of its sales-and-marketing business as it is operated from and located in Louisville, Kentucky.
- (e) “**Buyer**” has the meaning assigned in the preamble.
- (f) “**Closing**” means the closing of the transactions contemplated by this Agreement at the Closing Location on the Closing Date.
- (g) “**Closing Date**” means May 1, 2014, or such other date as the Seller and the Buyer may agree to.
- (h) “**Closing Location**” means the offices of [LOCATION OF CLOSING], or at such other location as the Buyer and the Seller shall agree.

- (i) **“Fixtures”** means any property that is on or attached to the Real Property of the Seller and is currently used by the Seller and accounted for as assets.
- (j) **“Goodwill”** means the Seller’s reputation with the Seller’s customers and others in relation to the Assets.
- (k) **“Inspection”** means the inspection performed by the Buyer on [INSPECTION DATE] and recorded in the certificate of inspection as set forth in **Exhibit 1.2**.
- (l) **“Opportunity to Cure”** has the meaning assigned in Section 7.3.
- (m) **“Parties”** has the meaning assigned in the preamble.
- (n) **“Party”** means either Hammerseal Corporation or Alpharat, Inc.
- (o) **“Preserve and Maintain”** means to only use Assets in the ordinary course of business and to keep the economic value of Assets as close to their value at the time of Buyers inspection as is reasonably possible.
- (p) **“Purchase Price”** has the meaning assigned in Section 2.2.
- (q) **“Real Property”** means the real estate buildings and land that the Seller currently conducts Business on and accounts for as assets.
- (r) **“Seller”** has the meaning assigned in the preamble.

Article 2. Purchase and Sale

2.1 Sale of Assets. At the Closing, the Seller shall sell, convey, transfer, and assign to the Buyer by bill of sale, assignment or other appropriate instruments in the form and substance satisfactory to the Buyer and its counsel, and the Buyer shall purchase, accept, and take possession from the Seller, all the Seller’s Assets. The Buyer shall take possession of the Assets at Closing, [and may occupy the leased premises identified in the Lease.]

2.2 Purchase Price. The purchase price for the Assets being purchased is \$780,000 (the **“Purchase Price”**).

2.3 Time of Payment. The Buyer shall pay the Purchase Price to the Seller at Closing.

2.4 Form of Payment. The Buyer shall deliver the Purchase Price in the form of a cashier’s check.

2.4 The Closing. The Closing shall take place at the Closing Location on the Closing Date.

2.5 After Closing. After the Closing and within 30 days of receiving written notice from the Buyer, the Seller shall execute any documents that may be required to effect the sale and

transfer of the Seller's Assets to the Buyer and to otherwise effectuate the purpose of this Agreement.

Article 3. Representations and Warranties of the Seller

The Seller represents and warrants to the Buyer as follows:

3.1 Ownership. The Seller is the sole owner of and has full right and authority to sell the Assets, all of which are free and clear of any and all debts, claims, liens, security agreements, and other encumbrances, or restrictions on transfer except for any lien or encumbrance securing the payment of an obligation specifically assumed by the Buyer as set forth in **Schedule 2.1**.

3.2 Organizations; Good Standing. The Seller is a corporation duly organized and validly existing under the laws of Kentucky. The execution and delivery of this Agreement by the Seller have been authorized by Seller's Board of Directors, and do not violate any provision of Seller's Articles of Incorporation, or any contract or other agreement to which the Seller is a party.

3.3 Litigation. With respect to the Assets, there is no litigation, arbitration, or other legal proceeding pending, or to the knowledge of the Seller, threatened against the Seller except as set forth in **Schedule 3.1**; and the Seller is not in default with respect to any order of any court or government authority issued against the Seller.

3.4 No Violation. The Seller's operation of the Assets has not been in violation of any existing or proposed environmental safety or health law, rule, or regulation.

3.5 Disclosure. The Seller has disclosed to Buyer all material information to which Seller has notice or knowledge relating to the Seller and the Assets, which could reasonably be expected to have a material adverse effect on Buyer's operation of the Assets.

Article 4. Representations and Warranties of the Buyer

The Buyer represents and warrants to the Seller as follows:

4.1 Inspection. The Buyer has performed an Inspection of the Assets.

4.2 Organizations; Good Standing. The Buyer is a corporation duly organized and validly existing under the laws of [Texas]. The application of this Agreement to the Buyer has been authorized by Buyer's Board of Directors, and does not violate any provision of Buyer's Articles of Incorporation, or any contract or other agreement to which the Buyer is a party.

4.3 Authority. The Buyer has taken, or will have taken prior to the Closing, all necessary action to approve this Agreement and the performance of its obligations hereunder.

Article 5. Covenants of the Seller

The Seller agrees that between the date of this Agreement and the Closing:

5.1 Business Operations.

- (a) The Seller shall duly perform all obligations under agreements binding on the Seller;
- (b) The Seller shall not pledge, encumber, or dispose of any of the Assets; and
- (c) The Seller shall not make any commitments with respect to capital expenditures for the Seller.

5.2 Maintenance of Assets. The Seller shall use its Best Efforts to Preserve and Maintain the Assets.

Article 6. Covenants of the Buyer

The Buyer agrees that at the Closing:

6.1 Acceptance. The Buyer shall accept the Assets “as is” and in their current condition as of Closing.

6.2 Transfer of Possession. The Buyer shall take physical possession of Seller’s Assets purchased under this Agreement at Closing or within 10 days of the Closing Date.

6.3 Financial Standing. The Buyer shall maintain balances in its cash and marketable securities accounts that is twice the amount of the purchase price.

Article 7. Conditions to the Buyer’s Obligations

All of the Buyer’s obligations under this Agreement are subject to the fulfillment, on or before the Closing Date, of each of the following conditions. The Buyer may waive any failure to satisfy any one or more of the conditions.

7.1 Seller’s Representations and Warranties. The representations and warranties of the Seller made in this Agreement [or any document or certificate delivered to the Buyer pursuant to this Agreement] are true and correct on and as of the Closing Date.

7.2 Seller’s Covenants. The Seller has performed and complied with all covenants, terms, and agreements to be performed and complied with by the Seller under this Agreement on or before the Closing Date.

7.3 No Litigation. On the Closing Date there is no pending or threatened action or proceeding against Seller before any court or governmental body that could result in an

unfavorable judgment, decree, or order that would prevent the carrying out of this Agreement or any of the transactions or events contemplated by this Agreement or cause such transactions to be rescinded, or require the Seller to lose assets that would make this Agreement imprudent in the opinion of Buyer's counsel.

Article 8. Termination

8.1 Breach. Either Party may terminate this Agreement upon the material breach of a provision of this Agreement by the other party.

8.2 Cure. Upon written notification of the material breach by the non-breaching party, the breaching party has 30 days to cure the problem resulting in the breach (the "**Opportunity to Cure**").

8.3 Notice. After the Opportunity to Cure has expired, termination of this Agreement is effective upon delivery of written notice by the non-breaching party to the breaching party. All notices of termination shall be in writing and are effective only if hand delivered or mailed certified first-class mail:

(a) If to the Seller:

Tonya J. McMinn
4164 Rowes Lane
Louisville, KY 40202

(b) If to the Buyer:

Fritz H. Veasey
4909 Smith Street
Austin, TX 78701

Article 9. Miscellaneous

9.1 Communication. All communications under this Agreement, not including notices of termination, shall be in writing and shall be deemed to have been duly delivered if by certified first-class mail to the addresses in Section 7.2 of this Agreement or by email:

(a) If to the Seller:

[NAME OF SELLER'S AUTHORIZED EMAIL RECIPIENT]

[EMAIL OF SELLER'S AUTHORIZED EMAIL RECIPIENT]

(b) If to the Buyer:

[NAME OF BUYER'S AUTHORIZED EMAIL RECIPIENT]

[EMAIL OF BUYER'S AUTHORIZED EMAIL RECIPIENT]

or to another person or persons at an address or addresses as may be designated by written notice by one party to the other party

9.2 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions of this agreement are not affected or impaired in any way

9.3 Integration. This Agreement constitutes the entire agreement among the parties and supersedes any prior understandings, agreements, or representations by the parties, written or oral to the extent they relate to the subparts of this agreement.

9.4 No Assignments. No party may assign or transfer any of its rights under this Agreement, except with the prior written consent of the party. That party shall not unreasonably withhold its consent. This section prohibits all assignments of rights, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law, or any other manner.

9.5 No Delegation. No party may delegate any performance under this agreement.

9.6 Assignment and Delegation Effect. Any purported assignment under this Agreement is void.

9.7 Governing Law. The laws of the State of [Kentucky] (without giving effect to its conflict of law principles) govern all matters arising out of or relating to this Agreement and all the transactions it contemplates.

9.8 Forum Selection. The Seller may bring a legal action or proceeding against any other party arising out of or relating to this Agreement or the transactions it contemplates in any court of the State of [Kentucky]. The Buyer submits to the jurisdiction of the courts named in this provision.

9.9 Arbitration. Any dispute arising out of or relating to this agreement, or the breach thereof, that cannot be resolved by mediation within 30 days, shall be resolved by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. The arbitration will be conducted in the English language in a law office within the city of Louisville, Kentucky.

9.10 Interim Measures. The Parties agree that for interim and provisional urgent measures application may be made to the courts in the States of Texas and Kentucky.

9.11 Construction/Interpretation. Each party recognizes that this Agreement is a legally binding contract and acknowledges that it, he, or she has had the opportunity to consult with legal counsel of choice. In any construction of the term of this Agreement, the same shall not be construed against either party on the basis of that party being the drafter of such terms.

To evidence the Parties' agreement to this Agreement, they have executed and delivered it on the effective date first specified above.

SELLER

HAMMERSEAL CORP.

By: _____
Name: Tonya J. McMinn,
Title: Chief Executive Officer

BUYER

ALPHARAT, INC.

By: _____
Name: Fritz H. Veasey
Title: President

Schedule 1

1.1 Assets. As used in this Agreement, Assets are:

(a) Seller's tangible assets that include

- (i) improvements,
- (ii) furniture,
- (iii) fixtures,
- (iv) tools,
- (v) machines,
- (vi) computers,
- (vii) software,
- (viii) assets,
- (ix) equipment,
- (x) inventory,
- (xi) supplies,
- (xii) literature,
- (xiii) business records,
- (xiv) files,
- (xv) maintenance records,
- (xvi) telephones,
- (xvii) accounts receivable,
- (xviii) insurance claims,
- (xix) causes of action,
- (xx) any other items of personal property owned by Seller, wherever located, including, but not limited to, those assets as set forth in **Exhibit 1.1** of this Agreement; and

(b) Seller's intangible assets that include, but are not limited to,

- (i) intellectual property,
- (ii) Goodwill,
- (iii) all customer lists, and
- (iv) the names and addresses of suppliers, mechanics, service personnel, and other related service providers.

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Schedule 2

2.1 Assumed Obligations. [list all obligations assumed by the buyer under leases or encumbrances of the seller].

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Schedule 3

3.1 Litigation. The pending and threatened actions against the Seller include:

(a) *Corinth Corp. v. Hammerseal* (filed November 1, 2013 in United States District Court – Western District of Texas (Austin Division)), wherein Corinth Corp has alleged breach of contract claims against the Seller.

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Exhibit 1.2

Certificate of Inspection.

[INCLUDE THE BUYER'S CERTIFICATE OF INSPECTION]

Exhibit 3.1

Third Party Claims.

[LIST ALL DEBTS, CLAIMS, MORTGAGES, LIENS, SECURITY AGREEMENTS,
EQUITIES, RESTRICTIONS, OR ENCUMBERANCES AGAINST THE SELLER'S ASSETS]