BILLS OF SALE IN TENNESSEE: AN ANNOTATED MODEL TENNESSEE BILL OF SALE

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PRELIMINARY NOTE

This Annotated Model Tennessee Bill of Sale ("Tennessee Model Bill of Sale") is designed to be used in connection with a middle-market or short-form asset purchase agreement governed by Tennessee law. It is annotated with explanatory footnotes and is intended to serve more as a reference tool than as a template for drafting. The Tennessee Model Bill of Sale has been drafted and annotated with an emphasis on Tennessee law and practice, although sources of general application (as well as those reflecting Tennessee law and practice) are cited in support of the authors' drafting choices, ideas and perspectives, as applicable. Moreover, the authors' stylistic preferences and practice tips are reflected in this Tennessee Model Bill of Sale. Capitalized terms used but not defined in this Preliminary Note have the meanings assigned to them in the text of the Tennessee Model Bill of Sale.

The authors intend that the Tennessee Model Bill of Sale benefit counsel for both the seller and the buyer in the planning and execution of the transaction. As a reference transaction for this Tennessee Model Bill of Sale, the authors have chosen to use the asset acquisition contemplated by the Annotated Model Tennessee Asset Purchase Agreement drafted and annotated by Angela Humphreys Hamilton and Joan MacLeod Heminway[1] (the "Asset Purchase Agreement"). Accordingly, this Tennessee Model Bill of Sale assumes that the buyer is a privately held Tennessee corporation and that Tennessee law will apply to both the Asset Purchase Agreement and the subject transaction. The seller, a closely held Tennessee corporation, is a manufacturer of computer hardware and a publisher of computer software, and it is selling its business as a going concern. As a result, the seller is selling all of the assets used in its business, constituting substantially all of its assets, including any attendant intellectual property rights but excluding any real property. The specific

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[1] Angela Humphreys Hamilton & Joan MacLeod Heminway, *Buying Assets in Tennessee: An Annotated Model Tennessee Asset Purchase Agreement,* 4 TRANSACTIONS: TENN. J. BUS. L. 209 (2003).

assets to be purchased are described as the "Acquired Assets" in Article 1 of the Asset Purchase Agreement (Definitions),[2] and the total value of these assets is $75,000,000.[3] The liabilities to be assumed by the buyer in the acquisition are defined as the "Assumed Liabilities" in Article 1 of the Asset Purchase Agreement[4] to include liabilities associated with listed contracts being assigned at the closing.[5]

In an asset acquisition, a bill of sale is the instrument of conveyance signed at the closing in order to transfer the subject assets from the seller to the buyer.[6] Typically, it is signed by the seller alone and executed in favor of the buyer. The seller's assignment and the buyer's assumption of bilateral agreements and liabilities, however, typically are handled through a separate document called an assignment and assumption agreement. This agreement is signed by both the seller and the buyer. Sometimes, the bill of sale and assignment and assumption agreement are combined in a single document denominated as a "Bill of Sale, Assignment, and Assumption."[7]

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[2] *Id.* at 212-13.

[3] *Id.* at 210.

[4] *Id.* at 214.

[5] *Id.* at 220.

[6] In the simplest form of an asset sale transaction, a seller merely transfers its personal property by a bill of sale to the buyer against payment of the purchase price with warranties of title and other representations and warranties of transferor contained in the bill of sale; if real property is involved, the real property is transferred by a warranty or quit claim deed. BRYON E. FOX & ELEANOR M. FOX, 1-5C CORPORATE ACQUISITIONS AND MERGERS § 5C.01 (2007). In a more complex transaction, scores of conveyance instruments—documents of title, deeds, mortgages, and the like—might pass between the parties. *Id.*

[7] COMMITTEE ON NEGOTIATED ACQUISITIONS, SECTION OF BUSINESS LAW, AMERICAN BAR ASSOCIATION, MODEL ASSET PURCHASE AGREEMENT WITH COMMENTARY: EXHIBITS, ANCILLARY DOCUMENTS AND APPENDICES 3 (2001) (hereinafter "MAPA ANCILLARY COMMENTARY"). Practitioners have different views regarding what the relationship should be between a bill of sale and an assignment and assumption agreement. *Id.* at 3. Some argue that "a bill of sale should properly relate only to items that would typically be shown on a balance sheet as having value." *Id.* Others use a bill of sale to "cover not only [balance sheet-type] assets . . . but also the contractual rights (but not the contractual obligations) and other assets without balance sheet value which the buyer is obtaining." *Id.* Proponents of this view assert that it is beneficial to document, in a single, unified writing, what the buyer is obtaining and that, accordingly, "the [b]ill of [s]ale should be as expansive as possible." *Id.* Still others "maintain that, rather than choosing between, on the one hand, the [b]ill of [s]ale not covering contract rights at all and, on the other hand, having the [b]ill of [s]ale and the [a]ssignment and [a]ssumption [a]greement overlap . . ., the two instruments should be combined into one." *Id.* "Opponents of this approach argue that it is better for a buyer to have the [b]ill of [s]ale[, as a unilateral instrument], remain enforceable separate from the [a]ssignment and [a]ssumption [a]greement[, as a bilateral contract]. *Id.*

This Tennessee Model Bill of Sale was adapted from a form prepared by the Negotiated Acquisitions Committee of the Business Law Section of the American Bar Association (the "ABA Form")[8] and adopts the overall approach implemented by the drafters of the ABA Form. As a result, the Bill of Sale is expansively drafted. The assignment of liabilities is included in a separate Assignment and Assumption Agreement. The Tennessee Model Bill of Sale is denominated as a "Bill of Sale" and only refers to the transfer of the assets (including all contract rights) from the seller to the buyer, whereas the ABA Form is referred to as a "Bill of Sale and Assignment of Contract Rights" and independently refers to the transfer of assets and contract rights.

The authors have drafted the Tennessee Model Bill of Sale with a focus on certain "plain English" drafting conventions.[9] Archaic language, such as "hereof," "thereof," "whereof," "hereunder," "thereunder," "hereby," "thereby," "wheretofore" and "whereas," is avoided throughout.[10] Additionally, "under" is used instead of "pursuant to,"[11] and "such" is used as an adjective or as a demonstrative (referential) pronoun as infrequently as possible and only where the intended reference is clear.[12] Finally, where words are listed in series, the

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[8] MAPA ANCILLARY COMMENTARY, *supra* note 7, at 5-6.

[9] *See, e.g.*, THOMAS R. HAGGARD & GEORGE W. KUNEY, LEGAL DRAFTING IN A NUTSHELL 6 (2007) (citing eight "Characteristics of Plain English").

[10] *See, e.g.*, HOWARD DARMSTADTER, HEREOF, THEREOF, AND EVERYWHEREOF: A CONTRARIAN GUIDE TO LEGAL DRAFTING 5-6 (2002) (noting that for words of this kind, "their distance from common speech makes them prime candidates for the chop, and they are usually dispensed with"); BRYAN A. GARNER, LEGAL WRITING IN PLAIN ENGLISH: A TEXT WITH EXERCISES 35 (2001) (classifying some of these words as "commonplace legalisms that skulk in every paragraph of listless legal writing"). *See generally* HAGGARD & KUNEY, *supra* note 9, at 6, 308 (noting that the "absence of overly legal jargon" is a characteristic of plain English and that words like these are archaic and constitute legalese).

[11] *See* KENNETH A. ADAMS, A MANUAL OF STYLE FOR CONTRACT DRAFTING 208 (2004) (classifying "pursuant to" as a "lawyerism" that can be replaced with "under, in accordance with, [and] as authorized by"); GARNER, *supra* note 10, at 35 (classifying "pursuant to" as a legalism that can be replaced with "under, by, in accordance with").

[12] *See* ADAMS, *supra* note 11, at 166 (noting that using "*such* instead of the 'pointing words' *the, this, that, these, and those* . . . goes against the principle that in drafting you should not use one word to convey different meanings . . . and it also alienates non-lawyers."); DARMSTADTER, *supra* note 10, at 3 ("Lawyers tend to use *any* instead of *a* and *such* instead of *the* . . . ."); GARNER, *supra* note 10, at 35 (classifying "such" as a legalism that can be replaced with "that, this, those, [and] the"); HAGGARD & KUNEY, *supra* note 9, at 273, 309-10 (stating that "[i]n addition to being in bad style, using 'such' as a demonstrative pronoun often creates ambiguity", and directing that the drafter "[n]ever use 'such' as an adjective before a singular noun" and "[n]ever use 'same' or 'such' as a pronoun").

discretionary comma before the conjunction has been omitted.[13] These stylistic preferences have been employed to create a consistent, clearer, more readable form.

[13] Although this is common—perhaps even the majority rule—in contract drafting, it may create ambiguities. *See* HAGGARD & KUNEY, *supra* note 9, at 288-89. The most widely accepted grammatical and plain English rule is that the comma should be included. *See* GARNER, *supra* note 10, at 148 ("Use a comma to separate items in a series—including the last and next-to-last.").

BILL OF SALE AND ASSIGNMENT

1. Sale and Transfer of Acquired Assets. For good and valuable consideration, the receipt, adequacy and legal sufficiency of which are acknowledged by this Bill of Sale and Assignment ("Bill of Sale"),[14] and as contemplated by Article 2 of the Asset Purchase Agreement dated as of _____, ____ (the "Purchase Agreement"),[15] to which _____, a Tennessee corporation ("Seller"), and _____, a Tennessee corporation ("Buyer"), are parties,[16] Seller by execution and delivery of this Bill of Sale sells, transfers, assigns, conveys, grants and delivers[17] to Buyer, effective as of __:__ __.m. (_____ time)[18] on _____, 2008,[19] all

[14] This recitation of consideration is less cumbersome than most but still could be further simplified. A simpler alternative might be: "In consideration of the mutual promises set forth in this Bill of Sale and the [Purchase Agreement], ..." *See* HAGGARD & KUNEY, *supra* note 9, at 48-49.

[15] This incorporation by reference of the Purchase Agreement and the use of the same defined terms used in the Purchase Agreement are together designed to ensure both breadth of coverage and consistency with the contract under which the assets are being transferred. *C.f.* MAPA ANCILLARY COMMENTARY, *supra* note 7, at 4 ("Probably the best way to ensure that the Assignment and Assumption Agreement is as expansive as possible while also ensuring that said document is not inconsistent with . . . the Asset Purchase Agreement language . . . is simply to . . . incorporate, by reference to the Asset Purchase Agreement's definition of Assumed Liabilities, the obligations assigned to and assumed by the buyer.").

[16] These introductory words, while somewhat unwieldy, represent a significant improvement over the more archaic, traditional introduction to the conveyance language in a bill of sale: "TO HAVE AND TO HOLD said assets unto Purchaser, his [*her*] heirs and assigns, forever." 3-3 TENNESSEE FORMS FOR BUSINESS TRANSACTIONS Form 7-602: Bill of Sale (2007); *see also* 3-6 TENNESSEE FORMS FOR BUSINESS TRANSACTIONS Form 6-201: Bill of Sale Transferring Partnership Interests for Shares of Stock (2007) (Tennessee form of bill of sale for the transfer of partnership interests to a corporation). Unfortunately, many forms used widely in practice continue to take the archaic, traditional approach. *See generally* HAGGARD & KUNEY, *supra* note 9, at 1-3 (noting that "drafted documents are full of the dull, ponderous, repetitive, pretentious nonsense that often passes for legal writing.") "The legal profession can no longer afford to indulge itself in this fashion." *Id.* at 3.

[17] This sequence of conveyance words is relatively customary in content and length (although the exact words and the number of terms used vary from form to form). Careful legal drafters will note the possibility of redundancy in any chain of words with similar intended meaning. *See* HAGGARD & KUNEY, *supra* note 9, at 300-05. Arguments can be made for the independent inclusion of certain listed conveyance words in this Tennessee Model Bill of Sale based on their legal meanings and significance relative to the property being conveyed. For example, contract rights are assigned, real property is conveyed. However, certain of the listed terms (including potentially "sells" and "conveys") may be of a lower rank than others ("transfers") and may be able to be omitted. In omitting individual items in lists, a drafter must be careful to retain words needed to effectuate the agreement's or instrument's legal purpose. "For example, in a real property sale agreement, the seller should be under a duty to 'execute *and* deliver' the deed to the property." *Id.* at 305 (emphasis in original).

[18] *See* TINA L. STARK, DRAFTING CONTRACTS: HOW AND WHY LAWYERS DO WHAT THEY DO 247 (2007) (providing guidance on clarity in expressing a time of day).

of Seller's right, title and interest[20] in and to all of the assets described on Schedule A to this Bill of Sale (the "Acquired Assets"). Capitalized terms used and not defined in this Bill of Sale have the meanings assigned to them in the Purchase Agreement.[21]

2. Further Actions. Seller covenants and agrees to warrant and defend the sale, transfer, assignment, conveyance, grant and delivery[22] of the Acquired Assets made by this Bill of Sale against all persons, to take all steps reasonably[23] necessary to establish the record of Buyer's title to the Acquired Assets and, at the request of Buyer, to execute and deliver further instruments of transfer and assignment and take any other action that Buyer may reasonably request to more effectively transfer and assign to and vest in Buyer Seller's right, title and interest in and to each of the Acquired Assets, all at the sole cost and expense[24] of Seller.[25]

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[19] Specification of the date and time at which the transfers will be effective may be important for risk allocation between the seller and the buyer. *See* MAPA ANCILLARY COMMENTARY, *supra* note 7, at 4.

[20] Under the common law "shelter rule," Seller can convey to Buyer no greater rights in the Acquired Assets than Seller has. *See generally* Curtis Nyquist, *A Spectrum Theory of Negotiability*, 78 MARQ. L. REV. 897, 904 (1995) (stating that under the shelter rule, the transferee receives "a right, title, and interest that is identical to the transferor"). The "shelter rule" is incorporated into various provisions of the Uniform Commercial Code. *See, e.g.*, U.C.C. §§ 2-403(1), 8-302(a) (2007). In accordance with the Purchase Agreement, Seller conveys the Acquired Assets free and clear of any Security Interest other than those specifically outlined in the Purchase Agreement. A seller and buyer may agree that assets will be transferred at closing subject to liens and other encumbrances. *See* 3-3 TENNESSEE FORMS FOR BUSINESS TRANSACTIONS Form 7-602: Bill of Sale (2007) ("[A] bill of sale could be drafted in such a way that the property is transferred subject to certain specified liens, security interests or encumbrances.").

[21] *See supra* note 15.

[22] *See supra* note 17 and accompanying text.

[23] Certain obligations and rights under this Bill of Sale are qualified by reasonableness. Reasonableness is a limiting word that, by its nature, is vague; the meaning varies with the circumstance. *See* CHARLES M. FOX, WORKING WITH CONTRACTS: WHAT LAW SCHOOL DOESN'T TEACH YOU 86-87 (2002); STARK, *supra* note 18, at 236. The parties to a transaction may choose to define the scope of reasonableness in certain contexts in their transaction agreements or instruments. *E.g.*, ADAMS, *supra* note 11, at 90-93 (giving guidance on defining "reasonable efforts").

[24] This is another seemingly redundant "doublet" that likely could be shortened to merely "cost." "Expense" may have a narrower meaning based on accounting nomenclature. *See* HAGGARD & KUNEY, *supra* note 9, at 302 (noting "costs, charges, and expenses" as a traditional triplet that warrants scrutiny).

[25] Some of the covenants in this paragraph 2 overlap with the powers granted in paragraph 3. This is a purposeful "belt and suspenders" approach to cover circumstances in which the power of attorney granted in paragraph 3 may not be valid or enforceable.

3. Power of Attorney.[26] Without limiting Section 2 of this Bill of Sale, Seller constitutes and appoints Buyer the true and lawful agent and attorney in fact of Seller, with full power of substitution and resubstitution, in whole or in part, in the name and stead of Seller but on behalf and for the benefit of Buyer and its successors and assigns, from time to time:

(a) to demand, receive, recover and collect any and all of the Acquired Assets and to give receipts and releases for and with respect to any or all of the Acquired Assets;

(b) to institute and prosecute, in the name of Seller or otherwise, any and all proceedings at law, in equity or otherwise, that Buyer or its successors and assigns may deem proper in order to collect or reduce to possession any or all of the Acquired Assets and in order to collect or enforce any claim or right of any kind assigned or transferred, or intended to be assigned or transferred, by this Bill of Sale; and

(c) to do all things legally permissible, required or reasonably deemed by Buyer to be required to ensure that Buyer acquires Seller's right, title and interest in and to any or all of the Acquired Assets and to use Seller's name in any manner Buyer may reasonably deem necessary for the acquisition by Buyer of Seller's right, title and interest in and to any or all of the Acquired Assets.

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[26] A power of attorney is typically requested by a buyer for its convenience, so that the buyer may take any post-closing steps necessary to quiet title in certain of the acquired assets in the buyer's name without the necessity of involving the seller in the process. Sometimes, the agreement providing for a merger or acquisition will include language granting a power of attorney, typically as part of a "further assurances" covenant that remains enforceable after the closing. *E.g.*, Joan MacLeod Heminway & Jackie G. Prester, *Bank Mergers in Tennessee: An Annotated Model Tennessee Bank Merger Agreement* 6 TRANSACTIONS: TENN. J. BUS. LAW 247, 257 (2005) (Section 1.04(a)). A power of attorney can especially be helpful where certain of the acquired assets are evidenced by separate certificates of title, including airplanes, vehicles or other pieces of equipment. A seller may resist granting a broad power of attorney and undertake instead to provide the appropriate certificates at the closing, taking the position that, as the seller, it is contractually obligated to quiet title in the acquired assets in accordance with the Purchase Agreement. This controversy generally is negotiated between the seller and the buyer in a manner that facilitates the transaction. The legal requirements for powers of attorney vary from state to state, and questions about their validity may create issues for the parties and their counsel (especially those rendering legal opinions). *See* FOX, *supra* note 23, at 154. In Tennessee, powers of attorney typically are construed and interpreted using the rules of contract law and construction, and they may be broadly drafted. *See* Tenn. Farmers Life Reassurance Co. v. Rose, 239 S.W.3d 743, 749-50 (Tenn. 2007).

Seller declares that the foregoing powers are coupled with an interest and are and will be irrevocable by Seller.[27]

4. Terms of the Purchase Agreement. The terms of the Purchase Agreement, including but not limited to Seller's representations, warranties, covenants, agreements and indemnities relating to the Acquired Assets, are incorporated in this Bill of Sale by this reference.[28] Seller acknowledges and agrees that the representations, warranties, covenants, agreements and indemnities contained in the Purchase Agreement are not superseded by this Bill of Sale but remain in full force and effect to the full extent provided in the Purchase Agreement.[29] In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms of this Bill of Sale, the terms of the Purchase Agreement govern.[30]

5. Governing Law. This Bill of Sale is governed by and construed under the laws of the State of Tennessee without regard to conflicts of laws principles that would require the application of any other law.[31]

Seller has executed this Bill of Sale as of _____, _____.[32]

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[27] A power of attorney, like other agency arrangements, typically is revocable. Hunter v. Mutual Reserve Life Ins. Co., 218 U.S. 573 (1910) ("A power of attorney, although irrevocable in terms, is revocable unless coupled with an interest or given for a consideration."); RESTATEMENT (THIRD) OF AGENCY § 3.06(5) (2006). However, under certain circumstances, a power of attorney coupled with an interest in the subject matter may, by agreement, be irrevocable, as determined by state statutory or common law. *See* Fred Fisher Music Co. v. M. Witmark & Sons, 318 U.S. 643, 645 (1943) (noting the execution of an irrevocable power of attorney in connection with a copyright assignment); Hunt v. Rousmanier's Adm'rs, 21 U.S. 174, 201-207 (1823) (describing generally the nature and effect of assertedly irrevocable powers of attorney); Clay v. People's Finance & Thrift Co., 160 Tenn. 390, 393 (1929) (stating the Tennessee rule); *see also* Steven B. Gorin, *Transferring Ownership of Stock in an S Corporation*, 61 J. MO. B. 92, 97 n.69 (2005). The most recent iteration of the Restatement of Agency takes account of this kind of power, denominating it a "power given as security." *See* RESTATEMENT (THIRD) OF AGENCY § 3.12(1) (defining this kind of power and, in the related comments, describing its nature and use). The insolvency of the principal may or may not revoke a power of attorney. *See* RESTATEMENT (THIRD) OF AGENCY § 3.13(1)-(2), cmt. b; Petrina R. Dawson, *Ratings Games with Contingent Transfer: A Structured Finance Illusion*, 8 DUKE J. COMP. & INT'L L. 381, 407-08 (1998).

[28] *See supra* note 15.

[29] *See* MAPA ANCILLARY COMMENTARY, *supra* note 7, at 4 (describing the desirability for referencing the Purchase Agreement as to these important, fully negotiated provisions).

[30] *Id.* at 6.

[31] The choice of law in a Bill of Sale generally parallels that governing the subject purchase agreement. As a general matter, choice-of-law provisions require careful consideration. *See, e.g.*, HAGGARD & KUNEY, *supra* note 9, at 54-55.

SELLER:
_____[33]

By_____
Name:
Title:[34]

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[32] *See* HAGGARD & KUNEY, *supra* note 9, at 60. It may be preferable to include the signing date at the end of this Bill of Sale since the first paragraph already includes two other dates—the date of the Purchase Agreement and the date of the actual asset transfer and assignment.

[33] The full corporate name of the Seller is inserted here. "Take care with party names and make sure you get them *exactly* right. . . . Many jurisdictions do not prohibit the formation of entities with very similar names, which might differ only by a comma or spelling out the word 'and' rather than using an ampersand (&)." HAGGARD & KUNEY, *supra* note 9, at 59.

[34] *See, e.g.*, FOX, *supra* note 23, at 155-56 (providing information about the format, content, and use of signature blocks).

Schedule A

Assets[35]

The assets of Seller used and/or[36] useful in the operation of the Business, including the following assets, but specifically excluding the Excluded Assets:

(a) all tangible personal property (such as machinery, equipment, Inventories, furniture, automobiles,[37] _____[38]);

(b) all Intellectual Property, associated goodwill, related licenses and sublicenses (in each case, whether granted or obtained) and other rights, remedies against infringements of and rights to protection of interests in Intellectual Property under the Laws of all jurisdictions;[39]

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[35] This Schedule lists all assets being transferred to Buyer at the Closing (as defined in Section 2.4 of the Purchase Agreement) and is derived from the definition of Acquired Assets in Article 1 of the Purchase Agreement. Hamilton & Heminway, *supra* note 1, at 212-13. Some practitioners favor including detailed lists of assets being transferred; others favor a more general approach that references, through defined terms or direct incorporation from, or incorporation by reference of, the related purchase agreement. MAPA ANCILLARY COMMENTARY, *supra* note 7, 7. This Tennessee Model Bill of Sale uses the latter, more general approach, inserting from the Purchase Agreement the description of the Acquired Assets. "If the detailed-listing approach is used, the list should end with an all-inclusive 'catchall' covering any other Assets that may have been inadvertently missed in the detailed lists." *Id.* An example of an all-exclusive "catchall" provision is: "all other properties and assets of every kind, character and description, tangible or intangible, of every kind and description, owned by Seller, whether or not similar to the items specifically set forth above."

[36] Use of "and/or" generally is frowned upon in legal drafting circles. *See* ADAMS, *supra* note 11, at 129-30; GARNER, *supra* note 10, at 112-13; HAGGARD & KUNEY, *supra* note 9, at 253-56. The term is used here because it is used in the description of Acquired Assets in the Purchase Agreement. Hamilton & Heminway, *supra* note 1, at 212.

[37] One practice resource notes that "[b]ills of sale for used motor vehicles should identify the vehicles generally and also by vehicle identification number and should contain certain (sworn) representations and warranties relating to mileage and their odometer readings." 3-3 TENNESSEE FORMS FOR BUSINESS TRANSACTIONS Form 7-602: Bill of Sale (2007); *see also* Schaeffer v. Richard, 306 S.W.2d 340, 341 (Tenn. Ct. App. 1956) (involving a defective bill of sale for the conveyance of an automobile due to an incorrect motor number shown on the bill of sale). However, the common practice for motor vehicles being transferred is to get the certificates of title at the closing.

[38] In an actual asset purchase agreement, this blank would be filled in with words signifying other asset categories.

[39] Generally, a separate Assignment of Copyrights, Assignment of Patents or an Assignment of Servicemarks and Trademarks or both are required to be delivered at closing in addition to a bill of sale where intellectual property is being transferred in a transaction. MAPA ANCILLARY COMMENTARY, *supra* note 7, at 15 (commenting on the reasons and uses for separate conveyance documents in these contexts). The primary reason for this delivery is to provide a separate, recordable document that should be filed in the U.S. Patent and Trademark Office or the U.S.

(c) the Contracts listed on Schedule 2.2 of the Purchase Agreement and all associated rights of Seller;

(d) all Accounts Receivable;

(e) all franchises, approvals, permits, licenses, orders, registrations, certificates, variances and similar rights obtained by, on behalf of or for the benefit of Seller from any Governmental Agency;

(f) all books, records, ledgers, files, documents, correspondence, lists, plats, architectural plans, drawings, specifications, creative materials, advertising and promotional materials, studies, reports and other printed or written materials used and/or useful in the operation of the Business;

(g) all insurance benefits, including rights and proceeds, arising from or relating to the Business prior to the Closing Date;[40]

(h) all claims of Seller against third parties relating to the Business;[41] and

(i) all rights of Seller relating to deposits and prepaid expenses, claims for refunds and rights to offset.[42]

Copyright Office, as applicable, to effectuate the transfer. *Id.* The failure to file these documents, if applicable, could provide a cloud on title to these intellectual property assets purchased by the buyer. *Id.*

[40] Items (g), (h), and (i) in this Schedule A are not directly referenced in the Purchase Agreement definition of Acquired Assets. However, one of the coauthors typically would include these categories of assets to ensure that they are transferred at the Closing. If the coauthors had the opportunity to revise the Purchase Agreement (which was published in 2002), they would add these three items into the definition of Acquired Assets. *See* Hamilton & Heminway, *supra* note 1, at 212-13.

[41] *See supra* note 40.

[42] *See supra* note 40.