

PLAN AND AGREEMENT OF MERGER

THIS AGREEMENT, dated as of the 30th day of August, 1976, by and between BURKE'S, INC., an Idaho corporation, (hereinafter called "Burke's, Inc.") and SURPLUS FURNITURE, INC., a Washington corporation, (hereinafter referred to as "Surplus Furniture, Inc."), said corporations hereinafter sometimes being collectively referred to as the "constituent corporations",

WITNESSETH: That

WHEREAS, BURKE'S, INC. is a corporation duly organized and existing under the laws of the State of Idaho, having originally been incorporated under the name "Berger Mace, Inc.", said corporate name having heretofore been changed by virtue of Articles of Amendment to the Articles of Incorporation of Berger Mace, Inc. heretofore filed with the Secretary of State of the State of Idaho, and SURPLUS FURNITURE, INC. is a corporation duly organized and existing under the laws of the State of Washington; and

WHEREAS, the authorized capital stock of BURKE'S, INC. consists of 100,000 shares of common stock, par value of \$1.00 per share, of which 47,000 shares are now issued and outstanding; and

WHEREAS, the authorized capital stock of SURPLUS FURNITURE, INC. consists of 500 shares of common stock, par value of \$100.00 per share, of which 360 shares are now issued and outstanding; and

WHEREAS, the respective Boards of Directors of the constituent corporations deem it advisable for the general welfare and advantage of the constituent corporations and their respective shareholders that such constituent corporations merge into a single corporation pursuant to this agreement, and the constituent corporations respectively desire to so merge pursuant to this agreement, and pursuant to the

applicable provisions of the laws of the States of Idaho and Washington,

NOW, THEREFORE, in consideration of the premises and of the mutual agreements herein contained, the parties hereby agree, in accordance with the applicable provisions of the laws of the States of Idaho and Washington, that the constituent corporations shall be merged into a single corporation, to-wit: BURKE'S, INC., an Idaho corporation, one of the constituent corporations, which is not a new corporation and which shall continue its corporate existence and be the corporation surviving the merger (said corporation hereafter being sometimes called the "surviving corporation"), and the terms and conditions of the merger hereby agreed upon (hereafter called the "merger") which the parties covenant to observe, keep and perform, and the mode of carrying the same into effect are, and shall be, as hereinafter set forth:

ARTICLE I.

EFFECTIVE TIME OF MERGER

The merger of the constituent corporations shall be effective when this agreement has been filed in the offices of the Secretary of State of the State of Idaho and the Secretary of State of the State of Washington as provided by the laws of said respective states, and at the effective time of the merger the separate existence of SURPLUS FURNITURE, INC. shall cease and SURPLUS FURNITURE, INC. shall be merged into the surviving corporation.

ARTICLE II.

GOVERNING LAW

The laws which are to govern the surviving corporation are the laws of the State of Idaho.

ARTICLE III.

BY-LAWS

The By-Laws of BURKE'S, INC., at the effective time of the merger shall

be the By-Laws of the surviving corporation until the same shall be altered or amended in accordance with the provisions thereof.

ARTICLE IV.

DIRECTORS AND OFFICERS

It is understood between the parties hereto that the directors of BURKE'S, INC. as of the date of execution of this agreement are as follows:

Roy Burke
Weldon Wasem
Janet Burke

and that the officers of BURKE'S, INC. are at the time of execution of this agreement, as follows:

Roy Burke	President
Weldon Wasem	Vice President
Janet Burke	Secretary-Treasurer.

The aforesaid directors and officers of BURKE'S, INC. shall be the directors and officers of the surviving corporation until their respective successors are duly elected and qualified.

ARTICLE V.

CONVERSION OF SHARES IN THE MERGER

The mode of carrying into effect the merger provided in this agreement, and the manner and basis of converting the shares of the constituent corporations into shares of the surviving corporation are as follows:

(1) BURKE'S, INC. COMMON STOCK:

None of the shares of common stock, par value \$1.00 per share of BURKE'S, INC., issued at the effective time of the merger shall be converted as a result of the merger, but all shares of such stock, including shares held in the treasury of BURKE'S, INC. shall remain issued shares of common stock of the surviving corporation.

(2) SURPLUS FURNITURE, INC. COMMON STOCK:

At the effective time of the merger, each share of the common stock, par

value \$100.00 of SURPLUS FURNITURE, INC., issued and outstanding, shall be converted into and become 28.98333 shares of common stock, par value \$1.00 per share, of the surviving corporation, and each holder of outstanding common stock of SURPLUS FURNITURE, INC. upon surrender to the surviving corporation, of one or more stock certificates for common stock of SURPLUS FURNITURE, INC. for cancellation shall be entitled to receive one or more stock certificates for the full amount of shares of common stock of the surviving corporation into which the common stock of SURPLUS FURNITURE, INC. so surrendered shall have been converted as aforesaid, together with any dividends on the common stock of the surviving corporation as to which the payment date shall have occurred on or prior to the date of surrender of said shares. Each issued share of common stock of SURPLUS FURNITURE, INC. in its treasury, if any, at the effective time of the merger shall be cancelled and shall not be converted.

(3) SURRENDER OF SURPLUS FURNITURE, INC. CERTIFICATES:

As soon as practicable after the merger becomes effective, the stock certificates representing common stock of Surplus Furniture, Inc. issued and outstanding at the time the merger becomes effective, shall be surrendered for exchange to the surviving corporation as hereinabove provided, and until so surrendered for exchange each such stock certificate nomily representing common stock of Surplus Furniture, Inc. shall be deemed for all corporate purposes (except for the payment of dividends, which shall be subject to the exchange of stock certificates as above provided) to evidence the ownership of the number of shares of the common stock of the surviving corporation which the holder thereof would be entitled to receive upon its surrender to the surviving corporation.

(4) FRACTIONAL INTEREST:

No fractional shares of the common stock of the surviving corporation, or certificate representing the same, shall be issued. In lieu thereof each holder of

Surplus Furniture's common stock having a fractional interest arising upon such conversion will be afforded the opportunity, on or before the 60 day following the effective date of the merger, or before such later date as the surviving corporation may determine, either to consolidate his fractional interest into one full share of the common stock of the surviving corporation by purchasing and paying for the additional fractional interest required for such consolidation, or to sell his fractional interest and obtain the proceeds thereof. Any fractional interest with respect to which instruction shall not have been so received by the surviving corporation within the prescribed period shall be sold. The proceeds of any sale of a fractional interest shall be paid in cash by the surviving corporation to the shareholder entitled to the fractional interest sold, except that the surviving corporation shall not pay such proceeds to any holder of Surplus Furniture's common stock who shall not have surrendered his certificates for exchange pursuant to the provisions hereinabove set forth and shall retain such proceeds until such time as such certificates have been so surrendered.

(5) STATUS OF COMMON STOCK ISSUED:

All shares of the common stock of the surviving corporation into which the shares of common stock of Surplus Furniture, Inc. are converted as herein provided shall be fully paid and non-assessable, and shall be issued in full satisfaction of all rights pertaining to such shares of the common stock of Surplus Furniture, Inc.

(6) EFFECT OF THE MERGER:

At the effective time of the merger, the surviving corporation shall succeed to, without other transfer, and shall possess and enjoy, all the rights, privileges, immunities, powers and franchises of every and any nature, and shall be subject to all the restrictions, disabilities and duties of each of the constituent corporations, and all the rights, privileges, immunities, powers and franchises of each of the constituent corporations, and all property, whether real, personal or mixed, and

all debts due to either of said constituent corporations on whatever account and for all other things and actions, or belonging to each of said corporations, shall be vested in the surviving corporation; and all property, rights, privileges, immunities, powers and franchises, and all and every other interest shall thereafter as effectually be property of the surviving corporation as they were of each of the respective constituent corporations; provided, however, that all rights of creditors and all liens upon any property upon either of said constituent corporations, if any, shall be preserved unimpaired, limited in lien to the property affected by such liens at the effective time of the merger, and all debts, liabilities and duties of said constituent corporations respectively shall thenceforth attach to the surviving corporation and may be enforced against the latter to the same extent as if said debts, liabilities and duties had been incurred or contracted by the surviving corporation.

(7) ACCOUNTING MATTERS:

The assets and liabilities of the constituent corporations as at the effective time of the merger shall be taken up and reflected on the books of the surviving corporation at the amounts at which they were carried at that time on the books of the respective constituent corporations. The amount of the capital of the surviving corporation after the merger shall be equal to the sum of the aggregate amount of the par value of the common stock of Burke's, Inc. issued and outstanding at the time of the effective date of the merger and the aggregate par value of the common stock of the surviving corporation issued in exchange for the common stock of Surplus Furniture, Inc. The surplus of the surviving corporation after the merger, including any surplus arising in the merger, shall be available to be used for any legal purposes for which such surplus may be used.

(8) APPROVAL OF SHAREHOLDERS; FILING OF CERTIFICATE OF MERGER:

This agreement shall be submitted to the shareholders of each of the con-

stituent corporations as provided by the laws of the States of Washington and Idaho at meetings which shall be held on or before August 31, 1976, or such later dates as the Boards of Directors of the constituent corporations shall mutually approve. After such adoption and approval, and subject to the conditions contained in this agreement, a Certificate of Merger, in proper form, shall be delivered to the Secretary of State of the State of Washington and the Secretary of State of the State of Idaho as provided by the statutes of each of said respective states.

(9) SURPLUS FURNITURE, INC.'S REPRESENTATIONS AND WARRANTIES:

Surplus Furniture, Inc. represents and warrants to Burke's, Inc. as follows:

(a) Surplus Furniture, Inc. is a corporation duly organized, validly existing and in good standing under the laws of the State of Washington and has corporate power to carry on its business as now and heretofore conducted by said corporation, and is qualified to do business in the State of Washington.

(b) Surplus Furniture, Inc.'s capitalization consists of 500 authorized shares of common stock having a par value of \$100.00 per share, of which 360 shares are issued and outstanding as of the date hereof. Each issued share is validly issued, fully paid for, and is non-assessable, and each such outstanding share is entitled to one vote.

(c) Surplus Furniture, Inc. has, and at the effective date of the merger, will have good and marketable title to all lands and buildings, machinery, equipment, merchandise, supplies and other property of every kind, tangible or intangible, shown as assets in its records and books of account, free and clear of all liens, encumbrances and charges, except as reflected in its said books of account and except for liens, encumbrances and charges, if any, which do not materially detract from the value of, or interfere with the use of the property subject thereto, or effective thereby.

(d) There are no suits, actions or legal or administrative pro-

ceedings pending, or to the knowledge of Surplus Furniture, Inc. threatened against it which, if adversely determined, might materially adversely affect the financial condition of Surplus Furniture, Inc., and that Surplus Furniture, Inc. is not in default in any material respect under the terms of any material outstanding contract, agreement, lease or other commitment of said corporation.

(10) BURKE'S, INC.'S REPRESENTATIONS AND WARRANTIES:

Burke's, Inc. represents and warrants to Surplus Furniture, Inc., as follows:

(a) Burke's, Inc. is a corporation duly organized, validly existing and in good standing under the laws of the State of Idaho, and has corporate power to carry on its business as it is now and has heretofore been conducted, and is qualified to do business in the State of Idaho.

(b) Burke's, Inc. capitalization consists of 100,000 authorized shares of common stock having a par value of \$1.00 per share, of which, as of the date hereof, 47,000 shares are issued and outstanding, and 35,000 shares are issued but are not outstanding and are held in Burke's, Inc. treasury. Each issued share is validly issued, is fully paid for, is non-assessable and each outstanding share is entitled to one vote.

(c) All such shares of the common stock of the surviving corporation into which the common stock of Surplus Furniture, Inc. is to be converted will be, immediately after the effective time of the merger, duly and validly authorized and issued and fully paid for non-assessable, and no stockholder of Burke's, Inc. will have any pre-emptive right of subscription or purchase in respect thereof. At the effective time of the merger the surviving corporation will have duly reserved for issuance a sufficient number of shares of the common stock of Burke's, Inc. to permit conversion at the basic conversion rate applicable hereto of the common stock of Surplus Furniture, Inc., and such shares of common stock when issued upon such conversion will be duly and validly authorized and issued, and fully paid for and non-assessable, and no stockholder of Burke's, Inc. will have any pre-

emptive right of subscription or purchase in respect thereto.

(11) CONDUCT OF BUSINESSES PENDING MERGER:

From and after the date of this agreement and prior to the effective time of the merger, neither of the constituent corporations will, without the prior written consent of the other:

(a) Amend its Certificate of Incorporation or By-Laws except, in the case of Burke's, Inc., as may be necessary to enable it to carry out the provisions of this agreement;

(b) Engage in any material activity or transaction, or incur any material obligation except in the ordinary course of business;

(c) Issue rights or options to purchase or subscribe to any shares of its capital stock, or otherwise change any such shares;

(d) Issue or sell any shares of its capital stock; or

(e) Declare or pay any dividends on, or take any distributions in respect of any shares of its capital stock.

(12) TERMINATION AND ABANDONMENT:

Anything herein or elsewhere to the contrary notwithstanding, this agreement may be terminated and abandoned at any time before the effective time of the merger, whether before or after adoption or approval of this agreement by the shareholders of the respective constituent corporations by the mutual consent of the Boards of Directors of the constituent corporations and upon any such termination and abandonment neither party shall have any liability or obligation hereunder to the other party.

IN WITNESS WHEREOF, this agreement has been signed by a majority of the Directors of each of the constituent corporations and attested to by the Secretary of each of the constituent corporations as of the day and year hereinabove first written.

Laura Burke
Linda Burke
Meldon B. Masens

A Majority of the Directors of Burke's, Inc.

Joy C. Burke
Linda Burke
Laura Burke

A Majority of the Directors of Surplus Furniture, Inc.

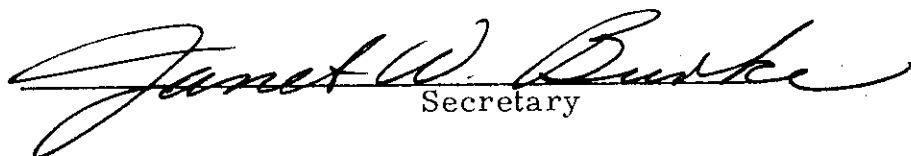
The foregoing Plan and Agreement of Merger, having been duly executed by a majority of the Directors of Burke's, Inc., an Idaho corporation, and Surplus Furniture, Inc., a Washington corporation, respectively, under the corporate seals of the respective corporations, and the said Plan and Agreement of Merger having been duly approved or adopted by the Boards of Directors and the stockholders of each of said corporations in a manner provided by the laws of their respective states of incorporation, the Presidents and Secretaries of each of said corporations do now execute this Plan and Agreement of Merger under the respective seals of said corporations by the authority of the Directors and stockholders of each, as the act, deed and agreement of each of said corporations this 30th day of August, 1976.

BURKE'S, INC.

By

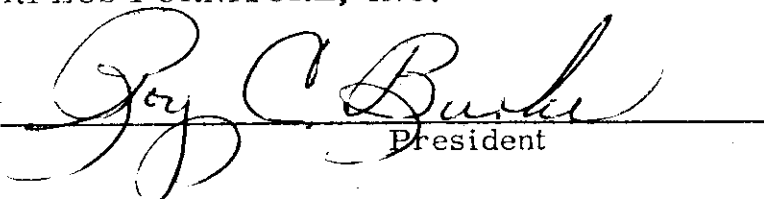

President

ATTEST:

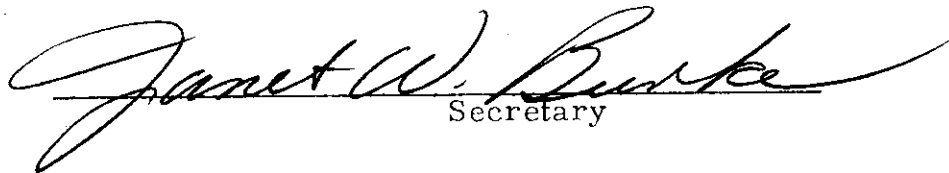

Secretary

SURPLUS FURNITURE, INC.

By


President

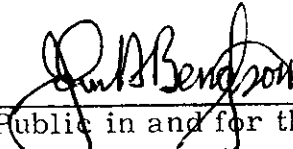
ATTEST:


Secretary

STATE OF IDAHO)
) ss.
County of Nez Perce)

On this 30th day of August, 1976, before me, the undersigned, a Notary Public in and for said State, personally appeared ROY C. BURKE and JANET BURKE, to me known to be the President and Secretary, respectively, of BURKE'S, INC., the corporation that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



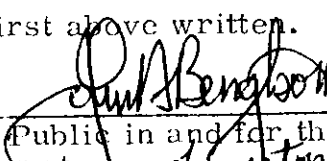
Notary Public in and for the State of Idaho,
Residing at Lewiston therein.

~~IDAHO~~
STATE OF ~~WASHINGTON~~)
) ss.
County of ~~Asotin~~ Nez Perce)

On this 30th day of August, 1976, before me, the undersigned, a Notary Public in and for said State, personally appeared ROY C. BURKE and JANET BURKE, to me known to be the President and Secretary, respectively, of SURPLUS FURNITURE, INC., the corporation that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

RANDALL & BENGTSON
LAWYERS
FIRST SECURITY BANK BLDG.
LEWISTON, IDAHO 83501



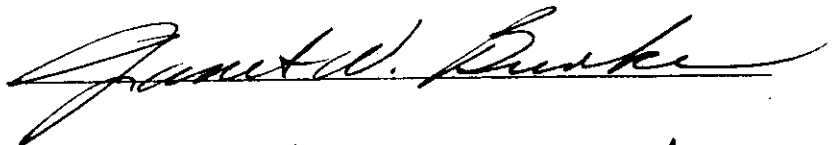
Notary Public in and for the State of ~~Washington~~ Idaho
Residing at: Lewiston therein.

CERTIFICATE OF CORPORATE SECRETARY

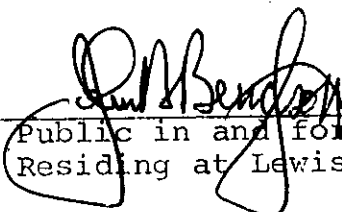
STATE OF IDAHO)
) ss.
County of Nez Perce)

I, JANET W. BURKE, the duly elected, qualified and acting Secretary of Surplus Furniture, Inc., a Washington corporation, do hereby certify that at a special meeting of the shareholders of Surplus Furniture, Inc. called in the manner provided in the Revised Code of Washington, and held on the 30th day of August, 1976, the shareholders of said corporation voted unanimously for the adoption of the within and foregoing "Plan and Agreement of Merger".

I do further certify that at said special meeting of the shareholders of said corporation all of the holders of the issued and outstanding capital stock of the corporation were present and that all of said shareholders voted in favor of the resolution providing for the adoption of said Plan and Agreement of Merger, and that thus the adoption of said Agreement was approved by more than two-thirds of the voting power of all shareholders of Surplus Furniture, Inc.



SUBSCRIBED AND SWORN to before me this 24th day of November,
1976,

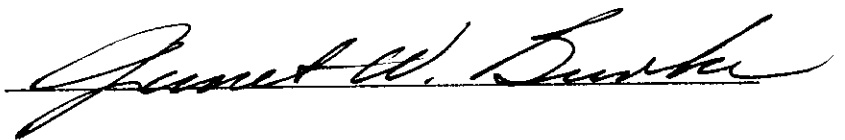

Notary Public in and for the State of
Idaho, Residing at Lewiston therein.

CERTIFICATE OF CORPORATE SECRETARY

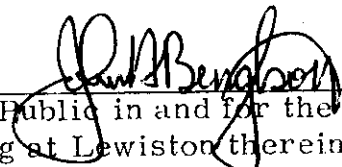
STATE OF IDAHO)
) ss.
County of Nez Perce)

I, JANET W. BURKE, the duly elected, qualified and acting Secretary of Burke's, Inc., an Idaho corporation, do hereby certify that at a special meeting of the shareholders of Burke's, Inc. called in the manner provided in Section 30-133, Idaho Code, and held on the 30th day of August, 1976, the shareholders of said corporation voted unanimously for the adoption of the within and foregoing "Plan and Agreement of Merger".

I do further certify that at said special meeting of the shareholders of said corporation all of the holders of the issued and outstanding capital stock of the corporation were present and that all of said shareholders voted in favor of the resolution providing for the adoption of said Plan and Agreement of Merger, and that thus the adoption of said Agreement was approved by more than two-thirds of the voting power of all shareholders of Burke's, Inc.



SUBSCRIBED AND SWORN to before me this 24th day of November,
1976.



Notary Public in and for the State of Idaho,
Residing at Lewiston therein.