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Transactional Matter Files

K Drafting p 31

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The introduction paragraph is not numbered. It should be in the form:²

This [Agreement, Lease, etc. as appropriate] ("[Defined Term]") dated [as of], 20xx, is between, [a Corporation, Limited Liability Company, General Partnership, an Individual, etc., as appropriate] ("[Defined Term]")² and, [a Corporation, Limited Liability Company, General Partnership, an Individual, etc., as appropriate] ("[Defined Term]") [add additional parties as needed].

For example:

This asset purchase agreement ("APA") dated September 21, 2003, is between Mayfield & Associates, LLC, a Delaware limited liability company ("Buyer"), and Bronson Construction, Inc., a California Corporation ("Seller").

The first paragraph of the agreement identifies the parties and the type of transaction they are documenting, establishes defined terms for the parties, and provides a reference date for the document. Ensure that all parties' names and other information (such as state of incorporation) are correct—using defined terms means they will not come up again until the signature blocks. Beyond these items there is no need for further detail. Leave that for the recitals and the body of the contract.

D. Preambles; Recitals; Transitioning Into the Agreement.

Preambles or recitals set the context for the agreement and are useful in later interpretation. They also provide a place to list related transactional documents and other things that may be part of the transaction as a whole but are otherwise not referenced in the particular agreement itself. Preambles or recitals do not need to be preceded by the word "whereas" and it is not necessary to title the section "Recitals," although you will no doubt run into those forms (and those who aggressively adhere to them) in practice.

Each recital should be written in plain English and should be preceded by a capital letter numbering or ordinal system (just like this section of this text). In the recitals, include facts that will help a later reader grasp the nature, purpose and basis for the agreement.

Examples of appropriate facts for recitals include: (i) the relationship and goals of the

² Bracketed—[]—text in examples is optional language or language needing replacement when drafting a specific provision. Brackets should be deleted when using these provisions.

²Note the form used to define a term. It should be used consistently throughout the document. For ease of future use of this agreement as an exemplar for future transactions, choose generic defined terms like "Buyer," "Seller," "Landlord," "Tenant," etc. This allows a change of party name in the first paragraph to ripple or flow through the document automatically when the document is used as an exemplar in a subsequent matter.