ORGANIZATION AND SALE OF SMALL BUSINESSES

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INTRODUCTION

The formation, operation, purchase and sale, and dissolution of business entities form the basis of a business law practice. This volume outlines the basic aspects of representing clients in these circumstances. It is designed for the general practitioner who does not necessarily deal with these issues on a day-to-day basis, and provides a broad overview of the statutes, case law and procedures with which counsel must deal in these areas. In particular, these materials make only passing references to tax, securities, environmental, employment and trademark law, all of which may be relevant to particular business situations. The practitioner is encouraged to explore each of the issues discussed in further depth to address special problems.

This volume includes references to various filings to be made in the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services. Please note the availability of forms and the ability to file via the internet. (See https://www.accessnet.state.nj.us or http://www.state.nj.us/njbgs.)

PART

1

SELECTION OF BUSINESS ENTITY

1.1 RETENTION AS COUNSEL

An attorney should establish the terms of a client's retention of the attorney at the outset of the relationship. In the case of a business entity being formed by more than one person, it is also important to clarify who or what is the client. Is it the entity or one or more of the principals? If the latter, conflict of interest issues obviously arise if the attorney attempts to represent multiple parties. When dealing with a business entity being formed by several unrelated (or even related) persons, it is often advisable to represent the entity and to advise the principals of that fact and their right to seek personal counsel to review matters from their individual points of view.

The Rules of Professional Conduct, specifically RPC 1.5(b), requires the attorney to communicate in writing the fee arrangement prior to, or within a reasonable time after, beginning the representation. It is advisable to use a retainer letter to memorialize the terms of the retention, such as the basis of the fee to be charged, when payment is to be made, whether an initial retainer is required, and who will be responsible for the fees. For example, if representing the entity, it is prudent to require the individual principals to guaranty payment, since the entity may have little or no capital, or may never be formed. A sample retainer letter is included as Form 1.1.

1.2 CONSIDERATIONS IN SELECTION OF BUSINESS ENTITY

The client will frequently consult with the attorney as to the most appropriate form or entity by which to conduct business. Even if the client has made a decision before approaching counsel, in certain cases it may be advisable for the attorney to review with the client the factors that bear upon the choice of entity. These factors include the legal requirements of various entities, personal liability to the principals, federal and state tax considerations, the resolution of potential management disputes, and the types of financing the business will seek. These factors will have different weight in different situations, and it is important that the client have a clear

understanding of them to make an informed decision as to the choice of entity. Frequently, the client's accountant will be involved in the decision.

1.3 SOLE PROPRIETORSHIPS

A sole proprietorship is an unincorporated business owned by a single individual. A sole proprietorship may be appropriate where individual responsibility for the liabilities of the business is either not a concern or is covered by insurance, and where income tax considerations do not compel incorporation. A sole proprietorship may be particularly useful where there are to be few, if any, employees other than the owner, for example in a consulting business.

While the sole proprietorship is the business form subject to the least governmental regulation and has the fewest business formalities, there are nevertheless certain compliance requirements, particularly in selecting a name and complying with tax requirements. Furthermore, a sole proprietor will face the normal problems of organizing any business.

Any person conducting business and using the words 'company' or 'co.' as part of the business name, or using an assumed name, must file a trade name certificate in the office of the clerk of the county or counties in which business is to be transacted. There are two different trade name certificates permitted, which are similar but not identical. (See N.J.S.A. 56:1-1 and 2 and, for a form of certificate, Form 1.2.) An original and copy must be filed with the county clerk(s), who forwards the copy to the Division of Revenue and Enterprise Services in the Department of the Treasury for filing in that office as well. The filing fee is $50. An extra copy should be submitted to be marked as filed by the clerk and returned to the filer as proof of filing. An additional $5 will be charged for a certified copy.

The attorney should check with the Office of the Division of Revenue and Enterprise Services in the Department of the Treasury with respect to the availability of both trade and corporate names prior to filing. The Office of Division of Revenue and Enterprise Services does not commingle the lists of names for business corporations, nonprofit corporations and trade names, each of which need to be checked to determine if a specific name is in use. Note that a name's availability as a trade or corporate name does not necessarily mean that the name does not infringe upon another person's or entity's rights in the name as a federal or state trademark or service mark. While trademark law is beyond the scope of this volume, it is advisable in many cases to conduct a trademark or service mark search to minimize the risk of adopting a name that infringes upon another party's rights.

A sole proprietorship is considered a separate business entity and, as such, must obtain an employer identification number from the Internal Revenue Service via IRS Form SS-4 (Form 1.3) (available at www.irs.gov) if the business will have employees and a registration number from

the New Jersey Division of Taxation. For income tax purposes, business income is included, and expenses deducted, on the sole proprietor's individual income tax return.

1.4 GENERAL PARTNERSHIPS

A general partnership is an association of two or more persons to carry on as co-owners of a business for profit. (N.J.S.A. 42:1A-2.) A general partnership may be appropriate in the same circumstances in which a sole proprietorship might be used, but where there will be more than one owner. These circumstances are where the owners' personal responsibility for the liabilities of the business either is not a concern or is covered fully by insurance, and where income tax considerations do not compel incorporation. Like a sole proprietorship, a general partnership may be more suitable to a business that has few, if any, employees other than the owners. Although the creation of a general partnership is more involved than that of a sole proprietorship, it does provide for relatively flexible arrangements regarding capital contributions, management, control and the sharing of profits and losses. General partnerships are frequently used for real estate investment, but they do not provide the limited liability benefits of a limited partnership or limited liability company.

The partners in a general partnership are personally liable for all debts and other obligations of the partnership. This liability is joint and several, and is not limited by the partner's capital contribution or percentage interest in the profits and losses of the partnership. (N.J.S.A. 42:1A-18.) Absent a partnership agreement to the contrary, each partner has an equal voice in the management and conduct of the partnership business. (N.J.S.A. 42A:1-21(f).) All partners must consent to the admission of new partners, subject to any agreement among the partners to the contrary. (N.J.S.A. 42A:1-21(i).)

A general partnership continues until dissolved, which is defined as a change in the relation of the partners caused by any partner ceasing to be associated in carrying on the business. (N.J.S.A. 42:1A-39.) The partnership is not terminated upon dissolution, but rather continues until the partnership's affairs are wound up. (N.J.S.A. 42A:1-40.) Winding up may take the form of reconstituting the partnership. (See *Wilzig v. Sisselman*, 182 N.J. Super. 519 (App. Div. 1982).) Dissolution occurs upon a variety of events, including when specified by the partnership agreement, by the express will of any partner, by the death or bankruptcy of a partner, or by court order. (N.J.S.A. 42:1A-39.)

A partnership agreement is not required to form or operate a partnership, but an agreement has the advantage of enabling the partners to vary certain statutory provisions in the Revised Uniform Partnership Act (N.J.S.A 42:1A-1 *et seq.*) and to define their respective rights and obligations more fully and more specifically to their particular situation.

The Revised Uniform Partnership Act provides that property of the partnership is partnership property, as opposed to property of the partners. (N.J.S.A. 42:1A-11.) The rights of the partners in such property are set forth in N.J.S.A. 42:1A-12. Every partner is an agent of the partnership, with the authority to bind the partnership. (N.J.S.A. 42:1A-13.) No partner is entitled to a salary from the partnership. (N.J.S.A. 42:1A-21(h).) The partners share equally the partnership's profits, losses and cash flow, absent an agreement to the contrary. (N.J.S.A. 42:1A-21(b).)

A partnership's income is not subject to federal income tax at the partnership level; rather, income and losses are allocated to the individual partners equally or as provided by the partnership agreement. The partners are taxed on their share of the partnership's income regardless of the amount of cash the partnership distributed to them during the tax year. (The partnership is a reporting entity for federal income tax purposes and must file an information return with the Internal Revenue Service setting forth the income and deductions of the partnership.

The advantages to using a general partnership as the form of business entity include the partners' ability to participate in management, the lack of formality to form and operate the partnership, the minimal fees to form the partnership, and the partnership's limited duration. The disadvantages include the need for consensus among the partners as to management decisions, the partners' personal liability for partnership obligations, and the restricted ability to transfer partnership interests. (N.J.S.A. 42:1A-28 and 29.) The federal income tax treatment of a general partnership may be an advantage or disadvantage in different circumstances.

1.5 LIMITED PARTNERSHIPS

A limited partnership has certain features of a general partnership and certain features of a corporation. A limited partnership must have at least one general partner and at least one limited partner. (N.J.S.A. 42:2A-5(g).) A general partner has basically the same rights, obligations and liabilities as a partner in a general partnership, most notably personal liability for the debts and obligations of the limited partnership. (N.J.S.A. 42:2A-32.) A limited partner, on the other hand, is not personally liable for the obligations of the limited partnership unless the person is also a general partner or takes part in the control of the business. The Uniform Limited Partnership Act sets forth a number of actions a limited partner may take without being deemed to have participated in the control of the limited partnership's business. (N.J.S.A. 42A:2-27.)

The formation and operation of a limited partnership is more involved than that of a general partnership. A certificate of limited partnership must be filed with the Office of the Division of Revenue and Enterprise Services in the Department of the Treasury to form a limited partnership, and annual reports must also be filed with the Department of the Treasury. (N.J.S.A. 42:2A-14 & 69.) As with a general partnership, a partnership agreement is not mandated by law, but should nevertheless be used to define the rights, duties, and liabilities of the partners.

Limited partnerships have been used frequently for real estate investment or development. They provide for centralized management in the general partner, usually the real estate manager or developer, while insulating from personal liability the limited partners, frequently passive investors. The income tax treatment afforded to partnerships is often preferable to that for corporations in real estate ventures. However, it is likely that limited liability companies will continue to be considered preferable to limited partnerships for real estate investment and other businesses.

1.6 LIMITED LIABILITY PARTNERSHIPS

Effective June 30, 1995, New Jersey authorized the formation of limited liability partnerships (Laws 1995, Ch.96). The limited liability partnership statute amended various provisions of the New Jersey Uniform Partnership Act, and added some provisions as well. These provisions are thus interspersed throughout N.J.S.A. 42:1A-1 *et seq.*

The key distinction between a general partnership and a limited liability partnership (LLP) is found in N.J.S.A. 42:1A-18(c), which provides:

> c. An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort or otherwise, is solely the obligation of the partnership. A partner is not liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner.
>
> d. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under subsection b. of section 47 of this Act.

Thus, a partner in an LLP is not liable for the LLP's malpractice and other negligent acts unless that partner or someone under his or her direct supervision and control committed the act. Consequently, LLPs are conducive to professional practices, such as medicine, accounting, engineering, and law, which have traditionally had only the professional corporation provisions available to achieve this limited liability status. (See Section 1.10 below.) With respect to law firms practicing as LLPs, see Court Rule 1:21-1C.

An LLP is formed by the filing of a statement of qualification in the Office of the Division of Revenue and Enterprise Services in the Department of the Treasury. (N.J.S.A. 42:1A-47(c).) A form is included as Form 1.4. An LLP must have a registered agent and office. (N.J.S.A. 42:1A-47(d).) If the LLP is to conduct business in states other than New Jersey, it should be

determined whether those states recognize LLPs. As with general partnerships, while there is no specific requirement for an agreement it is highly preferable to have one to spell out the rights and obligations of the partners.

1.7 LIMITED LIABILITY COMPANIES

Since Jan. 1994, New Jersey authorized the formation of limited liability companies pursuant to N.J.S.A. 42:2B-1 *et seq.* A new limited liability company act was adopted on Sept. 19, 2012, as N.J.S.A. 42:2C-1 *et seq.*, and is effective for all limited liability companies formed beginning March 18, 2013. For limited liability companies formed prior to that date, the former statute, N.J.S.A. 42:2B-1, *et seq.*, remained in effect until March 1, 2014, at which time the new act applied to all LLCs.

A limited liability company (LLC) is a hybrid entity incorporating features of general partnerships, limited partnerships and corporations. For federal and state purposes, an LLC is treated as a pass-through entity and taxed as a partnership, unless an election is made to the contrary. The owners of an LLC are referred to as members, and none of them, as such, have personal liability for the debts and obligations of the LLC. (N.J.S.A. 42:2C-30.) Management of the LLC is determined by the LLC's operating agreement. Absent an agreement, the LLC Act provides that management is vested in the members *per capita* rather than *pro rata* to their capital contributions or their interest in the LLC's profits, with decisions made by majority vote. (N.J.S.A. 42:2C-37(b)(2).)

An LLC is formed by the filing of a certificate of formation with the Office of the Division of Revenue and Enterprise Services in the Department of the Treasury. (N.J.S.A. 42:2C-18.) An LLC must have a registered agent and office. (N.J.S.A. 42:2C-14.) If the LLC is to conduct business in states other than New Jersey, it should be determined whether those states recognize LLCs, although most, if not all, states now do so. As with partnerships, while there is no specific requirement for an agreement (called an operating agreement when dealing with an LLC), it is highly preferable to have one.

The advantages of LLCs include limited liability for all members without the need for anyone to assume personal liability, a high degree of flexibility in structuring management rights and profit and loss allocations, and taxation as a partnership rather than a corporation, without many of the limitations imposed on S corporations.

1.8 LIMITED PARTNERSHIP ASSOCIATIONS

Prior to 1988, New Jersey authorized a type of entity known as a limited partnership association, which had some similarities to limited partnerships. Since 1988, New Jersey has not authorized the formation of new limited partnership associations and it is doubtful that many, if any, still exist. (N.J.S.A. 42:3-1.) This volume, therefore does not deal further with limited partnership associations, although the governing statute remains in effect for purposes of those entities that were formed prior to 1988 and continue to exist.

1.9 CORPORATIONS

New Jersey corporations are governed by the New Jersey Business Corporation Act (N.J.S.A. 14A:1-1 *et seq.*). The corporation has historically been the form of business entity most frequently employed when seeking to shield the owners from personal liability for the entity's debts and obligations. Shareholders are generally not liable for claims against the corporation for amounts greater than their investment in the corporation. (N.J.S.A. 14A:5-30(l).)

A corporation can have perpetual existence. The transfer of shares of stock by a stockholder does not affect the continuity of the corporation, nor does a shareholder's death or retirement. (N.J.S.A. 14A:3-1(1)(a).) Shares of stock are freely transferable, subject to any agreement among the shareholders and the restrictions imposed by state and federal securities laws. (N.J.S.A. 14A:7-12.)

Management of a corporation is vested in its board of directors, who are elected by the shareholders and appoint officers to manage the corporation's day-to-day business affairs. (N.J.S.A. 14A:5-24, 6-1 & 6-15.) The same person may act in more than one office and be a director. Only one director is necessary. (N.J.S.A. 14A:6-2 & 6-15(2).)

A corporation is formed by filing a certificate of incorporation in the Office of the Division of Revenue and Enterprise Services in the Department of the Treasury. (N.J.S.A. 14A:2-7.) The corporation must hold an organizational meeting of directors and adopt bylaws. (N.J.S.A. 14A:2-8 & 9.) The corporation must follow certain formalities in its formation and operation to maintain its status as a corporation with respect to protecting its shareholders from personal liability. These include holding meetings, acting through officers who function in their proper corporate capacities, segregating corporate assets from personal assets and assets of other corporations, and filing annual reports with the Division of Revenue and Enterprise Services in the Department of the Treasury. Failure to do so can result in shareholders, or affiliated corporations, being held liable for the corporation's debts and obligations. (*Yacker v. Weiner*, 109 N.J. Super. 351 (Ch. Div. 1970) *aff'd* 114 N.J. Super. 526 (App. Div. 1971).)

A corporation is a tax-paying entity subject to state and federal tax on its income, unless the corporation and its shareholders have elected to be treated as an S corporation. In this event, the corporation will be essentially taxed as a partnership, subject to some differences with respect to New Jersey taxes. To the extent that a non-S corporation (a C corporation) pays dividends, they are taxable as income at the shareholder level, effectively resulting in a double tax on corporate profits.

The advantages of the corporate form include the limited liability of the shareholders for corporate debt and obligations, centralized management, free transferability of shares of stock, continuity of existence of the entity, and the ability to spread risk over a large number of shareholders and to raise large amounts of capital by selling stock. It is essential to comply with federal and state securities laws when raising capital in any business entity, including corporations. Disadvantages included the formalities and expense of forming and operating the corporation, and the potentially adverse tax consequences of operating as a corporation.

1.10 PROFESSIONAL SERVICE CORPORATIONS

A professional service corporation permits one or more individuals who are licensed to render the same professional service in New Jersey to incorporate. A professional service corporation is organized and operated pursuant to the Business Corporation Act, subject to certain modifications imposed by the Professional Service Corporations Act (N.J.S.A. 14A:17-1 *et seq.*). The professional service corporation is generally limited to providing the licensed professional service. (N.J.S.A. 14A:17-9.) The professionals remain personally liable for their negligent or wrongful acts, and those of persons under their direct control while rendering professional services on behalf of the corporation. Otherwise, the personal liability of the shareholders for corporate debts and obligations is limited in the same manner as in a business corporation.

1.11 OFFICE OF THE DIVISION OF REVENUE AND ENTERPRISE SERVICES; FEES

Historically, filings relating to business entities, as well as under the Uniform Commercial Code, were made in the Office of the Secretary of State in New Jersey. By executive order issued by the governor in 1998, the Division of Commercial Recording was transferred from the Secretary of State's Office to the Office of Commercial Recording in the Division of Revenue in the Department of the Treasury. This office is now called the Division of Revenue and Enterprise Services. However, the various statutes referred to in this volume, as well as others pertinent to a business law practice, such as the Uniform Commercial Code, continue to provide for filings to be made in the Secretary of State's Office.

The Legislature, therefore, adopted a statute in 2000 that effectively states that all such references to the Secretary of State's Office shall be deemed to refer to the Office of Commercial Recording, wherever it may be administratively located. Currently, this is the Department of the Treasury's Division of Revenue and Enterprise Services. This legislation was codified at N.J.S.A. 52:16-8.1 and is retroactive to May 29, 1998. Contact information for the Division of Revenue and Enterprise Services is published in the *New Jersey Lawyers Diary,* and certain filings may be made on an expedited basis via telecopy at 609-984-6855. The Division of Revenue and Enterprise Services also maintains a website that may be accessed at: https://accessnet.state.nj.us, www.nj.gov/njbgs, or www.state.nj.us/treasury/revenue.

The filing fees applicable to business entities are codified at N.J.S.A. 14A:15-2 and 3 (corporations), N.J.S.A. 42:2B-65 (limited liability companies) and N.J.S.A. 42:2A-68 (limited partnerships and limited liability partnerships). These fees are also noted in the *New Jersey Lawyers Diary.*

PART

2

PARTNERSHIPS

2.1 FORMATION OF A GENERAL PARTNERSHIP

The New Jersey Uniform Partnership Law does not set forth a procedure by which a general partnership is formed, except for partnerships by estoppel. (N.J.S.A. 42:1A-16.) A written agreement is not necessary to form a partnership, which may be formed by oral agreement or may be inferred from the parties' conduct. Factors considered in determining whether a partnership exists include an agreement, sharing of profits and losses, control of the partnership's property and business, a sharing of management, and the parties conduct as third parties toward third persons. (*Kozlowski v. Kozlowski*, 164 N.J. Super. 162 (Ch. Div. 1978) *aff'd*, 80 N.J. 378 (1979).) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he or she is a partner in the business. This presumption can be rebutted by adequate evidence to the contrary. (N.J.S.A. 42:1-7(4); *Farris v. Farris Engineering Corp.*, 7 N.J. 487 (1951).)

A form of general partnership agreement is included as Form 2.1. The following discussion outlines the factors the attorney should discuss with the proposed partners prior to drafting the agreement.

The Partners

The initial consideration should be the names and addresses of each of the partners. Their rights and obligations with respect to the partnership and each other are discussed below.

The Partnership Name

The partners may choose any name that does not infringe on the rights of another in that name. If the partnership name includes the name of one or more partners (*e.g.*, Smith and Jones), the attorney should ascertain whether the partner's name can continue to be used in the partnership name following the death, retirement or withdrawal of the partner and, if so, for how long thereafter. The attorney should determine whether a business name statement or trade name certificate should be prepared and filed. (See Section 2.2, below.)

The Purpose of the Partnership

The partnership agreement usually specifies the purpose or objectives of the partnership. Consideration should be given as to how broadly or narrowly to define the partnership's purpose. It is often advisable to draft this clause as precisely as possible to place some parameters on the scope of the partnership's activities.

Capital Contributions

The attorney should determine the amount of capital to be contributed by each partner, the form in which the capital is to be contributed (*e.g.*, cash, real estate, other property) and when it is to be contributed. If the contributions are not to be proportionate to the partners' interests in the profit and losses of the partnership, care should be taken to comply with the applicable requirements of the Internal Revenue Code. The partners should also decide how they will deal with future needs for capital—who will decide who must contribute, and how the partnership will deal with a partner who fails to make a required contribution. If any partners will loan funds to the partnership, the amount and the terms of repayment should be specified.

The Internal Revenue Code requires the partnership to establish and maintain a capital account for each partner. The capital account is increased by the partner's capital contributions, share of profits and gain, and partnership liabilities assumed by the partner. The capital account is decreased by distributions of cash or property by the partnership to the partner, the partner's share of partnership losses, and liabilities of the partner assumed by the partnership.

Profits and Losses

The partners must establish the basis upon which they will share the profits and losses of the partnership. This may be set by a fixed percentage allocated to each partner, a formula based upon the partners' respective contributions to the partnership's profitability, or a determination by the partners or a committee of partners each year. The latter two methods are most frequently employed by professional service partnerships, such as medical, legal, accounting, and engineering firms, and are based upon hours worked, business generated, and other criteria. Of course, it is preferable from the point of view of drafting an agreement that will not lead to disputes, to use objective rather than subjective criteria.

It is not necessary that profits and losses each be allocated among or between the partners in the same percentages; however, care must be taken regarding the income tax implications of such allocations.

Management

It is crucial to establish at the outset of the partnership relationship the method by which the partnership's business will be managed, the scope of each partner's authority and the mechanism by which disputes regarding management will be resolved. There are a variety of ways to deal with this, but the first objective should be to satisfy the desires of the partners. The facts of the specific partnership will dictate, to a certain extent, what is and is not feasible. For example, a two-person partnership may decide virtually all matters after consultation between the partners, but this is not practical for a partnership with dozens of partners. In larger partnerships, the partners often appoint a management committee and/or a managing partner, with specific authority delegated to each. For drafting purposes, the limits of such authority are frequently defined by actions the manager(s) may not take without the consent of the full partnership or a larger group of partners. Even in smaller partnerships, it is advisable to establish limits on an individual partner's powers because of each partner's apparent authority to bind the partnership. (N.J.S.A. 42:1A-9.)

Dispute resolution is a difficult issue for any business entity, including general partnerships. Depending upon the number of partners and the vote allocated to each of them (for example, one partner may be granted extra votes or some other power to break ties), the partnership may or may not be potentially subject to deadlock. If the potential for deadlock exists, the possible solutions include arbitration or some other alternative dispute resolution mechanism, appointment of a third party to break the tie, or termination of the partnership. Because of the typical relationship between parties in a general partnership and the relative ease with which a general partnership can be dissolved, very often termination is the result of a deadlocked general partnership. Depending upon the nature of the partnership's business and its assets, this may, in turn, lead to arguments over disposition of the partnership assets. This subject is discussed below in the context of corporations, but is applicable to partnerships as well. (See Section 4.7, below.)

Employment by the Partnership

If one or more of the partners is to be employed by the partnership, the agreement should set forth the terms that govern this employment. These provisions can range from a relatively simple statement that each partner will devote his or her full time and effort to the business of the partnership up to a full employment agreement. Again, the facts of the particular partnership and the attorney's judgment will come to bear on this issue.

Death, Disability, Retirement, Voluntary and Involuntary Withdrawal

The partnership agreement should deal with the eventuality of a partner's death, disability, retirement, and voluntary or involuntary withdrawal from the partnership. As a general rule,

each of these events triggers a dissolution of the partnership, but this is only the beginning of the termination process. In a two-person partnership, the occurrence of one of these events may have a much different impact upon the 'surviving' partner than in the case of larger partnerships, where the withdrawal of one partner often leads to the partnership being reconstituted immediately as a new partnership among the remaining partners. The agreement should address the payment to be made to the departing partner (or such partner's estate), and these issues are also discussed in Section 4.7 of this publication. Furthermore, the conditions under which a partner may be compelled to withdraw involuntarily (*i.e.,* be expelled or fired) should be specified.

Competition with Partnership

The agreement should address the ability of a partner to compete with the partnership or engage in the same business outside of the partnership. To cite two examples of provisions often seen in partnership agreements, partners in a professional service partnership, such as a law firm, may be prohibited from engaging in the profession outside of the partnership, and all revenue earned by the partner from engaging in the profession outside of the partnership, is partnership revenue. In real estate partnerships, on the other hand, each partner is generally free to make other real estate investments (except perhaps within a specified radius of the partnership's property) without including the other partners in the investment or even providing them the opportunity to participate in the investment. In any event, the agreement should spell out the partners' understanding on this issue.

Additional Partners

This agreement should provide for the admission of additional partners to the partnership. Except in large partnerships, this usually requires the unanimous consent of the existing partners. The newly admitted partner is almost always obligated to become a party to the partnership agreement.

2.2 TRADE NAME CERTIFICATE

If a general partnership uses the designation 'and company' or '& Co.,' or uses any other name other than the real names of the partners as part of its name, the partnership must file a certificate in the Office of the Clerk of the county or counties in which it conducts business. (See Section 1.3 and Form 1.2.)

2.3 FORMATION OF LIMITED PARTNERSHIPS

New Jersey limited partnerships are governed by the Uniform Limited Partnership Law (N.J.S.A. 42:2A-1). To the extent issues not addressed by this statute are addressed by Uniform Partnership Law, the latter will apply. Similarly, the following discussion addresses only the differences between limited and general partnerships. To a great extent, the provisions of the statutes can be modified by agreement among the partners.

A limited partnership is formed by two or more persons filing a certificate of limited partnership with the Division of Revenue and Enterprise Services. The requirements of this certificate are set forth in Section 2.4, below, and a sample form is included as Form 2.2. While the statute does not mandate an agreement, it is desirable that the partners enter into one to define their respective rights and obligations. It is rare that a limited partnership is not governed by some type of agreement, oral or written.

Limited Partnership Name

The name of each limited partnership must include the words 'limited partnership' or the abbreviation 'L.P.' The name may not contain the name of a limited partner unless it is also the name of a general partner or the business of the limited partnership had been carried on under that name prior to the admission of the limited partner. The name may not contain any word or phrase indicating or implying that it is organized for a purpose other than that stated in its certificate of limited partnership. The name must be distinguishable upon the records of the Division of Revenue and Enterprise Services from other New Jersey and foreign limited partnerships, New Jersey and foreign corporations, and any names currently reserved for those purposes. (N.J.S.A. 42:2A-6.)

Alternate Limited Partnership Name

If a limited partnership is conducting business in New Jersey using a name other than its actual name, without also using its actual name, it must register the alternate name by filing an original and one copy of a certificate of registration of alternate name with the Division of Revenue and Enterprise Services. The certificate must include the name, jurisdiction and date of establishment of the limited partnership, the alternate name, a brief statement of the character or nature of the activities to be conducted using the alternate name, a statement that the limited partnership intends to use the alternate name in New Jersey, and a statement that the limited partnership has either not previously used the alternate name in New Jersey or, if it has, the month and year in which it commenced such use. A certificate of alternate name for a limited partnership is included as Form 2.3.

An alternate name registration is effective for five years, and may be renewed for successive five-year periods. The failure to file a certificate of registration (or renewal) of an alternate name does not impair the validity of any contract or act of the limited partnership, and does not prevent the limited partnership from defending any action or proceeding in a New Jersey court, but the limited partnership may not maintain any action or proceeding in a New Jersey court arising out of a contract or act in which it used the alternate name until it has filed the requisite certificate.

Reservation of Name

Any person intending to organize a limited partnership or register a foreign limited partnership in New Jersey, or any existing domestic or foreign limited partnership, may reserve the right to use a partnership name. This is done by filing with the Division of Revenue and Enterprise Services an application for not more than three names. If the Division of Revenue and Enterprise Services finds the name is available, the name will be reserved for 120 days from the date of the application. The name reservation is transferable. A form of application to reserve the name of a limited partnership is included as Form 2.4.

Registered Agent and Office

Every domestic and foreign limited partnership must maintain a registered office in New Jersey. This office need not be a place of business maintained by the partnership in New Jersey. The limited partnership must also designate a registered agent whose business office is identical with the registered office. The registered agent is the agent of the limited partnership for service of process, and must be an individual resident of New Jersey, a New Jersey corporation, or a foreign corporation authorized to do business in New Jersey. The initial registered agent and office are designated in the certificate of limited partnership, and are amended by a certificate of amendment. (See N.J.S.A. 42:2A-8 & 8.1.)

Foreign Qualifications

If the limited partnership will be conducting business in states other than New Jersey, it may be necessary under the laws of such states to qualify the limited partnership to do business in those states. The attorney should review this issue with the general partner to ascertain the facts necessary to decide whether qualification is necessary. While the laws of each state vary, it can be assumed generally that maintaining an office or owning property in another state will require qualification in that state. If necessary, the attorney should consult with an attorney admitted to practice in that state, either to determine whether qualification is necessary or to handle the qualification process. There are also several corporate service companies that will handle the qualification process in other states for attorneys. Note that in certain states, if the limited partnership is not qualified to do business at the time it enters into a contract or performs an act on which it later needs to bring suit in that state, the limited partnership may be barred from instituting a suit and cannot cure the defect retroactively by qualifying at the time of the lawsuit.

A form of limited partnership agreement is included as Form 2.5.

2.4 CERTIFICATE OF LIMITED PARTNERSHIP

A limited partnership is formed upon the filing of the certificate of limited partnership. It is effective upon filing with the Division of Revenue and Enterprise Services of the Department of Treasury or any later date specified in the certificate up to 30 days after the date of filing. (N.J.S.A. 42:2A-15.)

The certificate of limited partnership must be executed by the person or persons named as the general partner or partners. It must set forth the following information:

1. The name of the limited partnership
2. The general character of its business
3. The address of the original registered office and the name and address of the original registered agent
4. The name and business address or residence of each general partner
5. The aggregate amount of cash and a description and statement of the agreed value of the other property or services contributed by all partners in which all partners have agreed to contribute in the future
6. The time at, or events on the happening of, which any additional contributions agreed to be made by any partner are to be made
7. Any power of a limited partner to grant to an assignee of any part of his or her partnership interest the right to become a limited partner, and the terms and conditions of any such power
8. If agreed upon, the time at which or the events on the happening of which a partner may terminate his or her membership in the limited partnership and the amount of, or the method of determining, the distribution to which he or she may be entitled with respect to his or her partnership interest
9. Any right of a partner to receive distributions of property, including cash, from a limited partnership
10. Any right of a partner to receive or of a general partner to make, distributions that include a return of all or any part of the partner's contribution
11. Any time at which or events upon happening of which the limited partnership is to be dissolved and its affairs wound up

12. Any right of the remaining general partners to continue the business on the happening of an event of withdrawal by a general partner

13. The address of the principal office of the limited partnership, which need not be in New Jersey

14. Any other matters the partners wish to include in the certificate

15. An original and a copy of the certificate of limited partnership should be submitted to the Division of Revenue and Enterprise Services for filing, along with a return envelope (The copy will be marked 'filed,' with the date of filing, and returned to the filing person for his or her records. (N.J.S.A. 42:2A-21.) The filing fee for the certificate of limited partnership is $125.)

2.5 OPERATIONS

In addition to any requirements in the agreement of limited partnership, the Uniform Limited Partnership Act imposes certain obligations on a limited partnership. The limited partnership must file annually with the Division of Revenue and Enterprise Services an annual report setting forth the name of the limited partnership and the name and address of the registered agent of the partnership in New Jersey. If the report is not filed for two consecutive years, the Division of Revenue and Enterprise Services' Office will transfer the partnership to an inactive list after written demand to the limited partnership. The partnership may return to active status by paying double the annual report fee for each year the annual report was not filed and filing a current annual report. While on the inactive list, the name of the partnership becomes available for any other partnership or corporation and, if another entity takes the name, the limited partnership must amend its certificate of limited partnership to change its name in order to return to the active list. (N.J.S.A. 42:2A-69.) The filing fee for the annual report is $50.

Records of the Limited Partnership

The Uniform Limited Partnership Act requires every limited partnership to maintain at its principal office:

1. A current list of the name and last known business or home address of each partner, and the rights of each partner to vote

2. A copy of the certificate of limited partnership and any amendments thereto, along with executed copies of any powers of attorney pursuant to which any certificate was executed

3. Copies of the limited partnership's federal, state and local income tax returns and reports, if any, for the three most recent fiscal years

4. Copies of any currently effective written partnership agreements
5. Copies of any financial statements of the limited partnership for the three most recent fiscal years (N.J.S.A. 42:2A-9)

A limited partner has the right to inspect and copy any of the foregoing records. (N.J.S.A. 42:2A-29(a).) A limited partner also has the right to obtain from the general partners information concerning the business and financial condition of the limited partnership. Additionally, a limited partner has the right to receive copies of the limited partnership's federal, state and local income tax returns and other information concerning the affairs of the limited partnership as is just and reasonable. (N.J.S.A. 42:2A-29.)

Meetings

The Uniform Limited Partnership Act does not require meetings of the limited partners to be held. If a meeting is to be held, and provisions regarding notice, record dates, and voting are not established by the limited partnership agreement, the statute sets forth the applicable requirements. Written notice of the time, place and purpose of every meeting of limited partners must be given at least 10 and not more than 60 days before the date of the meeting. (N.J.S.A. 42:2A-29.1.) Notice of a meeting need not be given to any limited partner who signs a waiver of notice before or after the meeting. (N.J.S.A. 42:2A-29.2.) The general partner has the right to establish the record date for the meeting. (N.J.S.A. 42:2A-29.4.) Action may be taken by the limited partners either at a meeting or by the written consent of a sufficient number of limited partners whose votes would have been necessary to take the action at a meeting. If action is taken without a meeting, all limited partners are to receive a written report of the actions taken. (N.J.S.A. 42:2A-29.3.)

Amendment to Certificate of Limited Partnership

1. The certificate of limited partnership is to be amended in the event of the following:
2. There is a change in the name of the partnership
3. There is a decrease in the amount of the contribution of the partners
4. There is the admission of a new general partner or an event of withdrawal of a general partner
5. There is a change in the character of the business of the partnership
6. There is a continuation of the partnership business under N.J.S.A. 42:2A-51, after an event of withdrawal of a general partner
7. There is a change in the time stated in the certificate for the dissolution of the partnership or for the return of a contribution

8. There is a time fixed for dissolution of the partnership or for the return of a contribution, when no time had previously been specified in the certificate
9. There is a false or erroneous statement in the certificate or the facts described in the certificate have changed making the certificate inaccurate (N.J.S.A. 42:2A-17)

The certificate is amended by a certificate of amendment filed in the Division of Revenue and Enterprise Services' Office setting forth the name of the limited partnership, the date of filing of the original certificate, the amendment or amendments to the certificate, and the effective date, which shall be either upon filing or within 30 days thereafter (N.J.S.A. 42:2A-16) (The filing fee for a certificate of amendment to the certificate of limited partnership is $75.)

2.6 LIMITED LIABILITY PARTNERSHIPS

A limited liability partnership is formed by filing an application with the Division of Revenue and Enterprise Services of the Department of Treasury. The application must include the name of the LLP, the address of its principal office, the address of its registered office, the name of its registered agent, a brief statement of the LLP's business, any other matters that the LLP wishes to include, and a statement that the partnership is applying for status as an LLP. (N.J.S.A. 42:1A-44.) The application must be signed either by a majority in interest of the partners or by one or more partners authorized to do so. (N.J.S.A. 42:1A-44(c).) The filing fee is $125. The application is effective upon filing and paying the fee. (N.J.S.A. 42:1A-47(e).) The name of the LLP must include the words 'limited liability partnership' or the abbreviation 'L.L.P.' or 'LLP' as part of its name. (N.J.S.A. 42:1A-45.) A form of LLP application is included as Form 1.4.

A law firm may practice in New Jersey as an LLP by complying with the insurance and notice requirements of Court Rule 1:21-1C.

Similar to a limited partnership, an LLP must file an annual report with the Department of the Treasury, pay an annual fee of $50 (N.J.S.A. 42:1A-49), and maintain a registered agent and office for service of process. (N.J.S.A. 42:1A-47.)

Except as noted in this section and in Section 1.6 of this publication, an LLP is governed, operates, and is taxed in the same manner as a general partnership.

PART

3

LIMITED LIABILITY COMPANIES

In Jan. 1994, New Jersey authorized the formation of limited liability companies pursuant to N.J.S.A. 42:2B-1 *et seq.* A new limited liability company act was adopted on Sept. 19, 2012, as N.J.S.A. 42:2C-1 *et seq.*, and is effective for all limited liability companies formed beginning March 18, 2013. For limited liability companies formed prior to that date, the former statute, N.J.S.A. 42:2B-1, *et seq.*, remained in effect until March 1, 2014, at which time the new act applied to all LLCs. Limited liability companies formed prior to March 18, 2013, may elect to have the new act apply to them before March 1, 2014, through their operating agreement. All references below refer to the new limited liability company act.

3.1 NAMES AND ALTERNATE NAMES

The name of a limited liability company must contain the words 'limited liability company' or the abbreviations 'L.L.C.' or 'LLC' and must be distinguishable from the name of any domestic or foreign corporation, limited partnership, business trust or limited liability company either being used or reserved in New Jersey, unless the holder of the name consents. (N.J.S.A. 42:2C-8)

A name may be reserved by filing with the Division of Revenue and Enterprise Services an original and one copy of an application that lists the name to be reserved and the name and address of the applicant. If the Division of Revenue and Enterprise Services finds the name to be available, a certificate of reservation will be issued to the applicant. The reservation is transferable and renewable. (N.J.S.A. 42:2C-10.) A form of application for name reservation for an LLC is included as Form 3.1. The filing fee for this application is $50.

An LLC may not conduct business under an alternate name unless it registers the alternate name or also uses its actual name. (N.J.S.A. 42:2C-9) The alternate name need not be distinguishable from any current or reserved name. To register an alternate name, the LLC must file an original and a copy of registration of alternate name with the Division of Revenue and Enterprise Services. The certificate must state:

1. The name, jurisdiction and state of establishment of the LLC
2. The alternate name
3. A brief statement of the character or nature of the activities to be conducted using the alternate name
4. That the LLC intends to use the name in New Jersey
5. That the LLC has not previously used the name or, if it has, the date the LLC commenced use (N.J.S.A. 42:2C-9)

The registration is effective for five years, and is renewable. (N.J.S.A. 42:2B-4(c)) A form of application for registration of alternate name is included as Form 3.2. The filing fee for the application is $50.

3.2 CERTIFICATE OF FORMATION

A limited liability company is formed by filing a certificate of formation with the Division of Revenue and Enterprise Services of the Department of Treasury. (N.J.S.A. 42:2C-18) The certificate must include:

1. The name of the LLC
2. The name of the registered agent and the street and mailing address of the registered office for service of process (as required by N.J.S.A. 42:2C-14)
3. Any other matters the members decide to include

The certificate must be signed by one or more authorized persons, who need not be a member of the LLC, and may be an attorney for the LLC. (N.J.S.A. 42:2C-18) An LLC may have one or more members. While an LLC is typically formed upon filing the certificate in the Division of Revenue and Enterprise Services' office, the certificate may specify an effective date that is later than the filing date. (N.J.S.A. 42:2C-19(d)) A form of certificate of formation is included as Form 3.3.

A certificate of formation is amended by filing in the Office of the Division of Revenue and Enterprise Services a certificate of amendment that sets forth the name of the LLC and the terms of the amendment. The amendment is effective upon filing, or a later date not more than 30 days after filing, as specified in the amendment. (N.J.S.A. 42:2C-19)

A law firm may practice in New Jersey as an LLC by complying with the insurance and notice requirements of Court Rule 1:21-1B.

The LLC should obtain a federal identification number from the Internal Revenue Service by filing Form SS-4. This can be done online, at www.irs.gov.

3.3 OPERATING AGREEMENT

New Jersey does not mandate an operating agreement to govern the management and affairs of the LLC, although such an agreement is advisable in many cases. If the members of the LLC determine to adopt an operating agreement, the LLC Act no longer requires that the agreement be in writing. (*Cf.* N.J.S.A. 42:2B-2 (the prior LLC Act, repealed)) In the absence of an operating agreement, the LLC Act establishes the terms by which the LLC will be governed. These terms can be varied by the agreement in most cases, and it is the policy of the LLC Act to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements. Of particular concern should be the LLC Act's default provision that members vote on a *per capita* basis, not in proportion to the member's capital contribution or percentage interest

in profits. (N.J.S.A. 42:2C-38(2)) Similarly, the LLC Act provides for distributions to be made to the members in equal shares. (N.J.S.A. 42:2C-34(a)) Many LLCs will want to vary this in their operating agreement.

The attorney for the LLC must be aware of the provisions of the LLC Act to know what will govern the LLC if not dealt with in the operating agreement. Some provisions that should be considered in drafting an operating agreement include:

1. Capital contributions by members (N.J.S.A 42:2C-31-33)
2. Default provisions regarding a member who fails to make a required capital contribution (N.J.S.A. 42:2C-33)
3. Allocation of profits and losses (N.J.S.A. 42:2C-34)
4. Allocation of distributions (N.J.S.A. 42:2C-34)
5. Distributions upon dissolution of the LLC
6. Management of the LLC
7. Transferability of interests in the LLC
8. Voting rights (N.J.S.A. 42:2C-37)
9. Admission of new members
10. Dissolution

The issues raised in Section 2.1 of this publication, with respect to general partnerships, will generally require the attorney's consideration when preparing an LLC operating agreement as well. Similarly, the buy-sell concepts addressed in Section 4.7 for corporations apply to LLCs as well. However, the tax consequences for an LLC may be materially different than those for a corporation. A form of operating agreement is included as Form 3.4.

PART

4

CORPORATIONS

4.1 CORPORATE NAME

The name of a New Jersey corporation (or of a foreign corporation authorized to transact business in New Jersey) is subject to certain requirements and restrictions. The name must include the word 'corporation,' 'company,' 'incorporated,' an abbreviation of one of those words, or 'Ltd.' It may not contain a word, phrase or abbreviation that indicates or implies the corporation is organized for purposes other than those permitted by its certificate of incorporation. The name must be distinguishable from the names of other New Jersey corporations and foreign corporations qualified to do business in New Jersey, as well as from current name reservations. (N.J.S.A 14A:2-2(1)) Professional corporations are subject to additional requirements concerning their names. (N.J.S.A. 14A:17-14)

A corporate name may be reserved by filing an application listing up to three potential names. The Division of Revenue and Enterprise Services will issue a certificate of reservation of corporate name for the first available name. The reservation is effective for 120 days, and may be renewed an unlimited number of times. (N.J.S.A. 14A:2-3) The filing fee for this application is $50. A form of application for reservation of corporate name is included as Form 4.1.

The attorney should keep in mind that, although acceptable to the Division of Revenue and Enterprise Services, a corporate name could potentially violate another person or entity's federal, state or common law trademark or service mark rights. Thus, it is often advisable to conduct a search of the applicable trademark offices to determine whether a proposed name infringes upon the rights of another.

If a corporation transacts business in New Jersey under a name other than its corporate name without also using the actual corporate name, the alternate name must be registered as such with the Division of Revenue and Enterprise Services. This is accomplished by filing a certificate that sets forth:

1. The name of the corporation
2. The corporation's date and jurisdiction of incorporation
3. The alternate name
4. A description of the business to be conducted under the alternate name
5. A statement that the corporation intends to use the alternate name in New Jersey
6. A statement that the corporation has either not previously used the name in New Jersey or, if it has, the month and year of first use

An alternate name registration is effective for five years, and may be renewed. A form application for registration of alternate name is included as Form 4.2. The filing fee for this certificate is $50.

4.2 CERTIFICATE OF INCORPORATION

A corporation is formed in New Jersey by filing with the Division of Revenue and Enterprise Services a certificate of incorporation that complies with the New Jersey Business Corporation Act. The certificate is effective upon filing, although the certificate may, by its terms, delay effectiveness for up to 90 days after the filing date. (N.J.S.A. 14A:2-7(2))

The certificate of incorporation must include the following:

1. The name of the corporation
2. The purpose or purposes for which the corporation is formed (This may be specific or may simply be 'any lawful purpose.' The latter is more frequently used.)
3. The aggregate number of shares authorized to be issued, if the shares are to be divided into classes or series, the designation of each such class or series; the number of shares in each; the rights, preferences and limits of each; and any right of the board of directors to change any such designation, number, right, preference or limitation
4. The name of the registered agent and address of the registered office, which must be in New Jersey
5. The number of persons constituting the initial board of directors, and the names and addresses of the initial directors
6. The names and addresses of the incorporators
7. The duration of the corporation, if other than perpetual
8. The effective date of the certificate of incorporation, if other than the date of filing
9. The signature of the incorporator

The following items need only be included if desired, but must be in the certificate to be applicable:

1. Limiting or eliminating personal liability of officers and directors to the corporation or its shareholders for damages for breach of any duty owed to the corporation or its shareholders, other than breaches of duty based on an act or omission:
   (a) In breach of such officer's/director's duty of loyalty to the corporation or its shareholders;
   (b) Not in good faith or involving a knowing violation of law; or
   (c) Resulting in the receipt by such officer/director of an improper personal benefit (N.J.S.A 14A:2-7)
2. Giving shareholders sole power to make, alter and repeal bylaws (N.J.S.A. 14A:2-9(1))

3. Requiring authorization of indemnification by means other than those listed in N.J.S.A. 14A:3-5(5)(a)-(c)

4. Limiting the ability of shareholders to act by written consent of shareholders entitled to cast the minimum number of votes necessary to authorize an action at a meeting at which all shareholders entitled to vote were present and voting (N.J.S.A. 14A:5-6(2)(a))

5. Providing for a quorum at shareholder meetings of other than a majority of the votes present, in person or by proxy, at the meeting (N.J.S.A. 14A:5-9(1))

6. Providing for a number of votes per share other than one vote per share (N.J.S.A. 14A:5-10)

7. Providing for a greater plurality to authorize action by shareholder vote than a majority of the votes cast by holders entitled to vote thereon (N.J.S.A. 14A:5-11(1), 5-12(1))

8. Providing for voting as a class or series to authorize any or particular actions, and proportion of vote required, if other than a majority of the votes cast by the holders of shares of such class or series entitled to vote thereon (N.J.S.A. 14A:5-11(2))

9. If voting as a class of series is required by the New Jersey Business Corporation Act, providing for a greater vote than a majority of the votes cast by the holders of such shares of each such class or series entitled to vote thereon (N.J.S.A. 14A:5-11(3))

10. Restricting the board in its management of the business of the corporation or transfer to one or more persons (including natural persons and entities) named in the certificate of incorporation or to be selected from time to time by shareholders of all of any part of such management otherwise within the authority of the board (must be in initial certificate of incorporation or an amendment thereto authorized by the holders of record of all outstanding shares (voting and non-voting)). (N.J.S.A. 14A:5-21(2)) (Any such provision must also be noted conspicuously on the face of each certificate for shares issued by the corporation.) (N.J.S.A. 14A:5-21(6))

11. Voting rights of bondholders and manner of exercise (N.J.S.A. 14A:5-23)

12. Cumulative voting by shareholders in elections of directors (N.J.S.A. 14A:5-24)

13. Preemptive rights for shareholders (N.J.S.A. 14A:5-29(1))

14. Terms with respect to preemptive rights other than those set forth in N.J.S.A. 14A:5-29(3)

15. Requirement that directors must be U.S. citizens, residents of New Jersey or shareholders of the corporation (N.J.S.A. 14A:6-1(1))

16. Classification of directors (N.J.S.A. 14A:6-4)
    (a) No class of directors may hold office for a term of less than one year or more than five years.
    (b) The term of at least one class of directors must expire each year.

17. Filling of any board vacancies or newly created director seats by other than the affirmative vote of directors holding a majority of votes of the remaining directors (N.J.S.A. 14A:6-5(1))

18. Filling of vacancies caused by resignation by other than affirmative vote of directors holding a majority of the votes of all directors then in office, including the director(s) who resigned (N.J.S.A. 14A:6-5(2))

19. Limiting the ability to remove directors without cause (N.J.S.A. 14A:6-6(1))

20. Restrictions on removal of directors other than those listed in N.J.S.A. 14A:6-6(2).

21. Providing for more than one vote per director for: 1) directors elected by the holders of shares of a particular class or series; or 2) directors so designated by shareholder vote at an annual or special meeting (N.J.S.A. 14A:6-7.1) (It must also specify either the number of votes those directors shall have or that the shareholders electing those directors may specify the number of votes per director. It also must specify if the director elected or appointed to fill a directorship entitled to more than one vote may have more than one vote.)

22. Authority of board (without shareholder approval) to amend certificate of incorporation to divide shares into classes and into series within classes and determine the relative rights, preferences and limitations of the shares of any class or series (It must also specify any limitation on authority of the board to increase or decrease the number of shares in any class or series to determine relative rights and preferences that are prior or subordinate to, or equal with, the shares of any other class or series.) (N.J.S.A. 14A:7-2(2))

23. Restriction on consideration for which shares may be issued (N.J.S.A. 14A:7-4(1))

24. Giving shareholders sole authority to fix the consideration to be received for shares (N.J.S.A. 14A:7-4(2))

25. Restrictions on creation or issuance of rights or options to purchase shares (N.J.S.A. 14A:7-7(1))

26. Restrictions on creation or issuance of 'poison pills' (N.J.S.A. 14A:7-7(3))

27. Par value of shares (if not specified all shares will have no par value) (N.J.S.A. 14A:7-8.1)

28. Restrictions on ability to issue bonds convertible into shares (N.J.S.A. 14A:7-9(2))

29. Restrictions on issuance of fractional shares (N.J.S.A. 14A:7-13)

30. Restrictions on payment of dividends (N.J.S.A. 14A:7-15(1))

31. Restrictions on payment of dividends by issuance of preferred shares (N.J.S.A. 14A:7-15(5))

32. Requirement for shareholder authorization to effect share dividend or a share split or reverse split (N.J.S.A. 14A:7-15.1(2))

33. Restrictions on ability of corporation to acquire its own shares (N.J.S.A. 14A:7-16(5)(a))

34. Prohibition on reissuance of reacquired shares (N.J.S.A. 14A:7-18(1))

35. Requirement for shareholder approval of merger of a 90 percent or more subsidiary of the corporation into the corporation (N.J.S.A. 14A:10-5.1(6))

36. Requirement for shareholder approval of sale/disposition of all/substantially all assets of the corporation in the usual and regular course of its business or the mortgage or pledge of any of its assets, whether or not in the usual or regular course of its business. (N.J.S.A. 14A:10-10)

37. Application of New Jersey Shareholder Protection Act (NJSPA) (N.J.S.A. 14A:10A-1 *et seq.*) to:

(a) Business combinations of resident domestic corporation with an interested stockholder when the resident domestic corporation did not have a class of voting stock registered or traded on a national securities exchange or registered with the SEC pursuant to the Securities Exchange Act §12(g) on that interested shareholder's acquisition date; or

(b) Business combinations with an interested shareholder who was an interested shareholder on the effective date of the NJSPA (1/23/86) and who did not thereafter increase such stockholder's proportion of voting power of the resident domestic corporation above what it was on that effective date (N.J.S.A. 14A:10A-6(a), (b))

38. Giving any shareholder, any specified number of shareholders or the holders of any specified number or proportion of shares the power to affect a dissolution of the corporation at will or upon the occurrence of a specified event. (N.J.S.A. 14A:12-5(1)) (The existence of such a provision must be noted conspicuously on the face or back of each certificate for shares issued by the corporation) (N.J.S.A. 14A:12-5(3))

A form of certificate of incorporation is included as Form 4.3.

4.3 ORGANIZATIONAL MEETING

The corporation is required to hold an organizational meeting of the directors named in the certificate of incorporation. (N.J.S.A. 14A:2-8) The directors may act by unanimous consent in lieu of an actual meeting. (N.J.S.A. 14A:6-7.1) The following items should be addressed in this meeting or consent:

1. Approval of bylaws

2. Approval of corporate seal

3. Approval of form of stock certificate(s)

4. Authorize issuance of shares to initial shareholders for specified consideration.

5. Elect officers

6. Elect 'S' status, if desired

7. Authorize officers to do the things necessary to operate the business, such as leasing space, hiring employees, opening bank accounts and the like

A form of consent in lieu of an organizational meeting is attached as Form 4.4.

4.4 BYLAWS

The initial bylaws are adopted by the board of directors at its organizational meeting. They may be amended by the board unless that power is reserved for the shareholders in the certificate of incorporation. The bylaws should address the following matters:

1. Annual shareholder meetings:
   (a) Place or manner of designating place
   (b) Date or manner of designating date
   (c) Maximum/minimum notice of meetings (must not be less than 10 days or more than 60 days) (N.J.S.A. 14A:5-4(1)) (Extraordinary transactions (*e.g.*, mergers) may have different notice requirements provided by statute.)
2. Special shareholder meetings:
   (a) Who may call a meeting
   (b) Maximum/minimum notice (must not be less than 10 days or more than 60 days) (N.J.S.A. 14A:5-4(1))
3. Action by shareholders without meeting:
   (a) Minimum number of votes required
   (b) Written consent for annual director elections must be by all shareholders entitled to vote thereon. (N.J.S.A. 14A:5-6(2))
   (c) Written consent for transactions covered by N.J.S.A. 14A:10-1 *et seq.* must be by all shareholders entitled to vote thereon. If there are any shareholders not entitled to vote thereon, they must receive the advance notice required by N.J.S.A. 14A:5-6(2)(b). (N.J.S.A. 14a:5-6(1))
4. Method of voting by shareholders:
   (a) When written ballot is required
   (b) Requirements for voting inspectors
5. Conduct of shareholder meeting:
   (a) Who presides at the meeting
   (b) Who acts as secretary

(c) Order of meeting

(d) Number of votes required for quorum

(e) Procedure for adjournment

6. Record date for shareholder meetings:

(a) How determined

(b) Maximum/minimum record date

(c) Effect of adjournment on record date

7. Directors:

(a) Number

(i) Maximum/minimum number

(ii) How number may be changed

(iii) Permissible to have only one director regardless of number of shareholders (N.J.S.A. 14A:6-2)

(b) Classes of directors/directors elected by different constituencies

(c) Term of office

8. Regular director meetings:

(a) Any fixed meeting dates (*e.g.*, immediately after annual shareholder meeting)

(b) Place/date or manner of determining

(c) Notice requirements

9. Special director meetings:

(a) Who may call a meeting

(b) Notice requirements

10. Number of votes required for quorum

11. Number of votes required to act

12. Action without a meeting (such action must be by unanimous consent) (N.J.S.A. 14A:6-7.1(5))

13. Attendance by conference call/video conference

14. Board committees:

(a) How created/abolished

(b) Procedure for removing members from committee

15. Procedure for filling board vacancies/newly created seats

16. Officers:

(a) Procedure for election

(b) Requirements for officers (*e.g.*, whether they must also be shareholders or directors)

(c) Types of officers:

(i) Must have president, secretary and treasurer (N.J.S.A. 14A:6-15(1))

(ii) May also have chairperson of board, vice presidents and any other types of officers

(iii) Any person may hold more than one office simultaneously, but a person cannot attest to such person's own signature, if attestation is required. (N.J.S.A. 14A:6-15(2))

(d) Duties/powers of each office:

(i) May want to specify which officers can execute certain types of documents

(ii) Should have catch-all provision (*e.g.*, "and such other duties and powers as are incident to the office or as are assigned by the Board and/or the president").

(e) Term of office

(f) When may be removed from office/procedure for removal

17. Fiscal year-end of corporation

18. Share certificate requirements:

(a) Who must execute

(i) Must be executed by chair, vice chair, president or vice president (It is permissible to require only one signature.) (N.J.S.A. 14A:7-11(1))

(b) Required legends, if any

19. Dividend requirements

20. Amendment of bylaws:

(a) Who may amend (board/shareholders)

(b) Notice requirements

(c) Limitations on power to amend (*e.g.*, particular bylaws that must be amended only by shareholder vote)

21. Indemnification requirements:

(a) Making permissive indemnification mandatory (*e.g.*, "The corporation shall indemnify to the fullest extent permitted by N.J.S.A. 14A:3-5 and any successor provision thereto.")

(b) Procedure for obtaining/authorizing indemnification

(c) Authorization to obtain director and officer liability insurance

The bylaws may also contain any other provision relating to the corporation; the conduct of its affairs; and its shareholders, officers and directors not inconsistent with the certificate of incorporation, the New Jersey Business Corporation Act or any other state or federal law.

A form of bylaws is included as Form 4.5.

4.5 TAX MATTERS

The attorney should coordinate with the client's accountant the responsibility for compliance with applicable tax filings. Each corporation must apply for a federal identification number, which is done on IRS Form SS-4 (Form 1.3). If the corporation elects 'S' status under the Internal Revenue Code, Form 2553 must be filed. This can be accomplished online at www.irs.gov. This form is included as Form 4.6. In addition, the corresponding New Jersey form (CBT-2553) for an S election at the state level is included with Form 4.6.

4.6 SHARE CERTIFICATES

The New Jersey Business Corporation Act imposes certain requirements in the form of share certificates, which are as follows:

1. Must be stated on face of certificate:

(a) Name of corporation and that the corporation is organized under the laws of New Jersey

(b) Name of shareholder

(c) Number and class of shares and series (if any) the certificate represents (N.J.S.A. 14A:7-11(3))

2. Each certificate must have the signature (original or facsimile) of at least one corporate officer. (N.J.S.A. 14A:17-11(1))

3. If the corporation is authorized to issue more than one class of shares, each certificate must state (on face or back of certificate) either:

(a) The designations, relative rights, preferences and limitations of the shares of each class and series authorized to be issued, if determined, and the authority of the board, if any, to divide shares into classes and series and to determine and change the relative rights, preferences and limitations of any class or series; or

(b) That the corporation will furnish the information described in (a) to any shareholder, upon request and without charge (N.J.S.A. 14A:7-11(2))

4. Legends
   (a) Types of Legends:
      (i) Existence of shareholder/buy-sell/voting agreement
      (ii) Lack of registration under federal and state securities laws
      (iii) Restrictions on transfer of shares
      (iv) Legends required if certain provisions contained in certificate of incorporation
   (b) If legend appears on back of certificate, it should note the existence of the legend on the face of the certificate (*e.g.*, "See back of certificate for restrictions on transfer")

Stock certificates are generally available from legal stationary suppliers, and are generally purchased with a corporate seal, minute book and stock register. Each issuance, transfer and cancellation of a share certificate should be recorded in the stock register. A form of share certificate is included as Form 4.7.

4.7 BUY-SELL AGREEMENTS

There are two broad general categories that are most commonly dealt with in shareholders' or buy-sell agreements: management of the corporation and transfer of shares. A form of shareholders agreement is included here as Form 4.8 to provide specific ideas.

Concerning management, it is possible that the certificate of incorporation or bylaws will address specific matters, for example super majority voting or class voting. It is common to include in a shareholders agreement provisions relating to voting, for example that each shareholder agrees to vote to elect a particular slate of directors annually for as long as the agreement continues. Such agreements are enforceable in New Jersey pursuant to N.J.S.A. 14A:5-21(1). The shareholders agreement also may address the employment of the shareholders by the corporation and the terms of the employment, as well as including non-competition provisions.

The subject of transferring shares arises in a series of situations: upon the shareholder's death, disability, retirement, voluntary resignation from employment, involuntary termination of employment (firing) or bankruptcy, as well as the case where the shareholder simply wishes to sell the shares to a third party.

Taking the last of these first, New Jersey will generally not enforce absolute restrictions on the transfer of shares. (*Hill v. Warner, Berman & Spitz*, 197 N.J. Super. 152 (App. Div. 1984)) Thus, it is not acceptable for the shareholders to agree never to transfer their shares. On the other hand, the shareholders of a close corporation, who often are also employees of the corporation and generally perceive themselves as 'partners' with each other, do not want other shareholders

transferring those shares to anyone freely, making the transferee a new 'partner.' Thus, some limit is usually placed upon these transfers, often in the form of a right of first refusal. If a shareholder wishes to sell, he or she must first offer the shares to the corporation and/or the other shareholders at a certain price and on certain terms. The corporation and/or the other shareholders then decide whether to buy the shares. If they decline, the selling shareholder may then proceed to sell the shares to a third party, but not at a lower price or on better terms than offered to the corporation and/or shareholders. There are a number of variations possible on this theme, but this is a typical scenario.

In the case of the other triggering events (death, disability, etc.) the first decision is whether the event creates a mandatory sale or only an option to buy on the part of the corporation or other shareholder, or to sell on the part of the shareholder. In situations where the shareholders are active in the business, all parties generally wish someone who is no longer an employee to cease being a shareholder as well.

This, in turn, leads to three difficult questions: Who will be the buyer, at what price, and on what payment terms? There are tax issues associated with the first matter, and there are real-world financial concerns involved in price and payment terms. The forms included with this volume offer several suggestions, and the attorney is encouraged to consult other sources to explore the variety of alternatives on each of these issues.

4.8 FOREIGN QUALIFICATIONS

It will generally be necessary for a New Jersey corporation that owns or leases real property in another state to qualify to do business in that state. It will also be necessary in each state where the corporation 'transacts business,' as that or a similar term is defined in the state's corporate law. New Jersey attorneys will generally retain counsel in the other state or use a service such as Corporation Service Company (CSC) or CT Corporation System for foreign qualifications.

4.9 OPERATIONS

A New Jersey corporation must file an annual report with the Division of Revenue and Enterprise Services. (N.J.S.A. 14A:4-5(l)) The Division of Revenue and Enterprise Services sends the form to the registered agent several months before it is due. The Division of Revenue and Enterprise Services may revoke the certificate of incorporation of any corporation that fails to file for two or more years.

Transactions that are outside the ordinary course of the corporation's business, such as major asset sales or purchases, bank loans or the adoption of a pension or profit-sharing plan, should be approved by the board of directors, either at a meeting or by unanimous consent. Forms of waiver of notice and minutes of a regular directors meeting are included as Forms 4.9 and 4.10. Minutes of a special directors meeting are included as Form 4.11.

An annual meeting of the shareholders should be held to elect directors and take other necessary action. A consent of the shareholders may be signed by the shareholders in lieu of the meeting, but the consent must be signed by all shareholders to elect directors. A waiver of notice of annual shareholders meeting, minutes from an annual meeting of shareholders, minutes of an annual meeting of the board of directors and a unanimous consent in lieu of an annual shareholders meeting are included as Forms 4.12, 4.13, 4.14 and 4.15, respectively.

PART

5

DISSOLUTION OF A BUSINESS ENTITY

5.1 SOLE PROPRIETORSHIPS

Because a sole proprietorship is not a legal entity separate from the individual proprietor, it is not dissolved as such. Upon winding up such a business, the proprietor would want to complete or otherwise terminate contractual relationships; discharge any outstanding liabilities; file final payroll, sales tax and other tax returns; and dispose of any remaining business assets.

5.2 GENERAL PARTNERSHIPS

While a general partnership is a legal entity separate from its individual partners, there is no formal dissolution procedure, since there is no formal formation procedure. The Uniform Partnership Act defines dissolution of a partnership as a "change in the relation of the partners caused by any partners ceasing to be associated in the carrying on...of the business." (N.J.S.A. 42:1A-29) The partnership continues until the winding up of partnership affairs is completed. (N.J.S.A. 42:1A-30) Thus, when a partner withdraws from the partnership, the entity is dissolved but not terminated. The remaining partners are able to continue the partnership. If the partnership is to terminate, the partners should memorialize it in writing, file final tax returns, liquidate the partnership assets, conclude any contractual relationships with third parties, and make final distributions to the partners. If a trade name certificate was filed for the partnership, it should be dissolved by filing a certificate of dissolution with the applicable county clerk. A form is included as Form 5.1.

5.3 LIMITED PARTNERSHIPS

In addition to the items discussed above, a limited partnership must file a certificate of cancellation in the Division of Revenue and Enterprise Services to cancel its certificate of limited partnership. (N.J.S.A. 42:2A-18) The filing fee is $75. A form is included as Form 5.2.

5.4 LIMITED LIABILITY COMPANIES

The dissolution and termination of a limited liability company is similar to that of a limited partnership. A certificate of cancellation must be filed in the Division of Revenue and Enterprise Services. (N.J.S.A. 42:2C-49) The filing fee is $100. A form is included as Form 5.3.

5.5 CORPORATIONS

The dissolution of a corporation is a bit more involved. The statute sets forth eight ways by which

a corporation may be dissolved. (N.J.S.A. 14A:12-1(1)) Generally, a corporation that has been conducting business operations will dissolve pursuant to action by its directors and shareholders. A form of resolution by joint action of the directors and shareholders is included as Form 5.4, and a form of certificate of dissolution is included as Form 5.5. In order to file a certificate of dissolution of a corporation with the Division of Revenue and Enterprise Services, a tax clearance certificate issued by the New Jersey Division of Taxation must also be submitted. This is generally handled by the corporation's accountants, but the application form is included as Form 5.6. The filing fee for a certificate of dissolution is $75.

By filing a notice complying with N.J.S.A. 14A:12-12 three times in a newspaper of general circulation in the county where the corporation's registered office is located, a corporation in dissolution can bar the claims of its creditors after six months following the date of the first notice. (N.J.S.A. 14A:12-13)

PART

6

SALE OF A BUSINESS

6.1 ROLE OF COUNSEL

An initial concern to be addressed when serving as counsel in a sale of business transaction is the scope of the attorney's representation. It should be obvious that one may not represent both the seller and the buyer, but it may be less obvious that the selling shareholders (assuming a sale of a corporation's stock) have different interests in some situations, which may create a conflict of interest for an attorney representing all the selling shareholders. For example, a majority and minority shareholder may have different interests, a shareholder who is a guarantor of corporate debt may have a different interest than one who is not a guarantor, or one who has been active as an employee of the corporation being sold could be in a different position than one who was only a passive investor. This does not necessarily mean an attorney may not represent all of the selling shareholders, but it does call for an analysis and perhaps a waiver of the potential conflicts, if any are found.

The sale of a business generally requires an attorney to address a number of substantive areas of law beyond simply 'documenting the deal.' These may include contract, tax, securities, employment, labor, environmental, and intellectual property law, to name a few. This discussion will not address any of these areas in depth. In particular, because the tax consequences in a sale of business transaction can be significantly different in alternate structures, it is imperative the client be advised properly on tax issues, whether by counsel or an accountant. The attorney's engagement or retainer letter must clearly state if he or she is excluding tax advice from the scope of representation.

6.2 CONFIDENTIALITY AGREEMENTS

One of the initial concerns in a sale of business transaction is confidentiality. There is an inherent friction between a buyer's desire to know as much as possible about the business to be acquired and the seller's desire to maintain secrecy, especially prior to entering into a binding agreement. This is especially true when the buyer and seller are competitors. Thus, the buyer and seller typically enter into a confidentiality or non-disclosure agreement at the outset of discussions. A form of such an agreement is included as Form 6.1.

6.3 DUE DILIGENCE

The buyer's due diligence investigation of the seller's business is an ongoing process. In one sense or another, it continues from the initial contact through the time of closing. To oversimplify, there are three general categories of due diligence: business, financial and accounting, and legal. The attorney may have little or no involvement in the first two categories, but, of course, will be heavily involved in the third. There are not bright-line distinctions between the categories, and there is substantial overlap. For example, the workforce is a concern on all levels: business (quality), financial (costs,

payroll taxes) and legal (contracts, policies, discharge issues, etc.). Certainly, however, the attorney's focus will be on the legal issues.

The types of materials and documents counsel will review during due diligence include the seller's organizational and governing documents, third-party consent issues, governmental licenses and permits, material agreements to which the selling company is a party, environmental matters, pending and threatened litigation, judgments, tax liens, security interests, and intellectual property rights.

6.4 LETTER OF INTENT

There are advantages and disadvantages to using a letter of intent as part of the process of selling a business. The larger a transaction is, however, the more likely that a letter of intent will be used. The advantage is that the parties can focus directly on the business terms without the extensive language found in purchase agreements, to be sure there is a meeting of the minds on those terms before proceeding. A disadvantage, at least in the judgment of some attorneys, is the need for two rounds of negotiations, one to do the letter of intent and a second to do an agreement, with a corresponding increase in the time it takes to get to a closing date. Letters of intent vary as to how specific they might be, and getting too much detail in a letter arguably defeats the purpose. The vast majority of letters of intent are intended to be non-binding, at least as to the basic transaction, and care must be taken to be sure that the letter does not create a binding agreement if that is not the intent. A form of letter of intent is included as Form 6.2.

6.5 FORM OF TRANSACTION— STOCK VS. ASSET SALE

A threshold issue in the structure of the transaction is whether assets or stock will be sold. In the case of a business operated as a sole proprietorship, the sale of assets is the only possibility. A partnership or limited liability company will generally not sell all of the partnership or membership interests, as the case may be, to one or more buyers, but instead will usually sell their assets and dissolve. The sale of a business operated as a corporation, however, presents squarely the issue of stock or assets. Two key considerations are: 1) the income tax consequences to the corporation(s) involved and to the selling and buying shareholders, and 2) the assumption of the seller's liabilities by the buyer. Historically, asset sales were viewed as an appropriate mechanism to limit the buyer's assumption of the seller's liabilities, but that has been eroded, at least in the case of the seller's product liability exposure, by case law in New Jersey. (See, e.g., *Ramirez v. Amsted Industries, Inc.* 86 NJ 332 (1981).)

The balance of this section will address both stock and asset sales.

6.6 BULK SALES ACT

The New Jersey Bulk Sales Act (N.J.S.A. 12A:6-101 *et seq.*), which applied to certain asset sales, was repealed effective Jan. 1995. Nevertheless, in the case of a sale of assets in bulk outside the ordinary course of business, notice must be given to the New Jersey Division of Taxation at least 10 days prior to the closing of the sale. (See N.J.S.A. 54:50-38.) The notice may be given on the form included as Form 6.3.

The Division of Taxation will reply to the buyer or its counsel, indicating an amount, if any, of the purchase price to be retained in escrow pending a review by the division of the seller's remaining tax liabilities. Upon the division being satisfied that the liabilities have been paid or otherwise provided for, the buyer will be permitted to release the escrowed proceeds to the seller.

No filing is necessary in the case of a stock or membership interest sale.

6.7 ASSET SALES

The key elements of an asset sale agreement include identification of the assets to be sold (and sometimes the assets of the seller to be excluded from the sale), the purchase price, the method for payment of the purchase price, additional transactions such as an assignment of the seller's interest as a tenant under a lease, non-competition agreements, representations and warranties, indemnifications, conditions precedent to the parties' obligation to close, the date and place of the closing, and the documents to be delivered at the closing. A form of asset purchase agreement is included as Form 6.4. Note that this form does not include references to the Industrial Site Recovery Act (ISRA). If ISRA is applicable (discussed below), it should be addressed in the agreement. (See Section 6.9, in this publication.)

Typical closing documents include a bill of sale, a security agreement, and a UCC-1 financing statement, forms of which are included as Forms 6.5, 6.6 and 6.7.

The sale, lease, exchange or other disposition of all or substantially all of a corporation's assets, if not in the ordinary course of its business, requires that the board of directors recommend the transaction and direct that it be submitted to a vote of the shareholders. The notice to the shareholders of a meeting at which such a transaction is to be voted upon must summarize the principal terms of the proposed transaction and inform the shareholders of any rights they may have to dissent. See Section 6.10, below. (N.J.S.A. 14A:10-11(1)(b)) The board of directors may abandon the transaction subsequent to shareholder approval. (N.J.S.A. 14A:10-11(2)) A form of shareholders consent is attached as Form 6.8.

An allocation of the purchase price among the purchased assets must be agreed upon by the seller and buyer, both of whom must report the allocation to the IRS on their next returns using IRS Form 8594.

6.8 STOCK SALE

A stock purchase agreement includes many of the same provisions as an asset purchase agreement, particularly with respect to the purchase price and its method of payment. It is not necessary to list all of the assets of the corporation, since they remain property of the corporation. Nevertheless, they are frequently listed on a schedule, which is good practice when possible.

Compared to asset sales, stock sales generally involve more detailed representations, due diligence, and indemnification provisions, since the corporation, the stock of which is being acquired, retains all of its liabilities. A form of stock purchase agreement is included as Form 6.9. Again, ISRA may need to be addressed.

6.9 INDUSTRIAL SITE RECOVERY ACT

The Industrial Site Recovery Act (ISRA) (N.J.S.A. 13:1K-6 *et seq.*) mandates the cleanup of certain industrial establishments in the event of certain transactions. Specifically, the owner or operator of an industrial establishment planning to close operations or transfer ownership must provide notice to the New Jersey Department of Environmental Protection (DEP), and ultimately arrange for the cleanup of the establishment to the satisfaction of the DEP. (N.J.S.A. 13:1K-9(a)) An industrial establishment is defined as a place of business engaged in operations that involve the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substance or hazardous waste, which business has a standard industrial class location number within 22 to 39 inclusive, 46 to 49 inclusive, 51 or 76. The terms 'closing operations' and 'change in ownership' are also defined in the statute. (N.J.S.A. 13:1K-8) ISRA includes a provision for closing a transaction prior to completion of the cleanup process, provided that adequate financial assurance, usually in the form of letters of credit or bonds, is in place, all pursuant to regulations adopted by the DEP. (Also see the DEP's regulations with respect to ISRA at N.J.A.C. 7-26B-1.1, *et seq.*)

A full discussion of ISRA is beyond the scope of this volume. The necessary forms can be obtained from the DEP, Division of Hazardous Waste Management, Industrial Site Evaluation Element, CN 028, Trenton, New Jersey 08625.

6.10 RIGHTS OF DISSENTING SHAREHOLDERS

A shareholder of a New Jersey corporation has the right to dissent from any plan of merger or consolidation to which the corporation is a party, subject to certain exceptions, and from any sale, lease, exchange, or other disposition of all or substantially all of the corporation's assets not in the usual or regular course of business as conducted by such corporation, again subject to exceptions. (N.J.S.A. 14A:11-1) By complying with the applicable statutory requirements, the shareholder will be awarded the 'fair value' of his or her shares, as judicially determined. (N.J.S.A. 14A:11-1 *et seq.*) Care should be taken in structuring an asset or stock purchase transaction to comply properly with this aspect of the New Jersey Business Corporation Act.

FORMS

FORM 1.1

SAMPLE RETAINER LETTER

[Date]

[Name and Address of Client]

Dear:

This letter confirms that you have retained our firm to represent you in the formation of XYZ Corporation.

We will bill you monthly, for services performed in the preceding month on an hourly basis. The current hourly rate of John Smith, the attorney who will handle this matter, is $XXX. You will be billed separately on a monthly basis for all out-of-pocket expenses such as long distance telephone charges, photocopying, overnight delivery service and similar expenses.

If you agree with the terms of this letter, kindly sign at the bottom and return the original to me.

Very truly yours,

John Smith

Agreed to and accepted this

_____ day of _____, 2019.

_____

[Name of Client]

FORM 1.2

TRADE NAME CERTIFICATE

This Certificate is executed by the undersigned pursuant to the provisions of N.J.S.A. 56:1-1 *et seq*.

1. The name under which the business will be conducted is Smith and Jones Partnership.
2. The nature of the business is the practice of general accounting.
3. The place where the business is being or is about to be conducted is 100 Main Street, City, New Jersey.
4. The full name and residence or post office address of each partner in the business is John Smith [*address*] and Mary Jones [*address*].
5. The partners of the partnership conducting or transacting this business who are not resident in this state do hereby appoint the Clerk of _____ County the true and lawful attorney of such non-resident partners upon whom all original process may be served in an action or legal proceeding against such partnership or in an action against such partner for any debt, damages or liability contracted or incurred by him or her in or growing out of the conduct or transaction of said business. Such original process if served upon such Clerk shall be of the same force and effect as if served upon such non-resident partner. The authority granted in this paragraph shall continue in full force and effect for so long as the Partnership conducts business in the state under such name.

WITNESS:

_____ _____

JOHN SMITH

WITNESS:

_____ _____

MARY JONES

Dated: _____

STATE OF NEW JERSEY:

: SS

COUNTY OF :

John Smith and Mary Jones, being duly sworn, say that they are the persons named in the foregoing certificate and that the statements contained therein are true.

_____

JOHN SMITH

_____

MARY JONES

Sworn to and subscribed before me

tihis _____ day of _____, 2019.

_____

(Notary Public)

FORM 1.3

Form **SS-4** (Rev. December 2017)
Department of the Treasury Internal Revenue Service

Application for Employer Identification Number

(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.)
► Go to *www.irs.gov/FormSS4* for instructions and the latest information.
► See separate instructions for each line. ► Keep a copy for your records.

OMB No. 1545-0003
EIN

Type or print clearly.

1 Legal name of entity (or individual) for whom the EIN is being requested

2 Trade name of business (if different from name on line 1) | 3 Executor, administrator, trustee, "care of" name

4a Mailing address (room, apt., suite no. and street, or P.O. box) | 5a Street address (if different) (Do not enter a P.O. box.)

4b City, state, and ZIP code (if foreign, see instructions) | 5b City, state, and ZIP code (if foreign, see instructions)

6 County and state where principal business is located

7a Name of responsible party | 7b SSN, ITIN, or EIN

8a Is this application for a limited liability company (LLC) (or a foreign equivalent)? . . . . . ☐ Yes ☐ No | 8b If 8a is "Yes," enter the number of LLC members . . . . . ►

8c If 8a is "Yes," was the LLC organized in the United States? . . . . . ☐ Yes ☐ No

9a **Type of entity** (check only one box). **Caution.** If 8a is "Yes," see the instructions for the correct box to check.

- ☐ Sole proprietor (SSN) _____
- ☐ Partnership
- ☐ Corporation (enter form number to be filed) ► _____
- ☐ Personal service corporation
- ☐ Church or church-controlled organization
- ☐ Other nonprofit organization (specify) ► _____
- ☐ Other (specify) ►
- ☐ Estate (SSN of decedent) _____
- ☐ Plan administrator (TIN) _____
- ☐ Trust (TIN of grantor) _____
- ☐ Military/National Guard ☐ State/local government
- ☐ Farmers' cooperative ☐ Federal government
- ☐ REMIC ☐ Indian tribal governments/enterprises

Group Exemption Number (GEN) if any ►

9b If a corporation, name the state or foreign country (if applicable) where incorporated | State | Foreign country

10 **Reason for applying** (check only one box)

- ☐ Started new business (specify type) ► _____
- ☐ Hired employees (Check the box and see line 13.)
- ☐ Compliance with IRS withholding regulations
- ☐ Other (specify) ►
- ☐ Banking purpose (specify purpose) ► _____
- ☐ Changed type of organization (specify new type) ► _____
- ☐ Purchased going business
- ☐ Created a trust (specify type) ► _____
- ☐ Created a pension plan (specify type) ► _____

11 Date business started or acquired (month, day, year). See instructions.

12 Closing month of accounting year

13 Highest number of employees expected in the next 12 months (enter -0- if none). If no employees expected, skip line 14.

Agricultural | Household | Other

14 If you expect your employment tax liability to be $1,000 or less in a full calendar year **and** want to file Form 944 annually instead of Forms 941 quarterly, check here. (Your employment tax liability generally will be $1,000 or less if you expect to pay $4,000 or less in total wages.) If you do not check this box, you must file Form 941 for every quarter. ☐

15 First date wages or annuities were paid (month, day, year). **Note:** If applicant is a withholding agent, enter date income will first be paid to nonresident alien (month, day, year) . . . . . ►

16 Check **one** box that best describes the principal activity of your business.

☐ Construction ☐ Rental & leasing ☐ Transportation & warehousing ☐ Health care & social assistance ☐ Accommodation & food service ☐ Wholesale-agent/broker ☐ Wholesale-other ☐ Retail
☐ Real estate ☐ Manufacturing ☐ Finance & insurance ☐ Other (specify) ►

17 Indicate principal line of merchandise sold, specific construction work done, products produced, or services provided.

18 Has the applicant entity shown on line 1 ever applied for and received an EIN? ☐ Yes ☐ No
If "Yes," write previous EIN here ►

Third Party Designee

Complete this section **only** if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.

Designee's name | Designee's telephone number (include area code)

Address and ZIP code | Designee's fax number (include area code)

Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete. | Applicant's telephone number (include area code)

Name and title (type or print clearly) ►

Signature ► Date ► | Applicant's fax number (include area code)

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 16055N Form **SS-4** (Rev. 12-2017)

Do I Need an EIN?

File Form SS-4 if the applicant entity does not already have an EIN but is required to show an EIN on any return, statement, or other document.[1] See also the separate instructions for each line on Form SS-4.

IF the applicant...	AND...	THEN...
Started a new business	Does not currently have (nor expect to have) employees	Complete lines 1, 2, 4a–8a, 8b–c (if applicable), 9a, 9b (if applicable), and 10–14 and 16–18.
Hired (or will hire) employees, including household employees	Does not already have an EIN	Complete lines 1, 2, 4a–6, 7a–b (if applicable), 8a, 8b–c (if applicable), 9a, 9b (if applicable), 10–18.
Opened a bank account	Needs an EIN for banking purposes only	Complete lines 1–5b, 7a–b (if applicable), 8a, 8b–c (if applicable), 9a, 9b (if applicable), 10, and 18.
Changed type of organization	Either the legal character of the organization or its ownership changed (for example, you incorporate a sole proprietorship or form a partnership)[2]	Complete lines 1–18 (as applicable).
Purchased a going business[3]	Does not already have an EIN	Complete lines 1–18 (as applicable).
Created a trust	The trust is other than a grantor trust or an IRA trust[4]	Complete lines 1–18 (as applicable).
Created a pension plan as a plan administrator[5]	Needs an EIN for reporting purposes	Complete lines 1, 3, 4a–5b, 9a, 10, and 18.
Is a foreign person needing an EIN to comply with IRS withholding regulations	Needs an EIN to complete a Form W-8 (other than Form W-8ECI), avoid withholding on portfolio assets, or claim tax treaty benefits[6]	Complete lines 1–5b, 7a–b (SSN or ITIN optional), 8a, 8b–c (if applicable), 9a, 9b (if applicable), 10, and 18.
Is administering an estate	Needs an EIN to report estate income on Form 1041	Complete lines 1–6, 9a, 10–12, 13–17 (if applicable), and 18.
Is a withholding agent for taxes on non-wage income paid to an alien (i.e., individual, corporation, or partnership, etc.)	Is an agent, broker, fiduciary, manager, tenant, or spouse who is required to file Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons	Complete lines 1, 2, 3 (if applicable), 4a–5b, 7a–b (if applicable), 8a, 8b–c (if applicable), 9a, 9b (if applicable), 10, and 18.
Is a state or local agency	Serves as a tax reporting agent for public assistance recipients under Rev. Proc. 80-4, 1980-1 C.B. 581[7]	Complete lines 1, 2, 4a–5b, 9a, 10, and 18.
Is a single-member LLC (or similar single-member entity)	Needs an EIN to file Form 8832, Classification Election, for filing employment tax returns and excise tax returns, or for state reporting purposes[8], or is a foreign-owned U.S. disregarded entity and needs an EIN to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business (Under Sections 6038A and 6038C of the Internal Revenue Code)	Complete lines 1–18 (as applicable).
Is an S corporation	Needs an EIN to file Form 2553, Election by a Small Business Corporation[9]	Complete lines 1–18 (as applicable).

[1] For example, a sole proprietorship or self-employed farmer who establishes a qualified retirement plan, or is required to file excise, employment, alcohol, tobacco, or firearms returns, must have an EIN. A partnership, corporation, REMIC (real estate mortgage investment conduit), nonprofit organization (church, club, etc.), or farmers' cooperative must use an EIN for any tax-related purpose even if the entity does not have employees.

[2] However, do not apply for a new EIN if the existing entity only (a) changed its business name, (b) elected on Form 8832 to change the way it is taxed (or is covered by the default rules), or (c) terminated its partnership status because at least 50% of the total interests in partnership capital and profits were sold or exchanged within a 12-month period. The EIN of the terminated partnership should continue to be used. See Regulations section 301.6109-1(d)(2)(iii).

[3] Do not use the EIN of the prior business unless you became the "owner" of a corporation by acquiring its stock.

[4] However, grantor trusts that do not file using Optional Method 1 and IRA trusts that are required to file Form 990-T, Exempt Organization Business Income Tax Return, must have an EIN. For more information on grantor trusts, see the Instructions for Form 1041.

[5] A plan administrator is the person or group of persons specified as the administrator by the instrument under which the plan is operated.

[6] Entities applying to be a Qualified Intermediary (QI) need a QI-EIN even if they already have an EIN. See Rev. Proc. 2000-12.

[7] See also *Household employer* on page 4 of the Instructions. **Note:** State or local agencies may need an EIN for other reasons, for example, hired employees.

[8] See *Disregarded entities* on page 4 of the Instructions for details on completing Form SS-4 for an LLC.

[9] An existing corporation that is electing or revoking S corporation status should use its previously-assigned EIN.

FORM 1.4

APPLICATION TO REGISTER AS A LIMITED LIABILITY PARTNERSHIP

Pursuant to the provisions of the New Jersey Uniform Partnership Act governing limited liability partnerships, N.J.S.A. 42:1A-47(c), the undersigned hereby executes this application to become a limited liability partnership:

FIRST: The name of the partnership is Smith & Jones, LLP.

SECOND: The address of the principal office of the partnership is 100 Main Street, Anytown, New Jersey 55555.

THIRD: The address of the registered office of the partnership is 100 Main Street, Anytown, New Jersey 55555 and the name of its registered agent for service of process at that address is Mary Smith, Esq.

FOURTH: The business in which the partnership engages is the practice of law.

FIFTH: The partnership hereby applies for status as a limited liability company.

This Application has been signed by the undersigned as a duly authorized partner of the partnership this _____ day of _____, 2019.

_____

MARY SMITH, ESQ.,
an Authorized Partner

FORM 2.1

Note: *This agreement is designed for a relatively simple two-person service partnership, most of the assets of which consist of office furniture and equipment, accounts receivable and cash. It, therefore, does not include any buy-sell provisions,* for which reference is made to Form 4.9.

PARTNERSHIP AGREEMENT
OF
A&B PARTNERSHIP

GENERAL PARTNERSHIP AGREEMENT dated ____, 2019, between Partner A, having an address at _____ and Partner B, having an address at _____.

WHEREAS, Partner A and Partner B wish to form a general partnership for the purpose of practicing public accounting and to state in this Agreement the terms and conditions of their partnership.

NOW, THEREFORE, in consideration of the covenants contained in this Agreement, Partner A and Partner B agree as follows:

1. **Formation**. Partner A and Partner B hereby agree to form a general partnership (the "Partnership") for the limited purposes and scope set forth in this Agreement. The Partnership shall be organized and operated pursuant to the New Jersey Uniform Partnership Law (N.J.S.A. 42:1-1 *et seq*.), which shall govern the Partnership except as set forth in this Agreement.

2. **Name**. The name of the Partnership shall be A&B Partnership." The Partnership shall execute and file in the Office of the Clerk of _____ County a trade name certificate in compliance with N.J.S.A. 56:1-2.

3. **Principal Office**. The principal office of the Partnership shall be at 100 Main Street, City, New Jersey or at any other location as may be agreed upon by the Partners.

4. **Term**. The term of the Partnership shall commence on [*Date*] and shall continue until dissolved pursuant to the terms of this Agreement or by operation of law.

5. **Purpose**. The Partnership is being formed for the purpose of operating a general practice accounting firm. The Partnership is also authorized to engage in any lawful acts or activities that are permitted for partnerships under the laws of the State of New Jersey and that are necessary or desirable for conducting the business of the Partnership.

6. **Capital Contributions**. Each of Partner A and Partner B shall contribute the sum of $20,000 to the Partnership upon the effective date of this Agreement. To the extent that the Partners determine from time to time during the term of the Partnership that additional capital is necessary for the Partnership's operations, and that such capital cannot be borrowed by the Partnership on terms acceptable to the Partners, the Partners shall contribute such additional capital to the Partnership in equal shares.

7. **Capital Accounts**. The Partnership shall establish a capital account on its books for each of its Partners and maintain such accounts in compliance with the Internal Revenue Code and the regulations promulgated thereunder. No interest shall be accrued or paid with respect to the amounts in any Partner's capital account.

8. **Profits and Losses**. All items of Partnership income, gain, loss, deduction and credit shall be allocated to the Partners in equal amounts.

9. **Distributions**. Except in the event of dissolution of the Partnership, distributions of cash or other assets of the Partnership shall be made in such amounts and at such times as shall be approved by the Partners and shall be distributed to the Partners in equal shares.

10. **Obligations of Partners**. Each Partner shall devote his or her full time and efforts to the business and affairs of the Partnership. During the term of the Partnership, no Partner will directly or indirectly engage in the practice of accounting, including without limitation the preparation of tax returns, except on behalf of and through the Partnership. All income derived from the practice of accounting by either Partner shall constitute Partnership income.

11. **Management**. The business and affairs of the Partnership shall be managed by the Partners, who shall have an equal vote on all management issues. During the term of the Partnership, no partner shall, without the consent of the other Partner:

    a) Incur any Partnership obligation or make or agree to make any expenditure of Partnership funds in excess of $_____.

    b) Dispose of any asset of the Partnership having a value in excess of $_____.

    c) Hire or fire any employee of the Partnership, except temporary employees.

    d) Borrow money in the name of the Partnership or use any property of the Partnership as collateral.

    e) Make any distribution of Partnership assets, including cash, to a Partner.

    f) Make, execute or deliver in the name of the Partnership any bond, note, mortgage, security agreement, indemnity bond, surety bond or accommodation paper or endorsement.

g) Assign, pledge, transfer, release or compromise any debt owing to, or claim of, the Partnership except for payment in full, except that a Partner may compromise a debt to the Partnership for services rendered by that Partner in an amount not to exceed $1,000.00.

h) Pledge, transfer, hypothecate or grant a security interest in his or her interest in the Partnership.

i) Do any other act which would make it impossible or unreasonably difficult to carry on the ordinary business of the Partnership.

12. **Bank Deposits and Withdrawals**. All Partnership funds shall be deposited in the name of the Partnership in accounts in such bank or banks as may be agreed upon by the Partners from time to time. All checks, drafts or other withdrawal slips drawn upon accounts of the Partnership must be signed by both Partners except for amounts less than $_____.

13. **Books and Records**. The Partnership shall keep complete and accurate books of account and other necessary financial, accounting and tax records on a cash basis and otherwise in accordance with generally accepted accounting principles consistently applied. Each Partner shall have access to and may, during reasonable business hours and upon reasonable advance notice, inspect, copy and audit any part of such books and records.

14. **Partnership Representative**. The Partners appoint Partner A as the "Partnership Representative" for purposes of any dealings with the Internal Revenue Service regarding the Partnership. The Partnership Representative shall promptly send to the other Partner a copy of all communications received from the Internal Revenue Service and keep the other Partner informed of the status of all issues or disputes with the Internal Revenue Service.

15. **Additional Partners**. Partnership may admit additional partners to the Partnership upon the unanimous written consent of the existing Partners and the written acceptance by the new partner of all terms and conditions of this Agreement, including any subsequent amendments to this Agreement. The new partner shall purchase his or her interest in the Partnership for such amount and on such terms and conditions as may be unanimously agreed upon by the existing Partners.

16. **Termination of the Partnership**. The Partnership shall be terminated in the event of the death, disability, bankruptcy, retirement or withdrawal of a Partner. As used herein, "disability" refers to any physical or mental incapacity which renders a Partner unable to perform the services he or she ordinarily performs for the Partnership for a period of ninety (90) consecutive days, or a period of any 90 days over a 120-day period, and "bankruptcy" refers to any filing of a petition in bankruptcy or other insolvency proceeding under federal or state law by or against a Partner, except for an involuntary petition dismissed within sixty (60) days of filing. In addition, the Partnership shall terminate in the event that the license of either Partner as a certified public accountant in the state of New Jersey shall be suspended or revoked.

17. **Effect of Termination.** In the event of the termination of the Partnership, the assets of the Partnership shall be liquidated, the outstanding balance in each Partner's capital account shall be paid to the Partner, and any remaining assets shall be distributed to the Partners in equal amounts, but only after paying or reserving for any liabilities of the Partnership. In the event of termination, appropriate arrangements shall be made to acquire professional liability insurance with respect to the Partnership's practice for a period of at least six (6) years following termination.

18. **Notice of Withdrawal**. In the event either Partner desires to withdraw from the Partnership, that Partner shall give no less than 90 days' notice of the withdrawal to the other Partner.

19. **Notices**. All demands and communications required or provided for in this Agreement shall be in writing and shall be delivered personally or sent by certified mail, return receipt requested, to each Partner at his or her address given at the outset of this Agreement. Each Partner may designate in writing another address for purposes of this section.

20. **General Provisions**. (a) This Agreement constitutes the entire agreement and understanding of the Partners with respect to the matters covered hereby and shall supersede all previous written, oral or implied agreements, representations, statements, promises and understandings between them with respect to such matters.

    (b) This Agreement may not be amended or changed except by an agreement signed in writing by each Partner.

    (c) This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their successors by operation of law.

    (d) The validity, interpretation and enforcement of this Agreement shall be governed by the laws of the State of New Jersey without regard to its principles of conflicts of law.

[*Signatures Appear on Following Page*]

IN WITNESS WHEREOF, this Agreement has been signed as of the date first written above.

WITNESS:

_____ _____

PARTNER A

_____ _____

PARTNER B

FORM 2.2

CERTIFICATE OF LIMITED PARTNERSHIP OF XYZ LIMITED PARTNERSHIP

The undersigned, desiring to form a limited partnership under the New Jersey Uniform Limited Partnership Law (N.J.S.A. 42:2A-1, *et seq.*) hereby executes this Certificate of Limited Partnership pursuant to N.J.S.A. 42:2A-14:

1. The name of the limited partnership is XYZ Limited Partnership.
2. The general character of the business of the limited partnership is the ownership and operation of commercial real estate.
3. The address of the original registered office of the limited partnership is 100 Main Street, Anytown, New Jersey and the name of the original registered agent at that address is Mary Jones.
4. The name and address of the sole general partner of the limited partnership is Mary Jones, 100 Main Street, Anytown, New Jersey.
5. The aggregate amount of cash to be contributed by all partners to the limited partnership is $10,000. No partner has agreed to contribute property or services to the limited partnership, or to make further contributions of cash or property in the future.
6. The principal office of the limited partnership is 100 Main Street, Anytown, New Jersey.

This Certificate has been signed this ____ day of _____, 2019.

_____

MARY JONES

_____

JOHN SMITH

FORM 2.3

CERTIFICATE OF REGISTRATION OF ALTERNATE NAME

Pursuant to New Jersey Revised Statutes 42:2A-6.1 (New Jersey Uniform Limited Partnership Law) regulating the registration and use of an Alternate Name by a limited partnership, domestic or foreign, the undersigned corporation certifies as follows:

1. The name of this limited partnership as recorded with the Division of Revenue and Enterprise Services of the New Jersey Department of the Treasury is XYZ Limited Partnership.
2. The State and date of the formation of the limited partnership is New Jersey, October 1, 2019.
3. The Alternate Name to be used is ABC Limited Partnership.
4. The nature or character of the particular business or businesses to be conducted, using the Alternate Name is the ownership and operation of commercial real estate.
5. This limited partnership intends to use such Alternate Name in this State.
6. This limited partnership has not previously used this Alternate Name in this State.

Dated _____ By: _____
MARY JONES, General Partner

FORM 2.4

APPLICATION FOR RESERVATION OF LIMITED PARTNERSHIP NAME

Pursuant to the provisions of N.J.S.A. 42:2A-7 of the New Jersey Uniform Limited Partnership Law, the undersigned applicant hereby applies for the Reservation of a Limited Partnership Name in New Jersey for a period of one hundred twenty (120) days, and for that purpose submits the following application:

The Limited Partnership Name to be reserved is the first name available for use by a limited partnership among the following specified names:

1) _____

2) _____

3) _____

_____

(APPLICANT'S NAME)

_____

(STREET AND POSTAL DESIGNATION, IF APPLICABLE)

_____

(CITY) (STATE) (ZIP CODE)

Signature: _____

Date: _____

FORM 2.5

Note: *This agreement is designed for a relatively simple two-person limited partnership, the principal asset of which is an office building. It does not include certain provisions that may be required for income tax purposes in cases of disproportionate distributions and other variations, nor does it include buy-sell provisions,* for which reference is made to Form 4.8.

AGREEMENT OF LIMITED PARTNERSHIP OF XYZ LIMITED PARTNERSHIP

AGREEMENT OF LIMITED PARTNERSHIP, dated _____, 2019 by and between MARY JONES, having an address at _____(the "General Partner"), and JOHN SMITH (the "Limited Partner").

In consideration of the mutual covenants set forth herein and other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

For purposes of this Agreement, the terms defined in this Article I shall have the following meanings, unless the context clearly requires a different interpretation:

1.01 **Affiliate**. (a) Any Person directly or indirectly controlling, controlled by or under common control with another Person, (b) any Person owning or controlling 10% or more of the outstanding voting securities of such other Person, (c) any officer, director or partner of such Person, or (d) if such other Person is an officer, director or partner, any company for which such Person acts in any such capacity.

1.02 **Agreement**. This Agreement of Limited Partnership, as it may be amended from time to time.

1.03 **Capital Account**. The Capital Contribution of each of the Partners to the capital of the Partnership, from time to time (a) increased from time to time by such Partner's distributive share of Partnership income and gains, and (b) decreased from time to time by distributions to such Partner by the Partnership (other than distributions in repayment

of loans by a Partner or for services rendered by any Partner) and by such Partner's distributive share of Partnership losses. The Capital Account of each Partner shall otherwise appropriately reflect transactions of the Partnership and the Partners.

1.04 **Capital Contribution**. With respect to the General Partner, $_____, and with respect to each Limited Partner, $_____. The references in this Agreement to the Capital Contribution of a then Partner shall include the Capital Contribution previously made by any prior Partner.

1.05 **Capital Transaction**. Any transaction, the proceeds of which are not includable in determining Net Operating Cash Flow, such as the proceeds of insurance, condemnation or the sale of the Partnership's assets outside of the ordinary course of business.

1.06 **Code**. The Internal Revenue Code of 1986, as amended from time to time, and any successor statute thereto.

1.07 **Fiscal Year**. The calendar year ending December 31.

1.08 **Net Capital Proceeds**. The net proceeds received by the Partnership pursuant to Capital Transactions by the Partnership.

1.09 **Net Losses**. The net losses of the Partnership as reported on its information returns for Federal income tax purposes.

1.10 **Net Operating Cash Flow**. With respect to each Fiscal Year of the Partnership, the gross revenues of the Partnership, less (a) the actual cash expenditures for such period, and (b) such reasonable and necessary reserves for working capital, capital investments, potential liabilities and other contingencies as shall be determined in the sole discretion of the General Partner. Gross revenues shall not include (x) the proceeds of any contributions or loans to the Partnership, (y) security deposits, until the Partnership is entitled unconditionally to retain the same for its own use and benefit, and (z) Net Capital Proceeds.

1.11 **Net Profits**. The net income of the Partnership as reported on its information returns for Federal income tax purposes.

1.12 **Partners**. The Limited Partner and the General Partner, collectively.

1.13 **Partnership**. The limited partnership among the General Partner and the Limited Partner formed pursuant to the terms of this Agreement.

1.14 **Partnership Interest**. A Partner's interest in the Partnership, which shall include, without limitation, the Partner's Capital Account, Percentage Interest, distributive share of Partnership income, gain, loss, deduction and credits, the Partner's interest in Net Operating Cash Flow, Capital Transactions and other distributions, as provided for in this Agreement, and all other rights, duties, and obligations under this Agreement.

1.15 **Percentage Interest**. For each Partner, fifty percent (50%).

1.16 **Person**. An individual, trust, estate, partnership, association, company or corporation.

1.17 **Tax Credits**. The tax credits of the Partnership as reported on its information returns for Federal income tax purposes.

ARTICLE II

GENERAL

2.01 **Formation of Partnership**. The Partnership is hereby formed as a New Jersey limited partnership pursuant to the terms of this Agreement.

2.02 **Name**. The name of the Partnership shall be XYZ Limited Partnership, but it may do business under such other names as the General Partner hereby designates in writing to the Limited Partners, provided that the General Partner shall file all certificates required by law to be filed with respect to any name used by the Partnership.

2.03 **Instruments to be Filed**. Upon the execution and delivery of the Agreement, the General Partner shall cause to be filed on behalf of the Partnership a Certificate of Limited Partnership in accordance with the Act and shall execute such other documents and instruments and shall take all such other actions deemed by the General Partner to be necessary or appropriate to effectuate and permit the form of the Partnership under the laws of the State of New Jersey and as a limited partnership qualified to do business as a foreign limited partnership in such states as the General Partner may consider necessary or appropriate from time to time as a result of the business being conducted by the Partnership. The General Partner shall, from time to time, take appropriate action, including the preparation and filing of such amendments to the Certificate of Limited Partnership, as may be required by the Act. The Limited Partner shall execute such documents and instruments and take such other action as may be necessary to enable the General Partner to fulfill her responsibilities under this section.

2.04 **Principal Place of Business**. The principal office of the Partnership shall be at 100 Main Street, Anytown, New Jersey. The General Partner shall notify the Limited Partners of any change in the principal place of business of the Partnership. The Partnership may maintain other offices at other locations as the General Partner deems advisable from time to time.

2.05 **Registered Agent and Registered Office**. The registered agent for the Partnership shall be Mary Jones and the registered office shall be at 100 Main Street, Anytown, New Jersey, or at such other location of which the General Partner may notify the Limited Partner in writing from time to time.

2.06 **Business of the Partnership**. The business of the Partnership shall be:

(a) To acquire, develop, improve, manage, own, lease and sell the premises known as _____ (the "Premises");

(b) To develop, plan, obtain all approvals, and take all steps necessary, appropriate or incidental to the enhancement and/or improvement of the Premises;

(c) To acquire such personal property as is necessary, appropriate or incidental to the Premises;

(d) To borrow money, as necessary or desirable, and to evidence the same by notes or other evidences of indebtedness and to secure the same by liens or security interests on the real and personal property of the Partnership, including without limitation, mortgages on the Premises, in furtherance of any or all of the purposes of the Partnership;

(e) To enter into, perform and carry out leases, contracts and agreements which may be necessary, appropriate or incidental to the accomplishment of the purposes of the Partnership; and

(f) To do any other acts and things which may be necessary, appropriate or incidental to the carrying out of the business and purposes of the Partnership.

2.07 **Term**. The term of the Partnership shall commence upon the filing of a Certificate of Limited Partnership consistent with the terms of this Agreement in the Office of the Secretary of State of New Jersey and shall terminate upon the earlier of:

(a) December 31, 2040; or

(b) the termination of the Partnership pursuant to the terms of this Agreement, by operation of law or by judicial decree.

ARTICLE III

BANK ACCOUNTS, BOOKS, FISCAL YEAR, ACCOUNTING AND REPORTS

3.01 **Books of Account**. The General Partner shall keep, or cause to be kept, complete and accurate books of account, in which shall be entered, fully and accurately, each and every transaction of the Partnership. The books of the Partnership shall be kept on the accrual basis, unless the General Partner shall determine otherwise, in accordance with generally accepted accounting principles consistently applied from year to year, and shall be maintained at all times at the principal office of the Partnership.

3.02 **Annual Report**. On or before March 15 of every year, the General Partner will mail or cause to be mailed to the Limited Partner such information as is necessary for the preparation by such Limited Partner of his federal income tax returns and state income or other tax returns in jurisdictions in which the Partnership does business.

3.03 **Bank Accounts**. The funds of the Partnership shall be deposited in the name of the Partnership in one or more bank accounts as designated by the General Partner, and shall not be commingled nor shall the funds be used except for business of the Partnership. Withdrawals therefrom shall be made upon the signature of the General Partner or of any duly authorized agent of the Partnership, other than a Limited Partner.

3.04 **Tax Elections**.

(a) The General Partner, in her sole discretion, may cause the Partnership to make or revoke the election referred to in Section 754 of the Code, or any similar provision enacted in lieu thereof, as well as any other elections permitted by the Code.

(b) Organization expenses shall be amortized over the first sixty (60) months of the Partnership's business, as permitted under Code Section 709.

(c) The General Partner shall, for each fiscal year, file on behalf of the Partnership United States tax returns of income within the time prescribed by law for such filing. The General Partner shall also file on behalf of the Partnership such other tax returns and other documents from time to time as may be required by the United States of America or by any state. The determination of the General Partner with respect to the treatment of any item or its allocation for federal, state or local tax purposes shall be binding upon all of the Partners so long as such determination will not be inconsistent with any express term hereof or applicable law.

ARTICLE IV

RIGHTS, POWERS AND OBLIGATIONS OF GENERAL PARTNER AND LIMITATIONS THEREON

4.01 **Exercise of Management**. The General Partner shall manage the day to day affairs of the Partnership subject to the terms and provisions of this Agreement. The General Partner shall have complete and exclusive control over the management of the Partnership's business and affairs in accordance with the business of the Partnership set forth in paragraph 2.06 hereof, and, except as otherwise specifically provided in this Agreement, the General Partner shall have the right, power and authority on behalf of the Partnership and in its name, to exercise all of the rights, powers and authority of a Partner or Partnership without limited partners under the Act. In addition, the General Partner shall formulate all substantial policy decisions with respect to the Partnership. No Limited

Partner, as such, shall take part in the management or control of the business of the Partnership or have authority to bind the Partnership.

4.02 **Specific Power and Authority of General Partner**. The General Partner is fully authorized to take any action of any type and to do anything and everything which a general partner of a New Jersey limited partnership may be authorized to take or do hereunder, and specifically, without limitation of such authority, to execute, sign, seal and deliver in the name and on behalf of the Partnership:

(i) Any deed, lease, sublease, mortgage, mortgage note, deed of trust, bill of sale, contract or any other instrument purporting to convey or encumber real or personal property of the Partnership;

(ii) Any and all agreements, contracts, documents, certifications and instruments whatsoever involving the business and operations of the Partnership, including the employment of such persons as may be necessary therefor and for the rehabilitation of the Premises and the construction of additions and permanent improvements thereto;

(iii) Any and all instruments or documents requisite to carrying out the intention and purpose of this Agreement, including, without limitation, a Certificate of Limited Partnership and all amendments thereto; and

(iv) All certificates, notices, statements or other instruments required by law, including all federal, state and local tax returns and all documents required in connection with the formation of a condominium or cooperative under New Jersey law including, without limitation, the articles of incorporation, by-laws, management agreement, declaration of condominium and/or master declaration.

4.03 **Limitation on General Partner's Power, Authority and Obligation**. The General Partner, without first obtaining the consent or ratification of the specific act of the Limited Partner, shall have no right, power or authority to do any of the following:

(i) Do any act which would make it impossible to carry on the ordinary business of the Partnership, including the sale in bulk of all or substantially all of the assets of the Partnership;

(ii) Possess Partnership assets, or assign rights in specific Partnership assets, for other than a Partnership purpose; or

(iii) Admit a person as a Partner except as otherwise provided in this Agreement.

(iv) Except as specifically provided in this Agreement, sell, assign, hypothecate, gift, abandon, or in any manner transfer all or any part of her Partnership Interest to any other Person.

4.04 **No Duty of Third Party to Inquire as to Authority of the General Partner**. No person dealing with the Partnership shall be required to inquire into the authority of the General Partner to take any action or to make any decision hereunder.

ARTICLE V

CAPITAL ACCOUNTS AND CONTRIBUTIONS

5.01 **Establishment of Capital Accounts**. An individual Capital Account shall be established and maintained for each Partner, including any permitted additional or substituted Partner. Upon the admission, substitution or withdrawal of any Partner, the books and records of the appropriate Partners shall be adjusted to reflect such admission, withdrawal or substitution. The initial Capital Account of each Partner as of the date of this Agreement is the amount of such Partner's Capital Contribution.

5.02 **Credits and Charges to Capital Accounts**. All credits and charges to the Capital Account of each Partner shall be made in accordance with the provisions of paragraph 1.04. above.

5.03 **No Priority Among Partners; No Withdrawal of Capital**. No Partner shall have priority over any other Partner either as to the return of his or her Capital Contribution to the Partnership or as to allocation of Net Profits or Net Losses or distributions of cash or property made by the Partnership, and all such returns, allocations and distributions to the Partners shall be divided between the Partners pro rata in accordance with their respective Percentage Interests. No Partner shall have the right to demand or receive any funds or property of the Partnership or to bring any action of or partition against the Partnership. No Partner shall have the right or power to withdraw any part of his other Capital Contribution from the Partnership, except as specifically provided herein.

5.04 **No Interest on Capital Contributions**. No Partner shall receive any interest whatsoever on his or her Capital Account or Capital Contribution made to the Partnership.

ARTICLE VI

ALLOCATION OF NET PROFITS, NET LOSSES AND NET OPERATING CASH FLOW

6.01 **Allocation of Net Profit and Net Operating Cash Flow**. The Net Profits and Net Losses, Tax Credits and Net Operating Cash Flow of the Partnership shall be allocated to the Partners in accordance with their Percentage Interests.

6.02 **Allocations in the Event of Transfer of a Partnership Interest**. If a Partnership Interest is transferred, there shall be allocated to each Partner who held the transferred Partnership Interest during the fiscal year of transfer the product of (a) the Partnership's Net Profit or Net Losses allocable to such transferred Partnership Interest for such fiscal year; and (b) a fraction, the numerator of which is the number of days such Partner held the transferred Partnership interests during such fiscal year and the denominator of which is the total number of days in such fiscal year; provided, however, that the Partners may allocate such Net Profit or Net Losses by closing the Partnership's books immediately after the transfer of any Partnership Interest. Either allocation shall be made without regard to the date, amount or recipient of any distributions which may have been made with respect to such transferred Partnership Interest.

ARTICLE VII

DISTRIBUTION ON CAPITAL TRANSACTIONS

7.01 **Distribution of Net Capital Proceeds**. Any Net Capital Proceeds shall be distributed as follows:

First: To third party creditors of the Partnership in payment of the unpaid operating expenses of the Partnership to the extent required under agreements with said creditors;

Second: To creditors whose debt is secured by mortgages or security interests granted in the assets of the Partnership, if the Partnership is winding up or if required by the terms of the instruments evidencing or securing such indebtedness; otherwise, such creditors shall be paid only if the General Partner, in its sole discretion, determines that payment to them is advisable;

Third: To the payment of all other creditors of the Partnership to the extent due and payable; and

Fourth: To the Partners, pro rata to their Percentage Interests.

ARTICLE VIII

DISSOLUTION

8.01 **General**. The Partnership shall dissolve upon, but not before, the first to occur of the following:

(a) Upon the sale or other distribution of all or substantially all of the Partnership assets;

(b) Upon a decision of the General Partner to dissolve the Partnership; or

(c) December 31, 2040.

8.01 **Liquidation of Assets**. Upon the dissolution of the Partnership, the General Partner shall proceed to liquidate the assets thereof. The proceeds of such liquidation and dissolution shall be distributed as realized, in the payment of liabilities of the Partnership in the order set forth for the distribution of Capital Proceeds in Section 7.01 of this Agreement.

ARTICLE IX

RIGHTS AND LIABILITIES OF LIMITED PARTNER

9.01 **Activities of Limited Partner**. The Limited Partner shall not participate in, or have any part in the management, conduct or control of, the Partnership business. The Limited Partner shall have no authority whatsoever to act on behalf of or bind the Partnership.

9.02 **Limitation on Liability of Limited Partner**. The liability of the Limited Partner in the Partnership shall be limited to the amount of his aggregate Capital Contribution. No Limited Partner shall have any further personal liability to contribute money or other property to, or in respect of, the liabilities or obligations of the Partnership. No Limited Partner shall be personally liable for the obligations of the Partnership; provided, however, that if a Limited Partner has received a return of all or any portion of his Capital Contribution to the Partnership, he will be liable to the Partnership for any sum, not in excess of such amount returned, with interest at a commercially reasonable rate, which is necessary to discharge the Partnership's liabilities to any creditor who extended credit to the Partnership or whose claims arose before the return of said amount to the Limited Partner.

ARTICLE X

TRANSFERS OF PARTNERSHIP INTEREST

10.01 **Limited Partner**. The Limited Partner may not sell, assign, transfer, pledge, hypothecate, or otherwise dispose of all or any part of his Partnership Interest or any interest therein except with the prior written consent of the General Partner, which consent may be withheld only in the reasonable exercise of the General Partner's discretion. In the event of the death of the Limited Partner during the term of this Agreement, the Partnership shall not terminate and his Partnership Interest shall be held by his estate, his heirs, or the beneficiaries of his estate for the remainder of the term of this Agreement, subject to all terms and conditions of this Agreement.

10.02 **Right of First Refusal**. In the event the Limited Partner obtains the written permission of the General Partner to assign all or any portion of his Partnership Interest pursuant to Section 10.01 hereof, the Limited Partner may not assign such Partnership Interest unless and until he has given the Partnership the opportunity to exercise the right of first refusal described in this Section 10.02 (the "Right of First Refusal"). The Limited partner (the "Offering Partner") shall give written notice of such assignment (the "Offer"), including the identity of the proposed assignee, the proposed assignee's address, and all of the terms and conditions of the proposed assignment, to the partnership at its principal office. The Partnership shall have fifteen (15) business days after receipt of the Offer to notify the Offering Partner as to the Partnership's acceptance of the Offer on the terms and conditions stated therein (the "Acceptance"). If the Offering Partner has not received the Acceptance on or by the fifteenth business day after receipt of the Offer, the Offering Partner may proceed to assign all or a portion of his Partnership Interest to the proposed assignee on terms and conditions no more favorable than those described in the Offer. In the event of any change in the identity of the proposed assignee or in the terms and conditions of the proposed assignment more favorable than those contained in the Offer, the Offering Partner shall repeat the Offer to the partnership pursuant to the procedures stated in this Section 10.02, and the Partnership shall be entitled to exercise the Right of First Refusal with respect thereto. The closing of the Partnership's purchase pursuant to the Offer shall occur on the closing date stated in the Offer, or if there is none, within forty-five (45) days after the date of the Acceptance. The Right of First Refusal shall not apply to any assignment of all or a portion of the Partnership Interest of the General Partner.

10.03 **No Termination of Partnership for Federal Income Tax Purposes**. Notwithstanding any other provision of this Agreement, neither a sale, exchange or assignment of all or any part of a Partnership Interest by a Limited Partner may be consummated unless, in the opinion of counsel to the Partnership, the sale, exchange, assignment or relinquishment, when considered in conjunction with the provisions that have been made for the admission of a Successor Limited Partner or appointment of a Successor General Partner, would not result in the Partnership being considered to have terminated within the meaning of Code Section 708, and would not adversely affect the qualification of the Partnership as such for Federal income tax purposes.

10.04 **Certain Undertakings Required of Assignee**. No assignee of all or any part of a Partnership Interest shall be admitted to the Partnership as a substitute Partner unless (i) the assignor has indicated the intention of substitution in the written assignment or the transfer results by death or operation of law, (ii) the General Partner has consented in writing to such admission; and (iii) the assignee has executed a counterpart of this Agreement (as it may have then been modified) and such other instruments as are required or as the General Partner deems necessary or desirable to confirm the undertaking of such assignee to be bound by all the terms and provisions of this Agreement.

10.05 **Bankruptcy and Insolvency**. In the event of the voluntary filing of a petition in bankruptcy or pursuant to other insolvency laws, or an involuntary filing of a petition in bankruptcy or pursuant to other insolvency laws not discharged within one hundred twenty (120) days with respect to a Partner, the Partnership or General Partner shall have the right, but not the obligation, to purchase the Partnership Interest of the Partner subject to such bankruptcy, insolvency or dissolution proceedings for an amount equal to such Partner's Capital Account. In no event will the Partnership terminate as a result of such bankruptcy or insolvency.

ARTICLE XI

MISCELLANEOUS

11.01 **Integration**. This Agreement contains the entire agreement among the parties pertaining to the subject matter hereof, supersedes any prior agreements among the parties hereto and may not be amended except as provided in paragraph 11.06 of this Agreement.

11.02 **Notices**. Except as otherwise expressly provided in this Agreement, all notices, demands and other communications hereunder shall be in writing and shall be deemed to have been given if delivered or mailed, registered or certified mail, first class postage prepaid, return receipt requested, to the applicable party at the address herein set forth or at such other address of which a Partner has given notice to the General Partner in

accordance herewith. The substance of any such notice shall be deemed to have been fully acknowledged in the event of any refusal of acceptance by the party to whom the notice is addressed.

11.03 **Captions**. All captions and headings of articles, sections, paragraphs, subparagraphs and subdivisions of this Agreement are solely for convenience and are not part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision thereof.

11.04 **Gender**. The masculine gender shall include the feminine and neuter genders, as appropriate in the context of this Agreement.

11.05 **Singular or Plural**. Whenever the singular number is used in this Agreement, the same shall include the plural when required by context.

11.06 **Amendment**. This Agreement may be modified or amended only by written agreement of the General Partner and the Limited Partner.

11.07 **Governing Law**. This Agreement shall be construed in accordance with the laws and other legal authority of the State of New Jersey, including the Act, but excluding the conflicts of laws provisions of the State of New Jersey.

11.08 **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11.09 **Partnership Representative**. Each of the Partners hereby designates the General Partner as the "Partnership Representative" of the Partnership, as defined in the Code. The General Partner hereby agrees that she shall provide to the Limited Partners copies of all communications she receives from any taxing authority with respect to the Partnership.

[Signature Page Follows]

IN WITNESS WHEREOF, the Partner hereby executes this Agreement the day and year first above written.

WITNESS:

_____

GENERAL PARTNER:

_____

MARY JONES

LIMITED PARTNER:

_____

_____

JOHN SMITH

FORM 3.1

APPLICATION TO RESERVE NAME OF CORPORATION

[Date]

Office of the Treasurer
Division of Revenue and Enterprise Services
CN 308
Trenton, New Jersey 08625

Re: Reservation of Name (for limited liability company)

To the Treasurer:

We have enclosed an executed Application for Certificate of Name Reservation to reserve for us the first available name of the following three names for use by a limited liability company:

XYZ FORMS, L.L.C.
XY FORMS, L.L.C.
ABC FORMS, L.L.C.

[Please date, stamp and return to us to copy of the application we have provided. A self-addressed stamped envelope is enclosed for your convenience.]

We have enclosed our check in the amount of $50.00 for your fee.

[Please charge our account (No._____) for your fee.]

Very truly yours,

ATTORNEY

FORM 3.2

XYZ FORMS, L.L.C.

CERTIFICATE OF REGISTRATION OF ALTERNATE NAME

XYZ FORMS, L.L.C., to register an alternate name pursuant to Section 42:2C-9 of the New Jersey Limited Liability Company Act, hereby certifies:

FIRST: The name of the limited liability company is XYZ FORMS, L.L.C.

SECOND: The limited liability company was formed pursuant to the laws of the State of New Jersey on _____, 2019.

THIRD: The alternate name adopted by the limited liability company is ABC FORMS.

FOURTH: The nature of the business to be conducted using the alternate name is the manufacture, distribution, and sale of business forms.

FIFTH: The limited liability company intends to use the alternate name in New Jersey.

SIXTH: The limited liability company has not previously used the alternate name in New Jersey in violation of Section 42:2C-9 of the New Jersey Limited Liability Company Act.

IN WITNESS WHEREOF, XYZ FORMS, L.L.C. has caused its duly authorized manager (or member) to execute this certificate this ____ day of _____, 2019.

XYZ FORMS, L.L.C.

By: _____
Manager (or Member)

Registered Agent: _____

Address of Registered Agent: _____

_____

Notes:

1. Information concerning the registered office and agent may be requested by the Office of Commercial Recording but is not required by the New Jersey Limited Liability Company Act.

2. The filing fee is $50. N.J.S.A. §42:2C-93(a)(4). The registration is effective for five (5) years from the date of filing. N.J.S.A. §42:2C-9(c).

FORM 3.3

XYZ FORMS, L.L.C.

CERTIFICATE OF FORMATION

The undersigned, in order to form a limited liability company pursuant to the provisions of the New Jersey Limited Liability Company Act, hereby certifies:

FIRST: The name of the limited liability company is XYZ FORMS, L.L.C.

SECOND: The address of the limited liability company's initial registered office is 200 Main Street, Anytown, New Jersey 55555, and the name of the registered agent at such address is Jane Doe.

THIRD: [The duration of the limited liability company is limited and shall expire on _____] OR [The duration of the limited liability company is perpetual.] *[*Note: *The current LLC Act provides that the duration is perpetual if the certificate of formation is silent*.]

[**FOURTH**: This Certificate of Formation is to be effective on _____.]*

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation and has certified this as his or her act and deed and the facts herein stated as true, this ____ day of _____, 2019.

_____

Authorized Person

* Note: *The effective date of the certificate of formation may not be delayed for more than 30 days after filing. If the certificate of formation is to become effective upon filing with the secretary of state, omit this provision*.

FORM 3.4

OPERATING AGREEMENT

OF

_____, LLC

DATED AS OF _____, 2019

A New Jersey Limited Liability Company

Greenbaum, Rowe, Smith & Davis LLP
Metro Corporate Campus I
P.O. Box 5600
Woodbridge, New Jersey 07095
(732) 549-5600

Form 3.4 Table of Contents

OPERATING AGREEMENT

of

_____, LLC

OPERATING AGREEMENT (the "Agreement") of _____, LLC, a New Jersey limited liability company (the "Company") dated as of _____, 2019 by and between _____ LLC, a New Jersey limited liability company ("_____") and _____ ("_____") (each may be referred to individually as a "Member" and collectively as the "Members").

W I T N E S S E T H:

WHEREAS, the Members filed a Certificate of Formation with the Division of Revenue and Enterprise Services in the Department of the Treasury of the State of New Jersey to form a limited liability company under the name _____, LLC, pursuant to the New Jersey Limited Liability Company Act (the "Act"); and

WHEREAS, the Members desire to enter into this Agreement to set forth the terms and conditions governing various aspects of the Company, its business and its ownership interests;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

ARTICLE I.
GENERAL

1.01 **Name**. The name of the Company shall be _____ LLC, but it may do business under such other name(s) as may be approved by the Board of Managers (as established in Article IV of this Agreement), including without limitation _____. If the Company does business under any other name or names, it shall file a certificate of registration of alternate or assumed name with the Treasurer of the State of New Jersey in accordance with the Act.

1.02 **Principal Place of Business**. The principal office of the Company will be located at _____. The Company may have other offices, or subsidiary offices, either

within or outside the State of New Jersey, as the Board of Managers may designate or as the business of the Company may from time to time require.

1.03 **Registered Office; Registered Agent**. The registered office of the Company in the State of New Jersey is located at _____ and the name of the registered agent at such address is _____ unless otherwise designated by the Board of Managers. The Board of Managers may change the registered office or registered agent of the Company in its discretion by filing the applicable forms, if any, with the Treasurer of the State of New Jersey in accordance with the Act.

1.04 **Purpose of the Company**. The purpose of the Company is to engage in any activity that limited liability companies may engage in under the Act. Without limiting the foregoing, the Company was formed to acquire the assets of XYZ Corporation and operate the _____ manufacturing business previously conducted by that company.

1.05 **Term**. The Company commenced upon the filing of the Certificate of Formation in the office of the Division of Revenue and Enterprise Services on _____, 2019 and shall continue in perpetuity unless it is terminated earlier pursuant to the terms of this Agreement, by operation of law or by judicial decree, or by consent of the Board of Managers. Upon termination, the Company shall be dissolved and its affairs wound up in accordance with Article IX of this Agreement.

ARTICLE II.
ACCOUNTING AND REPORTS

2.01 **Fiscal Year**. The fiscal year of the Company shall be the calendar year.

2.02 **Books of Account and Financial Records**. The Company shall maintain complete and accurate books of account and financial records in which shall be entered each transaction of the Company. The books of account and financial records shall be kept on a cash basis and maintained and reported in accordance with generally accepted tax accounting principles, consistently applied from year to year, and shall be maintained at the principal office of the Company.

2.03 **Reports to Members**. On or before March 15th of each year, the Company shall mail to each Member (i) such information as is necessary for the preparation by each Member of his federal and state income tax returns and (ii) an annual financial statement reviewed by the Company's independent certified public accountants to be selected by the Board of Managers, in accordance with generally accepted tax accounting principles consistently applied from year to year. The Company will prepare and forward to each Member unaudited quarterly financial statements within thirty (30) days of the conclusion of each fiscal quarter, except the fourth quarter of each year. The reports shall include a statement of operations, balance sheet and statement of changes in Member's equity,

and a statement of Members' interests showing the distributions and allocations to each Member and the Capital Account balance for each Member.

2.04 **Bank Accounts**. The funds of the Company shall be deposited in the name of the Company and/or in the name of any of its subsidiaries, in one or more bank accounts designated by the Board of Managers, and shall not be commingled nor used for any purpose other than Company business. Withdrawals from such accounts shall be made only upon the signature of the _____, _____ or other signatures that the Managing Member designates.

2.05 **Taxation**. The Members acknowledge that it is their intention that the Company be treated as a partnership for United States tax purposes and the Members agree that they shall take no action or omit to take any action which would affect the tax treatment of the Company as a partnership under U.S. Federal income tax law. The Members further agree that in the event that it shall become necessary at any time as a result of any change to any law or regulation that they shall take such action as shall be necessary to maintain the treatment of the Company as a partnership for tax purposes.

2.06 **Right of Inspection**. Each Member and his respective attorneys and accountants shall have the right to go to the principal office of the Company, during usual business hours and upon reasonable notice, to examine, review and independently audit the books and records of the Company. Each Member and his respective attorney, accountant, or other advisor shall maintain all information relating to the Company in such books and records in the strictest confidence. Each Member making such examination, review or audit, shall bear all of the expenses incurred by such Member and the Company in any such examination, review or audit. Upon the written request of any Member of the Company, the Company shall make available, during usual business hours at the principal office of the Company, the Company's most recent financial statements, showing in reasonable detail the Company's assets and liabilities and the results of its operations.

ARTICLE III.
MEMBERS AND CAPITAL CONTRIBUTIONS

3.01 **Members**. The Company shall initially have two (2) Members, who are the two (2) parties to this Agreement. _____ shall have a sixty (60%) percent interest and _____ shall have a forty percent (40%) interest in the profits, losses, gains and distributions of the Company. Such interests are referred to as the Members' "Ownership Interests" and the percentages represented thereby as their "Percentage Interests."

3.02 **Initial Capital Contributions**. _____ shall make an initial capital contribution to the Company in the amount of _____ Dollars ($____), and _____ shall make an initial capital contribution to the Company in the amount of _____ Dollars ($_____).

3.03 **Additional Capital Contributions**. No Member shall be obligated to make an additional capital contribution to the Company unless all of the Members agree that each shall make an additional, equal capital contribution. The Members shall determine the payment date for any such additional capital contribution.

3.04 **Additional Members**. No Person shall be admitted as or become a Member without the prior unanimous consent of the Board of Managers. The Company may admit additional Members upon such terms and conditions as the Board of Managers deems advisable, which shall include the execution of a counterpart of this Agreement. For the purposes of this Agreement, "Person" shall be defined as an individual, corporation, association, partnership, joint venture, limited liability company, estate, trust or any other legal entity.

3.05 **Liability of Members**. The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Member shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member of the Company. Except as otherwise provided in this Agreement, the liability of the Members, as such, shall be limited to the amount of capital contributions that the Members have made to the Company.

3.06 **Time to be Devoted**. Each Member of the Company will devote the requisite amount of his working time, professional skill and attention to the Company as is reasonably necessary for the advancement of the business and affairs of the Company. It is expected that each Member will devote approximately equal amounts of time to the business of the Company.

3.07 **Compensation**. No Member shall be entitled to compensation for his or her services to the Company unless approved unanimously by the other Member of the Company.

3.08 **Non-Compete**. Each of the Members agree that during the term of this Agreement and for a period of one (1) year after the date on which such Member withdraws from the Company for any reason, he will not, directly or indirectly, as a principal agent, employee, officer, director, shareholder, partner, joint venturer, trustee, or otherwise, either as an individual of his own account or for any other person, firm, corporation, partnership, joint venture, trust or association:

(a) engage in a similar business or a business in competition with the Company without the consent of each other Member of the Company; or

(b) solicit, interfere with, disrupt, or attempt to disrupt any present, past or future relationship, contractual or otherwise, between the Company and any of its Members, properties or affiliated entities.

ARTICLE IV.
MANAGEMENT

4.01 **Management by the Board**.

(a) The management and control of the Company shall be vested exclusively in a Board of Managers, and the business and affairs of the Company shall be managed under the direction of the Board. The Board of Managers shall always retain the authority to make management decisions notwithstanding any delegation of duties by the Board to an employee, officer, agent, or Managing Member. In managing the business and affairs of the Company, and in exercising its powers, the Board shall act through meetings and written consents pursuant to this Article IV.

(b) The Board of Managers shall consist of two (2) Managers, who shall be _____ and _____. In the event that _____ is unable or unwilling to serve as a Manager, _____ may appoint _____ to serve as a Manager. In the event that _____ is unable or unwilling to serve as a Manager, then he shall not be replaced as a Manager.

(c) Except as otherwise expressly required in this Agreement or in the Act, whenever any action, including any approval, consent, determination, resolution, or decision is to be taken or given by the Board or the Company, it shall be authorized by both members of the Board of Managers. Such an authorization may be evidenced by a vote taken at a meeting of the Board of Managers or by a written consent pursuant to this Agreement.

(d) A Person shall cease to serve as a member of the Board of Managers upon his death, a ruling by a court of competent jurisdiction that he is incompetent, an event which precludes the Company from obtaining directors and officers liability insurance at normal rates, or at such time as he ceases to be a Member. A Member of the Board of Managers may voluntarily withdraw from such position at any time upon ninety (90) days advance written notice to all of the Members.

(e) Notwithstanding anything to the contrary in this Article IV, the consent of both Members, given in writing or at a meeting of the Members duly called and held, or by written consent, shall be required to authorize the following actions of the Company:

(i) to merge or consolidate with or into any Person (other than an entity wholly-owned, directly or indirectly, by the Company) or permit any Person to merge or consolidate with or into it;

(ii) to sell the business of the Company, or sell, lease, transfer, assign or otherwise dispose of all or substantially all of the assets of the Company; or any real estate project owned by the Company;

(iii) to purchase property;

(iv) to acquire or invest in property outside of the ordinary course of the Company's business;

(v) to admit any new member to the Company;

(vi) to dissolve the Company;

(vii) to amend this Agreement;

(viii) to pay any salary, bonus or other compensation to a Member or an affiliate of a member; or

(ix) to enter into, assume or become bound by any contract to do any of the foregoing.

4.02 **Meetings**. Meetings of the Board of Managers may be called by either Member. Written notice of any meeting, specifying the time and place of the meeting and, at the option of the person calling the meeting, the purpose of the meeting, shall be given to each Member at least two days prior thereto. Such notice may be delivered by facsimile or email transmission.

4.03 **Notice of Meeting; Waiver of Notice**. Meetings of the Board of Managers shall be held at such place as shall be designated in the notice of meetings. Notice of any meeting need not be given to any member of the Board who signs a waiver of notice before or after the meeting.

4.04 **Liability of Parties**. No Member or member of the Board of Managers shall be liable to the Company or to any other Member or member of the Board for (a) the performance of, or the omission to perform, any act or duty on behalf of the Company if, in good faith, the Member or Board member determined that such conduct was in the best interests of the Company and such conduct did not constitute fraud, gross negligence or reckless or intentional misconduct, (b) the termination of the Company and this Agreement pursuant to the terms hereof, and (c) the performance of, or the omission to perform, any act on behalf of the Company in good faith reliance on advice of legal counsel, accountants or other professional advisors to the Company.

4.05 **Managing Member**. The Company shall have a Managing Member who shall be responsible for the day-to-day administration and management of the Company and its business, subject at all times to the direction and control of the Board of Managers. _____ shall be the initial Managing Member. The Board of Managers may, from time to time, appoint another Member as the Managing Member. The Managing Member shall be the "partnership representative" of the Company as that term is defined in the Internal Revenue Code of 1986, as amended.

4.06 **Indemnification of Managers**. The Company, its successors, assigns, receiver or trustee shall indemnify, defend and hold each Member (and their respective heirs, personal representatives, and successors) harmless from and against any expense, loss, damage or liability incurred or connected with, or any claim, suit, demand, loss, judgment, liability, cost or expense (including reasonable attorneys' fees) arising from or related to, the Company or any act or omission of the Member or officer on behalf of the Company, and amounts paid in settlement of any of the foregoing, provided that the same were not the result of fraud, gross negligence, or reckless or intentional misconduct on the part of the Member or officer against whom a claim is asserted. The Company may advance to any Member or officer (and their respective heirs, personal representatives, and successors) the costs of defending any claim, suit or action against such Person if the Person undertakes to repay the funds advanced, with interest, if the Person is not entitled to indemnification under this Section 4.06.

4.07 **Obligations of the Board of Managers**. In addition to the obligations expressly provided by law or this Agreement, the Board of Managers shall act at all times in a fiduciary manner with respect to the Company, the Members and the Company's property and assets. The Board of Managers shall:

(a) devote such efforts to the business and affairs of the Company as it shall, in its discretion exercised in good faith, determine to be necessary to conduct the business and affairs of the Company;

(b) execute, file, record and/or publish all certificates, statements and other documents and do any and all other things as may be appropriate for the formation, qualification and operation of the Company and for the conduct of its business in all appropriate jurisdictions;

(c) retain independent public accountants to prepare tax returns of the Company and to audit its annual financial statements;

(d) retain attorneys to represent the Company and employ consultants, as deemed necessary to assist in the review and inspection of assets or the respective investments reviewed and/or acquired by the Company;

(e) use reasonable efforts to maintain the status of the Company as partnership for federal and state income tax purposes;

(f) have responsibility for the safekeeping and use of all funds and assets of the Company, whether or not in the Board of Managers' immediate possession or control, and not use or permit others to use such funds or assets in any manner except for the benefit of the Company;

(g) maintain a current list of the names and last known addresses of, and Percentage Interests owned by, each Member and the other Company documents at the

Company's principal office, which documents shall be made available there at reasonable times during ordinary business hours for inspection by any Member or his representative for any purpose reasonably related to the business of the Company; and

(h) amend this Agreement in its sole discretion solely in order to remedy any ambiguity or formal defect or omission within this Agreement; conform this Agreement to applicable laws and regulations; and make any changes to this Agreement which, in the judgment of the Board of Managers, is not to the prejudice of the Members.

ARTICLE V.
CAPITAL ACCOUNTS AND CONTRIBUTIONS

5.01 **Definition**. An individual capital account ("Capital Account") shall be established and maintained for each Member, including any additional or substituted Member, in accordance with the rules set forth in the Internal Revenue Code of 1986, as amended (the "Code") and the Treasury regulations thereunder (the "Treasury Regulations") as the same may be amended from time to time. The Capital Accounts shall consist of each Member's initial capital contribution as, pursuant to Section 5.03 hereof, is contributed to the Company, increased by any additional capital contributions, valued at the face value of cash and the fair market value, net of liabilities, of any property contributed to the Company:

(a) **Increased by**: (i) allocations of the Company's income and gain to such Member, if any, as reported for Federal income tax purposes, excluding allocations pursuant to Section 704(c) of the Code; and (ii) such Member's distributive share of income of the Company which is exempt from taxation under the Code; and

(b) **Decreased by**: (i) the fair market value of any distributions made to such Member by the Company (net of liabilities secured by any property or to which any property is subject, and other than in repayment of loans owed to a Member or for services rendered by a Member); (ii) allocations of Company loss and deduction to such Member, as reported for Federal income tax purposes; and (iii) such Member's share of expenditures of the Company which are not deductible or amortizable under the Code.

Each Member's Capital Account shall also be adjusted upon the constructive termination of the Company as provided under Section 708 of the Code in accordance with the methods set forth in Treasury Regulation Section 1.708-1(b)(2)(iv)(1).

5.02 **Conformity to Code and Treasury Regulations**. The maintenance of the Capital Accounts shall in all cases be as required by the Code and the Treasury Regulations (including Temporary Regulations) promulgated thereunder from time to time. Any inconsistencies between the terms of this Agreement and the Code and the Treasury Regulations shall be resolved in favor of the Code and Treasury Regulations.

5.03 **Initial Capital Contributions**. Each Member has made an initial capital contribution in cash to the Company in the amount set forth in Section 3.02 of this Agreement and each Member shall initially have the Percentage Interest in the Company set forth in Section 3.01 of this Agreement in consideration thereof.

5.04 **Interest**. No Member shall have the right to receive any interest on capital contributions.

5.05 **Return of Capital Contributions**. Except as specifically provided in this Agreement, no Member shall have the right to receive a return of any capital contribution.

5.06 **No Withdrawal of Capital Contributions**. Except as determined by a majority of the Board of Managers, no Member shall have the right to withdraw his capital contribution.

ARTICLE VI.
PROFIT, LOSS AND DISTRIBUTIONS

6.01 **Definitions**. For all purposes of this Agreement, the terms "Net Profits" and "Net Losses" shall mean the net income and the net losses of the Company as reported on the Company's information returns for Federal income tax purposes.

6.02 **Allocations**. The Net Profits and Net Losses of the Company shall be allocated in accordance with the Members' Percentage Interests.

6.03 **Distributions**. Except as may be set forth elsewhere in this Agreement, the Company will distribute cash, which in the discretion of the Board of Managers is available for distribution, to the Members in proportion to their Percentage Interests. If any Member does not withdraw the whole or any part of his share of the cash available for distribution, such Member shall not be entitled to receive any interest thereon. Undrawn cash shall not be deemed to be an increase in such Member's interest in the capital of the Company and shall not be credited to the Member's Capital Account. Undrawn cash shall be assigned to a suspense account established for each Member who does not withdraw his entire allocation of cash. The Company will use its best efforts to cause annual distributions of cash in an amount equal to forty-five percent (45%) of the Net Profits allocated to the Members.

6.04 **Code Section 704(c) Allocations**. In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss, and deduction (including depreciation) with respect to any property contributed to the capital of the Company by a Member shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for Federal income tax purposes and its fair market value at the time it was contributed to the Company.

ARTICLE VII.

TRANSFERABILITY OF OWNERSHIP INTERESTS

7.01 **Transfers**. Except as provided in this Article VII, and subject to the provisions of Section 3.04 of this Agreement, no Member, directly or indirectly, shall sell, assign, mortgage, hypothecate, transfer, pledge, create a security interest in or lien upon, encumber, give, place in trust, or otherwise voluntarily or involuntarily dispose of any Ownership Interest now owned or hereafter acquired, or otherwise withdraw, relinquish or abandon an interest as a Member of the Company (any of the foregoing acts being referred to herein as a "Transfer" of such Ownership Interests). Any Transfer, other than as permitted by this Agreement, shall be null, void and without effect as against the Company and the other Members.

7.02 **Restrictions Fair and Reasonable**. The Members recognize and acknowledge that the restrictions imposed in this Agreement on the Transfer of their Ownership Interests are fair and reasonable in consideration of their absolute necessity for the proper conduct of the business of the Company and the provisions of this Agreement providing a market for their Ownership Interests at a fair price upon the occurrence of certain events, and may be necessary for the Company to be treated as a partnership for federal and state tax laws, rules and regulations.

7.03 **Right of First Refusal**.

(a) If any Member (individually, a "Transferor") receives a bona fide written offer (the "Transferee Offer") from any other Person (a "Transferee") to purchase all or any portion of the Transferor's Ownership Interests (the "Transferor Interest"), then, prior to any Transfer of the Transferor Interest, the Transferor shall give the Company written notice (the "Transfer Notice") containing each of the following:

(i) the Transferee's identity;

(ii) a true and complete copy of the Transferee Offer; and

(iii) the Transferor's Offer (the "Offer") to sell the Transferor Interest to the Company for a total price equal to the price set forth in the Transferee Offer (the "Transfer Purchase Price"), which shall be payable on the terms of payment set forth in the Transferee Offer.

(b) The Offer shall be irrevocable for a period (the "Offer Period") ending at 5:00 P.M. local time at the Company's principal office, on the thirtieth (30th) day following the date the Transfer Notice is given to the Company. At any time during the Offer Period, the Company may accept the Offer by notifying the Transferor in writing that the Company intends to purchase all, but not less than all, of the Transferor Interest. The Company shall have the right to reject the Transfer Purchase Price and make

a counter offer to the Transferor. The decision to accept or reject the Offer shall be made by the Board of Managers, excluding the Transferor.

(c) If the Company accepts the Offer, the Transfer Purchase Price shall be paid in accordance with the payment terms set forth in the Transferee Offer on the Transfer Closing Date.

(d) If the Offer is not accepted by the Company within the time and in the manner specified in this Section 7.03, the Transferor must then repeat the process set forth in paragraphs 7.03(a), (b) and (c), except that the Offer shall be made to the other Members of the Company, pro rata to the Percentage Interest held by each of them. In the event that some Members accept the Offer and some do not, those Members accepting the Offer shall have the right to acquire the Ownership Interests not accepted, pro rata to the respective Percentage Interests held by each of them.

(e) If the Offer is not accepted by either the Company or any of the Members within the time and in the manner specified in this Article VII, then the Transferor shall be free for a period (the "Free Transfer Period") of ninety (90) days after the expiration of the Offer Period to Transfer the Transferor Interest to the Transferee, for the same or greater price and on the same terms and conditions as set forth in the Transfer Notice. If the Transferor does not Transfer the Transferor Interest within the Free Transfer Period, the Transferor's right to Transfer the Transferor Interest pursuant to this Article VII shall cease and terminate.

(f) Any Transfer by the Transferor after the last day of the Free Transfer Period or without strict compliance with the terms, provisions and conditions of this Article VII and the other terms, provisions and conditions of this Agreement, shall be null and void and of no force and effect. Notwithstanding the foregoing, the Board of Managers may waive the strict compliance requirement for the purposes of validating a Transfer made pursuant to this Article VII.

(g) The provisions of this Section 7.03 shall be subject to the terms and conditions of Section 3.04 of this Agreement, governing admission of new Members.

7.04 **Permitted Transfers**. Nothing herein shall preclude any Member from transferring all or any portion of their Ownership Interest to a member of their immediate family for estate planning or administration purposes. The phrase "any member of their immediate family" shall mean their spouse, children, wives of married children, grandchildren or any trust created for the benefit of all or any of the foregoing ("Permitted Transferee"); provided, however, any such Permitted Transferee, for the Transfer to be effective, shall execute and deliver a counterpart of this Agreement within five (5) days of the Transfer, the failure of which shall deem the Transfer null and void as against the Company or any other Member. A Permitted Transferee shall have no voting rights with respect to an Ownership Interest transferred to him or her, nor any right to become a Member of the Board of Managers.

7.05 **Drag-Along and Tag-Along Rights**.

(a) **Drag-Along Right**. If Ownership Interests representing at least 60% of the outstanding Percentage Interests are to be sold by a Member (the "Selling Member") in any transaction or series of related transactions to a third party or parties (the "Third Party"), and the Third Party requires a sale of all issued and outstanding Ownership Interests of the Company as a condition of such sale, the Selling Member shall give notice of such transaction to the other Member not later than twenty (20) days prior to the scheduled closing of the sale to the Third Party, setting forth the consideration to be paid by the Third Party and the other material terms and conditions of the sale (the "Drag-Along Notice"). The Selling Member shall require the other Member (including Permitted Transferees) (the "Drag-Along Member") to sell to the Third Party, for the same consideration per Percentage Interest, all of the Ownership Interests of the Drag-Along Member, and otherwise on the same terms and conditions upon which the Selling Member proposes to sell its Ownership Interest to the Third Party.

(b) **Tag-Along Right**. If Ownership Interests representing at least 60% of the outstanding Percentage Interests are to be sold in any transaction or series of related transactions to a Third Party, then the other Member, including Permitted Transferees (the "Tag-Along Member") shall be given written notice of such sale to the Third Party, not later than thirty (30) days prior to the closing, and shall have the option to give notice (the "Tag-Along Notice"), not later than twenty (20) days prior to the closing of the sale to the Third Party, pursuant to which the Tag-Along Member may require the Selling Member to give notice to the Third Party that as part of such transaction, all of the Ownership Interests of the Tag-Along Member (the "Tag-Along Units") shall be purchased for the same consideration per Percentage Interests and otherwise on the same terms and conditions upon which the Selling Member shall sell its Ownership Interest to the Third Party. If the Third Party does not agree to purchase all of the outstanding Ownership Interests, then each Member who is participating in such sale will sell only that portion of his Ownership Interests, pro rata to his Percentage Interest, as the Third Party agrees to purchase.

ARTICLE VIII.
INVOLUNTARY WITHDRAWAL OF A MEMBER

8.01 **Event of Involuntary Withdrawal**

(a) In the event of any of the following (hereinafter an "Event of Involuntary Withdrawal"), a Member involved in an Event of Involuntary Withdrawal shall be deemed to be a "Withdrawing Member":

(b) A petition seeking an order for relief pursuant to the provisions of any bankruptcy law is filed by or against a Member and such petition is not discharged within sixty (60) days of the filing of such petition; or

(c) A Member is adjudged bankrupt or insolvent; or

(d) A Member violates any of the terms, conditions and provisions of this Agreement, including without limitation the obligation to devote adequate time to the business of the Company in accordance with Section 3.06 of this Agreement, and fails to cure such violation within thirty (30) days after receipt of a notice of such violation from the Company (the determination to give such a notice shall be made by the Manager); or

(e) The restrictions on transfer contained in this Agreement are adjudged by any authority of competent jurisdiction to be invalid, contrary to applicable statutes, or otherwise unenforceable, or any such authority orders the sale, assignment, or other transfer of all or any portion of the Ownership Interest of any Member contrary to this Agreement; or

(f) The death or disability (as defined in Section 22(e)(3) of the Code) of _____ or, in the case of _____, of both _____ and _____.

8.02 **Involuntary Withdrawal of a Member**. Upon the happening of an Event of Involuntary Withdrawal and subject to the provisions of Section 3.04, if applicable, a Withdrawing Member shall be deemed to have offered for sale to the Company all of his Ownership Interests as of the date of such Event of Involuntary Withdrawal (the "Implied Offer"). The Company shall have the option, but not the obligation, to purchase all of the Ownership Interests of such Withdrawing Member and those of his permitted Transferees, if any, at the price, and upon the terms and conditions set forth below.

(a) The Implied Offer shall be irrevocable for a period (the "Implied Offer Period") ending at 11:59 P.M. local time at the Company's principal office, on the thirtieth (30th) day following the date of the Company's receipt of notice of the Event of Involuntary Withdrawal. At any time during the Implied Offer Period, the Company may accept the Implied Offer by notifying the Withdrawing Member in writing that the Company intends to purchase all, but not less than all, of the Withdrawing Member's Ownership Interest.

(b) If the Company accepts the Implied Offer, the purchase price shall be paid in immediately available funds on a closing date which shall occur within ninety (90) days from the date of the Event of Involuntary Withdrawal.

(c) If the Company does not accept the Implied Offer (within the time and in the manner specified in this Article VIII), then the Manager may, in his sole discretion, agree to an alternative disposition of the Units, for the same or greater price and on the same terms and conditions as set forth in the Implied Offer.

8.03 **Purchase Price**. The purchase price of any Ownership Interests purchased pursuant to Section 8.02 shall be the amount set forth on the most current Certificate of Value for the Company. In the event that, at the time of an Involuntary Withdrawal, the most current Certificate of Value is dated more than eighteen (18) months earlier, then the value of the Company shall equal the average of (a) four (4) times the average annual net income of the Company and (b) two (2) times the average annual gross sales of the Company, in both cases over the three last complete fiscal years of the Company at the time of the Involuntary Withdrawal. Notwithstanding the foregoing, in the event that the Involuntary Withdrawal is due to any of the reasons specified in clauses (i), (ii), (iii) or (iv) of Section 8.01 (a), the purchase price for the Ownership Interest of the Withdrawing Member shall be the then Capital Account of such Member. The purchase price will be payable by the Company over two (2) years in eight (8) consecutive, equal quarterly installments of principal plus interest in arrears at the rate of a five-year (5) U.S. Treasury Note on the date of the initial sale.

ARTICLE VIII.
DISSOLUTION

9.01 **Events of Dissolution**. The Company shall, except as otherwise provided in this Agreement, be dissolved upon the occurrence of any of the following:

(a) The unanimous vote of the Board of Managers; or

(b) The sale or transfer of substantially all of the assets of the Company.

9.02 **Manner of Dissolution**. Upon the occurrence of any of the events described in Section 9.01, the Members shall proceed with reasonable promptness to liquidate the Company and wind up its affairs. The assets of the Company shall be distributed in the following order upon the liquidation of the Company:

(a) First, to pay or provide for the payment of all Company liabilities, liquidating expenses, and obligations, excluding any liabilities owed to a Member;

(b) Second, to the Members in payment of any loans owing to them from the Company;

(c) Third, for the establishment of reasonable reserves, as such may be determined by the Board of Managers. Such reserves shall be held for disbursement in payment of any of the aforesaid liabilities and at the expiration of such reasonable period of time, any remaining reserves shall be distributed in the manner hereinafter provided;

(d) Fourth, to each Member with a positive balance in his Capital Account to the extent of said positive balance(s), after crediting or reducing such Capital Account by any Net Profits or Net Losses accrued or incurred to the date of dissolution, but proportional to the percentage of positive Capital Accounts held by each Members to aggregate

positive Capital Accounts of all Members if the amount to be distributed is insufficient to pay the positive balances of the Capital Accounts of all such Members in full; and

(e) Fifth, to the Members pro rata to their Percentage Interests.

9.03 **Filing of Certificate of Cancellation**. If the Company is dissolved, the Manager shall promptly file a Certificate of Cancellation with the appropriate state agency in accordance with the Act. If there is no Manager, the Certificate shall be filed by the last person to be a Member; if there are no remaining Members, or a person who last was a Member, the Certificate shall be filed by the legal or personal representatives of the person who was last a Member.

ARTICLE X.
MISCELLANEOUS

10.01 **Notices**. Any notice required or permitted to be given pursuant to the provisions of the Act or this Agreement shall be effective as of the date personally delivered or delivered by a recognized courier service providing proof of delivery, or if sent by mail, on the date deposited with the United States Postal Service, prepaid, certified mail return receipt requested, and addressed to the intended receiver at his last known address as shown in the records of the Company.

10.02 **Legal Representation**. Each of the Members acknowledge and agree that he has been advised by the law firm of Greenbaum, Rowe, Smith & Davis LLP ("Greenbaum"), that Greenbaum represents only the Company and _____ in connection with the preparation, negotiation and execution of this Agreement, and that Greenbaum has advised each Member that he has the right and should engage independent legal counsel in connection with same. By execution of this Agreement, each Member agrees that he has either engaged independent counsel or waived his right to same.

10.03 **Waiver of Notice**. Whenever any notice is required to be given pursuant to the provisions of the statute or this Agreement, a waiver thereof, in writing, signed by the persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

10.04 **Gender and Number**. Whenever the context requires, the gender of all words used herein shall include the masculine, feminine and neuter, and the number of all words shall include the singular and plural thereof.

10.05 **Currency**. All dollar values specified in this Agreement shall be deemed to be in United States dollars.

10.06 **Articles, Sections and Other Headings**. The articles, sections and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation thereof.

10.07 **Amendments**. This Agreement may be altered, amended or repealed and a new Agreement adopted only by consent of the Manager.

10.08 **Applicable Law**. This Agreement shall be construed in accordance with the laws of the State of New Jersey, without giving effect to principles of conflicts of law thereof. The parties hereto agree that the State and Federal courts of the State of New Jersey shall have co-exclusive jurisdiction to hear and determine any claims or disputes pertaining directly or indirectly to this Agreement. The parties expressly and irrevocably submit and consent in advance to such jurisdiction in any action or proceeding, hereby waiving personal service of the summons and complaint or other process, and agree that service of such summons and complaint, or other process or paper shall be made inside or outside the State of New Jersey by conforming to the notice provisions set forth in Section 10.01 hereof, or in such other manner as may be permissible under the rules of said courts.

10.09 **Counterparts**. This Agreement may be executed in one or more counterparts all of which shall together constitute one and the same instrument.

THE UNDERSIGNED, being all of the Members of _____ LLC, a New Jersey limited liability company (the "Company"), hereby evidence their adoption and ratification of the foregoing Operating Agreement of the Company.

_____

INDEX OF DEFINED TERMS

CERTIFICATE OF VALUE

The undersigned, being the members of _____ LLC, a New Jersey limited liability company (the "Company"), hereby agree that the value of the Company, pursuant to Section 8.03 of its Operating Agreement dated _____, 2019, is $_____ as of _____, 2019.

_____

By: _____

By: _____

By: _____

FORM 4.1

APPLICATION FOR RESERVATION OF CORPORATE NAME

Pursuant to the provisions of Section 14A:2-3, Corporations, General, of the New Jersey Statutes, the undersigned applicant hereby applies for the Reservation of a Corporate Name in New Jersey for a period of one hundred twenty (120) days, and for that purpose submits the following application:

1. The corporate name to be reserved is the first name available for corporate use among the following specified names:

   1) _____

   2) _____

   3) _____

2. The name and address including the zip code of the applicant is _____ _____ _____

   Dated this _____ day of _____, 2019.

_____
APPLICANT

_____
Print or type name and title

FORM 4.2

APPLICATION FOR REGISTRATION OF ALTERNATE NAME

CHECK APPROPRIATE STATUTE: **TYPE ALL INFORMATION EXCEPT SIGNATURE**

[ ] Title 14A:2-2.1(2) New Jersey Business Corporation Act (File in DUPLICATE)

[ ] Title 15A:2-3(b) New Jersey Nonprofit Corporation Act (File in TRIPLICATE)

REGISTRATION OF ALTERNATE NAME

(FOR USE BY DOMESTIC AND FOREIGN, PROFIT AND NONPROFIT CORPORATIONS)

Pursuant to the provisions of the appropriate Statute, checked above, of the New Jersey Statutes, the undersigned corporation hereby applies for the Registration of an Alternate Name in New Jersey for a period of five (5) years, and for that purpose submits the following application:

1. Name of _____
2. Corporation Number _____
3. Set Forth State of Original Incorporation _____
4. Date of Incorporation _____

   Date of Authorization (Foreign) _____
5. Alternate Name to be Used _____
6. The Character or Nature of the Particular Business/Activity to be Conducted using the Alternate Name is: _____
7. The Corporation intends to use the Alternate Name in this State.
8. The Corporation has not previously used the Alternate Name in this State in violation of this Statute, or if it has, the month and year in which it commenced such as is _____ .

Signature _____

Name _____

(Print Above Name)

Title_____

(Must be Ch. of Bd. Pres. or Vice Pres.)

Date _____

FORM 4.3

CERTIFICATE OF INCORPORATION OF

_____

The undersigned individual, being at least 18 years of age and acting as the sole incorporator of the corporation being organized hereby (the "Corporation") pursuant to the New Jersey Business Corporation Act (the "Act"), hereby certifies as follows:

ARTICLE I

CORPORATE NAME

The name of the Corporation is _____

ARTICLE II

PURPOSE

The purposes for which the Corporation is organized are to engage in any activity with the purposes for which corporations may be organized under the Act.

ARTICLE III

CAPITAL STOCK

The total authorized capital stock of the Corporation shall be 1,000 shares of common stock, no par value.

ARTICLE IV

REGISTERED AGENT AND OFFICE

The address of this corporation's initial registered agent is c/o Greenbaum, Rowe, Smith & Davis LLP, 99 Wood Avenue South, Woodbridge, New Jersey 07095, and the name of the corporation's initial registered agent at such address is W. Raymond Felton.

ARTICLE V
BOARD OF DIRECTORS

The number of directors constituting the Corporation's initial Board of Directors shall be one (two, etc.), and the name(s) and addresses(s) of the person(s) who are to serve are as follows:

_____	_____
Name	Address

ARTICLE VI
DURATION

The period of existence of the Corporation is unlimited.

ARTICLE VII
WAIVER OF PERSONAL LIABILITY

No director or officer of the Corporation shall be personally liable to the Corporation or its shareholders for the breach of any duty owed to the Corporation or its shareholders, except that no director or officer shall be relieved from personal liability for any breach of duty owed to the Corporation or its shareholders which is based upon an act or omission (a) in breach of such director's or officer's duty of loyalty to the Corporation or its shareholders, (b) not in good faith or involving a knowing violation of law, or (c) resulting in the receipt by such director or officer of an improper personal benefit.

ARTICLE VIII
INCORPORATOR

The name and address of the incorporator is W. Raymond Felton, 99 Wood Avenue, Woodbridge, New Jersey 07095.

ARTICLE IX

EFFECTIVE DATE

This Certificate of Incorporation shall become effective as of the date of filing.

IN WITNESS WHEREOF, this Certificate of Incorporation has been signed this ____ day of _____, 2019.

_____

, Incorporator

FORM 4.4

UNANIMOUS CONSENT OF THE DIRECTORS IN LIEU OF THE ORGANIZATIONAL MEETING OF THE BOARD OF DIRECTORS OF

_____

The undersigned are the directors of _____, a New Jersey corporation (the "Corporation"). In lieu of the organizational meeting, the undersigned hereby consent in writing to the adoption of the following resolutions in connection with the organization of the Corporation and hereby authorizes and approves the taking of the action described therein:

WHEREAS, the New Jersey Business Corporation Act (the "Act") provides in N.J.S.A. 14A:2-8 that the directors named in the Certificate of Incorporation shall hold an organizational meeting of the Board of Directors on or after the effective date of the Certificate of Incorporation to adopt bylaws, elect officers, authorize the issuance of stock and transact such other business as the directors shall deem necessary or advisable; and

WHEREAS, the Act also provides in N.J.S.A. 14A:6-7.1(5) that any action required or permitted to be taken pursuant to authorization voted at a meeting of the Board of Directors may be taken without a meeting if all members of the Board of Directors consent thereto in writing and such written consents are filed with the Minutes of the proceedings of the Board of Directors; and

WHEREAS, the directors named in the Certificate of Incorporation have unanimously decided that it would be advisable to consent in writing to the adoption of the following resolutions at a meeting of the Board of Directors,

NOW, THEREFORE, IT IS

RESOLVED, that the proposed form of bylaws for the regulation and management of the affairs of the Corporation be and they hereby are approved and adopted as and for the bylaws of the Corporation, and a copy thereof shall be permanently inserted in the minute book; and be it further

RESOLVED, that the following persons be and they hereby are elected as officers of the Corporation to serve in the position set forth opposite their respective names for a period of one year and until their respective successors are duly elected and qualified (subject, however, to removal at any time by the Board of Directors, in its sole discretion, with or without cause):

Name	Office
	President
	Vice President
	Treasurer
	Secretary

and be it further

RESOLVED, that the Corporation issue _____ shares of its common stock to the following individuals in the amounts indicated for a price of $____ per share, allocated $_____ to common stock and $_____ to additional paid in capital; and be it further

RESOLVED, that the Treasurer of the Corporation be and hereby is authorized and directed to pay all fees and expenses for, incident to or arising out of the organization of the Corporation and to reimburse all persons who have previously made any expenditures or disbursements therefor; and be it further

RESOLVED, that the Corporation select on its first federal income tax return to deduct the foregoing expenses ratably over a sixty-month period, starting with the month in which the Corporation begins business, pursuant to Section 248 of the Internal Revenue Code; and be it further

RESOLVED, that the form of stock certificate for fully paid and nonassessable shares of the Corporation previously submitted to the Board of Directors is hereby adopted as the form of stock certificate of the Corporation and a specimen of such certificate shall be kept in the minute book; and be it further

RESOLVED, that the seal of the Corporation shall be circular in form, have the name of the Corporation, and the words “Incorporated New Jersey,” and the year of the incorporation in the center thereof, and that an impression of the seal shall be made on the margin of the page of the Corporation’s minute book on which this resolution shall appear; and be it further

RESOLVED, that the officers of this Corporation be and they hereby are authorized and directed to take all actions, do all things and execute any and all writings required or advisable to implement the business of the Corporation, including but not limited to the hiring of employees, the opening of bank accounts, the execution and delivery of corporate resolutions on forms prepared by banks, and the hiring of accountants, attorneys and other advisors and consultants.

The undersigned, do hereby consent to, authorize and approve the foregoing resolutions in their capacity as the initial directors of the Corporation as of the ___ day of _____, 2019.

_____

_____

FORM 4.5

BYLAWS OF

ADOPTED: _____, 2019

ARTICLE I
OFFICES

Section 1. **Registered Agent and Office**. The registered agent of the Corporation in the State of New Jersey is W. Raymond Felton and the registered office of the Corporation in that State is c/o Greenbaum, Rowe, Smith, Ravin & Davis, 99 Wood Avenue South, Woodbridge, New Jersey 07095.

Section 2. **Principal Place of Business**. The principal place of business of the Corporation is located at _____.

Section 3. **Other Places of Business**. The Board of Directors of the Corporation may establish such other places of business for the Corporation whenever the Corporation is qualified to do business or where qualification is not required.

ARTICLE II
SHAREHOLDERS

Section 1. **Place of Meeting; Notice**. All meetings of shareholders shall be held at the principal office of the Corporation or at such other place, either within or outside of New Jersey, as shall be fixed by the Board of Directors. Written or printed notice stating the place, day and hour of the meeting shall be given not less than ten or more than sixty days before the date of the meeting, either personally or by mail, to each shareholder of record entitled to vote at the meeting. The notice shall designate with reasonable specificity the business to be conducted at the meeting.

Section 2. **Annual Meeting**. The annual meeting of shareholders for the purpose of electing directors and for the transaction of such other business as may come before the meeting, shall be held on the anniversary date of the Corporation's incorporation, or at such other time as may be fixed by the Board of Directors.

Section 3. **Special Meeting**. Special meetings of the shareholders, for any purpose or purposes, may be called by the President or by the Board of Directors by notice given to the shareholders as provided in Section 1 above.

Section 4. **Action by Shareholders Without a Meeting**. Any action required or permitted to be taken at a meeting of shareholders may be taken without a meeting pursuant to N.J.S.A. 14A:5-6. The written consent of the shareholders, which may be executed in counterparts, shall be filed with the minutes of the Corporation.

Section 5. **Quorum**. The holders of shares entitled to cast a majority of the votes at a meeting, represented in person or by proxy, shall constitute a quorum at such meeting.

Section 6. **Method of Voting**. The shareholders shall vote by voice vote on all matters including the election of directors, unless any shareholder demands voting by written ballot prior to the vote. In the event a written ballot is demanded, the person presiding at the meeting shall designate one individual, who may not be a nominee for director if the vote be to elect directors, as inspector to tally the ballots and report the results of the voting.

Section 7. **Presiding Officers at Meetings**. The President and the Secretary of the Corporation shall act as President and Secretary of each shareholders' meeting unless the majority of the shareholders present at the meeting shall decide otherwise.

ARTICLE III
DIRECTORS

Section 1. **Number; Term of Office**. The Board of Directors shall consist of ___ persons. The directors named in the Certificate of Incorporation shall hold office until the annual meeting of shareholders next succeeding the filing of the Certificate of Incorporation, and until their successors are elected and qualified. The directors elected at the first annual meeting of shareholders and at each annual meeting thereafter shall hold office for one year, and until their successors are elected and qualified.

Section 2. **Regular Meetings**. A regular meeting of the Board of Directors for the purpose of electing officers and transacting such other business as may come before the meeting shall be held without notice immediately following and at the same place as the annual shareholders' meeting. The Board of Directors may provide, by resolution, the place, day and hour for additional regular meetings which may be held without prior notice.

Section 3. **Special Meetings**. Special meetings of the Board of Directors may be called by the President or any director. Written notice of any special meeting, specifying the time and place

of the meeting and, at the option of the person calling the meeting, the purpose of the meeting, shall be given to each director at least two days prior thereto. Such notice may be delivered by facsimile transmission.

Section 4. Notice of Meeting; Waiver of Notice. Meetings of the Board of Directors shall be held at such place as shall be designated in the notice of meetings. Notice of any meeting need not be given to any director who signs a waiver of notice before or after the meeting.

Section 5. Quorum. A majority of the directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

Section 6. Action Without a Meeting. Any action required or permitted to be taken pursuant to authorization voted at a meeting of the Board of Directors may be taken without a meeting if, prior or subsequent to such action, all of the directors consent thereto in writing. Such written consents may be executed in counterparts, and shall be filed with the minutes of the Corporation.

Section 7. Vacancies. Any vacancy in the Board of Directors, including a vacancy caused by an increase in the number of directors, may be filled by the affirmative vote of a majority of the directors, even though less than a quorum.

ARTICLE IV
OFFICERS

Section 1. Election. At its regular meeting following the annual meeting of shareholders, the Board of Directors shall elect a President, a Treasurer, a Secretary, and such other officers or agents as it shall deem necessary or desirable. One person may hold two or more offices. Any officer may be removed by the Board of Directors with or without cause at any time.

Section 2. Vacancies. Any vacancy occurring among the officers, however caused, may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. President. The President shall be chief executive officer of the Corporation and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the corporation. Unless otherwise directed by the Board of Directors, all other officers shall be subject to the authority and supervision of the President. The President may enter into and execute, in the name of the Corporation, contracts or other instruments in the regular course of business, or contracts or other instruments not in the regular course of business which are authorized, either generally or specifically, by the Board of Directors. The President shall have the general powers and duties of management usually vested in the office of the President of a corporation.

Section 4. Vice President. If any are elected, the Vice President(s) shall perform such duties and have such authority as may be delegated to them from time to time by the President or by the Board of Directors. In the absence of the President or in the event of his death, inability, or refusal to act, the Vice President(s), in order designated, shall perform the duties and be vested with the authority of the President.

Section 5. Treasurer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Corporation, shall keep or cause to be kept regular books of account for the corporation and shall perform such other duties and possess such other powers as are incident to the office of Treasurer or as shall be assigned to him by the President or by the Board of Directors.

Section 6. Secretary. The Secretary shall cause notices of all meetings to be served as prescribed in these bylaws or by statute, shall keep or cause to be kept the minutes of all meetings of the shareholders and of the Board of Directors, shall have charge of the corporate records and seal of the corporation and shall keep a register of the post office address of each shareholder. The Secretary shall perform such other duties as are consistent with the office of Secretary or as are assigned by the President or by the Board of Directors.

ARTICLE V
EXECUTION OF DOCUMENTS

Section 1. Commercial Paper. All checks, notes, drafts and other commercial paper of the corporation shall be signed by the President or any Vice-President of the Corporation or by such other person or persons as the Board of Directors may from time to time designate.

Section 2. Other Instruments. All contracts, deeds, mortgages and other documents and instruments shall be executed by the President or any Vice President of the corporation, and, if deemed necessary or advisable, by the Secretary, or such other person or persons as the Board of Directors may from time to time designate.

ARTICLE VI
FISCAL YEAR

Section 1. Fiscal Year. The fiscal year of the corporation shall be the same as the calendar year unless the Board of Directors shall direct otherwise.

ARTICLE VII
CERTIFICATES FOR SHARES

Section 1. Execution. Certificates representing shares of the corporation shall be in such form as shall be determined by the Board of Directors and shall be executed by the President or Vice President and by the Secretary or the Treasurer, unless the Board of Directors shall direct otherwise.

Section 2. Fixing Record Date. For the purpose of determining the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or to express consent to or dissent from any proposal without any meeting or for the purpose of determining shareholders entitled to receive payment of any dividend or allotment of any right, or in order to make a determination of shareholders for any other purpose, the Board of Directors may fix, in advance, a date as the record date for any such determination of shareholders. Such date shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action.

ARTICLE VIII
DIVIDENDS

Section 1. Dividends. The Board of Directors may from time to time declare, and the corporation may pay dividends or make other distributions on its outstanding shares in the manner and upon the terms and conditions provided by the Certificate of Incorporation or by statute.

ARTICLE IX
INDEMNIFICATION

Section 1. Indemnification. Any Corporate Agent shall be indemnified by the Corporation to the full extent permitted by N.J.S.A. 14A:3-5 in connection with any proceeding involving the Corporate Agent by reason of his being or having been such a Corporate Agent. Any Corporate Agent may be insured by insurance purchased and maintained by the Corporation against any expenses incurred in any proceeding and any liability asserted against him in his capacity as Corporate Agent, whether or not the Corporation would have the power to indemnify him against such liability.

Section 2. Definitions. For purposes of this Article IX, the following definitions, as well as all other definitions set forth in N.J.S.A. 14A:3-5, shall apply:

a. "Corporate Agent" shall mean any person who is or was a director, officer, employee or agent of the Corporation or of any constituent corporation absorbed by the Corporation in consolidation or merger on any person who is or was a director, officer, trustee, employee or agent of any other enterprise, serving as such constituent corporation, or the legal representative of any such director, officer, trustee, employee or agent. Furthermore, any Corporate Agent also serving as a "fiduciary" of an employee benefit plan governed by the Act of Congress entitled "Employee Retirement Income Security Act of 1974" (ERISA) as amended from time to time, shall serve in such capacity as a Corporate Agent, if the Corporation shall have requested any such person to serve. The Corporation shall be deemed to have requested such person to serve as fiduciary of any employee benefit plan, only where the performance by such person of his duties to the corporation also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the plan.

b. "Other Enterprises" shall mean any domestic or foreign corporation other than the Corporation, and any partnership, joint venture, sole proprietorship, trust or other enterprise (including employee benefit plans governed by ERISA), whether or not for profit served by a Corporate Agent.

ARTICLE X

LOANS TO AND GUARANTEES OF OBLIGATIONS OF OFFICERS, DIRECTORS AND EMPLOYEES

Section 1. Loans and Guarantees. The Corporation may lend money to, or guarantee any obligation of, or otherwise assist, any director, officer or other employee of the Corporation or of any subsidiary, whenever, in the judgment of the directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. Such loan, guarantee or assistance must be authorized by a majority of the entire Board of Directors of the Corporation. Any such loan, guarantee or other assistance may be made with or without interest, and may be unsecured, or secured in such manner as the Board of Directors shall approve, including without limitation, a pledge of shares of the corporation, and may be made upon such other terms and conditions as the Board may determine.

ARTICLE XI
AMENDMENT

Section 1. Amendments. These bylaws may be altered, amended or repealed and new bylaws may be adopted by a majority of the votes cast at any regular or special meeting of the shareholders, if notice of the proposed alteration or amendment be contained in the notice of meeting, or by a majority of the Board of Directors, unless the resolution of the shareholders adopting the bylaws expressly reserves to the shareholders the right to amend it, at a regular meeting or at a special meeting called for that purpose.

Form 4.6

Form **2553**
(Rev. December 2017)
Department of the Treasury
Internal Revenue Service

Election by a Small Business Corporation

(Under section 1362 of the Internal Revenue Code)
(Including a late election filed pursuant to Rev. Proc. 2013-30)

▶ **You can fax this form to the IRS. See separate instructions.**
▶ **Go to *www.irs.gov/Form2553* for instructions and the latest information.**

OMB No. 1545-0123

Note: This election to be an S corporation can be accepted only if all the tests are met under *Who May Elect* in the instructions, all shareholders have signed the consent statement, an officer has signed below, and the exact name and address of the corporation (entity) and other required form information have been provided.

Part I Election Information

Type or Print	Name (see instructions)	**A** Employer identification number
	Number, street, and room or suite no. If a P.O. box, see instructions.	**B** Date incorporated
	City or town, state or province, country, and ZIP or foreign postal code	**C** State of incorporation

D Check the applicable box(es) if the corporation (entity), after applying for the EIN shown in **A** above, changed its ☐ name or ☐ address

E Election is to be effective for tax year beginning (month, day, year) (see instructions) . . . . . ▶ _____

Caution: A corporation (entity) making the election for its first tax year in existence will usually enter the beginning date of a short tax year that begins on a date other than January 1.

F Selected tax year:
(1) ☐ Calendar year
(2) ☐ Fiscal year ending (month and day) ▶ _____
(3) ☐ 52-53-week year ending with reference to the month of December
(4) ☐ 52-53-week year ending with reference to the month of ▶ _____
If box (2) or (4) is checked, complete Part II.

G If more than 100 shareholders are listed for item J (see page 2), check this box if treating members of a family as one shareholder results in no more than 100 shareholders (see test 2 under *Who May Elect* in the instructions) ▶ ☐

H Name and title of officer or legal representative whom the IRS may call for more information	Telephone number of officer or legal representative

I If this S corporation election is being filed late, I declare I had reasonable cause for not filing Form 2553 timely. If this late election is being made by an entity eligible to elect to be treated as a corporation, I declare I also had reasonable cause for not filing an entity classification election timely and the representations listed in Part IV are true. See below for my explanation of the reasons the election or elections were not made on time and a description of my diligent actions to correct the mistake upon its discovery. See instructions.

Sign Here

Under penalties of perjury, I declare that I have examined this election, including accompanying documents, and, to the best of my knowledge and belief, the election contains all the relevant facts relating to the election, and such facts are true, correct, and complete.

▶ _____ _____ _____
Signature of officer | Title | Date

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 18629R Form **2553** (Rev. 12-2017)

Name | Employer identification number

Part I **Election Information** *(continued)* **Note:** If you need more rows, use additional copies of page 2.

J Name and address of each shareholder or former shareholder required to consent to the election. (see instructions)	K Shareholder's Consent Statement. Under penalties of perjury, I declare that I consent to the election of the above-named corporation (entity) to be an S corporation under section 1362(a) and that I have examined this consent statement, including accompanying documents, and, to the best of my knowledge and belief, the election contains all the relevant facts relating to the election, and such facts are true, correct, and complete. I understand my consent is binding and may not be withdrawn after the corporation (entity) has made a valid election. If seeking relief for a late filed election, I also declare under penalties of perjury that I have reported my income on all affected returns consistent with the S corporation election for the year for which the election should have been filed (see beginning date entered on line E) and for all subsequent years.		L Stock owned or percentage of ownership (see instructions)		M Social security number or employer identification number (see instructions)	N Shareholder's tax year ends (month and day)
	Signature	Date	Number of shares or percentage of ownership	Date(s) acquired		

Name | Employer identification number

Part II Selection of Fiscal Tax Year (see instructions)

Note: All corporations using this part must complete item O and item P, Q, or R.

O Check the applicable box to indicate whether the corporation is:

1. ☐ A new corporation **adopting** the tax year entered in item F, Part I.
2. ☐ An existing corporation **retaining** the tax year entered in item F, Part I.
3. ☐ An existing corporation **changing** to the tax year entered in item F, Part I.

P Complete item P if the corporation is using the automatic approval provisions of Rev. Proc. 2006-46, 2006-45 I.R.B. 859, to request (1) a natural business year (as defined in section 5.07 of Rev. Proc. 2006-46) or (2) a year that satisfies the ownership tax year test (as defined in section 5.08 of Rev. Proc. 2006-46). Check the applicable box below to indicate the representation statement the corporation is making.

1. Natural Business Year ► ☐ I represent that the corporation is adopting, retaining, or changing to a tax year that qualifies as its natural business year (as defined in section 5.07 of Rev. Proc. 2006-46) and has attached a statement showing separately for each month the gross receipts for the most recent 47 months. See instructions. I also represent that the corporation is not precluded by section 4.02 of Rev. Proc. 2006-46 from obtaining automatic approval of such adoption, retention, or change in tax year.

2. Ownership Tax Year ► ☐ I represent that shareholders (as described in section 5.08 of Rev. Proc. 2006-46) holding more than half of the shares of the stock (as of the first day of the tax year to which the request relates) of the corporation have the same tax year or are concurrently changing to the tax year that the corporation adopts, retains, or changes to per item F, Part I, and that such tax year satisfies the requirement of section 4.01(3) of Rev. Proc. 2006-46. I also represent that the corporation is not precluded by section 4.02 of Rev. Proc. 2006-46 from obtaining automatic approval of such adoption, retention, or change in tax year.

Note: If you do not use item P and the corporation wants a fiscal tax year, complete either item Q or R below. Item Q is used to request a fiscal tax year based on a business purpose and to make a back-up section 444 election. Item R is used to make a regular section 444 election.

Q Business Purpose—To request a fiscal tax year based on a business purpose, check box Q1. See instructions for details including payment of a user fee. You may also check box Q2 and/or box Q3.

1. Check here ► ☐ if the fiscal year entered in item F, Part I, is requested under the prior approval provisions of Rev. Proc. 2002-39, 2002-22 I.R.B. 1046. Attach to Form 2553 a statement describing the relevant facts and circumstances and, if applicable, the gross receipts from sales and services necessary to establish a business purpose. See the instructions for details regarding the gross receipts from sales and services. If the IRS proposes to disapprove the requested fiscal year, do you want a conference with the IRS National Office?

☐ Yes ☐ No

2. Check here ► ☐ to show that the corporation intends to make a back-up section 444 election in the event the corporation's business purpose request is not approved by the IRS. See instructions for more information.

3. Check here ► ☐ to show that the corporation agrees to adopt or change to a tax year ending December 31 if necessary for the IRS to accept this election for S corporation status in the event (1) the corporation's business purpose request is not approved and the corporation makes a back-up section 444 election, but is ultimately not qualified to make a section 444 election, or (2) the corporation's business purpose request is not approved and the corporation did not make a back-up section 444 election.

R Section 444 Election—To make a section 444 election, check box R1. You may also check box R2.

1. Check here ► ☐ to show that the corporation will make, if qualified, a section 444 election to have the fiscal tax year shown in item F, Part I. To make the election, you must complete **Form 8716,** Election To Have a Tax Year Other Than a Required Tax Year, and either attach it to Form 2553 or file it separately.

2. Check here ► ☐ to show that the corporation agrees to adopt or change to a tax year ending December 31 if necessary for the IRS to accept this election for S corporation status in the event the corporation is ultimately not qualified to make a section 444 election.

Name	Employer identification number

Part III **Qualified Subchapter S Trust (QSST) Election Under Section 1361(d)(2)* Note:** If you are making more than one QSST election, use additional copies of page 4.

Income beneficiary's name and address	Social security number
Trust's name and address	**Employer identification number**

Date on which stock of the corporation was transferred to the trust (month, day, year) . . . . . ▶

In order for the trust named above to be a QSST and thus a qualifying shareholder of the S corporation for which this Form 2553 is filed, I hereby make the election under section 1361(d)(2). Under penalties of perjury, I certify that the trust meets the definitional requirements of section 1361(d)(3) and that all other information provided in Part III is true, correct, and complete.

Signature of income beneficiary or signature and title of legal representative or other qualified person making the election | Date

*Use Part III to make the QSST election only if stock of the corporation has been transferred to the trust on or before the date on which the corporation makes its election to be an S corporation. The QSST election must be made and filed separately if stock of the corporation is transferred to the trust **after** the date on which the corporation makes the S election.

Part IV **Late Corporate Classification Election Representations** (see instructions)

If a late entity classification election was intended to be effective on the same date that the S corporation election was intended to be effective, relief for a late S corporation election must also include the following representations.

1 The requesting entity is an eligible entity as defined in Regulations section 301.7701-3(a);

2 The requesting entity intended to be classified as a corporation as of the effective date of the S corporation status;

3 The requesting entity fails to qualify as a corporation solely because Form 8832, Entity Classification Election, was not timely filed under Regulations section 301.7701-3(c)(1)(i), or Form 8832 was not deemed to have been filed under Regulations section 301.7701-3(c)(1)(v)(C);

4 The requesting entity fails to qualify as an S corporation on the effective date of the S corporation status solely because the S corporation election was not timely filed pursuant to section 1362(b); **and**

5a The requesting entity timely filed all required federal tax returns and information returns consistent with its requested classification as an S corporation for all of the years the entity intended to be an S corporation and no inconsistent tax or information returns have been filed by or with respect to the entity during any of the tax years, **or**

b The requesting entity has not filed a federal tax or information return for the first year in which the election was intended to be effective because the due date has not passed for that year's federal tax or information return.

CBT-2553
(8-05)

State of New Jersey
Division of Taxation

New Jersey S Corporation or New Jersey QSSS Election

Check the appropriate box: ☐ Initial S Corporation Election ☐ New Jersey QSSS Election (See Part V) ☐ Change in S or QSSS Corporation Shareholders
IMPORTANT: This form only has to be filed once. There is no renewal required. Please Note: All changes can be filed with the S corporation final return.

Part I Corporate Information (Type or Print)

Name of Corporation	Federal Employer Identification Number
Mailing Address	New Jersey Corporation Number
City or Town, State and ZIP Code	Name and telephone number of corporate officer or legal representative
Check here ☐ if the corporation has changed its name or address in the past 12 months	Date of Incorporation / / — State of Incorporation

Election Information

Enter the effective date of the Federal S corporation election ____/____/____ (month / day / year) Applied for ☐

New Jersey S corporation or New Jersey QSSS election is to be effective for tax year beginning ____/____/____ (month / day / year) ending ____/____/____ (month / day / year)

NOTE: If this election takes effect for the first tax year the corporation exists, enter for item 2 and item 3, the month, day and year of the earliest of the following: (1) date the corporation first had shareholders, (2) date the corporation first had assets, or (3) date the corporation began doing business.

If the accounting period you enter is for an automatic 52-53 week tax year, check here ☐

Part II Shareholder's Consent Statement

Shareholder's Consent Statement - By signing this election, we the undersigned shareholders, consent (1) to the corporation's election to be treated as a New Jersey S corporation under N.J.S.A. 54:10A-1, et seq., (2) that New Jersey shall have the right and jurisdiction to tax and collect the tax on each shareholder's S corporation income, as defined in N.J.S.A. 54A:5-10 and (3) such right and jurisdiction shall not be affected by a change of a shareholder's residency, except as provided in N.J.S.A. 54A:1-1, et seq. Shareholders must sign, date and provide the requested information below. For the original or initial election to be valid, the consent of each shareholder, person having a community property interest in the corporation's stock, and each tenant in common, joint tenant, and tenant by the entirety must appear below or be attached to this form. If more space is needed, a continuation sheet reporting the exact information for additional shareholders or a second consent statement must be attached to this form.

Name of each shareholder, person having a community property interest in the corporation's stock, and each tenant in common, joint tenant, and tenant by the entirety. (A husband and wife (and their estates) are counted as one shareholder).	*** Signatures must be provided *** Signature	Date	Stock Owned: Number of shares	Stock Owned: Dates acquired	Social Security Number or Employer Identification Number for an estate or qualified trust	* Shareholder's state of residency
					/ /	
					/ /	
					/ /	
					/ /	
					/ /	

* You must provide the address of any shareholder who is not a resident of New Jersey on a rider and attach it to this form.

Part III Corporation's Consent Statement

Corporation's Consent Statement - The above named corporation consents (1) to the election to be treated as a New Jersey S corporation under N.J.S.A. 54:10A-1, et seq., (2) to fulfill any tax obligations of any nonconsenting shareholder who was not an initial shareholder as required by any tax law in the State of New Jersey including the payment of tax to the State of New Jersey on behalf of such shareholder. (An authorized officer must sign and date below.)

Under penalties of perjury, I declare that I have examined this election, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

X _____
Signature of authorized officer — Title — Date

Part IV Persons who are no longer shareholders of the corporation.

Do not enter any shareholder who sold or transferred all of his or her stock before the election was made.

Name of shareholder, person no longer having a community property interest in the corporation's stock, tenant in common, joint tenant, or tenant by the entirety. (A husband and wife (and their estates) are counted as one shareholder).	Date Stock Relinquished	Social Security Number or Employer Identification Number for an estate or qualified trust
	/ /	/ /
	/ /	/ /
	/ /	/ /
	/ /	/ /

Under penalties of perjury, I declare that the above, to the best of my knowledge and belief, is true, correct, and complete.

Signature of authorized officer — Title — Date

- 41 -

Part V **Qualified Subchapter S Subsidiary Election**

Corporation's Consent Statement - The above named corporation consents (1) to the election to be treated as a "New Jersey Qualified Subchapter S Subsidiary", and (2) to file a CBT-100S reflecting the $500 minimum tax liability or the $2,000 minimum tax liability if the taxpayer is a member of an affiliated group or a controlled group whose group has a total payroll of $5,000,000 or more for the privilege period. (An authorized officer must sign and date below.)

Under penalties of perjury, I declare that I have examined this election, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of authorized officer	Title	Date

Corporate Parent Company's Consent Statement - By signing this election, the undersigned corporation consents (1) to the subsidiary's election to be treated as a "New Jersey Qualified Subchapter S Subsidiary" and (2) to taxation by New Jersey by filing a CBT-100S or a CBT-100 and remitting the appropriate tax liability including the assets, liabilities, income, and expenses of its QSSS.

Corporate Parent Name	Address	FID Number

Under penalties of perjury, I declare that I have examined this election, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of authorized officer	Title	Date

INSTRUCTIONS for Form CBT-2553

1. **Purpose** - A corporation must file form CBT-2553 to elect to be treated as a New Jersey S corporation or a New Jersey QSSS or to report a change in shareholders. Check the appropriate box to indicate if this is an initial S corporation election or a change in S or QSSS corporation shareholders or a New Jersey QSSS election.

2. **Who may elect** - A corporation may make the election to be treated as a New Jersey S corporation only if it meets all of the following criteria:

   a) The corporation is or will be an S corporation pursuant to section 1361 of the Federal Internal Revenue Code;

   b) Each shareholder of the corporation consents to the election and the jurisdictional requirements as detailed in Part II of this form;

   c) The corporation consents to the election and the assumption of any tax liabilities of any nonconsenting shareholder who was not an initial shareholder as indicated in Part III of this form.

3. **Where to file** - Mail form CBT-2553 to: New Jersey Division of Revenue, PO Box 252, Trenton, NJ 08646-0252 (Registered Mail Receipt is suggested)

4. **When to make the election** - The completed form CBT-2553 shall be filed within one calendar month of the time at which a Federal S corporation election would be required. Specifically, it must be filed at any time before the 16th day of the fourth month of the first tax year the election is to take effect (if the tax year has 3-1/2 months or less, and the election is made not later than 3 months and 15 days after the first day of the tax year, it shall be treated as timely made during such year). An election made by a small business corporation after the fifteenth day of the fourth month but before the end of the tax year is treated as made for the next year.

5. **Acceptance or non-acceptance of election** - The Division of Revenue will notify you if your election is accepted or not accepted within 30 days after the filing of the CBT-2553 form. **If you are not notified within 30 days, call (609) 292-9292.**

6. **End of election** - Generally, once an election is made, a corporation remains a New Jersey S corporation as long as it is a Federal S corporation. There is a limited opportunity to revoke an election only during the first tax year to which an election would otherwise apply. To revoke an election, a letter of revocation signed by shareholders holding more than 50% of the outstanding shares of stock on the day of revocation should be mailed to the address in instruction 3 on or before the last day of the first tax year to which the election would otherwise apply. A copy of the original election should accompany the letter of revocation. Such a revocation will render the original election null and void from inception.

7. **Initial election** - Complete Parts I, II and III in their entirety for an initial New Jersey S Corporation election. Each shareholder who owns (or is deemed to own) stock at the time the election is made, must consent to the election. A list providing the social security number and the address of any shareholder who is not a New Jersey resident must be attached when filing this form.

8. **Reporting shareholders who were not initial shareholders** - Complete Parts I, II and III when filing this form to report any new shareholder. A new shareholder is a shareholder who, prior to the acquisition of stock, did not own any shares of stock in the S corporation, but who acquired stock (either existing shares or shares issued at a later date) subsequent to the initial New Jersey S corporation election. If a new shareholder fails to sign a consent statement, the corporation is obligated to fulfill the tax requirements as stated in Part III on behalf of the nonconsenting shareholder. An existing shareholder whose percentage of stock ownership changes is not considered a new shareholder. If the taxpayer previously had elected to be treated as a New Jersey QSSS, the new shareholder must also complete Part V.

9. **Part IV** should only be completed for any person who is no longer a shareholder of the corporation. You do not have to enter any shareholder who sold or transferred all of his or her stock before the election was made. All changes can be filed with the S corporation final return.

10. **Part V** must be completed in order to permit a New Jersey S Corporation to be treated as a New Jersey Qualified Subchapter S Subsidiary and remit only a minimum tax. In addition, the parent company also must consent to filing and remitting New Jersey Corporation Business Tax which would include the assets, liabilities, income and expenses of its QSSS along with its own. Failure of the parent either to consent or file a CBT-100 or CBT-100S for a period will result in the disallowance of the New Jersey QSSS election and require the subsidiary to file and remit a CBT-100S determining its own liability.

CBT-2553 - Cert
(8-05)

Mail to:
PO Box 252
Trenton, NJ 08646-0252
(609) 292-9292

State of New Jersey
Division of Taxation

New Jersey S Corporation Certification

This certification is for use by unauthorized foreign (non-NJ) entities that want New Jersey S Corporation Status. This form **MUST** be attached to form CBT-2553.

Part I. Corporate Information (Type or Print)

Name of Corporation: _____

Federal Employer Identification Number: _____ - _____

Part II. Corporate Attestation

By signing this statement, the corporation affirms that the corporation has not conducted any activities within this state that would require the Corporation to file a Certificate of Authority in accordance with N.J.S.A. 14A :13-3. Specifically, the corporation attests that it is not transacting business in accordance with the definitions provided in statute.

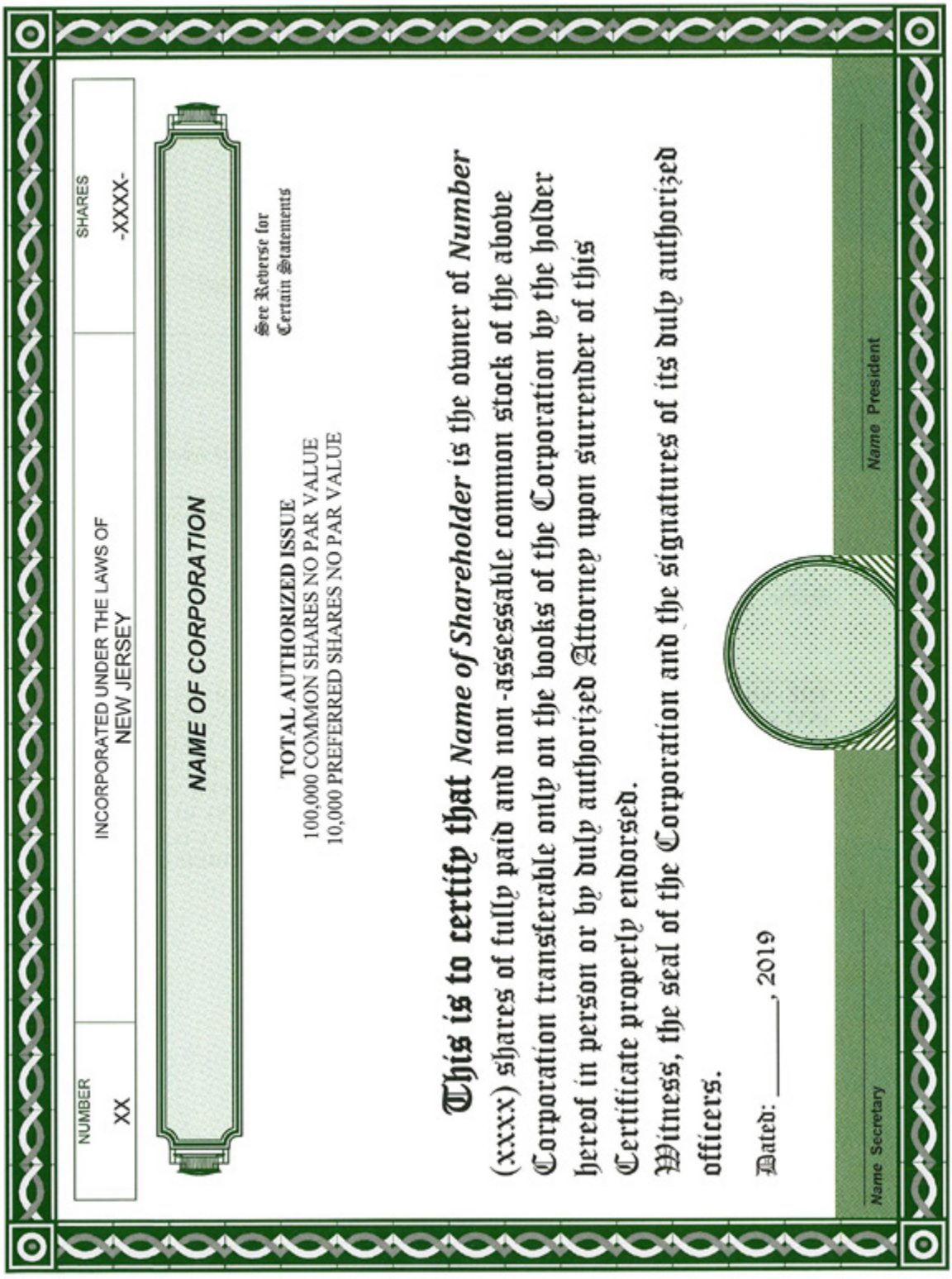
Print the name and title of the person executing this document on behalf of the Corporation. This person **must** be a corporate officer.

Name: _____ Title: _____

Signature: _____ Date: _____

Form 4.7

SHARE CERTIFICATION



NUMBER
XX

INCORPORATED UNDER THE LAWS OF
NEW JERSEY

SHARES
-XXXX-

NAME OF CORPORATION

See Reverse for
Certain Statements

TOTAL AUTHORIZED ISSUE
100,000 COMMON SHARES NO PAR VALUE
10,000 PREFERRED SHARES NO PAR VALUE

This is to certify that *Name of Shareholder* is the owner of *Number*
(XXXX) shares of fully paid and non-assessable common stock of the above
Corporation transferable only on the books of the Corporation by the holder
hereof in person or by duly authorized Attorney upon surrender of this
Certificate properly endorsed.
Witness, the seal of the Corporation and the signatures of its duly authorized
officers.

Dated: _____, 2019

Name Secretary

Name President

For value received _____ hereby sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

_____

_____

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS INCLUDING POSTAL ZIP CODE OF ASSIGNEE)

_____

_____

_____ Shares

represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____

Attorney to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated: _____

In presence of

_____

THE SHARES REPRESENTED HEREBY HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH TRANSFER MAY BE MADE WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

Form 4.8

STOCKHOLDERS AGREEMENT

THIS AGREEMENT, made this __ day of ____, 2019, by and among Stockholder A ("A"), Stockholder B ("B"), Stockholder C ("C"), Stockholder ("D") and Stockholder E ("E") as Trustee U/T/I created by _____ dated _____ (the "Trust") (hereinafter referred to together as "Stockholders" and individually as a "Stockholder"), and XYZ Corp. ("Corporation"), a corporation of the State of New Jersey, having its principal office at 500 Corporate Lane, Business City, New Jersey; all of the above are hereinafter, at times, referred to as the "Parties" or individually as a "Party," and this Stockholders Agreement is hereinafter referred to as the "Agreement."

W I T N E S S E T H:

WHEREAS, A, B, C, and D each presently own four (4) shares of Class A Non-Voting Common Stock of the Corporation ("the Common Stock") constituting 80% of the issued and outstanding Common Stock of the Corporation; and

WHEREAS, the Trust presently owns sixteen (16) shares of the Common Stock constituting 80% of the issued and outstanding Common Stock of the Corporation; and

WHEREAS, one (1) or more of the Stockholders may, in the future, own shares of the Class A Voting Preferred Stock of the Corporation (the "Voting Preferred Stock"); and

WHEREAS, the Parties have concluded that the continuity of the Corporation's business can best be accomplished by providing procedures governing the sale and purchase of a Stockholder's stock of the Corporation during his or her lifetime, and by providing procedures to guard against the possibility that, upon a Stockholder's death, his or her estate might be required to sell such stock ownership in the Corporation to persons not familiar with the business.

NOW, THEREFORE, in consideration of the mutual covenants herein expressed, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto mutually agree as follows:

1. **Stock Ownership**

The Corporation has three (3) classes of stock ("Stock"), which are owned as follows:

	Class A Non-Voting Preferred	Class B Non-Voting Preferred	Class A Voting Common	Total
A				
B				
C				
D				
E				
TOTAL				

(a) Stockholder E ("E") is the President of the Corporation and the owner of ten (10) shares of the Voting Preferred Stock, constituting one hundred (100%) percent of the issued and outstanding Voting Preferred Stock.

(b) A, B, C, and D are the beneficiaries of the Trust. If any Stock of the Corporation then owned by any such individual Stockholder is purchased pursuant to the provisions of this Agreement, the Trust shall be obligated to sell that number of shares of Stock of the Corporation then owned by it which represents such Stockholder's beneficial interest in the Trust, in the same manner and upon the same terms and conditions as the Stock sold by such individual Stockholder.

2. **Restrictions During Life**. Except as otherwise provided in Articles 2 or 3 of this Agreement, no Stockholder shall transfer or encumber his or her Stock to any person, firm or corporation without the consent of the other stockholders and the Corporation unless the Stockholder desiring to make the transfer or encumbrance, hereinafter referred to as the "Selling Stockholder," shall have first made the offer to sell hereinafter defined and such offer shall not have been accepted.

(a) Notice of Offer. The offer which shall be given to the Corporation and the other Stockholders shall consist of an offer to sell all of the Stock of the Corporation owned by the Selling Stockholder, to which shall be attached a statement of intention to transfer or encumber, as the case may be, the name and address of prospective purchaser or lienor, the number of shares involved in the proposed transfer or encumbrance, and the price and terms of such transfer or encumbrance.

(b) Acceptance of Offer. Within thirty (30) days after the receipt of such offer, the other Stockholders may, at their option, elect to purchase all, but not less than all, of the Stock of the Corporation owned by the Selling Stockholder. If such offer is not accepted by the other Stockholders, the corporation may, within forty-five (45) days after the receipt of such offer, at its option, elect to purchase all of the Stock of the Corporation owned by the Selling Stockholder. The offer to the remaining Stockholders shall be deemed an offer to them for the purchase of said Stock in proportion to their respective ownership of said Stock; provided, however, that the remaining Stockholders may arrange between themselves for the purchase of the Stock in proportions different than the proportions of their respective holdings. The other Stockholders shall exercise their election to purchase by giving notice thereof to the Selling Stockholder and to the Corporation. The Corporation shall exercise its election to purchase by giving notice thereof to the Selling Stockholder and to the other Stockholders. In either event, the notice shall specify a date for the closing of the purchase which shall not be more than thirty (30) days after the date of the giving of such notice of acceptance.

(c) Purchase Price. The purchase price for the shares of Stock of the Corporation owned by the Selling Stockholder shall be as determined under Article 6 hereof.

(d) Terms of Payment - Lifetime Transfer. If the other Stockholders or the Corporation exercise their rights to purchase the shares of the Stock in accordance with the terms of this Agreement, then the other Stockholders or the Corporation, whichever the case may be, shall be entitled to pay the purchase price in successive equal annual installments over a period of up to fifteen (15) years, without interest. The first annual installment shall be due at the time of closing with annual payments thereafter until this obligation has been paid in full. The obligation to make such payments shall be evidenced by a promissory note and provide for acceleration of any unpaid balance upon default in the payment of any annual installment. The promissory note shall provide for the unrestricted right to prepay all or any part of the unpaid balance, without premium or penalty.

(e) Release from Restriction. If the offer to sell is not accepted either by the other Stockholders or the Corporation, the Selling Stockholder may make a bona fide transfer or encumbrance to the prospective purchaser or lienor named in the statement attached to the offer, such sale or encumbrance to be made only in strict accordance with the terms therein stated. However, if the Selling Stockholder shall fail to make such transfer or encumbrance within thirty (30) days following the expiration of the time hereinabove provided for the election by the other Stockholders or the Corporation, such shares shall again become subject to all the restrictions of this Agreement.

(f) Sale in Violation of Agreement. In the event of any attempted sale, assignment, transfer, hypothecation, pledge, encumbrance or disposition of Stock by any

Stockholder not in accordance with the terms of this Agreement, such action shall be deemed to be an offer to sell the Stock pursuant to Article 2 of this Agreement, to be deemed made as of the date of discovery of such action or attempted action by such Stockholder.

(g) Delivery by Escrow Agent. At the time of closing, as set forth in Article 2(b), the Selling Stockholder shall deliver to the Escrow Agent, as defined in Article 11 hereof, certificates representing all of the shares of Stock owned by the Selling Stockholder free and clear of all liens, claims and encumbrances, endorsed in blank or with duly executed stock power and with any necessary stock transfer charges or stamps affixed, in order to effectuate the sale and purchase.

3. **Buy-Sell Provisions**.

(a) Election to Sell Upon Termination of Employment. Except as otherwise provided in Article 3(b) of this Agreement, in the event the employment of any Stockholder is voluntarily or involuntarily terminated, other than by death ("Terminated Stockholder"), the Terminated Stockholder shall have the right but not the obligation to sell his or her Stock, to the Corporation.

(i) The Selling Stockholder shall exercise his or her election to purchase by giving notice thereof to the Corporation and to the other Stockholders. The notice shall specify a date for the closing of the purchase which shall not be sooner than forty-five (45) days after the date of the giving of such notice of intention to sell.

(ii) Except as otherwise provided in Article 3(b) hereof, the purchase price for the shares of Stock of the Corporation owned by the Selling Stockholder shall be as determined under Article 6 hereof.

(iii) Except as otherwise provided in Article 3(b) hereof, if the Selling Stockholder exercises his or her right to sell the shares of the Stock in accordance with the terms of Article 3(a)(i) hereof, then the Corporation shall be obligated to purchase such shares from the Selling Stockholder and the Corporation shall pay the purchase price in successive equal annual installments over a period of up to fifteen (15) years, without interest. The first annual installment shall be due at the time of closing with annual payments thereafter until this obligation has been paid in full. The obligation to make such payments shall be evidenced by the promissory note of the Corporation and provide for acceleration of any unpaid balance upon default in the payment of any annual installment. The promissory note shall provide for the unrestricted right to prepay all or any part of the unpaid balance, without premium or penalty.

(b) Limitation on Payment Terms. Notwithstanding any other provision contained herein to the contrary, if a Selling Stockholder elects to sell his or her, Stock to the Corporation

pursuant to the provisions of Article 3(a) hereof, then the following limitations regarding the purchase price and terms of payment for Selling Stockholder whose shares have been or are being purchased:

(i) if there is, at any time, only one (1) such Selling Stockholder, who is then receiving payments from the Corporation of the purchase price for his or her shares of Stock, then the terms of payment shall be as set forth in Article 3 (a) (ii) hereof.

(ii) If there are, at any time, two (2) such Selling Stockholders, who are then receiving payments from the Corporation of the purchase price for their respective shares of Stock, then the annual amount required to be paid hereunder by the Corporation to both Selling Stockholders shall not exceed one hundred fifty (150%) percent of the annual amount required to be paid to the Selling Stockholder who was the earlier to have his shares of Stock purchased by the Corporation, which amount shall be apportioned equally between each such Selling Stockholder, and the period of time for the payment of the purchase price shall be correspondingly lengthened as to each such Terminated Stockholder so as to allow for full payment of the purchase price.

(iii) If there are, at any time, three (3) or more such Selling Stockholders, who are then receiving payments from the Corporation of the purchase price for their respective shares of Stock, then the annual amount required to be paid hereunder by the Corporation to all of such Selling Stockholders shall not exceed two hundred (200) percent of the annual amount required to be paid to the Selling Stockholder who was the earliest to have his shares of Stock purchased by the Corporation, which amount shall be apportioned equally among all of such Selling Stockholders, and the period of time for the payment of the purchase price shall be correspondingly increased as to each such selling Stockholder so as to allow for full payment of the purchase price.

(c) Permitted Transfers. Notwithstanding the provisions of Articles 2 and 5, each of A, B, C, and D, during his or her lifetime or on death, may gift, sell, assign or otherwise transfer all or any part of his Stock to any of A, B, C, D, and E, their issue or to trusts created for the benefit of any of the foregoing individuals and their issue (the "Transferee") free of the restrictions imposed by this Agreement. In the case of any transfer of Stock of the Corporation pursuant to the provisions of this Article 3(c), the Stockholder so transferring such Stock shall notify the Corporation and all other stockholders of the Corporation, in writing, as to the identity of the Transferee, and the number of shares of Stock so transferred. Any such Transferee shall receive and continue to hold the Stock so transferred subject to the terms and conditions of this Agreement, and all further transfers of such stock shall be made only in accordance with the provisions of this Agreement, including this Article 3(c).

4. **Stock Certificates**. All Stock heretofore or hereafter issued by the Corporation, shall be subject to the terms of this Agreement, and all certificates representing such shares of Stock, shall be stamped with the following legend:

> The shares of Stock evidenced by this Certificate or any certificate issued in exchange or transfer therefor are and will be subject to, and will not be transferred except in accordance with, an Agreement dated March 22, 1995, between the Corporation and its Stockholders, together with any amendments thereto, a copy of which Agreement is on file and may be obtained at the principal office of the Corporation.

This legend is intended to be and is notice to any and all persons who may in the future acquire any of the Stock subject to this Agreement and any rights therein, that they and each of them are bound and governed by all of the provisions of this Agreement, and all such future holders shall take and hold said Stock or any interest therein or claim with respect thereto, on the terms and conditions contained in this Agreement.

5. **Death of a Stockholder**. Upon the death of a Stockholder ("Decedent"), but only if the Decedent's Stock has passed to a person other than a permitted Transferee, the Corporation shall purchase, and the legal representatives of the Decedent's estate shall sell, all of the Decedent's Stock in the Corporation, at the purchase price determined under Article 6 hereof, and upon the terms and conditions set forth herein.

   (a) Within sixty (60) days after the Decedent's death, the Decedent's legal representative and the Corporation shall mutually confirm the purchase price for the Stock pursuant to Article 6 of this Agreement.

   (b) The Decedent's legal representatives shall furnish to the Trustees, hereinafter designated in Article 9, the Corporation and the surviving Stockholders ("Surviving Stockholders") such proof of death and other instruments, certificates and documents as may be necessary or required by the respective carriers issuing any insurance policies on the life of the Decedent. Provided that the Trustees, Corporation and the Surviving Stockholders are furnished with all required proof, instruments, certificates and documents, so that he may make proper application for payment of the proceeds payable under any such policies, if any, for the use and payment thereof in accordance with the provisions of Articles 5(c), (d) and (e) below. The Trustees, Corporation and the Surviving Stockholders shall not be obligated to institute or proceed with any legal or other proceedings for the recovery of any insurance proceeds unless all expenses, including attorney's fees, shall be advanced by the Decedent's legal representatives. All of the parties hereto shall provide to the Corporation and the Surviving Stockholders such assistance as may be reasonably required in order to cause the insurance carriers to make timely payment upon the insurance policies.

(c) The Trustees, on behalf of the Corporation, shall receive proceeds of any insurance policies on the life of the Decedent listed in Exhibit A annexed hereto and made a part hereof. The proceeds shall be payable to and used by the Trustees, on behalf of the Corporation, to fund the purchase price in whole or in part for the Decedent's Stock. Payment for the stock shall be deferred until the date of closing.

(d) The closing of the purchase and sale of Decedent's Stock to the Corporation ("Closing") shall take place at the principal office of the Corporation, or at such other place as agreed to by the Parties, on a date designated by the Parties, which shall be no more than sixty (60) days following the date of the qualification of the Decedent's legal representatives, provided that the insurance proceeds on the Decedent's life, if any, have been received by the Trustees, on behalf of the Corporation. If the life insurance proceeds are received later than sixty (60) days following the date of such qualification, the Closing will take place no later than ten (10) days from such receipt.

(e) At the time of Closing, the Trustees, on behalf of the Corporation, shall pay no less than the amount of the insurance proceeds on the life of the Decedent, if any, up to the amount of the purchase price, directly to the Decedent's estate, and any excess proceeds shall be paid to the Corporation. If, however, the proceeds on the life of the Decedent are insufficient to fund the entire purchase price determined under Article 6 hereof, the Corporation shall execute its promissory note made payable to the legal representatives of the Decedent's estate for the unpaid balance of the purchase price, if any, after payment of all life insurance proceeds has been made. The promissory note shall require successive equal annual installments over a period of up to fifteen (15) years, without interest. The first annual installment shall be due at the time of closing with annual payments thereafter until this obligation has been paid in full. The promissory note shall provide for acceleration of the unpaid balance upon default in the payment of any one annual installment. The Corporation shall possess the unrestricted right to prepay all or any part of its promissory note, without premium or penalty.

(f) At the time of Closing, the Decedent's legal representatives, upon receipt of the life insurance proceeds, if any, and the promissory note, if any should be required, shall deliver to the Escrow Agent, as defined in Article 11 hereof, certificates representing all of the shares of Stock owned by the Decedent, free and clear of all liens, claims and encumbrances, endorsed in blank or with duly executed stock power and with any necessary stock transfer charges or stamps affixed, in order to effectuate the sale and purchase. The Escrow Agent shall hold such certificates in escrow in accordance with the provisions of Article 11. If the total purchase price is paid at Closing and no promissory note is delivered to the Decedent's legal representatives, the Stock shall be delivered to the Corporation rather than the Escrow Agent.

6. **Determination of Purchase Price**. The purchase price per share of Stock sold pursuant to this Agreement shall be the "Book Value Per Share," determined as follows: An amount

equal to the book value of the Corporation, as determined by the accountants regularly employed by the Corporation applying generally accepted accounting principles, reduced by _____ ($_____) Dollars (which dollar amount represents the value of the _____ (_____) shares of Class B Non-Voting Preferred Stock of the Corporation (the "Non-Voting Preferred Stock") currently issued and outstanding, if such Nonvoting Preferred Stock is then issued and outstanding at the time shares of Stock pursuant to this Agreement are sold, divided by the number of the then issued and outstanding shares of Stock of the Corporation, other than the Non-Voting Preferred Stock.

7. **Corporate Restrictions during Payout Period**. So long as any part of the purchase price of shares of Stock sold to the Corporation in accordance with this Agreement remains unpaid, the Corporation shall not declare or pay dividends on its Stock, and if the Corporation does not have sufficient surplus to enable it to fulfill its obligations hereunder, then the Corporation and the Stockholders shall take all possible steps permitted under the law of New Jersey to recapitalize or to decrease its capital and increase said surplus to an amount sufficient to enable the Corporation to fulfill its obligations hereunder including, but not limited to, the reduction of the par value of capital stock of the Corporation, including its good will, if any, to their market value on the books of the Corporation.

   So long as any part of the purchase price shall remain unpaid, the Decedent's legal representatives and the Selling or Disabled Stockholder shall have the right to examine the books and records of the Corporation from time to time and receive copies of all accounting reports and tax purposes prepared on behalf of the Corporation. If the Corporation breaches any of its obligations under this Article 7, the Decedent's legal representatives and the Selling or Disabled Stockholder, in addition to any other remedies available, may elect to declare the entire unpaid purchase price due and payable forthwith.

8. **Insurance**.

   (a) In order to provide ready funds to the Trustee and Corporation to finance all or part of the payments contemplated in Article 5 hereunder, the Corporation shall obtain policies of life insurance on the life of the Stockholders, as set forth on Exhibit A hereof.

   (b) The Trustees upon receiving the proceeds of the life insurance policies if any, listed in Exhibit A, shall hold same In Trust for the uses and purposes of this Agreement. The Decedent's estate or successor in interest shall have a lien on the proceeds of such life insurance policy(ies) until payment of the life insurance proceeds are made pursuant to the terms of this Agreement.

   (c) An insurer's duties, liabilities and rights under such policies subject to this Agreement shall be as stated in such policy itself without regard whatsoever for the terms and provisions of this Agreement. Accordingly, it is contemplated that an insurer may deal with any matter arising under a policy such, for instance, as matters relating to amendment of or change in policy form, change in beneficiary policy or premium loan,

reinstatement, surrender, assignment, claim for benefit or the exercise of any other right, option or privilege provided by the policy in the same manner as though this Agreement has never been made.

9. **Trust for Proceeds**. The Corporation, upon receiving the proceeds of the life insurance policy(ies), if any, listed on Exhibit A, shall hold same In Trust for the uses and purposes of this Agreement. The Decedent's estate or successor in interest, whichever the case may be, shall have a lien on the proceeds of such life insurance policy(ies) until payment of the life insurance proceeds, whichever the case may be, are made pursuant to the terms of this Agreement.

10. **Disposition of Insurance Policies after Sale of Stock**.

    (a) At such time as a Stockholder ceases to be a Stockholder of the Corporation (hereinafter referred to as "Former Stockholder"), the Former Stockholder shall have the option to purchase from the Corporation each insurance policy on such Former Stockholder's life at a purchase price equal to the interpolated terminal reserve of such insurance policy plus that portion of the premium thereon paid before the date of purchase of such insurance policy covering the period of the policy extending beyond the date of purchase. Such option shall be exercisable by written notice to the Corporation given not later than ninety (90) days after the date that the Former Stockholder ceases to be a Stockholder and shall be accompanied by payment of the purchase price for the policy or an undertaking to pay the purchase price promptly upon notification of the amount due. Notwithstanding the foregoing, if a Party is a Selling Stockholder under Articles 2 or 3 of this Agreement, then such option to purchase the insurance policies on the Former Stockholder's life shall only be exercisable as to insurance policies in principal amount exceeding the unpaid portion of the purchase price payable to the Former Stockholder for the Stock sold by him or her pursuant thereto, and such option shall remain exercisable from time to time in its entirety for a period expiring ninety (90) days after the payment in full of such purchase price. In this event, the Corporation shall be obligated to maintain the policy of insurance on the Selling Stockholder's life until ninety (90) days have expired after the other Stockholder has paid the above-noted purchase price in full. Upon receipt of payment of the purchase price for any insurance policy in accordance with the provisions of this Article 10, the policy owner shall deliver such insurance policy to the Former Stockholder.

    (b) The legal representatives of such deceased Stockholder's estate shall furnish the Corporation and the Trustees such proof of death and other instruments, certificates and documents as may be required by the carriers issuing the insurance policies on the life of such deceased Stockholder. Provided that the Corporation and Trustees are so furnished with all required proof, instruments, certificates and documents, the Corporation shall make application for payment of the proceeds payable under such

policies and shall hold such proceeds and make payment thereof in accordance with the provisions of Article 10(c) below. Neither the Corporation nor the Trustees shall be obligated to institute or proceed with any legal or other proceedings for the recovery of any insurance proceeds; provided, however, that if the Corporation or the Trustees so proceed, they shall be solely responsible for all expenses, including attorneys' fees. All of the Parties hereto shall provide to the Corporation and the Trustees such assistance as they may reasonably require in order to cause the insurance carriers to make timely payment upon the insurance policies.

(c) Payment for the promissory notes purchased by the Corporation in accordance with the provisions of this Article 10 shall be made in the following manner: The closing shall be held at the offices of the Corporation and the Trustees on a date designated by the Corporation, but in no event later than (i) the expiration of sixty (60) days after appointment of the deceased Stockholder's legal representative, or (ii) one hundred twenty (120) days after such deceased Stockholder's death, whichever first occurs; provided, however, that in no event shall the closing be held earlier than ten (10) business days after the Trustees have collected the proceeds of insurance policies on the life of the deceased Stockholder. At the closing, the deceased Stockholder's legal representatives shall deliver to the Trustees the promissory note being purchased, free and clear of all liens, claims and encumbrances, duly endorsed for transfer. Upon receipt of such promissory note, the Trustees shall pay the proceeds of the insurance policies on the life of such deceased Stockholder to the deceased Stockholder's legal representatives to pay the aggregate purchase price for the notes being purchased and the excess of such insurance proceeds, if any, shall be retained by the Corporation. In the event that the proceeds of the insurance proceeds are not sufficient to pay the full purchase price, the Corporation shall issue a new promissory note for the unpaid portion of the purchase price with terms identical to the promissory note that have already been sold according to this Article 10.

11. **Escrow Arrangement for Collateral**.

(a) If a sale of Stock is effectuated between any of the Parties to this Agreement under any of the provisions hereof, and if any portion of the purchase price is payable after the closing, the Stock being sold shall be delivered, at the closing, to an Escrow Agent mutually acceptable to the Parties, who shall then hold such Stock pursuant to the terms and conditions provided below in Article 11(b). In the event that the Parties do not agree on the Escrow Agent, the attorneys then representing the Corporation shall be designated as the Escrow Agent. Neither such attorney nor any member of the law firm shall be precluded from representing any of the Parties hereto by virtue of such escrow.

(b) During the period that the shares of Stock shall be held in escrow pending payment of the note evidencing the purchase price, the Selling Stockholder (whether the Stockholder himself or his legal representatives) shall not be entitled to exercise any voting rights

with respect to the Stock. Upon receipt of evidence satisfactory to the Escrow Agent of payment in full of said note, the Escrow Agent shall give the Selling Stockholder written notice thereof and unless such evidence is contradicted by the Selling Stockholder within ten (10) days after the receipt of such notice, the Escrow Agent shall turn over the shares of Stock to the purchaser or purchasers. Upon receipt of evidence of default of more then thirty (30) days in the payment of any such note after the giving of written notice thereof by the Selling Stockholder to the Escrow Agent and to the purchaser or purchasers, unless such evidence is contradicted by the purchaser within ten (10) days after the receipt of such notice of default, the Escrow Agent shall be authorized to sell the shares of Stock and all other property then being held in escrow in a public or private sale, at which public sale the Selling Stockholder shall have the right to bid and purchase the Stock being sold. The Escrow Agent shall apply all of the proceeds from such sale (i) to the payment of any and all expenses of such sale, including reasonable attorney's fees, (ii) to the payment of the balance owed by the purchaser or purchasers to the Selling Stockholder, and (iii) - any excess thereof to be paid over to the purchaser or purchasers. The Selling Stockholder shall also retain any and all rights and remedies available by law. If the Escrow Agent shall receive conflicting notices from the Selling Stockholder and any purchaser, the Escrow Agent shall not act in respect of either of such notices, but shall thereafter act with respect to the Stock in accordance with any of the following:

(1) A new notice signed jointly by the Parties or their representatives or

(2) A certified copy of a judgment of a court of competent jurisdiction specifying the action to be taken by the Escrow Agent, as to which the Escrow Agent shall have received an opinion of counsel satisfactory to the Escrow Agent in its sole and absolute discretion that such judgment is final beyond appeal.

(c) Upon performance of its duties in accordance with the provisions hereof, the Escrow Agent shall be relieved and discharged of any and all liabilities hereunder. The Escrow Agent shall in no event have any liability for any act or omission to act except those which constitute willful misconduct and shall be indemnified and held harmless from and against any loss, liability and expense incurred without willful misconduct on the part of the Escrow Agent arising out of or in connection with the acceptance by the Escrow Agent of the Escrow Agent's duties hereunder, including the cost and expense of defending itself against any claim of liability hereunder.

(d) During the period in which any Stock shall be held in escrow pursuant to the provisions hereof, the remaining stockholders shall not take any action to (i) increase the authorized or issued Stock, (ii) mortgage or pledge all or substantially all of the assets of the Corporation, (iii) declare any dividends other than stock dividends, or (iv) otherwise materially and adversely affect the rights, powers, privileges and equity interest represented by the Stock held in escrow.

12. **Termination**. This Agreement shall automatically terminate upon the occurrence of any one of the following events:

    (a) Dissolution or complete liquidation of the Corporation; provided, however, that nothing herein shall be construed in a manner which would authorize any party to institute an action for dissolution of the Corporation while an offer to sell is pending hereunder, nor shall such dissolution nullify the Corporation's obligation to act concerning any offer made pursuant to this Agreement;

    (b) Assignment for the benefit of creditors, bankruptcy or appointment of a receiver for the Corporation;

    (c) The sale of substantially all of the assets of the Corporation, or the sale of a controlling interest (greater than fifty (50 %) percent of the Stock) of the Corporation;

    (d) The merger or consolidation of the Corporation in a transaction in which the Corporation is not the surviving Corporation;

    (e) Death of the Stockholders simultaneously or within a period of sixty (60) days, leaving no surviving Stockholder;

    (f) Written agreement of all of the Stockholders; and

    (g) Notwithstanding the foregoing, no termination of this Agreement shall affect any provision hereof which is by its terms to be performed or observed after such termination, and each and every such provision hereof shall remain in full force and effect until such time as such provision has been performed in full or has terminated by its own terms.

13. **Events Causing Acceleration of Payout Provisions**. The entire unpaid balance of the purchase price on any of the installment payment provisions of this Agreement under Articles 2, 3 or 5 shall be accelerated and become due and payable upon the occurrence of the following events:

    (a) Dissolution or complete liquidation of the Corporation;

    (b) Assignment for the benefit of creditors, bankruptcy, or an appointment of a receiver for the corporation;

    (c) The sale of substantially all of the assets of the Corporation, or the sale of a controlling interest (greater than fifty (50 %) percent of the Stock) of the Corporation;

    (d) The merger or consolidation of the corporation in a transaction in which the Corporation is not the surviving Corporation.

14. **Revocation of Prior Agreements**. This Agreement supersedes all prior agreements and understandings among the Parties or any of them and contains the full understanding of the Parties hereto with respect to the subject matter hereof.

15. **Administrative Obligations of Parties**.

(a) The Corporation shall:

(i) Keep on file at its office and make available for inspection during business hours, to all persons having rights under this Agreement, a copy of this Agreement.

(ii) Keep a record showing the outstanding certificates that bear the hereinbefore mentioned legend.

(iii) Receive notices and undertakings and do each and every act that it may be requested to do, by any of the Parties hereto in the performance of this Agreement or in effectuating any of the rights hereunder.

(iv) Not issue any shares of Stock without the prior written consent of all Parties to this Agreement, which consent shall not be unreasonably withheld or delayed.

(b) The Stockholders shall:

(i) Execute any and all instruments which may be deemed necessary or advisable to carry out any of the terms of this Agreement.

(ii) Attend meetings or execute proxies in connection with any such meetings in favor of and use his best efforts to cause the Corporation to take such action and perform any and all acts as may be required to compel the performance by the Corporation of its obligations under the terms of this Agreement.

16. **Miscellaneous**.

(a) This Agreement may be altered, waived, amended or revoked at any time, or from time to time, but only as to its future application, by an instrument in writing duly executed by all of the Stockholders of the Corporation.

(b) All notices provided for or mentioned in this Agreement shall be given in writing by registered or certified mail, and shall be signed by the Party or Parties giving such notice or by their attorneys-in-fact, and shall be addressed in the case of the Corporation to its principal office, and in the case of the Stockholders to their addresses appearing in the stock books of the Corporation or to their residences or to such other address as may be designated by them. All such notices or requests may be served by delivering a copy personally to the person or persons to whom they are addressed or by registered or certified mail, return receipt requested; if delivered personally, then the date of such delivery shall be the effective date of the notice; if given by registered or certified mail, then the date on which such notice is delivered to the post office for delivery shall be the effective date of such notice. An original duplicate of every such notice shall be filed with the Corporation immediately, together with a statement in writing setting forth the date and manner in which said notice was served.

(c) This Agreement shall inure to the benefit of and shall be binding upon the respective heirs, personal representatives, successors and assigns of the Parties hereto. The Parties hereto covenant that they and their executors, legal representatives, heirs, successors and assigns will execute all instruments and documents and will take all steps which may be necessary in order to implement and carry into effect the provisions of this Agreement. Any person acquiring any interest in Stock subject to the provisions of this Agreement shall, by acquiring such interest, become obligated to perform any and all acts which may be necessary to effectuate the provisions and the intent of this Agreement.

(d) The failure of any Party at any time to require performance of another Party of any provision hereof or to resort to his remedy at law or in equity or otherwise, shall in no way affect the right of such Party to require such full performance or to resort to such remedy at any time thereafter, nor shall the waiver by any Party of a breach of any provision hereof be taken or held to be a waiver of any subsequent breach of such provision unless expressly so stated in writing. No waiver of any of the provisions hereof shall be effective unless in writing and signed by the Party to be charged with such waiver.

(e) If any Party to this Agreement is in breach or threatens breach of an affirmative obligation hereunder including the unauthorized transfer of Stock, then the Parties hereto acknowledge that all other Parties bound by this Agreement will have no adequate remedy at law and shall be entitled to such equitable and injunctive relief as may be available to restrain a violation or threatened violation of the provisions of this Agreement or to specifically enforce the provisions hereof.

(f) All of the agreements, understandings and obligations herein contained which expressly or by implication subsist after termination of this Agreement shall survive such termination.

(g) If any of the provisions, terms or conditions of this Agreement are held to be invalid or unenforceable, then the remaining provisions, terms and conditions which can be effected without such invalid or unenforceable part of the Agreement shall nonetheless remain in full force and effect.

(h) This Agreement and all the terms thereof shall be construed, performed and enforced in accordance with the laws of the State of New Jersey.

(i) This Agreement may be executed in counterparts and each counterpart shall be considered as an original. One (1) counterpart shall be delivered to each of the Parties hereto. This Agreement shall be effective immediately upon its execution.

(j) Any controversy or claim arising out of or relating to this Agreement or any breach thereof shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, and judgment upon the

award rendered by the arbitration may be entered in any court having jurisdiction thereof. The findings of any such arbitration shall be final, conclusive and binding upon the Parties, and may not be appealed to any court.

IN WITNESS WHEREOF, the Stockholders have hereunto set their hands and seals, and the corporation has caused these presents to be signed by its President, attested by its Secretary, and its corporate seal affixed hereto the day and year first above written.

Signed, Sealed and Delivered

in the Presence of:

_____	_____
	Stockholder
_____	_____
	Stockholder
_____	_____
	Stockholder
_____	_____
	Stockholder
_____	_____
	Trustee U/T/I Created by _____ dated ___
	Stockholder

ATTEST:

_____	_____
Secretary	President

EXHIBIT A

LIFE INSURANCE POLICIES

	Name of Policy	Policy No.	Amount
A.			
B.			
C.			
D.			

FORM 4.9

WAIVER OF NOTICE OF REGULAR MEETING OF DIRECTORS

WAIVER OF NOTICE OF THE REGULAR MEETING OF DIRECTORS OF XYZ CORP.

We, the undersigned, being all the directors of the corporation hereby agree and consent that the regular meeting of directors of the corporation be held on the date and the time and at the place stated below for the purpose of transacting any and all business that should properly come before the meeting and hereby waive all notice of the meeting and of any adjournment thereof.

Date of meeting

Time of meeting

Place of meeting

Dated

_____
Director

_____
Director

_____
Director

FORM 4.10

MINUTES OF REGULAR MEETING OF DIRECTORS

MINUTES OF THE REGULAR MEETING OF DIRECTORS OF XYZ CORP.

The regular meeting of directors of the corporation was held at _____, 2019 at _____ a.m. The following were present

being a quorum and all of the directors of the corporation. _____ was elected chair of the meeting and _____ was appointed secretary thereof.

The secretary then presented and read to the meeting a waiver of notice of meeting, subscribed by all the directors of the corporation, and it was ordered that it be appended to the minutes of the meeting.

The minutes of the preceding meeting of the board of directors held on _____, 2019 was thereupon read and adopted.

The president then rendered a general report of the business of the corporation, the secretary presented his report and the treasurer rendered a report of the finances of the corporation. The officers' reports were received and ordered on file.

The following were duly nominated and a vote having been taken were unanimously elected officers of the corporation to serve for one year and until their successors are elected and shall qualify:

President

Vice-President

Secretary

Treasurer

There being no further business before the meeting, on motion duly made, seconded and carried, the meeting adjourned.

Dated

_____

Secretary

_____

Chair

The following have been appended to these minutes:

Waiver of Notice

FORM 4.11

MINUTES OF SPECIAL MEETING OF DIRECTORS

MINUTES OF THE SPECIAL MEETING OF DIRECTORS OF XYZ CORP.

The special meeting of directors of the corporation was held at _____ on _____, 2019 at _____ a.m.

The following directors were present:

being all the directors of the corporation and a quorum.

_____ was elected chair of the meeting and _____ was elected secretary of the meeting.

The secretary then presented and read a waiver of notice of the meeting, subscribed by all the directors of the corporation, and it was ordered that it be appended to the minutes of the meeting.

The chair then stated that the meeting was called for the purpose of

There being no further business before the meeting, on motion duly made, seconded and carried, the meeting adjourned.

Dated

_____
Secretary

_____
Chair

The following have been appended to these minutes:

Waiver of Notice

FORM 4.12

WAIVER OF NOTICE OF ANNUAL MEETING OF SHAREHOLDERS OF XYZ CORP.

WE, the undersigned, being all of the shareholders, hereby waive notice of the annual meeting of shareholders and consent to its being held on the date and time and at the place set forth below, and do hereby waive all notice whatsoever of any adjournments thereof.

We do further consent that any and all lawful business may be transacted at such meeting or at any adjournments thereof as may be deemed advisable by the shareholders present at such meeting.

Place of Meeting

Date of Meeting

Time of Meeting

Dated

_____
Shareholder

_____
Shareholder

_____
Shareholder

FORM 4.13

MINUTES OF ANNUAL MEETING OF SHAREHOLDERS OF XYZ CORP.

The annual meeting of Shareholders was held on the date and at the time and place set forth in the written Waiver signed by the Shareholders; fixing such time and place, and affixed to the minutes of this meeting. The following shareholders were present:

Shareholders	Shares

The meeting was called to order by the President, who acted as Chair and the Secretary of the Corporation acted as Secretary. The Chair noted that all of the outstanding shares of the Corporation were represented and he then presented his annual report. After discussion, the report was accepted and a copy filed with the Secretary for the Corporate records.

The Chair then proceeded to the election of a Board of Directors to serve for the coming year. Nominations were duly made and seconded. A vote was taken and the following persons were elected as Directors, to serve for a period of one year and until such time as their successors are elected and qualify:

There being no further business to come before the meeting, upon motion duly made, seconded and unanimously approved, the meeting was adjourned.

_____

, Secretary

FORM 4.14

BOARD OF DIRECTORS' ANNUAL MEETING MINUTES

MINUTES OF ANNUAL MEETING
OF
BOARD OF DIRECTORS
OF
XYZ CORP.

The annual meeting of the Board of Directors was held immediately following the annual meeting of shareholders.

All of the Directors were present. The meeting was called to order by the President who acted as Chairman. The Secretary of the Corporation acted as Secretary of the meeting.

The Chairman then proceeded to the election of officers for the coming year. Nominations were duly made and seconded. A vote was taken and the following were elected officers of the Corporation, to serve for the ensuring year and until their successors are elected and qualify:

President

Vice-President

Secretary

Treasurer

There being no further business to come before the meeting, upon motion duly made, seconded and unanimously carried, it was adjourned.

_____

Secretary

Attest:
Board of Directors

_____

_____

_____

FORM 4.15

UNANIMOUS CONSENT OF THE SHAREHOLDERS

IN LIEU OF THE ANNUAL MEETING OF SHAREHOLDERS OF

_____

The undersigned, being all of the shareholders of _____ (the "Corporation"), do hereby consent in writing to the adoption of the following resolutions and do hereby authorize and approve the taking of the actions described therein in lieu of the annual meeting of shareholders of the Corporation:

> RESOLVED that the actions of the Director and the officers of the Corporation since the last meeting of shareholders of the Corporation be and they hereby are ratified, confirmed and approved; and be it further
>
> RESOLVED that the following individuals be and they hereby are elected as Directors of the Corporation for a period of one (1) year and until their successors are elected and qualified:

Consented, adopted, authorized and approved as of the ___ day of _____, 2019.

_____

_____

_____

FORM 5.1

CERTIFICATE OF DISSOLUTION OF TRADE NAME

John Smith and Mary Jones hereby make the following statement of dissolution of trade name certificate pursuant to the provisions of N.J.S.A. 56:1-2 and 56:1-3 pertaining to the regulation of the use of business names.

1. The name under which they have been conducting business was The ABC Partnership.
2. The business so conducted by them was that of public accounting.
3. The place where the business was conducted and transacted was 100 Main Street, Any Town, New Jersey.
4. The full names and post office addresses of all the persons connected with the said business as owners are:

   John Smith

   (Address)

   Mary Jones

   (Address)

5. Said
   partnership has been dissolved and the county clerk is hereby authorized to file and record the certificate of dissolution.

_____

JOHN SMITH

_____

MARY JONES

Dated: _____

STATE OF NEW JERSEY:

: SS

COUNTY OF :

John Smith and Mary Jones, of full age, being duly sworn according to law, say that they are the persons named in the foregoing certificate and that the statements contained therein are true.

_____

JOHN SMITH

_____

MARY JONES

Sworn to and subscribed to
before me this ____ day of
_____ , 2019.

_____

Notary

FORM 5.2

CERTIFICATE OF CANCELLATION OF CERTIFICATE OF LIMITED PARTNERSHIP OF ABC PARTNERSHIP, L.P.

Pursuant to the provisions of N.J.S.A. 42:2A-18, the undersigned, being the sole general partner of the limited partnership referred to herein, certifies that:

1. The name of the limited partnership is ABC Partnership, L.P.
2. The date of filing of the certificate of limited partnership was [DATE].
3. The reason for filing the Certificate of Cancellation is that the business of the limited partnership has been wound-up.
4. The effective date of cancellation is the date of filing of the Certificate in the Office of the Secretary of State of New Jersey.

IN WITNESS WHEREOF, this Certificate has been signed and sealed this ___ day of _____, 2019.

_____

MARY JONES, General Partner

FORM 5.3

CERTIFICATE OF CANCELLATION OF CERTIFICATE OF FORMATION OF ABC COMPANY, L.L.C.

Pursuant to the provisions of N.J.S.A. 42:2C-49, the undersigned, being the manager of the limited liability company referred to herein, certifies that:

1. The name of the limited liability company is ABC Company, L.L.C.
2. The date of filing of the certificate of formation was [DATE].
3. The reason for filing the Certificate of Cancellation of the Certificate of Formation is that the business of the limited liability company has been wound-up.
4. The effective date of cancellation is the date of filing of the Certificate in the Office of the Secretary of State of New Jersey.

IN WITNESS WHEREOF, this Certificate has been signed and sealed this ____ day of _____, 2019.

_____

MARY JONES, Manager

FORM 5.4

UNANIMOUS CONSENT OF THE DIRECTORS AND SHAREHOLDERS IN LIEU OF A SPECIAL JOINT MEETING OF THE SHAREHOLDERS AND DIRECTORS OF ABC CORPORATION

The undersigned, being all of the shareholders and directors of ABC Corporation, a New Jersey corporation (the "Corporation"), hereby consent in writing to the adoption of the following resolutions in lieu of a special joint meeting of the shareholders and Board of Directors of the Corporation:

RESOLVED, that the following plan of liquidation, pursuant to Section 331 of the Internal Revenue Code of 1986, as amended (the "Code"), be and the same hereby is adopted:

1. Within 30 days after the date of this consent, counsel for the Corporation shall file Form 966 with the Internal Revenue Service, attaching to said Form a certified copy of this resolution indicating that the shareholders and directors have adopted a plan of complete liquidation pursuant to Section 331 of the Code.
2. That the Corporation, by its duly authorized officers, proceed to liquidate the assets of the Corporation and distribute them to the shareholders, except those which may be retained to meet certain liabilities.
3. That the accountants for the Corporation shall prepare and file all the necessary state and federal tax returns to reflect such plan of liquidation and such dissolution of the Corporation.
4. That as soon as is practicable after said liquidation, the Corporation shall file an application for tax clearance certificate with the New Jersey Division of Taxation, and thereafter file a Certificate of Dissolution for the Corporation with the Secretary of State of New Jersey within the time limited prescribed by the New Jersey Division of Taxation.
5. That the Corporation, by its duly authorized officers, is hereby authorized to execute any and all documents necessary or appropriate to effectuate the intent of the foregoing.

Consented to, authorized, adopted and approved this ___ day of _____, 2019.

_____

JOHN SMITH, Shareholder and Director

_____

MARY JONES, Shareholder and Director

FORM 5.5

CERTIFICATE OF DISSOLUTION BY CONSENT OF ALL SHAREHOLDERS OF ABC CORPORATION

Pursuant to the provisions of N.J.S.A. 14A:12-3, the undersigned, being all the shareholders entitled to vote thereon, certify that:

1. The name of the corporation is ABC Corporation.
2. The name of the registered agent of the Corporation is Mary Jones.
3. The location of the registered office of the corporation is 100 Main Street, Any Town, New Jersey.
4. The names of its directors and officers are John Smith and Mary Jones.
5. This corporation is dissolved.
6. This Certificate has been signed in person by all of the shareholders of the Corporation entitled to vote thereon.

IN WITNESS WHEREOF, this Certificate has been signed and sealed this ___ day of _____, 2019.

_____
JOHN SMITH

_____
MARY JONES

FORM 5.6

A-5088-TC
4-11, R-11

State of New Jersey
Department of the Treasury
DIVISION OF TAXATION
PO Box 269
TRENTON, NJ 08695-0269

APPLICATION FOR TAX CLEARANCE CERTIFICATE

(See Important Note below for application fee)

To the Director of the Division of Taxation, Department of the Treasury, State of New Jersey:

Application is hereby made by _____
(Name and address of corporation)

for a Tax Clearance Certificate under Title 54 of the Revised Statutes.

Correspondence and eventual issuance of Tax Clearance Certificate should be addressed to:

_____
(if third party, authorization letter must be included) (Phone Number)

NJ Corporation Number _____ FID Number _____ State & date of incorporation or authorization _____

NOTE: **All questions must be answered**.

1. The purpose for which Certificate is to be used is (state whether for dissolution, merger, withdrawal, or reauthorization) and the intended effective date of noted action _____
2. The accounting year employed by the corporation for Federal Income Tax purposes is _____ _____ (See special instruction on reverse side.)
3. Is this entity a part of an affiliated group? ☐ Yes or ☐ No
   a. If "Yes", is the total payroll for the whole group over $5,000,000? ☐ Yes or ☐ No
4. Have any of the assets of the corporation been sold or transferred during the current or prior taxable accounting period? ☐ Yes or ☐ No
   a. If "Yes", enter date sold _____
   b. Sales price or fair market value of assets $ _____
   c. Profit on sale or transfer of assets $_____
   d. Sales price of real estate included in the above $ _____
   e. Profit on sale or transfer of such real estate $_____
   f. Name of purchaser or transferee of real estate and other assets _____
5. Have any of the assets of the corporation been distributed in dissolution or liquidation during the current or prior taxable accounting periods?
   ☐ Yes or ☐ No If "Yes", give names, dates and other particulars. _____
   _____
   _____
6. Has the corporation or its stockholders entered into any negotiations or contract for the sale of any of the remaining assets?
   ☐ Yes or ☐ No If "Yes", state the full consideration to be received $_____
7. Have any dividends been declared or payments made in liquidation of capital stock? ☐ Yes or ☐ No
   If "Yes", give amounts, dates and other particulars _____
   _____
8. If all the assets have *not* been disposed of, advise:
   a. What disposition will be made of remaining assets? _____
   b. Fair market value of assets remaining to be liquidated $_____
9. Who will continue the business formerly conducted by this corporation?_____
10. Give names and addresses of the present officers and directors of the company _____
    _____
    _____

Enclosed is remittance in the sum of $25.00 made payable to the State of New Jersey. (See Important Note Below).

I declare and affirm, under the penalties provided by law, that this application (including any accompanying statements) has been examined by me and the statements contained therein are true to the best of my information, knowledge and belief.

Date_____ Signature of Officer _____
President, Vice President, Secretary or Treasurer (Strike out Titles not applicable)

IMPORTANT NOTE: Corporations wishing to dissolve/withdraw may file dissolution documents online by visiting www.nj.gov/njbgs.

http://www:state.nj.us/treasury/taxation

NOTES

A. If all state taxes, fees, penalties and interest have been paid or secured, a Certificate of the Director evidencing such payment will be forwarded to the Division of Revenue or the party designated on the front of the application.

B. If all such state taxes, fees, penalties and interest have not been paid, advice thereof will be given to the applicant.

C. The Tax Clearance Certificate shall be void 45 days after date of issuance, except that where a certificate is issued during the last month of taxpayer's accounting period, such certificate shall be void after the last day of such accounting period. If said certificate is not filed with the Division of Revenue within the period specified therein, applicant must reapply and submit a new application and $25.00 fee in order to accomplish the purpose for which the original application was filed.

D. Instructions for filing tax returns can be found on the form "Procedure for Dissolution, Withdrawal or Surrender". (A-5033-TC).

INSTRUCTIONS

1. Application for Tax Clearance Certificate must be typewritten or printed.
2. Great care should be taken to have the corporate name spelled correctly, as even a slight misspelling will generally make it difficult to identify the corporation for which the application is made. Be sure to include the State and date of incorporation, or date of authorization.
3. Complete answers to all questions applicable to the corporation must be given. Attach rider where necessary.

SPECIAL INSTRUCTIONS

WHERE TAXPAYER DESIRES TO COMPLETE ITS PROCEEDINGS FOR DISSOLUTION, MERGER, ETC. NO LATER THAN THE END OF A FISCAL YEAR IN PROGRESS, APPLICATION SHOULD BE SUBMITTED AT LEAST NINETY (90) DAYS PRIOR TO THE CLOSE OF SUCH FISCAL YEAR TO ALLOW SUFFICIENT TIME FOR PROCESSING AND FOR THE SUBMISSION OF ANY REQUIRED ADDITIONAL DATA OR PAYMENTS.

FOR DIVISION USE ONLY

☐ Estimated Summary
☐ _____ Return
☐ Affidavit Per Instruction 3 of Estimated Summary
☐ Assumption of Liability
☐ Prior Year Affidavit
☐ Other _____
_____
_____
_____

☐ Check $_____
☐ Check $_____

☐ Assumption of tax liability
☐ Prior year activity affidavit
☐ Merged corporation
☐ Remarks

☐ Final required
☐ No final required
☐ Survivor of merger

Searched by _____
Examiner _____
Void Date _____

CERTIFICATE NUMBER _____
Approved _____
Issued _____

FORM 6.1

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (the "Agreement") is entered into this _____ day of _____, 2019, by and between TARGET, INC., a New Jersey corporation authorized to do business in Delaware with an address at _____ ("Target") and BUYER, INC., a New Jersey corporation having an address at _____ ("Buyer").

BACKGROUND

A. Buyer and Target desire to enter into discussions regarding a possible acquisition by Buyer of the business and assets of Target. Target maintains information regarding its business, assets and financial condition on a confidential and proprietary basis and Target takes steps to assure the continuing confidentiality of its business information. During the course of the discussions contemplated by this Confidentiality Agreement Target will divulge its business information to Buyer, which information Target insists on keeping confidential.

B. As an inducement to Target to make a full and complete disclosure of its confidential and proprietary business information, Buyer and Target desire to enter into this Agreement to protect Target's property from disclosure or use.

NOW, THEREFORE, in consideration of the foregoing premises and in consideration of Target disclosing or allowing Buyer access to Target's Confidential and Proprietary Information (as described below), Buyer and Target, intending to be legally bound hereby, agree as follows:

1. **Definition**. "Confidential and Proprietary Information" means:

   (a) Information, in any form or medium, concerning Target or Target's business or affairs, including, without limitation, any and all information relating to business ideas, products, services, business processes, methods of distribution, cost of materials, customers, studies, marketing, strategic plans, procedures, tax returns, bank records, pricing and finances; and

   (b) Any information which Target shall identify in writing as confidential and proprietary.

2. **Non-Disclosure; Non-Use**. Buyer shall not, without the prior written consent of Target, disclose to any third party, or use for their own or any third party's direct or indirect benefit, any Confidential and Proprietary Information. Notwithstanding the foregoing, Buyer may use Confidential and Proprietary Information as necessary to reasonably inform itself of the business and affairs of Target solely for purposes of evaluating a possible acquisition; provided, however, Buyer shall take all reasonable measures to protect the secrecy of,

and avoid the unauthorized disclosure or use of, Confidential and Proprietary Information, including exercising the highest degree of care that Buyer would use in protecting its own Confidential and Proprietary Information of a similar nature. Buyer shall be responsible for the acts and omissions of its agents, servants, employees, representatives, professional advisers and all others receiving Confidential and Proprietary Information by or through Buyer. Buyer shall notify Target in writing of any disclosure, misuse, or misappropriation of Confidential and Proprietary Information, and Buyer shall be liable for any such disclosure, misuse, or misappropriation of any Confidential and Proprietary Information.

3. **Non-Disclosure of Negotiations**. Neither Buyer nor Target shall disclose or discuss in any way the fact or terms of their negotiations other than to or with their respective attorneys, accountants and other professional advisers.

4. **Return of Materials**. In the event the discussions between Buyer and Target shall not be consummated with a merger, acquisition or joint venture agreement, Buyer shall:

   (a) Discontinue all use of the Confidential and Proprietary Information;

   (b) Return all Confidential and Proprietary Information and other data and documents that contain Confidential and Proprietary Information;

   (c) Erase or destroy any Confidential and Proprietary Information contained in computer memory or other data storage apparatus; and

   (d) Certify in writing, within ten (10) days after any request, that all actions described in this Section 4 have been taken and that no impermissible use or disclosure has occurred.

   Notwithstanding anything herein or elsewhere to the contrary, Buyer shall not remove any Confidential and Proprietary Information from Target's premises without first obtaining Target's written consent and any Confidential and Proprietary Information which is removed shall be prominently and appropriately marked so as to preserve its confidential and proprietary nature.

5. **Notice of Required Disclosure**. If Buyer is required by judicial or administration process to disclose any Confidential and Proprietary Information, then it shall promptly notify Target of the process and allow Target a reasonable time to oppose such process. If, by the time Buyer shall be required to respond to or comply with the judicial or administrative process, Target has not obtained a protective order or other order of court prohibiting disclosure, Buyer may comply with the process but shall only supply as much Confidential and Proprietary Information as is so necessary to so comply and no more.

6. **Proprietary Rights**. Any and all ownership or proprietary rights, including patent rights, copyrights, trademarks, and trade secrets in and to any Confidential and Proprietary Information shall be and remain the property of Target. Buyer shall not have any right, license, title or interest in or to any Confidential and Proprietary Information, except the limited right to use such Confidential and Proprietary Information for informational purposes set forth in Section 2 above.

7. **Successor; Assignment**. This Agreement shall be binding upon Buyer and Target and their successors and assigns; provided, however, that this Agreement and the rights and obligations hereunder may not be assigned or delegated, in whole or in part, without the prior written consent of all of the parties.

8. **Governing Law**. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without regard to any conflict of law or rules of any jurisdiction.

9. **Remedies**. Buyer and Target acknowledge that:

   (a) The terms of this Agreement are necessary and reasonable in order to protect Target and its' business and business affairs;

   (b) Violation or threatened violation of the covenants and agreements set forth in this Agreement will cause irreparable harm to Target; and

   (c) Monetary damages alone would be inadequate to compensate Target for any violation or threatened violation of this Agreement by Buyer. In addition to any other remedies that may be available, at law, in equity or otherwise, Target shall be entitled to obtain immediate injunctive relief against Buyer to enforce the provisions of this Agreement without the necessity of posting bond.

10. **Entire Agreement**. This Agreement contains the entire agreement and understanding relating to the subject matter hereof and merges and supersedes all prior discussions, agreements, and understandings with respect to its subject matter. This Agreement may not be changed or modified, except in a writing signed by both Buyer and Target. The failure or delay of either Buyer or Target to exercise any right under this Agreement shall not be deemed a waiver of any rights under this Agreement.

IN WITNESS WHEREOF, Buyer and Target have caused this Confidentiality Agreement to be executed by their duly authorized officer on the date first above written.

ATTEST: TARGET, INC.

_____ BY: _____

ATTEST: BUYER, INC.

_____ BY: _____

FORM 6.2

LETTER OF INTENT

_____, 2019

Target, LLC

[*Address*]

Dear _____:

This letter (the "Letter of Intent") will confirm the proposal, subject to the execution of a definitive purchase agreement (the "Purchase Agreement"), with respect to the proposed acquisition by Buyer Corp. or its designee ("Buyer"), of certain assets of Target, LLC ("Target") related to Target's _____ manufacturing business (the "Business").

A. **Purchase of Assets**. Subject to the terms and conditions of this letter and the completion of a customary due diligence investigation over the sixty (60) day period beginning on the date of this letter, Target will sell to Buyer and Buyer will acquire from Target those assets owned by Target and located in _____, New Jersey that are necessary for the operation of the Business, including but not limited to equipment, inventory, intangible assets, customer contracts and customer lists (the "Assets").

B. **Purchase Price**. The Purchase Price for the Assets will be $1 million subject to further negotiation upon the completion of our due diligence investigation.

C. **Assets**. At the Closing of the transaction contemplated by this Letter of Intent (the "Closing"), the Assets shall be (i) in good, usable, saleable, operating or merchantable condition, as applicable, and (ii) free and clear of any and all liens. Target will cause any existing liens to be released at or prior to the Closing.

D. **Liabilities**. Buyer will not assume any of Target's liabilities, such as, but not limited to, accounts payable, accrued payroll, operating accruals, federal and state taxes, bank debt or environmental liabilities. Target will be responsible for, and indemnify Buyer against, all unassumed liabilities of Target.

E. **Closing**. The Closing shall take place no later than _____, 2019 (the "Closing Date") subject to the satisfaction or waiver of all conditions precedent set forth in the Purchase Agreement. The Closing Date may be extended by mutual written agreement of the parties.

F. **Covenant Not to Compete**. At the Closing, Target and its principals will enter into a covenant not to compete in the business of manufacturing _____ in New Jersey for a term of five (5) years commencing on the Closing Date.

G. **Definitive Agreement**. Consummation of the acquisition will be subject to the good faith negotiation and execution of a mutually satisfactory Purchase Agreement providing for, in addition to the terms specifically described elsewhere in the Letter of Intent, representations and warranties, covenants, conditions, releases and indemnifications as are customary or appropriate for transactions of the kind contemplated hereby. The representations and warranties contained in the Purchase Agreement shall survive the Closing. The Purchase Agreement shall include customary indemnities from each party with respect to breaches of representations, warranties and covenants.

H. **Preparation of Definitive Agreement**. The parties will cooperate with each other to the fullest extent in preparing the definitive Purchase Agreement and any related agreements and other necessary documentation, obtaining all necessary consents from third parties and complying with all regulatory requirements. The parties will use their best efforts to negotiate and execute the definitive Purchase Agreement with respect to the acquisition transaction as soon as possible following the 60-day due diligence period. Target will permit reasonable access to its properties and personnel and make available to Buyer all books, papers and records relating to the ownership and operation of the Assets.

I. **Conduct of Business**. From the date of this Letter of Intent through its termination pursuant to paragraph L below, Target shall operate its business in the ordinary course of business consistent with past practice and use its reasonable best efforts to preserve its business organization intact, to retain the services of its present employees and to preserve the goodwill of its customers and suppliers.

J. **Expenses**. Each of the parties hereto shall bear its own legal, accounting and administrative expenses in connection with the negotiation and consummation of the transactions contemplated by this Letter of Intent. Neither party shall have responsibility for the fees or expenses of any broker or advisor retained by the other.

K. **Exclusivity**. Target acknowledges that Buyer will expend a significant amount of time and money in its pursuit of the transactions contemplated by this Letter of Intent. In consideration thereof, Target hereby agrees that from the date of the execution of this Letter of Intent through the termination of this Letter of Intent pursuant to paragraph L below, Target and its affiliates, employees and representatives will deal exclusively with Buyer in connection with the sale of its Assets or its outstanding ownership interests. Neither Target nor its respective affiliates, employees and representatives will, directly, without the Buyer's prior written consent, solicit, encourage or initiate any offer or proposal from, or engage in any discussions with, or provide any information to, any person or other entity or group, other than Buyer and its affiliates, employees and representatives, concerning any transaction involving the sale of its Assets or its outstanding ownership interests, nor shall such party accept any proposal with respect to any such transaction. If Target shall receive any inquiry or proposal with respect to its Assets, it shall immediately communicate to Buyer the terms of such inquiry or proposal (including a copy thereof).

L. **Termination**. This Letter of Intent agreement may be terminated, and the transactions contemplated hereby may be abandoned or terminated (i) at any time by mutual agreement

of the parties, or (ii) by either party, if by the close of business on _____, 2019, the definitive Purchase Agreement shall not have been executed by Buyer and Target.

M. **Public Disclosure**. No public disclosure or publicity concerning the transactions contemplated hereby will be made without the prior approval of both parties, except that either party, after prior consultation with the other, may make any public disclosure which it in good faith believes is required by law.

N. **Statement of Intention Only**. It is understood that this Letter of Intent merely constitutes a statement of our mutual intentions and does not contain all matters upon which agreement must be reached for the acquisition of the Assets to be consummated. A binding commitment with respect to the proposed transaction will result only from the execution of the definitive Purchase Agreement, subject to the conditions expressed therein. Notwithstanding the two preceding sentences of this paragraph, upon acceptance hereof as described below, the provisions of paragraphs G, H, I, J, K, L, M and this paragraph N shall be legally binding. In addition, the Confidentiality Agreement dated _____, 2019 between Buyer and Target shall remain in full force and effect.

O. **Governing Law**. This Letter of Intent shall be construed and governed in accordance with the laws of the United States and the State of New Jersey, without regard to the conflict of law principles thereof.

P. **Counterparts**. This Letter of Intent may be executed in any number of counterparts, each of which shall be an original, but all of which together shall be deemed to constitute one instrument.

We look forward to proceeding expeditiously with you toward a transaction that we believe will be advantageous to all concerned. We and our counsel are prepared to move forward immediately to complete the definitive Purchase Agreement.

If this Letter of Intent sets forth your understanding of our agreement, please so indicate by signing the enclosed copy of this Letter of Intent in the space provided below and returning it to the undersigned no later than 5:00 p.m. (Eastern time) on _____, 2019.

Very truly yours,

BUYER CORP.

By: _____

Agreed to and accepted this
___ day of _____, 2019.

TARGET, LLC

By: _____

FORM 6.3

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION

Bulk Sale Unit
CN-245
Trenton, New Jersey 08646-0245

NOTIFICATION OF SALE, TRANSFER, OR ASSIGNMENT IN BULK

This form is to be used to notify the Director of the Division of Taxation, of a bulk transfer in accordance with Section 22(c) of the New Jersey State Sales and Use Tax Act and Section 15 of the New Jersey Business Personal Property Tax Act. See Reverse Side.

The following information is required to be submitted by registered mail ten (10) days before taking possession of, or paying for, the property.

Name of Purchaser(s) _____

Trade Name of Purchaser(s) _____

Street _____ City _____ State _____ Zip Code _____

Federal Identification No. _____ Social Security No. _____

Name and Address of Attorney or Escrow Agent for Purchaser _____

Telephone Number _____

Amount of Escrow Fund

Name of Seller(s) _____

Trade Name of Seller(s) _____

N.J. Tax Identification No.

Name of Officer, Partner, or Individual Owner _____

Home Address _____ City _____ State _____ Zip Code _____

Home Phone Number _____ Business Telephone Number _____

Federal Identification No. _____ Social Security No. _____

Name and Address of Attorney or Agent for Seller _____ Phone Number: _____

Date Seller Acquired Business Month _____ Year _____

SCHEDULED DATE OF SALE	
_____	Sales Price of Furniture, Fixtures, & Equipment ..... $ _____
_____	Sales Price of Land and Building ..... $ _____
	Sales Price of Other Assets (attach schedule)..... $ _____
	Total Sales Price ..... $ _____

TERMS AND CONDITIONS OF SALE

LOCATION OF BUSINESS OR PROPERTY

TYPE OF BUSINESS

ATTACH COPY OF PENDING CONTRACT OF SALE OR IMPORTANT ASPECTS THEREOF.

_____

SIGNATURE TITLE - IF OTHER THAN PURCHASER, PLEASE IDENTIFY DATE

Whenever a person required to collect tax under the Sales and Use Tax Act, N.J.S.A. 54:32B-1, et. seq., or whenever a person subject to tax under the Business Personal Property Tax Act, N.J.S.A. 54:11A-11, et seq., shall make a sales, transfer, or assignment in bulk of any part or the whole of his business assets, otherwise than in the ordinary course of business, the purchaser, transferee, or assignee shall at least 10 days before taking possession of the subject of said sale, transfer, or assignment, or paying therefor, notify the Director by Registered Mail of the proposed sale and of the price, terms, and conditions thereof whether or not the seller, transferrer, or assignor, has represented to, or informed the purchaser, transferee, or assignee that he owes any tax pursuant to this act, and whether or not the purchaser, transferee, or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee, or assignee shall fail to give notice to the Director as required by the preceding paragraph, or whenever the Director shall inform the purchaser, transferee, or assignee that a possible claim for such tax or taxes exists, any sums of money, property, or choses in action, or other consideration, which the purchaser, transferee, or assignee is required to transfer over to the seller, transferrer, or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferrer, or assignor to the State, and the purchaser, transferee, or assignee is forbidden to transfer to the seller, transferrer, or assignor any such sums of money, property, or choses in action to the extent of the amount of the State's claim. For failure to comply with the provisions for this section, the purchaser, transferee, or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of the Uniform Commercial Code, Title 12A of the Revised Statutes of New Jersey, shall be personally liable for the payment to the State of any such taxes theretofore or thereafter determined to be due to the State from the seller, transferrer, or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this act.

Title 54 of the New Jersey Statutes Annotated also provides the following:

54:49-1 Tax a debt and lien; preference; proceeds paid to Director

The taxes, fees, interest, and penalties imposed by any such State tax law, or by this subtitle, from the time the same shall be due, shall be a personal debt of the taxpayer to the State, recoverable in any court of competent jurisdiction in an action in debt in the name of the State. Such debt, whether sued upon or not, shall be a lien on all the property of the debtor except as against an innocent purchaser for value in the usual course of business and without notice thereof, and except as may be provided to the contrary in any other law, and shall have preference in any distribution of the assets of the taxpayer, whether in bankruptcy, insolvency, or otherwise. The proceeds of any judgment or order obtained hereunder, shall be paid to the Director.

(L. 1936, c.263, §302, p.808, as amended L. 1952, c.169, §1, p.44.)

FORM 6.4

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is dated the ___ day of _____, 2019 by and among PURCHASER CORPORATION, a New Jersey corporation (the "Purchaser") and SELLER COMPANY, LLC, a New Jersey limited liability company (the "Seller" and/or "Company") and _____ and _____ (the "Principals") (the Purchaser, the Sellers and the Principals are referred to collectively as the "Parties" or individually, as a "Party").

RECITALS

WHEREAS, the Company has agreed to sell its Assets to the Purchaser at the price and on the terms and conditions set forth in this Agreement, and the Purchaser has agreed to such terms and conditions.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants, and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which all Parties mutually acknowledge, the Parties, intending to be legally bound, agree as follows:

ARTICLE I
Definitions and Interpretation

1.01 **Definitions**: In this Agreement, the following terms shall be defined as follows:

(a) "Affiliate" means a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned Person;

(b) "Agreement" shall mean this Asset Purchase Agreement;

(c) "Closing Date" and "Closing" have the meanings given in Section 2.04 of this Agreement;

(d) "Company" and/or "Seller" means Fire 1st Defense, LLC, a Delaware limited liability company;

(e) "GAAP" means generally accepted accounting principles, consistently applied;

(f) "Person" means an individual, corporation, partnership, limited liability company,

association, trust, unincorporated organization, governmental entity, other entity or group (as used in Section 13(d) of the Securities Exchange Act of 1934, as amended);

(g) "Tax" or "taxes" means any and all taxes, charges, fees, levies, assessments, duties, or other amounts payable to any federal, state, local, or foreign taxing government, authority, or agency, including, without limitation, (i) income, franchise, profits, gross receipts, minimum, alternative minimum, estimated, ad valorem, value added, sales, use, service, real or personal property, capital stock, license, payroll, withholding, disability, employment, social security, workers compensation, unemployment compensation, utility, severance, excise, stamp, windfall profits, transfer, and gains taxes; (ii) customs, duties, imposts, charges, levies, or other similar assessments of any kind; and (iii) interest, penalties, and additions to tax imposed with respect thereto.

1.02 **Headings**. The headings and subheadings in this Agreement are included for convenience and identification only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provisions hereof in any manner whatsoever.

1.03 **Interpretation**. The definitions shall apply equally to both the singular and plural form of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter form. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." Unless the context otherwise requires, (a) all references to Sections, Paragraphs, Exhibits and Schedules are to sections and paragraphs in, and exhibits and schedules to, this Agreement; and (b) the terms "herein," "hereof," "hereto," "hereunder" and words of similar import refer to this Agreement as a whole.

ARTICLE II

Purchase and Sale of Assets

2.01 **Sale of Assets**. In reliance upon the representations, warranties and covenants of the Parties set forth herein, and subject to the terms set forth herein, the Seller agrees to sell to the Purchaser, and the Purchaser agrees to acquire from the Seller at the Closing all assets of the Seller, tangible and intangible, wherever located, including without limitation (a) all inventory of raw materials, work-in-progress and finished goods inventory (the "Inventory"), more particularly itemized on Schedule 2.01 to this Agreement, and (b) the name "XXXXXXXXX" and any other trade names, trademarks and search marks (collectively, the "Names" and with the Inventory, the "Assets"). Schedule 2.01 also includes the value of the Inventory as set forth on the Seller's books and records. The Assets shall be conveyed to the Purchaser free and clear of all liens, claims, security interests and encumbrances.

2.02 **Consideration**. In consideration of the sale, transfer or assignment by the Seller of the Assets, the Purchaser shall pay to Seller a purchase price equal to:

(a) At the Closing Five Hundred Thousand Dollars ($500,000.00) payable by certified or bank check or wire transfer at the Closing.

(b) At the Closing, the amount owed to the Bank, $100,000.00, in full satisfaction of _____ Bank's security interest in the Inventory, contingent upon receipt from the Bank at the Closing of a release of its security interest in the Inventory; and

(c) Within thirty (30) days of the Closing Date, the Purchaser shall pay to the Seller, an amount equal to the value, at cost, of the usable and saleable Inventory, as set forth on Schedule 2.01, less (i) the amount actually paid pursuant to paragraph 2.02(b) above, (ii) the amounts paid to the Seller's creditors for the claims set forth on Schedule 2.02 to this Agreement (which may be less than the amounts shown on such schedule provided that the applicable creditor releases the claim fully), and (iii) the sum of $30,000 previously loaned by the Purchaser to the Seller.

2.03 **Employment Agreements**. At the Closing, the Purchaser will enter into employment agreements in the form of Exhibit 2.03 to this Agreement with each of the Principals (the "Employment Agreements"). Each Employment Agreement shall have (a) a term of three (3) years with two (2) options for the Principals each individually to renew the Employment Agreements for additional one (1) years terms, (b) a base salary of $125,000 per year, and (c) a car allowance of $500.00 per month.

2.04 **Closing; Closing Date**. The consummation of the purchase and sale of the Assets and the closing of the transactions contemplated by this Agreement (the "Closing") will take place at the offices of Greenbaum, Rowe, Smith, Davis LLP, 99 Wood Avenue South, Woodbridge, New Jersey, simultaneously with the execution and delivery of this Agreement and the payments set forth in Section 2.02 (the "Closing Date"). At the Closing, the Seller will change its name to a name other than "Seller Corporation" or any name similar thereto.

2.06 **No Assumption of Liabilities**. Except as set forth in Section 2.07, the Purchaser is not assuming any of the liabilities or other obligations of the Seller.

ARTICLE III

Representations and Warranties of the Seller and the Principals

The Seller and the Principals make the following representations and warranties to the Purchaser, each of which shall be deemed material (and the Purchaser, in executing and delivering, and performing its obligations under this Agreement has relied and will rely upon the correctness and completeness of each of such representations and warranties):

3.01 **Legal Existence and Qualification**. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New Jersey. The Company has the power to carry on its business as now conducted to own its assets, and to enter into and perform its obligations under this Agreement.

3.02 **Consents**. All requisite consents of governmental and other regulatory agencies, foreign or domestic, and of other parties required to be received by or on the part of the Seller to it to enter into and carry out this Agreement in all material respects have been, or prior to the Closing will have been, obtained.

3.03 **Binding Nature of Agreement; Title to Assets**. This Agreement constitutes the Seller's valid and binding obligation and is enforceable in accordance with its terms. The Seller is and, at the Closing will be, the sole owner of the Assets, free and clear of all manner of liens, charges, encumbrances, and claims, provided Purchaser makes the payment set forth in Paragraph 2.02(b) hereinabove. The Seller has, and at the Closing will have, good and marketable title to the Units, and have, and at the Closing will have the absolute and unqualified right to sell, transfer and deliver the Assets to the Purchaser. The delivery of the Assets to the Purchaser at the Closing pursuant to the provisions of this Agreement will transfer valid title thereto, free and clear of all manner of liens, charges, encumbrances and claims.

3.04 **Condition of Inventory**. All of the Inventory is in good and marketable condition and it is saleable in the ordinary course of the Seller's business, and is located at the following addresses:

3.05 **Ownership of Assets**. The Company owns outright, subject to the security interest of the Bank, and has good and marketable title to all of its assets, properties and business (including all assets reflected in its Balance Sheet, except as the same may have been disposed of in the ordinary course of business since the Balance Sheet Date), free and clear of all liens, mortgages, pledges, conditional sales agreements, restrictions on transfer or other encumbrances or changes, except for the security interest of the Bank. Such Assets so owned or leased are, in the reasonable business judgment of the Seller, sufficient to permit the Company to conduct its business as now conducted. The Company is not a party to or bound by any license or agreement requiring the payment to any person, firm or corporation of any royalty. The Seller, after reasonable inquiry, does not know, or have reasonable grounds to know of any violation by other of the trademark, trade name, patent or other intellectual property rights of the Company except for a possible claim the Company may have against First Alert for violation of a patent pending of the Company. The Seller is assigning to the Purchaser any and all rights to pursue any action against First Alert for violation of such patent pending and any recovery by way of settlement, judgment or otherwise. To the knowledge of the Principals, the Company is not infringing upon any patent, copyright, trade name or trademark or otherwise is violating the rights of any third party with respect thereto, and no proceedings have been instituted or, to the knowledge of the Seller, after reasonable inquiry, are threatened and no claim has been received by the Company or the Seller alleging any such violation.

3.06 **Litigation, Compliance with Law**. There are no actions, suits, proceedings or governmental investigations relating to the Company or to any of its respective properties, assets or businesses pending or, to the knowledge of the Sellers, after reasonable inquiry, threatened, or any order, injunction, award or decree outstanding against the Company or against or relating to any of their properties, assets or businesses. The Sellers, after reasonable inquiry, know of no basis for any such action, suits or proceedings within the past two (2) years or any such governmental investigations, order, injunctions or decrees at any time in the past. The Company is not in violation of any law, regulation, ordinance, order, injunction, decree, award or other requirement of any governmental body, court or arbitrator relating to its properties, assets or business, which violation would have a material adverse effect on the Company.

3.07 **Brokers**. Neither the Seller nor anyone acting on behalf of the Seller has engaged, consented to, or authorized any broker, finder, investment banker or other third party to act on its behalf, directly or indirectly, as a broker or finder in connection with the transaction contemplated by this Agreement.

ARTICLE IV

Representations and Warranties of the Purchaser

The Purchaser hereby represents and warrants to the Seller and the Principals as follows:

4.01 **Organization**. The Purchaser is a corporation duly organized, validly existing, and in good standing under the laws of the State of New Jersey.

4.02 **Authority**. The Purchaser has all requisite corporate power and authority to execute and deliver this Agreement, to perform it obligations hereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement by the Purchaser and the consummation by the Purchaser of the transaction contemplated hereby and thereby have been duly authorized by all necessary corporate action and no other corporate proceedings on the part of the Purchaser are necessary to authorize this Agreement. This Agreement has been duly executed and delivered by the Purchaser and assuming the due authorization, execution, and delivery of this Agreement by the Company and the Sellers, constitute the legal, valid, and binding obligations of the Purchaser, enforceable in accordance with their respective terms.

4.03 **No Conflict; Required Filings and Consents**. The carrying on or any activity by the Purchaser, the execution and delivery of this Agreement by the Purchaser does not, and the consummation of the transactions contemplated hereby will not, (a) conflict with or violate its certificate of incorporation or bylaw, in each case as amended or restated to the date of this agreement, of the Purchaser; (b) conflict with or violate any Laws applicable to the Purchaser or by which any of its properties is bound or subject; or (c) result in any breach of or constitute a default (or an event that with notice

or lapse of time or both would become a default) under, or give to any other Person any rights of termination, amendment, acceleration, or cancellation of, or require payment under, or result in the creation of any encumbrance on any of the properties or assets of the Purchaser pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise, or other instrument or obligation to which the Purchaser is a party or by or to which the Purchaser or its properties is bound or subject. The execution and delivery of this Agreement by the Purchaser does not and the consummation of the transactions contemplated hereby will not require the Purchaser to obtain any consent, license, permit, approval, waiver, authorizations or order of, or to make any filings with or notifications to any governmental entity(ies).

4.04 **No Broker**. No broker, investment banker or other third party is entitled to any fee, commission or other compensation with respect to the transactions contemplated by this Agreement as a result of any agreement made or action taken by the Purchaser.

ARTICLE V

Covenants and Agreements

The following covenants and agreements shall be conditions precedent to the Closing of the transactions contemplated hereunder:

5.01 **Survival**. All representations and warranties made in or pursuant to this Agreement by the Seller and the Principals will be true on the Closing Date as if made on such date.

5.02 **Non-Disclosure of Information**. Each Party agrees that for a period of two (2) years after receipt of any information disclosed by the other Party to it which is identified by the other Party as being confidential or proprietary, shall be considered confidential information. Each Party further agrees that it shall hold all such confidential information in confidence and shall not disclose any such confidential information to any third party or applicable process, provided that to the extent possible the other Party shall have been provided with reasonable notice and the opportunity to seek a protective order to the extent possible prior to such disclosure, other than its counsel or accountants; provided, however, that the foregoing obligation to hold in confidence and not to disclose confidential information shall not apply to any information that (1) was known to the public prior to disclosure by the other Party, (2) becomes known to the public through no fault of such Party, (3) is disclosed to such Party on a non-confidential basis by a third party having a legal right to make such disclosure or (4) is independently developed by such Party.

ARTICLE VI

Survival of Representations; Indemnification

6.01 **Survival**. The parties hereto agree that their respective representations, warranties, covenants and agreements contained in this Agreement shall survive the Closing for a term of two (2) years with the exception of those regarding taxes set forth in Section 3.10 which shall survive the Closing for three (3) months following the expiration of the applicable statutes of limitation for such taxes.

6.02 **Indemnification**. The Sellers and the principals, jointly and severally, agree to save, defend and indemnify Purchaser against and hold it harmless from any losses, damages, deficiencies or liabilities (including, without limitation, counsel fees and expenses in connection therewith) caused by, resulting or arising from or otherwise relating to any failure by the Sellers to perform or otherwise fulfill or comply with any undertaking, agreement, or obligation of the Sellers hereunder or by reason of any breach of any representation or warranty of the Sellers contained herein and for all tax liabilities for periods prior to the Closing Date not previously paid or reserved for.

6.03 **Defense of Claims**. Purchaser agrees to notify the Seller with reasonable promptness of any claim asserted against it in respect of which the Sellers, or any of them, may be liable under this Agreement, which notification shall be accompanied by a written statement setting forth the basis of such claim and the manner of calculation thereof. The Sellers shall have the right to defend any such claim at their own expense and with counsel of their choice; provided, however, that such counsel shall have been approved by Purchaser prior to engagement, which approval shall not be unreasonably withheld, or delayed; and provided further, that Purchaser may participate in such defense, if it so chooses, with its own counsel and as its own expense. The Sellers, jointly and severally, agree that if any of the representations and warranties made by any of them in this Agreement shall be finally determined not to have been true, correct or complete when made, then the Sellers, jointly and severally, will pay to Purchaser at the time of such final determination an amount sufficient to indemnify Purchaser to the full extent of its losses and expenses sustained by reason thereof.

6.04 **Rights Without Prejudice**. The rights of the Purchaser under this Article VI are without prejudice to any other rights or remedies that it may have by reason of this Agreement or as otherwise provided by law.

ARTICLE VII

Miscellaneous

7.01 **Notices**. All notices that are required or may be given pursuant to this Agreement must be in writing and delivered personally, by a recognized courier service, by a recognized overnight delivery service, by telecopy or by registered or certified mail, postage prepaid, to the parties at the following addresses:

To the Purchaser:

With a copy to:
Greenbaum, Rowe, Smith, Davis LLP
99 Wood Avenue South
Woodbridge, NJ 07095
Attn: W. Raymond Felton

To the Seller:

With a copy to:

Any such notice or other communication will be deemed to have been given and received (whether actually received or not) on the day it is personally delivered or delivered by courier or overnight delivery service or if sent by telefax or, mailed, when actually received.

7.02 **Further Assurances**. Each party agrees to execute any and all documents and to perform such other acts as may be necessary or expedient to further the purposes of this Agreement and the transactions contemplated by this Agreement.

7.03 **Counterparts**. This Agreement may be executed in one or more counterparts for the convenience of the parties to this Agreement, all of which together will constitute one and the same instrument. Exchange of signed facsimile copy of the Agreement shall be deemed sufficient for the purposes of binding the parties to its constituents.

7.04 **Assignment**. Neither this Agreement nor any of the rights, interests or obligations under this Agreement will be assigned or delegated by the Seller or the Purchaser, without the prior written consent of the other parties, except that the Purchaser may assign its rights

under this Agreement to a subsidiary of the Purchaser. This Agreement is not intended to confer any rights or benefits to any Person (including without limitation any employees of the Company) other than the parties to this Agreement.

7.05 **Entire Agreement**. This Agreement and the related documents contained as Exhibits, Appendixes and Schedules to this Agreement or expressly contemplated by this Agreement contain the entire understanding of the parties relating to the subject matter hereof and supersede all prior written or oral and all contemporaneous oral agreements and understandings relating to the subject matter hereof. This Agreement cannot be modified or amended except in writing signed by the party against whom enforcement is sought. The Exhibits, Appendixes and Schedules to this Agreement are hereby incorporated by reference into and made a part of this Agreement for all purposes.

7.06 **Governing Law**. This Agreement shall be construed and interpreted in accordance with the laws of the State of New Jersey, without regard to its provisions concerning conflict of laws. The parties agree that any action that is brought under this Agreement is to be brought in the New Jersey Superior Court and/or the United States District Court for the District of New Jersey.

7.07 **Severability**. Each of the provisions contained in this Agreement shall be severable, and the unenforceability of one shall not affect the enforceability of any others or of the remainder of this Agreement.

7.08 **Expenses**. The Seller and the Purchaser will each bear its own expenses related to this Agreement and the transactions contemplated hereby.

The Parties hereto have executed this Agreement as of the date first above written.

PURCHASER

By: _____

, President & CEO

SELLER

By: _____

, Manager

_____

_____

FORM 6.5

BILL OF SALE

KNOW ALL BY THESE PRESENTS, that as of this ___ day of _____, 2019, XXXXXXXXXXXX, a New Jersey corporation (the "Seller"), having an address at _____, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby convey, transfer and assign to ZZZZZZZZZZZZZ., a New Jersey corporation (the "Buyer"), having an address at _____, all of the Seller's right, title and interest in and to those assets set forth on Schedule A to this Bill of Sale (collectively, the "Assets"), free and clear of all liens, pledges, encumbrances or other adverse claims of any kind or description.

TO HAVE AND TO HOLD the Assets hereby sold, transferred and conveyed to the Purchaser, its successors and assigns, to and for their own use and benefit forever.

This instrument shall be binding upon the Seller, its respective successors and assigns, and shall inure to the benefit of the Purchaser and its successors and assigns.

This Bill of Sale shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey.

IN WITNESS WHEREOF, the Seller has caused this Bill of Sale to be executed by its duly authorized officer as of the date first set forth above.

XXXXXXXXXXX

By: _____
Name:
Title:

SCHEDULE A

The Assets consist of the following:

(a) all manufacturing equipment listed on Schedule 1.1(a) of that certain Asset Purchase Agreement (the "Agreement") dated _____, 2019 by and among the Seller and the Buyer;

(b) inventory of raw materials and work in process;

(c) all rights in, to and under each contract (including customer contracts), agreement, commitment and arrangement, oral or written, to which the Seller is a party or by which the Seller or its equipment is otherwise bound or benefited, which contracts are listed or described on Schedule 1.1(c) of the Agreement;

(d) all customer lists, as set forth on Schedule 1.1(d) of the Agreement, catalogs, brochures, marketing or promotional materials and advertising material, including source material for all such applicable materials;

(e) all current customer sales statistics, customer product specifications, customer sales pricing, correspondence with customers and customer contacts with respect to current customers;

(f) all plans, specifications, working drawings, operational manuals, equipment manuals, maintenance records, surveys, warranties and guarantees held by the Seller with respect to any of the foregoing Assets;

(g) all Intellectual Property (as defined herein) owned by the Seller, including without limitation Seller's rights regarding use of the name "Industrial Drums"; and

(h) all rights and claims of the Seller against any other person or entity with respect to any of the foregoing assets.

FORM 6.6

SECURITY AGREEMENT

THIS AGREEMENT (the "Agreement") made as of the ___ day of _____, 2019, is by and between XXXXX, Inc., a New Jersey corporation (the "Company"), having an address at _____ , and ZZZZZZZZZ (the "Secured Party"), having an address at _____.

W I T N E S S E T H:

WHEREAS, the Company has issued its $150,000 principal amount promissory note dated as of _____, 2019 (the "Note") to the Secured Party; and

WHEREAS, it is a condition to the Note that the Company enter into this Agreement to secure the satisfaction and discharge of all of the Company's obligations under the Note.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. The Security Interest

The Company hereby grants to the Secured Party a continuing security interest in all of the tangible and intangible assets of the Company and in all of the tangible and intangible assets of the Subsidiaries, as that term is hereinafter defined, of the Company (the Company and the Subsidiaries are referred to herein as the "Company") whether now owned or hereafter acquired or arising and wherever located (collectively, the "Collateral"), including, without limitation the following property of the Company:

(A) All fixtures and all tangible and intangible personal property now or hereafter owned by the Company, or in which the Company now or hereafter acquires an interest, including, without limitation, all machinery, equipment, motor vehicle furniture, furnishings, office supplies, general intangibles, contract rights, patents, trademarks, trade names, instruments, documents of title, policies and certificates of insurance, securities, bank deposits, checking accounts and cash, and all additions and accessions hereto and all replacements and substitutions therefor and parts therefor now owned or hereafter acquired by or in which now or hereafter holds or hereafter acquires an interest; all proceeds and products of all of the foregoing, wherever situated.

(B) All inventory now owned or hereafter acquired by the Company or in which the Company now or hereafter acquires an interest and proceeds therefor, cash, and all accounts of the Company, including all accounts receivable, notes, drafts, acceptances, chattel paper and

other forms of obligations and receivables now owned or hereafter arising from inventory sold or otherwise disposed of by and all proceeds and products of all of the foregoing.

(C) All collateral consisting of accounts, contract rights, chattel paper and general intangibles of the Company, whether now existing or hereafter arising, and arising from the sale, delivery or provision of services.

(D) All other assets and rights of every kind and nature, real or personal, tangible or intangible, which are owned by the Company and used the Company's Business.

Section 2. Filing; Further Assurances

The Company will, at its expense, execute, deliver, file and record (in such manner and form as the Secured Party may require), or permit the Secured Party to file and record, any financing statements, any carbon, photographic or other reproduction of a financing statement or this Agreement (which shall be sufficient as a financing statement hereunder), any specific assignments or other paper that may be reasonably necessary or desirable, or that the Secured Party may request, in order to create, preserve, perfect or validate any Security Interest or to enable the Secured Party to exercise and enforce its rights hereunder with respect to any of the Collateral.

Section 3. Representations and Warranties of the Company

(A) The Company is, or to the extent that certain of the Collateral is to be acquired after the date hereof, will be, the owner of the Collateral free from any adverse lien, security interest or encumbrance.

(B) No financing statement covering the Collateral is on file in any public office, other than the financing statements filed pursuant to this Agreement.

(C) The Company shall at all times maintain the liens and security interests provided for hereunder as valid and perfected first priority liens and security interests in the Collateral hereby granted to the Secured Party. The Company hereby agrees to defend the same against any and all persons whatsoever. The Company shall safeguard and protect all Collateral for the account of the Secured Party and make no disposition thereof other than in the ordinary course of business. At the request of the Secured Party, the Company will sign and deliver to the Secured Party at any time or from time to time one or more financing statements pursuant to the Uniform Commercial Code in form satisfactory to the Secured Party and will pay the cost of filing the same in all public offices wherever filing is, or is deemed by the Secured Party to be, necessary or desirable and with respect to the Collateral.

(D) The Company shall advise the Secured Party promptly, in sufficient detail, of any substantial change in the Collateral, and of the occurrence of any event which would have a material adverse effect on the value of the Collateral or on the Secured Party's security interests therein.

(E) The Company will comply with all applicable laws, rules and regulations and orders, noncompliance with which would have a material adverse effect (a) on the business, financial condition or results of operation of the Company or (b) on the ability of the Company to perform any of its obligations under the Note.

(F) The Company shall not merge or consolidate with any other person, or sell, assign, lease or otherwise transfer its assets, except the Company may transfer assets in the ordinary course of business as currently conducted.

Section 4. Covenants of the Company

The Company hereby covenants and agrees as follows:

(A) That the Company will defend the Collateral against all claims and demands of all third parties at any time claiming any interest therein.

(B) That the Company will provide the Secured Party with at least ten (10) days prior written notice of the movement or location of Collateral.

(C) That the Company will have and maintain insurance at all times with respect to the Collateral against risks of fire (including so-called extended coverage) and theft, and such other risks as the Secured Party may reasonably require in writing, containing such terms, in such form, or such periods and written by such companies as may be reasonably satisfactory to the Secured Party, such insurance to be payable to the Secured Party and the Company as their interests may appear.

(D) The Company will not sell or offer to sell or otherwise assign, transfer or dispose of the Collateral or any interest therein, without the prior written consent of the Secured Party; provided, however, that as long as no Event of Default has occurred and is continuing and subject to the terms thereof.

(E) The Company will keep the Collateral free from any adverse lien, security interest or encumbrance and in good order and repair, reasonable wear and tear excepted, and will not waste or destroy the Collateral or any part thereof.

(F) The Company will not use the Collateral in violation of any statute or ordinance.

(G) The Company agrees to cooperate and join, at its expense, with the Secured Party in taking such steps as are necessary, in the Secured Party's judgment, to perfect or continue the perfected status of the Security Interests granted hereunder including, without limitation, the execution and delivery of any financing statements, amendments thereto and continuation statements, the delivery of chattel paper, documents or instruments to the Secured Party, the obtaining of landlord's waivers required by the Secured Party, the notation of encumbrances in favor of on certificates of title, and the execution and filing of any collateral assignments and any other instruments requested by the Secured Party to perfect its security interest in any and all of the Company's patents, trademarks, service marks, tradenames, copyrights and other general intangibles.

(H) The Company agrees to reimburse the Secured Party on demand for out-of-pocket expenses incurred in connection with the Secured Party's exercise of its rights under this Agreement. The Company agrees to indemnify the Secured Party and hold it harmless against any costs, expenses, losses, damages and liability (including reasonable attorney's fees) incurred in connection with this Agreement, other than as a direct result of the Company's negligence or willful misconduct.

Section 5. Records Relating to Collateral

The Company will keep its records concerning the Collateral at its principal office at the address first listed above, or at such other place or places of business upon notice to the Secured Party. The Company will hold and preserve such records and will permit representatives of the Secured Party at any time during normal business hours to examine and inspect the Collateral and to make abstracts from such records, and will furnish to the Secured Party such information and reports regarding the Collateral as the Secured Party may from time to time reasonably request. The Company shall immediately notify the Secured Party of any change in the location of its chief executive office, of any new or additional address where its books and records concerning the Collateral are located and of any new locations of Collateral not specified hereinabove.

Section 6. Events of Default.

An Event of Default shall be as defined under the Note.

Section 7. Remedies upon Event of Default

Upon occurrence of any of the above Events of Default and at any time thereafter, as long as any such Event of Default shall continue, the Secured Party may exercise any and all of the rights and remedies conferred hereunder and under the Note, including the right to accelerate all the obligations secured hereby, and the Secured Party shall have all the rights and remedies of a secured party under the Uniform Commercial Code and/or any other applicable law of any jurisdiction as to any Collateral therein located (whether or not such other Uniform Commercial Code applies to the affected Collateral) and shall further have, in addition to all other rights and remedies provided herein or by law, the following rights and powers:

(A) The Secured Party shall have the right to take possession of the Collateral and, for that purpose, enter, with the aid and assistance of any person or persons, any premises where the Collateral, or any part thereof, is or may be placed and remove the same.

(B) The Secured Party shall have the right from time to time to sell, resell and deliver all or any part of the Collateral, at public or private sale (provided that the fair market value of such Collateral may be readily determined) or otherwise, at the option of the Secured Party, for cash or on credit or for future delivery, in such parcel or parcels and at such time or times and at such place or places, and upon such commercially reasonable terms and conditions, all without (except as shall be required by applicable statute and cannot be waived)

advertisement or demand upon or notice to the Company or right of redemption of the Company, which are hereby expressly waived.

(C) Upon each such sale, the Secured Party may, unless prohibited by applicable statute which cannot be waived, purchase all or any part of the Collateral being sold, free from and discharged of all trusts, claims, right of redemption and equities of the Company, which are hereby waived and released.

(D) The proceeds of any such sale, lease or other disposition of the Collateral shall be applied first, to the expenses of retaking, holding, storing, processing and preparing for sale, selling, and the like, and to the reasonable attorneys' fees and legal expenses incurred by the Secured Party, and then to satisfaction of the obligations, and to the payment of any other amounts required by applicable law, after which the Secured Party shall pay to the Company any surplus proceeds. If, upon the sale, lease or other disposition of the Collateral, the proceeds thereof are insufficient to pay all amounts to which the Secured Party is legally entitled, the Company will be liable for the deficiency, together with interest thereon, and the reasonable fees of any attorneys employed by the Secured Party to collect such deficiency. To the extent permitted by applicable law, the Company waives all claims, damages and demands against the Secured Party arising out of the repossession, removal, retention or sale of the Collateral, unless due to the gross negligence or willful misconduct of the Secured Party.

(E) At any time after such Event of Default, the Secured Party shall have the right to send notice of the assignment granted herein and the security interest created hereunder to any account debtors of the Company or any other persons obligated on, holding or otherwise concerned with, any of the receivables, may demand that monies due or to become due be paid to the Secured Party, and thereafter, the Secured Party shall have the sole right to collect the receivables and all books and records relating thereto.

Section 8. Costs and Expenses.

Any and all out-of-pocket fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by the Secured Party, and all other documents relating hereto and the consummation of this transaction, the filing or recording of financing statements and other documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, insurance premiums, encumbrances or otherwise protecting, maintaining or preserving the Collateral, or the enforcing, foreclosing, retaking, holding, storing, processing, selling or otherwise realizing upon the Collateral and the Secured Party's security interests therein, whether through judicial proceedings, where the Secured Party prevails or otherwise, or in defending or prosecuting any actions or proceedings arising out of or related to the transaction to which this Agreement relates, shall be borne and paid by the Company on demand by the Secured Party and until so paid shall be added to the principal amount of the outstanding obligations and shall bear interest at the default rate of interest, as specified in the Note.

Section 9. Notices

Unless otherwise provided herein, any notice or other communication to a party hereunder shall be sufficiently given if in writing and personally delivered or sent by facsimile with copy sent in another manner herein provided or sent by courier (which for all purposes of this Agreement shall include Federal Express, UPS or other recognized overnight courier) or mailed to said party by certified mail, return receipt requested, at the address first set forth above or such other address as either may designate for itself in such notice to the other and communications shall be deemed to have been received when delivered personally, on the scheduled arrival date when sent by next day or 2-day courier service or if sent by facsimile upon receipt of transmittal confirmation or if sent by mail then three days after deposit in the mail.

Section 10. Changes in Writing

Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally but only by a statement in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

Section 11. New Jersey Law; Jurisdiction; Meaning of Terms

This Agreement shall be construed in accordance with and governed by the laws of the State of New Jersey. The parties agree that all actions or proceedings arising directly or indirectly from or in connection with this Agreement shall be litigated only in the United States District Court for the District of New Jersey or in a state court located in New Jersey. Unless otherwise defined herein, or unless the context otherwise requires, all terms used herein which are defined in the New Jersey Uniform Commercial Code have the meanings therein stated.

Section 12. Severability

If any provision hereof is invalid or unenforceable in any jurisdiction, the other provisions hereof shall remain in full force and effect in such jurisdiction.

Section 14. Headings

The headings in this Agreement are for the purposes of reference only and shall not limit or otherwise affect the meaning hereof.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto all as of the day and year first above written.

XXXXXXXX, INC.

By: _____

, President & CEO

_____

FORM 6.7

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]	
B. SEND ACKNOWLEDGMENT TO: (Name and Address)	**THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY**

1. DEBTOR'S EXACT FULL LEGAL NAME – Insert only one debtor name (1a or 1b) – do not abbreviate or combine names

OR	1a. ORGANIZATION'S NAME				
	1b. INDIVIDUAL'S LAST NAME	FIRST NAME		MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
1d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR / 1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION		1g. ORGANIZATIONAL ID #, if any ☐ NONE	

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – Insert only one debtor name (2a or 2b) – do not abbreviate or combine names

OR	2a. ORGANIZATION'S NAME				
	2b. INDIVIDUAL'S LAST NAME	FIRST NAME		MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
2d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR / 2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION		2g. ORGANIZATIONAL ID #, if any ☐ NONE	

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – Insert only one secured party name (3a or 3b)

OR	3a. ORGANIZATION'S NAME				
	3b. INDIVIDUAL'S LAST NAME	FIRST NAME		MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION [if applicable]:
☐ LESSEE/LESSOR ☐ COSIGNEE/COSIGNOR ☐ BAILEE/BAIL OR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS.
☐ Attach Addendum [if applicable]

7. Check to REQUEST SEARCH REPORT(S) on
☐ Debtor(s) [ADDITIONAL FEE] [optional] ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA

FORM 6.8

UNANIMOUS CONSENT OF THE SHAREHOLDERS IN LIEU OF A SPECIAL MEETING OF THE SHAREHOLDERS OF XYZ CORP.

The undersigned, being all of the shareholders of XYZ Corp., a New Jersey corporation (the "Corporation"), do hereby consent in writing to the adoption of the following resolutions in lieu of a special meeting of the shareholders of the Corporation:

RESOLVED, that the Corporation sell all of its assets to ABC Partnership for a purchase price of $100,000, payable in full at closing, pursuant to the terms of that Purchase Agreement dated February 1, 2019 between the Corporation and ABC Partnership; and be it further

RESOLVED, that Mary Smith as President and John Jones as Secretary of the Corporation be and they hereby authorized to take such actions and execute such documents and instruments, including without limitation the aforesaid Purchase Agreement, as may be necessary or appropriate in order to effectuate the foregoing resolution.

Consented to, authorized, adopted and approved this 1st day of February, 2019.

_____

MARY SMITH

_____

JOHN JONES

FORM 6.9

STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (this "Agreement") made this ___ day of _____2019, by and between (Name of Selling Individual), (Name of Existing Corporation), a New Jersey corporation, (Name of Purchasing Corporation), a New Jersey corporation, (Name of Purchasing Individual).

W I T N E S S E T H

WHEREAS, (Name of Selling Individual) is the owner of (percentage) % of the issued and outstanding stock of (Name of Existing Corporation) (the "Stock"); and

WHEREAS, (Name of Selling Individual) desires to sell and the (Name of Purchasing Individual) desire to purchase the Stock, and in connection therewith (Name of Selling Individual) and (Name of Purchasing Individual) entered into a letter of intent (the "Letter of Intent") dated (Date) which provides for the sale of the Stock upon the terms and conditions all as more fully set forth in this Agreement; and

WHEREAS, in accordance with the terms of the Letter of Intent, (Name of Purchasing Individual) has formed (Name of Purchasing Corporation) to purchase the Stock; and

WHEREAS, (Name of Purchasing Corporation) will acquire the Stock in accordance with the terms and conditions more fully set forth herein, and thereafter merge (Name of Existing Corporation) into (Name of Purchasing Corporation) with (Name of Purchasing Corporation) being the successor entity, of which (Name of Purchasing Individual) will be the sole shareholder.

NOW THEREFORE, in consideration of the mutual covenants, agreements, representations and warranties contained in this Agreement, the parties hereto agree as follows:

ARTICLE I
PURCHASE AND SALE OF THE STOCK

1.01 **Sale of Stock**. Subject to the terms of this Agreement, (Name of Selling Individual) shall transfer and convey the Stock to (Name of Purchasing Corporation) free and clear of any and all restrictions, liens and encumbrances, and (Name of Purchasing Corporation) shall acquire the Stock from (Name of Selling Individual) for a purchase price of (amount in words and numbers).

1.02 **Consideration**. In consideration of the transfer of the Stock at the Closing, (Name of Purchasing Corporation) deliver to (Name of Selling Individual) a promissory note (the "Note") in the form attached hereto as Exhibit "A" for the full amount of the purchase price. The Note shall provide for the purchase price for the Stock to be paid in (number of installments) annual installments of (amount in words and numbers), the first installment being due twelve months after the Closing (as defined herein). All of the installment payments shall bear an imputed interest rate of (percentage) percent (percentage %) or the minimum applicable federal rate, if higher.

1.03 **Security**. (Name of Purchasing Corporation)'s obligations under the Note shall be secured by the following:

(a) personal guarantees of the (Name of Purchasing Individual) in the form attached hereto as Exhibit "B" (the "Guarantee"). The Guarantee shall be given on a joint and several basis to the full extent of the amount outstanding on the Note;

(b) all of the issued and outstanding shares of capital stock of (Name of Purchasing Corporation) which shall be pledged as collateral security for the Guarantee in accordance with the stock pledge agreement in the form attached hereto as Exhibit "C" (the "Stock Pledge Agreement"); and

(c) a first security interest in all of the assets of (Name of Purchasing Corporation) including all equipment, inventory and accounts receivable in accordance with the form of security agreement attached hereto as Exhibit "D" (the "Security Agreement"). Said first security interest in equipment shall include only the equipment owned by (Name of Purchasing Corporation) on the date of the Closing as well as any replacements thereof. Excluded from said first security interest shall be any equipment acquired by (Name of Purchasing Corporation) after the Closing. At the Closing (Name of Purchasing Corporation) shall execute and deliver to (Name of Selling Individual) UCC-1 Financing Statements in the form attached hereto as Exhibit "E" . For all Guarantee, the Stock Pledge Agreement, the Security-Agreement, the UCC-1 Financing Statements and the Confidentiality Agreement (as defined herein) shall be referred to as the "Collateral Agreements."

ARTICLE II

CLOSING

2.01 **Time and Place**. The transfer of the Stock by (Name of Selling Individual) to (Name of Purchasing Corporation) (the "Closing") shall take place on (Date of Closing) at the offices of Greenbaum, Rowe, Smith &Davis LLP, 99 Wood Avenue South, Iselin, New Jersey, or at such other time and place as the parties mutually agree upon.

2.02 **Escrow**. Upon the execution of this Agreement, (Name of Purchasing Individual) shall pay the amount of (amount in words and numbers) into an escrow fund to be held by

Greenbaum, Rowe, Smith & Davis LLP, in its interest bearing attorney trust account. During the time period between the execution of this Agreement and the Closing, (Name of Purchasing Individual) shall instruct (Name of Existing Corporation) and (Name of Existing Corporation) agrees to make certain expenditures not to exceed (amount in words and numbers) in total, in connection with (Name of Existing Corporation)'s appearance at the (name of event) to be held from (date) through (date). At the Closing, (Name of Selling Individual) shall be reimbursed directly from the escrow fund for any such expenditures, and the balance of the escrow fund, with interest, shall be refunded to (Name of Purchasing Individual). In the event the Closing fails to take place on or before (date) as a result of (Name of Purchasing Individual)'s refusal to close, or in the event (Name of Purchasing Individual) breaches any terms of this Agreement, then the entire escrow fund, with interest, shall be paid to (Name of Selling Individual).

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF (NAME OF SELLING INDIVIDUAL & EXISTING CORPORATION)

(Name of Selling Individual) and (Name of Existing Corporation) represent and warrant to (Name of Purchasing Corporation) and (Name of Purchasing Individual) as follows:

3.01 **Corporate Authority**. (Name of Existing Corporation) is a corporation duly incorporated, validly existing and in good standing under the laws of the State of (Name of State), and (Name of Existing Corporation) and have the required corporate and individual power and authority, respectively, to enter into and perform this Agreement. (Name of Existing Corporation) does not own any direct or indirect interest in a subsidiary.

3.02 **Capitalization**. (Name of Existing Corporation)'s authorized capital stock consists solely of (number of shares) shares of common stock, no par value, of which (number of shares) shares are now issued and outstanding and held by (Name of Selling Individual).

3.03 **Ownership of the Stock**. (Name of Selling Individual) is the registered owner of the Stock which constitutes one hundred percent (100 %) of the issued and outstanding shares of (Name of Existing Corporation): The Stock is free and clear of any liens, pledges, security interests, claims or encumbrances of any kind.

3.04 **No Consent by Third Party**. No third party is required to consent to or approve the sale of the Stock pursuant to the terms and conditions of this Agreement.

3.05 **Name of Existing Corporation) Documents**. The copies of (Name of Existing Corporation)'s charter and by-laws, both as amended to date, which have been or shall be delivered to (Name of Purchasing Corporation) and (Name of Purchasing Individual) are or shall be correct and complete.

3.06 **No Brokers**. All negotiations relating to this Agreement and all transactions contemplated hereby have been carried on by (Name of Selling Individual) and (Name of Existing Corporation) directly with (Name of Purchasing Corporation) and (Name of Purchasing Individual) without the intervention of any person as a result of any act of (Name of Selling Individual) or (Name of Existing Corporation) in such manner as to give rise to any claim against any of the parties hereto for any brokerage commission or other like payment.

3.07 **Employee Plans**. (Name of Existing Corporation) has no profit sharing, pension, retirement, deferred compensation, or any other employee benefit plan currently in force.

3.08 **Litigation**. There is no order, notice, claim, litigation, suit or legal proceeding pending or threatened against (Name of Existing Corporation), except for (describe litigation).

3.09 **Insurance**. The premiums currently due for all insurance policies historically maintained by (Name of Existing Corporation) in the ordinary course of its business have been paid and said insurance policies are in full force and effect.

3.10 **Title to Property**. (Name of Existing Corporation) owns all of the tangible and intangible property (including the name "(Name)") used by (Name of Existing Corporation) in the ordinary course of business, and only the property referred to in Section 7.04 shall not remain with (Name of Existing Corporation) after the Closing.

3.11 **Financial Statements**. The (year) through (year) profit and loss statements and balance sheets of (Name of Existing Corporation) fairly and accurately present the financial condition of (Name of Existing Corporation) as of the year end of each such period, and all of the fixed liabilities of (Name of Existing Corporation) are reflected on such balance sheets. The (date) profit and loss statement and balance sheet of (Name of Existing Corporation) (which shall be delivered to (Name of Purchasing Individual) before (date)) will fairly and accurately present the financial condition of (Name of Existing Corporation) as of such date and all of the fixed liabilities of (Name of Existing Corporation) will be reflected on such balance sheet.

3.12 **Survival of Representations and Warranties**. The representations and warranties of (Name of Selling Individual) and (Name of Existing Corporation) contained in this Article Three and in any of the Collateral Agreements shall be complete, correct and true as of the date hereof and/or the date of the Closing and shall survive the date of the Closing and shall terminate on the first anniversary of the date of the Closing.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF (NAME OF PURCHASING CORPORATION) AND (NAME OF PURCHASING INDIVIDUAL)

(Name of Purchasing Corporation) and (Name of Purchasing Individual) represent and warrant to (Name of Selling Individual) and (Name of Existing Corporation) as follows:

4.01 **Corporate Authority**. (Name of Purchasing Corporation) is a corporation duly incorporated, validly existing and in good standing under the laws of the State of (Name of State) and has the required corporate power and authority to enter into this Agreement.

4.02 **Capitalization**. (Name of Purchasing Corporation)'s authorized capital stock consists solely of (number of shares) shares of common stock, no par value, of which (number of shares) shares are now issued to (Name of Purchasing Individual).

4.03 **Ownership of (Name of Purchasing Corporation Shares**. (Name of Purchasing Individual) is the registered owner of one hundred percent (100%) of the capital stock of (Name of Purchasing Corporation) which shares are free and clear of any liens, pledges, security interests, claims or encumbrances of any kind.

4.04 **Title to Assets**. On the date of the Closing (Name of Purchasing Corporation) will have good and marketable title to all of its property and assets free and clear of any and all liens, encumbrances or security interests.

4.05 **No Brokers**. All negotiations relating to this Agreement and all transactions contemplated hereby have been carried on by (Name of Purchasing Corporation) and (Name of Purchasing Individual) directly with (Name of Selling Individual) and (Name of Existing Corporation) without the intervention of any person as a result of any act of (Name of Purchasing Corporation) or (Name of Purchasing Individual) in such manner as to give rise to any claim against any of the parties hereto for any brokerage commission or other like payment.

4.06 **Survival of Representations and Warranties**. The representations and warranties of (Name of Purchasing Corporation) and (Name of Purchasing Individual) contained in this Article Four and in any of the Collateral Agreements shall be complete, correct and true as of the date hereof and/or the date of the Closing and shall survive the date of the Closing until the Note shall be repaid in full.

ARTICLE V

COVENANTS OF (NAME OF SELLING INDIVIDUAL) AND (NAME OF EXISTING CORPORATION)

5.01 **Conduct of Business by (Name of Existing Corporation) Before Closing**. During the time period between the execution of this Agreement and the Closing, (Name of Existing Corporation) will not enter into any contracts or assume any liabilities out of the ordinary course of its business without the prior consent of (Name of Purchasing Individual).

5.02 **Delivery of Additional Documents**. Within thirty (30) days of the execution of this Agreement, (Name of Existing Corporation) shall provide (Name of Purchasing Individual) with the documents identified in Exhibit "F." The documents identified in Exhibit "F"

are being provided solely for informational purposes, and the Closing shall not be conditioned upon the information contained therein. The terms of the confidentiality agreement dated (date) (the "Confidentiality Agreement") are incorporated herein, and the Confidentiality Agreement is hereby amended to include all documents identified in Exhibit F as well as any other documents which have been or may be provided by (Name of Existing Corporation) to (Name of Purchasing Individual) in connection with the transaction described in this Agreement.

5.03 **Release of Security**. So long as there is no default in any of the installment payments provided for in the Note, or any of the terms of this Agreement, (Name of Selling Individual) shall release his first security interest in (Name of Purchasing Corporation)'s accounts receivable after receiving the (number of installment) installment of (amount of installment) due under the Note.

5.04 **Indemnification**.

(a) (Name of Selling Individual) and (Name of Existing Corporation) agree to indemnify and hold (Name of Purchasing Individual) and (Name of Purchasing Corporation) harmless against any loss from the (describe claim) claim referred to in Section 3.08.

(b) (Name of Selling Individual) and (Name of Existing Corporation) agree to indemnify and hold (Name of Purchasing Individual) and (Name of Purchasing Corporation) harmless against any tax liability (inclusive of interest and penalties) in excess of $500.00 per occurrence and/or $1,000.00 during any consecutive twelve month period directly resulting from any of the following items or adjustments relating to (Name of Existing Corporation) prior to the Closing:

(1) Insert Item or Adjustment

(2) Insert Item or Adjustment

(3) Insert Item or Adjustment

(4) Insert Item or Adjustment

(5) Insert Item or Adjustment

(6) Insert Item or Adjustment.

The indemnification agreement set forth in this Section 5.04 shall survive the Closing and shall terminate on the third anniversary of the date of the Closing.

5.01 **Resignations**. At the Closing (Name of Selling Individual) shall deliver the written resignations of all officers and directors of (Name of Existing Corporation).

ARTICLE VI

COVENANTS OF (NAME OF PURCHASING CORPORATION) AND (NAME OF PURCHASING INDIVIDUAL)

6.01 **Merger of (Name of Existing Corporation) into (Name of Purchasing Corporation)**. Effective simultaneously with the Closing hereunder, (Name of Purchasing Corporation) shall merge (Name of Existing Corporation) into (Name of Purchasing Corporation), and (Name of Purchasing Corporation) shall be the successor entity.

6.02 **Financial Statements and Reporting Requirement**. After the Closing, (Name of Purchasing Corporation) shall furnish (Name of Selling Individual) with (i) all quarterly financial statements of (Name of Purchasing Corporation) within forty-five (45) days after the end of the respective quarterly periods, (ii) all annual financial statements of (Name of Purchasing Corporation) within ninety (90) days after the end of the respective annual periods, and (iii) prior written notice of intention to acquire any particular item of equipment for greater than (amount in words and numbers) and prior written notice of acquisition of any particular item of equipment which, when aggregated with all other equipment purchases by (Name of Purchasing Corporation) during any fiscal year, shall be in excess of (amount in words and numbers). So long as there is no default in any of the installment payments due under the Note or any of the terms of the Collateral Agreements, (Name of Purchasing Corporation) shall only be required to deliver annual financial statements and shall no longer be required to deliver any of said prior notices after (Name of Selling Individual) receives the (number of installment) installment of (amount of installment) due under the Note.

6.03 **Issuance of Additional Shares of (Name of Purchasing Corporation)**. For so long as there is a balance due under the Note, (Name of Purchasing Corporation) shall not authorize or issue any common, preferred or other capital stock or other securities convertible into or exchangeable for capital stock, or issue any warrants, options, or other instruments entitling any person to hold capital stock in (Name of Purchasing Corporation).

6.04 **Transfer of Assets of (Name of Purchasing Corporation)**. For so long as there is a balance due under the Note, (Name of Purchasing Corporation) shall not transfer all or substantially all of its property or assets whether in a single transaction or in a series of transactions, nor shall (Name of Purchasing Corporation) permit the merger, reorganization or consolidation of (Name of Purchasing Corporation).

6.05 **No Personal Guarantees**. For so long as there is a balance due under the Note, (Name of Purchasing Individual) will not guarantee the payment or performance of any loan or advance made to (Name of Purchasing Corporation) or to any other individual or business entity in excess of an aggregate amount of (amount in words and numbers) except for personal auto loans and/or mortgage loans on (Name of Purchasing Individual) personal residence.

ARTICLE VII
MISCELLANEOUS AGREEMENTS

7.01 **Consulting Services**. (Name of Selling Individual), in (his/her) sole discretion, may provide consulting services for (Name of Purchasing Corporation) during the one year period following the Closing. The nature and extent of these consulting services are entirely within (Name of Selling Individual)'s discretion. (Name of Purchasing Individual) shall reimburse (Name of Selling individual) for any reasonable expenses and disbursements he incurs in connection with these consulting services. (Name of Selling Individual) shall obtain prior consent from (Name of Purchasing Corporation) before incurring travel expenses and disbursements in excess of (amount).

7.02 **Restrictive Covenant**. (Name of Selling Individual) agrees to enter into a restrictive covenant agreement with (Name of Purchasing Corporation) in the form attached hereto as Exhibit "G" (the "Restrictive Covenant Agreement") for a period of three years after the Closing covering a geographic area not smaller than (Name of Existing Corporation)'s current sales territory.

7.03 **Lease**. (Name of Purchasing Corporation) shall be responsible for payment of the monthly rental under (Name of Existing Corporation) lease for the premises located at (address) (the "Lease") for the months of (month, year) and (month, year). (Name of Selling Individual) will indemnify (Name of Purchasing Corporation) for any claims of the landlord under the Lease for rent for the period from (date) until (date) at which time the Lease will terminate; however, if (Name of Purchasing Corporation) decides to remain at the premises after (date), (Name of Purchasing Corporation) will pay the monthly rental directly to the landlord under the Lease for the amount of space leased and the amount of time the premises are occupied. Upon termination of the Lease, the security deposit being held thereunder will be refunded to (Name of Selling Individual).

7.04 **Property and Equipment**. All property and equipment owned or leased by (Name of Existing Corporation) shall remain with (Name of Existing Corporation) after the Closing other than the (describe property, equipment, etc.) in (Name of Selling Individual)'s office and conference room, and miscellaneous personal effects.

ARTICLE VIII
REMEDIES UPON DEFAULT

If, at any time, (Name of Purchasing Corporation) or (Name of Purchasing Individual) breach, violate or otherwise fail, to satisfy any of the provisions of this Agreement or any of the Collateral Agreements then (Name of Selling Individual) shall have available to him all rights and remedies provided under this Agreement and any of the Collateral Agreements, at law or in equity.

ARTICLE IX
MISCELLANEOUS

9.01 **Entire Agreement**. This Agreement sets forth the entire understanding of the parties. Any previous agreements or understandings between the parties regarding the subject matter hereof including the Letter of Intent are merged into and superseded by this Agreement except for the Collateral Agreements being executed simultaneously herewith.

9.02 **Counterparts**. Any number of counterparts of this Agreement may be signed and delivered and each shall be considered an original and together they shall constitute one agreement.

9.03 **Successors, Assigns, etc**. This Agreement is binding upon the parties and their heirs, personal representatives, successors and assigns, as the case may be.

9.04 **Governing Law: Jurisdiction**. This Agreement shall be construed in accordance with and governed by the laws of the State of New Jersey. The parties agree that any disputes and matters arising from this Agreement shall be brought in and before the Superior Court of New Jersey or, if federal jurisdiction exists, before the United States Court for the District of New Jersey, and each party agrees to submit to the jurisdiction of said courts, and to waive any defenses based upon grounds of lack of jurisdiction, improper venue or inconvenience.

9.05 **Severability**. If any part of this Agreement is declared to be invalid or unenforceable, then such invalidity or unenforceability shall not affect the remainder of this Agreement which shall continue is full force and effect.

9.06 **Notices**. All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be made in writing and signed by the party giving the same and shall be deemed to have been given or made when hand delivered or mailed by United States certified mail, return receipt requested, postage prepaid, to the following addresses, or to any other addresses of which all parties are notified in writing:

If to (Name of Existing Corporation) or (Name of Selling Individual):

Copy to:

If to (Name of Purchasing Corporation):

Copy to:

9.07 **Heading**. The subject headings of the sections and subsections of this Agreement are included for purposes of convenience only, and shall not effect the construction or interpretation of any of its provisions.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

WITNESS:

_____

ATTEST:

_____

ORGANIZATION AND SALE OF SMALL BUSINESSES

PRACTICAL SKILLS SERIES

2019 Edition

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