

New Jersey Co-op Research

Cooperatives Generally

New Jersey has a high concentration of cooperatives in more densely populated urban areas, including Newark, Trenton, Elizabeth, and Jersey City.¹ The New Jersey Department of Community Affairs (DCA) lists 151 cooperative projects statewide, including 14 in Bergen and Passaic counties.² North Jersey's co-ops are primarily clustered in Fort Lee, where there are 12 of them.³ There are also several retirement cooperatives in central New Jersey.⁴

The New Jersey Cooperative Recording Act governs housing cooperatives within the State and specifies how the governing documents of a housing cooperative, including the by-laws, proprietary leases, and certificate of incorporation, must be filed with the State attorney general's office.⁵ The Act requires “a plan of cooperative ownership” which can be created by “recording a master declaration and master register of all cooperative units allocated for separate occupancy.”⁶ The Act also recognizes and provides a structure for cooperative ownership, including formation, management, voting, and ownership rights.⁷

The New Jersey Business Corporation Act defines a corporation as an entity organized for-profit under this Act, “organized under any other law of this State for a purpose or purposes for which a corporation may be organized under this act.”⁸ In New Jersey, most new “cooperatively” owned and operated businesses are formed under the New Jersey Business Corporation Act.⁹

There are no other New Jersey laws specifically regulating co-ops. As such, there are no statutory restrictions around using the word “cooperative” in New Jersey. In light of this, cooperatives in New Jersey are governed by their own rules and regulations as delineated in their certificate of incorporations, by-laws, operating agreements, proprietary leases, and/or house rules. These documents delineate how each cooperative is governed and operated, and where the international cooperative principles may be included.

Statutes

The Cooperative Recording Act of New Jersey

¹ <https://nj.cooperatornews.com/article/co-ops-around-the-globe/full>

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ [NJ Rev Stat § 46:8D-1 \(2013\)](#)

⁶ *Id.*

⁷ *Id.*

⁸ [NJ Rev Stat § 14A:1-1 \(2013\)](#)

⁹ *Id.*

The Cooperative Recording Act of New Jersey, which governs housing cooperatives, was enacted on May 8, 1988. This Act was codified in the "New Jersey Statutes Annotated" and is cited as N.J.S.A. 46:8D-1. Under this law, housing cooperatives must also comply with the Planned Real Estate Development Full Disclosure Act (PREDFDA) and New Jersey's Corporations statute, N.J.S.A. 14A:1-1 et. seq. The Cooperative Recording Act specifically provides government oversight to housing cooperative associations.

The Cooperative Recording Act requires a plan of cooperative ownership. N.J. Stat. Ann. § 46:8D-5. ¹⁰ A plan of cooperative ownership is created by recording in the county office where the cooperatively-owned land is located a master declaration and master register of all cooperative units allocated for separate occupancy. Both the master declaration and master register is required to be executed and acknowledged by all owners of the land and shall set forth the matters, required by sections 6 and 7 of this Act, for example, bylaws which regulate the cooperative, a copy of the certificate of incorporation and separate identification of each unit .¹¹

Cooperatives must also follow the State's Business Corporation Act's requirements, codified as N.J.S.A. 14A:1-1, which sets forth basic rules about recordkeeping, shareholder meetings, and board members' elections and voting. When creating a corporation, the incorporator can be one or more individuals who file a certificate of incorporation with the NJ Secretary of State office.

This Act defines a "cooperative" as "any system of land ownership and possession in which the fee title to the land and structure is owned by a corporation or other legal entity in which the shareholders or other coowners each also have a long term proprietary lease or other long term arrangement of exclusive possession for a specific unit of occupancy space located within the same structure."¹²

Planned Real Estate Development Full Disclosure Act NJSA 45:22A-21

This law requires common interest communities, such as condominiums, cooperatives, or subdivided properties with an association that manages commonly owned property interests, register an offering plan with the Department of Community Affairs before offering housing units for sale to the public.¹³

The Planned Real Estate Development Full Disclosure Act ("PREDFDA") became effective on November 22, 1978 and governs some aspects which require a developer of a common interest community such as condominium, cooperative or subdivided property with an association that manages commonly owned interests register an offering plan.¹⁴ The Act was amended on July 13, 2017, to establish that all unit owners be members of the association, have fundamental election participation rights,, and

¹⁰ § 46:8D-5

¹¹ Id.

¹² N.J. Stat. § 46:8D-3

¹³ NJSA 45:22A-21

¹⁴ <https://www.nj.gov/dca/divisions/codes/offices/pred.html>

New Jersey Co-op Template as prepared by Elizabeth L. Carter and Chynnique Ross of Elizabeth L. Carter, Esq., LLC

decide how by-laws may be drafted and amended.¹⁵ The Department of Community Affairs is charged with enforcing the law.¹⁶

Consumer Cooperatives

There is no statute explicitly governing consumer cooperatives. As with other cooperatives in New Jersey, they may be formed under the New Jersey Business Corporation Act.

Worker Cooperatives

There is no statute explicitly governing worker cooperatives. As with other cooperatives in New Jersey, they may be formed the State's Business Corporation Act's requirements.

Credit Unions: Financial Cooperatives

There is no statute explicitly governing financial cooperatives. As with other cooperatives in New Jersey, they may be formed under the New Jersey Business Corporation Act.

Producer Cooperatives

A producer cooperative allows its members, who produce the same or similar products, cooperatively market and sell the products. There is no statute explicitly governing producer cooperatives. As with other cooperatives in New Jersey, they may be formed under the New Jersey Business Corporation Act.

Nonprofit Cooperatives

Cooperatives in New Jersey may form under New Jersey law for nonprofit corporations governed by Title 15A of the New Jersey Statutes. This statute provides for a legal entity that is not organized for pecuniary profit. The nonprofit cooperative may not intend to issue capital stock or shares. The nonprofit is not permitted to pay or plan to pay dividends, and no part of its profits or income is to be distributed to members, trustees, or officers.

Nonprofit corporations may be organized for any lawful purpose other than for pecuniary profit, including charitable, benevolent, eleemosynary, educational, cemetery, civic, patriotic, political, religious, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural, animal husbandry, volunteer fire company, ambulance, first aid, rescue, professional, commercial, industrial, trade association, labor unions, and cooperative purposes [N.J.S. 15A:2-1(a)]. A corporation may also be organized for any purpose for which a religious corporation may be incorporated under Title 16 of the New Jersey Statutes [N.J.S. 15A:2-1(c); see N.J.S. 16:1-1-16:19-9].

Miscellaneous Cooperatives: Retirement Cooperatives

A retirement cooperative is a housing option that offers adults age 55 and over independence and social interaction without the maintenance, chores, and single-home

¹⁵ Id.

¹⁶ Id.

ownership expenses. Residents purchase a share of the community and also have a say in how the community operates. Retirement Cooperatives are governed by the Senior and Disabled Cooperative Housing Finance Incentive Act, 1998 N.J. A.N. 1632.¹⁷ This Act authorizes the set aside of bonds by the Housing and Mortgage and Financing Agency (HMFA) for funding. HMFA, supplementing chapter 14K of Title 55 of the Revised Statutes, assists nonprofit housing cooperative corporations with the financial costs of providing cooperative living opportunities to low- and moderate-income senior or disabled tenant-purchasers.¹⁸

Sample By-Laws or Operating Agreements

There are no particular by-laws or operating agreements used as templates for cooperatives in New Jersey, but here is a sample operating agreement that has been used for a NJ worker cooperative: Operating Agreement Template - Exhibit A. Likewise, here are sample by-laws that have been used for NJ limited-equity housing cooperatives: By-Laws Template - Exhibit B.

Major Cases

The following cases may be of interest regarding Housing Cooperatives.

Drew Associates of N.J., L.P. v. Travisano

The case concerns a cooperative developer challenging the constitutionality of the Cooperative Recording Act, § 46:8D-1 to -18, which exempted units formed prior to the Act's 1988 enactment.¹⁹ The cooperative developer specifically challenged a legislative determination to phase in a title registration system for recording and taxing the creation and transfer of ownership in cooperative housing units.²⁰ The Act applies only to cooperatives created after the effective date of the 1988 legislation.²¹ The court found that the fact that other available methods might achieve the same ends did not warrant the respondent's conclusion that the recording requirements of the Act were arbitrary and unnecessary.²²

The court noted that cooperative ownership constituted a hybrid form of property, and it was reasonable to treat the transfer of cooperative interests differently from the transfer of cooperative interests differently from the transfer of other real estate interests.²³ The court affirmed the portion of the lower court's finding that the cooperative housing legislation did not violate respondent limited partnership's equal

¹⁷ Senior and Disabled Cooperative Housing Finance Incentive Act., 1996 Bill Text NJ A.B. 3055

¹⁸ Id.

¹⁹ Drew Assocs. of N.J., Ltd. P'ship v. Travisano, 122 N.J. 249, 584 A.2d 807 (1991)

²⁰ Id.

²¹ Id.

²² Id.

²³ Id.

protection or due process rights.²⁴ However, the court reversed the portion of the lower court's order with respect to the transfer tax, reasoning that pre-Act and post-Act cooperatives were genuinely different and deserved different treatment under the statute.²⁵

Davis v. Howell Management Co., Inc.

The case arises out of the removal and destruction of the contents of a storage bin located in the basement of a cooperative housing project.²⁶ Plaintiff Rosetta Davis, a resident of the apartment complex, Fox Hill Apartments, owned the stored possessions that were discarded.²⁷ Defendant Fox Hill Tenants Corporation (the Association) is the owner of Fox Hill Apartments. ²⁸Fox Hill is a cooperative housing corporation with a Board of Directors. ²⁹ The Association removed most of the storage bin's contents and then discarded or damaged the contents of the bin.³⁰ The Association contended that this occurred accidentally as part of a general cleanup effort.³¹ The Plaintiff alleged that defendants wrongfully entered the plaintiff's storage bin and removed her belongings, either willfully or at least negligently. Plaintiff sought compensation for her items that had been discarded or damaged.

The court found that the business judgment rule applied to officers and directors of the cooperative apartment association.³² Thus, officers and directors could not be held liable for their negligent acts or omissions that caused the Association's employees to mistakenly discard tenant shareholder's possessions from the locked storage unit during the cleaning project.³³ After discovering their error, officers and directors took appropriate steps to inform the tenant shareholders, apologized for the harm caused, and promised to take curative measures to prevent the situation from being repeated in the future.³⁴

E. Dickerson & Son, Inc. v. Ernst & Young, LLP

In this case, an accounting firm contended that none of the conditions specified in N.J. Stat. Ann. § 2A:53A-25b(2)(a), (b) and (c) to confer third-party standing to the corporations was satisfied by the corporations' pleaded claims.³⁵ The complaint neither

²⁴ Id.

²⁵ Id.

²⁶ Davis v. Howell Mgmt. Co., No. A-3147-08T3, 2009 WL 4251170 (N.J. Super. Ct. App. Div. Nov. 19, 2009)

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Id.

³² Id.

³³ Id.

³⁴ Id.

³⁵ *E. Dickerson & Son, Inc. v. Ernst & Young, LLP*, 179 N.J. 500, 502, 846 A.2d 1237, 1238 (2004)

alleged expressly, nor implied, satisfaction of any of the elements of this statute.³⁶ Specifically, in the corporations' complaint, since the first category did not allege a transaction between the client and the corporations, N.J. Stat. Ann. § 2A:53A-25a(5) was not satisfied.³⁷ Further, there was no special status which the corporations achieved by reason of their announced cooperative purpose that could have distinguished them from the individual shareholders of an accounting firm's corporate client.³⁸ They were still required to meet the qualifying conditions of N.J. Stat. Ann. § 2A:53A-25.³⁹

The Supreme Court, King, J. held as a matter of first impression that:

- (1) the shareholders enjoyed no special status to escape the rigors of the accountants' liability statute despite their description of the Corporation as a cooperative organization.
- (2) the shareholders were not the clients of the accountant; and
- (3) their reliance could not alone satisfy the "specified transaction" requirement for the accountant's liability to the third-party claimant connected with the specified transaction.⁴⁰

Moore v. THE ROADBURN ASSOCIATION, INC., NJ: Appellate Div. 2010

In July 2017, New Jersey Governor Chris Christie signed into law P.L. 2017, Ch. 106 (S-2492/A-4091), known colloquially as 'the Radburn Bill' or simply 'Radburn.' This law made significant changes to the Planned Real Estate Development Full Disclosure Act's procedures for board elections and voting participation rights.⁴¹ The legislation originated in direct response to complaints about a specific association - the Radburn Association in Fair Lawn - but it affects nearly all of the Garden State's approximately 7,000 community associations.⁴²

The trial judge concluded that (1) Radburn residents were not entitled to membership in defendant Radburn Association (Association); (2) residents were not statutorily entitled to nominate candidates for the Association's Board of Trustees (the Board); and (3) the Association's open meetings policy complied with PREDFDA.⁴³

Lambert v. Fishermen's Dock Coop., Inc., 61 N.J. 596, 297 A.2d 566 (1972)

Plaintiff stockholder joined defendant fisherman's cooperative association and purchased two shares of stock.⁴⁴ At the time of the purchase, the defendant's by-laws set

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

⁴¹ Moore v. Radburn Ass'n, No. A-4284-07T2, 2010 N.J. Super. Unpub. LEXIS 561, at *2 (Super. Ct. App. Div. Mar. 18, 2010)

⁴² Id.

⁴³ Id.

⁴⁴ Lambert v. Fishermen's Dock Coop., Inc., 61 N.J. 596, 297 A.2d 566 (1972)

the redemption price at fair book value, but the by-laws were later amended to establish the stock's redemption price at the original purchase price.⁴⁵ Years later, the plaintiff sought to redeem the shares at fair book value, contending that the amendment was invalid as violating a contract, infringing upon a vested right, and exceeding the defendant's authority to amend.⁴⁶ Defendant cooperative claimed it reserved the power to amend the by-laws of the association through majority-vote, and therefore, the amendment changing the stock redemption price to its original purchase price became binding upon the plaintiff upon its adoption. The court reserved the order setting the redemption price at the original purchase price and remanded for a determination of what the fair book value, the proper redemption price, was. The court held that the defendant's power to amend its by-laws was limited and could not affect the basic contract rights and vested interests of the membership.⁴⁷ The court remanded for a determination of the fair book value of the shares, the proper redemption value.⁴⁸

State Specific Secondary Sources

Mark Rosen drafted, *Residential Housing Cooperative—A Legal Perspective*. The article provides an overview of some issues that may confront an attorney who is asked to provide counsel concerning a housing cooperative in New Jersey. Because of the historical absence of clear statutory guidelines, New Jersey's experience with cooperatives has resulted in unique and complex legal issues, according to Rosen.⁴⁹

Issue of Note

The following issue of note concerns housing cooperatives in the form of condominiums.

Transparency & Governance March 2021

The NJ Cooperator addressed whether a condominium, cooperative, or any common interest are democratic institutions.⁵⁰ The NJ Cooperator also addressed the following issues: Do shareholders of cooperatives have the right to access the documents and information that boards use to make decisions? Can they demand to see those documents? The answer is not a simple yes or no.

New Jersey's Condominium Act and its Nonprofit Corporation Act provide that members see corporation documents that are not subject to privilege. Some documents are subject to exception, such as those that are covered under attorney-client privilege, for instance." Documents easily obtainable by association members not serving on the board include such things as a list of members of the association and minutes of

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Mark S. Rosen, Residential Housing Cooperatives--A Legal Perspective, N.J. Law., JANUARY/FEBRUARY 1996, at 14

⁵⁰ <https://nj.cooperatornews.com/article/transparency-governance>

New Jersey Co-op Template as prepared by Elizabeth L. Carter and Chynnique Ross of Elizabeth L. Carter, Esq., LLC

meetings. There is very little statutory authority for co-ops in New Jersey, although attempts are underway to bring them under more of a statutory umbrella.

<https://njcooperator.com/article/transparency-governance/full#cut>

Cooperative Support Organizations

Keystone Development Center

The Keystone Development Center (KDC) has a mission to sustain communities, economies, and resources through cooperatively-owned businesses. Keystone is a nonprofit corporation incorporated in 1999 to provide technical and research assistance to groups who wish to organize as cooperatives. Through these efforts, Keystone strives to meet the economic and business development needs of rural and non-rural areas in the multi-state region of Pennsylvania, Maryland, New Jersey, and Delaware.

NASCO

NASCO provides education, outreach and project management support to individuals, groups, and developers wanting to create resident-controlled, affordable housing co-operatives – usually student, youth, or campus-oriented. NASCO Development Services also assists new or existing co-ops in obtaining acquisition and gap financing, as well as permanent funding and refinancing packages, usually on a fee-for-service or success fee basis. <https://www.nasco.coop/who-we-are>

Urban Cooperative Enterprise Legal Center, Inc. (UCELC)

[UCELC](#) is a 501c3 nonprofit organization with a mission to create and support cooperative enterprises within marginalized communities. Its main office is located in Newark, NJ where it formed its organizing arm called Street Team. The Street Team is a group of community organizers tasked with the mission of bridging the gap between those fighting existing oppressive systems and those fighting for alternatives to these systems. This organization also has a transactional legal department; community planning department; participatory advocacy team; and a Cooperative Academy.

Cooperative Examples in New Jersey

Housing Cooperatives

Cooperative Housing Corporation (CHC) is an example of a housing cooperative in New Jersey and was founded to provide affordable, quality housing and services to low/moderate-income senior citizens.⁵¹ Through a model of shared living, Cooperative

⁵¹ <https://www.chchousing.org/about>

Housing offers a cost-effective housing alternative to New Jersey's most vulnerable residents.⁵²

CHC builds and manages its own houses.⁵³ This allows CHC to construct in the most efficient manner and style possible, emphasizing single-level ranch homes that are handicap accessible and senior-friendly.⁵⁴ Cooperative Housing currently owns and operates five houses in Somerset County, NJ.⁵⁵ Expansion into neighboring counties is also on the horizon.⁵⁶ Cooperative Housing is supported by federal funds, State of New Jersey grants, County grants, Township funds and land, private grants, fundraising initiatives, and private donations.⁵⁷

High Park Terrace

High Park Terrace Cooperative Apartments (HPT), built in 1964 after the Newark Rebellions, is a 216 unit affordable housing cooperative consisting of 36 three-story garden-style buildings with low monthly carrying charges and down payment fees.⁵⁸ HPT is primarily owned by Black, low-income seniors who have called the cooperative homes for over five decades. The cooperative remains one of the most affordable housing residences in the City of Newark, namely due to its cooperative status and property tax support.

High Park Gardens

High Park Gardens (HPG) is another limited equity cooperative built by the same developers as High Park Terrace in 1964. Just as HPT, HPG is one of the most affordable housing stock in the City of Newark, providing affordable housing to low-income families and seniors. Unlike HPT, HPG is a tax exempt 501c3 nonprofit organization and is the only cooperative with this tax designation.

Orchid House

The Orchid House is a newly-formed worker cooperative/housing cooperative hybrid in Trenton, NJ consisting of a worker-owned artisan shop at the bottom level and cooperatively-owned housing units at the top level. The House also has an urban farm in the backyard and artist performance space.

Authors

⁵² Id.

⁵³ Id. at chchousing

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ <http://www.highparkterrace.com>

New Jersey Co-op Template as prepared by Elizabeth L. Carter and Chynnique Ross of Elizabeth L. Carter, Esq., LLC

Elizabeth L. Carter,
Managing Attorney

Elizabeth is a crowdfunding securities attorney representing investment funds,, small businesses, nonprofits, cooperatives, and other social enterprises with the legal strategy and compliance of raising capital from both accredited and non-accredited investors. She currently serves on several Advisory Boards, including the Advisory Boards of Seaway, A Division of Self-Help Federal Credit Union; National Public Housing Museum; and the Lawndale Christian Community Development Corporation of Chicago.

Prior, Elizabeth has provided legal representation to individuals, nonprofits, small businesses, and government agencies in various community economic development initiatives, including serving as General Counsel to a Black-owned limited-equity housing cooperative with over two hundred affordable housing units for seniors and persons of low income; and as Special Counsel within the Department of Economic and Housing Development of the City of Newark where she provided lead counsel to an \$8.1 million affordable cooperative housing project and authored the City's amended tax abatement ordinance which offers tax incentives for inclusionary development by women, racial minorities, and cooperatives.

<https://www.elcesq.com>

Chynnique Ross, Law Clerk

Chynnique is a graduate of UIC John Marshall Law School where she was a member of the Black Law Students Association and the Professional Chair of the Corporate Law Society. She was also a Research Assistant to Professor Renee Hatcher where she is addressing how race and a hegemonic Western worldview in U.S corporate law shape and limit institution-building. Chynnique is interested in practicing both business and community development law.

At the Firm, she continued her research and writing on Black women entrepreneurs and barriers to raising capital, as well assisting with client engagement. Chynnique has prior experience working as a Securities Law Clerk. She hopes to focus her practice on business law and has a strong interest in community development law. Chynnique is a Chicago native and is looking forward to practicing in her hometown.

New Jersey Co-op Template as prepared by Elizabeth L. Carter and Chynnique Ross of Elizabeth L. Carter, Esq., LLC

Exhibit A

This OPERATING AGREEMENT (“**Agreement**”) of _____ (the “**Company**”), dated as of [_____], by and among each Person (as defined below) who has executed this Agreement and whose name is set forth on Schedule 1 hereto as a member of the Company (each, a “**Member**” and collectively, the “**Members**”) pursuant to and in accordance with the Limited Liability Company Law of the State of New Jersey (N.J.S.A. 42:2C-1 et seq.), as amended from time to time (the “**Company Law**”).

WHEREAS, the parties hereto have agreed to form a limited liability company pursuant to the Company Law;

WHEREAS, the parties hereto hereby constitute themselves a limited liability company for the purposes and on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, the parties hereto, in consideration of their mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, mutually covenant and agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. For the purpose of this Agreement, the following terms shall have the following meanings:

“**Cash Account**” shall have the meaning set forth in Section 6.3.

“**Cash Contribution**” shall mean, with respect to each Member, the amount of cash contributed by such Member to the capital of the Company from time to time pursuant to Sections 6.1 and 6.2.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“**Company**” shall have the meaning set forth in the recitals.

“**Company Law**” shall have the meaning set forth in the recitals.

“**Covered Person**” shall have the meaning set forth in Section 10.1.

“**Depreciation**” means, with respect to any fiscal year, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for Federal income tax purposes, except that if the Gross Asset Value of the asset

differs from its adjusted tax basis, Depreciation shall be determined in accordance with the methods used for Federal income tax purposes and shall equal the amount that bears the same ratio to the Gross Asset Value of such asset as the depreciation, amortization or other cost recovery deduction computed for Federal income tax purposes with respect to such asset bears to the adjusted Federal income tax basis of such asset; provided, however, that if any such asset that is depreciable or amortizable has an adjusted federal income tax basis of zero, the rate of Depreciation shall be as determined by the Members.

“Dissolution Event” shall have the meaning set forth in Section 9.1.

“Fiscal Year” shall mean each fiscal year of the Company (or portion thereof), which shall end on December 31; provided, however, that upon Termination of the Company, “Fiscal Year” shall mean the period from the January 1 immediately preceding such Termination to the date of such Termination.

“Gross Asset Value” means, with respect to any asset, the asset’s adjusted basis for Federal income tax purposes, except that (i) the Gross Asset Value of any asset contributed to the Company shall be its gross fair market value (as determined by the Members) at the time such asset is contributed or deemed contributed for purposes of computing Cash Accounts and Service Accounts, (ii) upon a contribution of money or other property to the Company by a new or existing Member as consideration for an interest in the Company and upon a distribution of money or other property to a retiring or continuing Member as consideration for an interest in the Company, the Gross Asset Value of all of the assets of the Company shall be adjusted to equal their respective gross fair market values (as determined by the Members), to the extent such adjustment is determined by the Members to be necessary or appropriate to reflect the Members’ relative interests in the Company, (iii) the Gross Asset Value of any asset distributed in kind to any Member shall be the gross fair market value of such asset (as determined by the Members) on the date of such distribution, (iv) the Gross Asset Value of any asset determined pursuant to clause (i) or (ii) above shall thereafter be adjusted from time to time by the Depreciation taken into account with respect to such asset for purposes of determining Net Profit or Net Loss and (v) the Gross Asset Value of any assets of the Company shall be increased or decreased to the extent required by Treasury Regulations Section 1.704-1(b)(2)(iv)(m) in the event that the adjusted tax basis of such asset is adjusted pursuant to Sections 732, 734 or 743 of the Code.

“Leader” shall have the meaning set forth in Section 5.1.

“Leadership Committee” shall have the meaning set forth in Section 5.1.

“Members” shall have the meaning set forth in the recitals.

“Net Profit” or “Net Loss” means, with respect to any fiscal year, the taxable income or loss of the Company as determined for federal income tax purposes, with the following adjustments:

(i) Such taxable income or loss shall be increased by the amount, if any, of tax-exempt income received or accrued by the Company;

(ii) Such taxable income or loss shall be reduced by the amount, if any, of all expenditures of the Company described in Section 705(a)(2)(B) of the Code, including expenditures treated as so described under Section 1.704-1(b)(2)(iv)(i) of the Treasury Regulations;

(iii) If the Gross Asset Value of any asset is adjusted pursuant to clause (ii) or (iii) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account, immediately prior to the event giving rise to such adjustment, as gain or loss from the disposition of such asset for purposes of computing Net Profit or Net Loss;

(iv) Gain or loss resulting from any disposition of any asset with respect to which gain or loss is recognized for Federal income tax purposes shall be computed by reference to the Gross Asset Value of the asset disposed of, notwithstanding that such Gross Asset Value differs from the adjusted tax basis of such asset;

(v) In lieu of the depreciation, amortization, or other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year; and

(vi) Notwithstanding any other provision of this definition, any items that are specially allocated pursuant to Section 7.3 shall not be taken into account in computing Net Income and Net Loss.

“Percentage Interest” shall mean, with respect to any Member, the percentage set forth opposite such Member’s name on Schedule 1 hereto, as adjusted from time to time pursuant to Sections 3.1, 3.3, and 3.4.

“Person” shall mean an individual, a corporation, a company, a voluntary association, a partnership, a joint venture, a limited liability company, a trust, an estate, an unincorporated organization, a governmental authority or other entity.

“Service Account” shall have the meaning set forth in Section 6.5.

“Service Contribution” shall mean, with respect to each Member, the services performed by such Member from time to time on behalf of the Company pursuant to Section 6.4.

“Seven Internationally-Recognized Cooperative Principles” shall have the meaning set forth in Section 4.1

“Tax Matters Member” shall have the meaning set forth in Section 8.5.

“**Termination**” shall mean the date of the cancellation of the Articles of Organization of the Company following the end of the Winding Up Period by the filing of a Certificate of Cancellation in the Office of the Secretary of State of the State of New York.

“**Treasury Regulations**” means the final or temporary regulations issued by the United States Department of Treasury pursuant to its authority under the Code, and any successor regulations.

“**Winding Up Period**” shall mean the period from the Dissolution Event to the Termination of the Company.

ARTICLE II

ORGANIZATION

2.1 Formation.

(a) The Company was formed on _____ pursuant to the provisions of the Company Law, upon the filing of the Articles of Organization with the Secretary of State of the State of New Jersey.

(b) This Agreement shall constitute the “Operating Agreement” (as that term is used in the Company Law) of the Company. The rights, powers, duties, obligations and liabilities of the Members shall be determined pursuant to the Company Law and this Agreement.

2.2 Name. The name of the Company shall be “_____,” or such other name or names as the Members may from time to time designate pursuant to an amended certificate of formation; provided, that the name shall always contain the words “Limited Liability Company” or the abbreviation “L.L.C.” or the designation “LLC.”

2.3 Principal Office. The principal office of the Company shall be _____ or at such other place in the United States as may from time to time be designated by the Members.

2.4 Service of Process; Agent. The _____ is designated as agent of the Company upon whom process against it may be served. The address to which the Secretary of State of the State of New Jersey shall mail a copy of any process is _____ or at such other place in the United States as may from time to time be designated by the Members.

2.5 Purpose. The purpose of the Company is to sell paper and other office stationary products in accordance with the seven (7) internationally-recognized cooperative principles and to carry on any lawful business, purpose or activity permitted under the Company Law and to engage in any and all activities necessary, convenient, desirable or incidental to the foregoing.

2.6 Duration of the Company. The Company shall have perpetual existence unless sooner dissolved pursuant to the provisions of this Agreement or applicable law

ARTICLE III

MEMBERS

3.1 Admission of New Members. No additional Members shall be admitted to the Company, except upon an affirmative vote by all of the Members. A Person shall be deemed admitted as a Member at the time that such Person: (i) executes an amendment, counterpart or supplement to this Agreement and such other instruments as the Members may reasonably deem necessary or desirable to evidence such Person's agreement to be bound by and to comply with the terms and provisions hereof; and (ii) is named on the books and records of the Company.

3.2 Non-Assignable. No Member may assign, transfer or grant any interest in the Company. Except as otherwise provided in this Agreement, any purported assignment, transfer or grant by any Member of any interest in the Company shall be entirely null and void.

3.3 Withdrawal by Member. Members shall have the right to withdraw from the Company at any time prior to the dissolution and winding up of the Company. Upon the withdrawal of a Member from the Company for any reason, such Member shall cease to have any further right to or interest in distributions pursuant to Section 7.1. The Percentage Interest held by the withdrawing Member shall be returned to the Company and the remaining Members' relative interests shall be adjusted accordingly.

3.4 Change in Interests. Upon any change in the relative interests of the Members, whether by reason of the admission or withdrawal of a Member or otherwise, the Members' shares of all Company items shall be determined, except as otherwise required by law, by an interim closing of the Company's books.

3.5 No Personal Liability. Except as otherwise provided in the Company Law, by applicable law or expressly in this Agreement, no Member will be obligated personally for any debt, obligation or liability of the Company or other Members, whether arising in contract, tort or otherwise, solely by reason of being a Member, and no Member shall be obligated to restore any portion of a negative Capital Account.

3.6 Voting. Except as otherwise provided by this Agreement, or as otherwise required by the Company Law or applicable law, each Member shall be entitled to one vote on all matters upon which the Members have the right to vote under this Agreement.

3.7 Regular Meetings. Regular meetings of the Members shall occur every other Tuesday of the month, beginning with [DATE], [A1] or on such other dates as the

Members may designate. The Members may hold meetings at the Company's principal office or at such other place as the Members may designate.

3.8 Special Meetings. Special meetings of the Members shall be held on the call of the Leadership Committee.

3.9 Quorum. A quorum of any meeting of the Members shall require the presence of all of the Members. Subject to Section 3.10, no action at any meeting may be taken by the Members unless the appropriate quorum is present. Subject to Section 3.10, no action may be taken by the Members at any meeting at which a quorum is present without the affirmative vote of all of the Members.

3.10 Action By Consent. Notwithstanding the provisions of Section 3.9, any matter that is to be voted on, consented to or approved by the Members may be taken without a meeting, without prior notice and without a vote if consented to, in writing or by electronic transmission, by a majority of the Members. A record shall be maintained by the Members of each such action taken by written consent of the Members.

3.11 Participation in Meetings By Conference Telephone. Any Member may participate in a meeting of the Members by means of telephone or video conference or other communications device that permits all Members participating in the meeting to hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

3.12 Vote by Proxy. On any matter that is to be voted on by the Members, a Member may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Every proxy shall be revocable in the discretion of the Member executing it unless otherwise provided in such proxy; provided, that such right to revocation shall not invalidate or otherwise affect actions taken under such proxy prior to such revocation.

3.13 Power of Members. The Members shall have the power to exercise any and all rights or powers granted to Members pursuant to the express terms of this Agreement and the Company Law. Except as otherwise specifically provided by this Agreement or required by the Company Law, no Member, in its capacity as a Member, shall have the power to act solely for or on behalf of, or to bind, the Company.

3.14 No Interest in Company Property. No real or personal property of the Company shall be deemed to be owned by any Member individually, but shall be owned by, and title shall be vested solely in, the Company. Without limiting the foregoing, each Member hereby irrevocably waives during the term of the Company any right that such Member may have to maintain any action for partition with respect to the property of the Company.

3.15 No Employment. This Agreement does not, and is not intended to, confer upon any Member any rights with respect to continued employment by the Company, and nothing herein should be construed to have created any employment agreement with any Member.

ARTICLE IV

MANAGEMENT AND OPERATION OF BUSINESS

4.1 Seven Internationally-Recognized Cooperative Principles. The business of the Company is to _____ in accordance with the following seven (7) internationally-recognized cooperative principles, and to engage in any lawful activity for which a Limited Liability Company may be organized under the Act.

1. Voluntary and Open Membership. The Company shall remain a voluntary organization, open to all persons able to use its services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2. Democratic Member Control. The Company shall remain a democratic organization controlled by its Members on a one member, one vote basis. Members shall actively participate in setting the policies and decisions of the Company through consensus decision-making. Any elected representatives shall be accountable to the membership.

3. Member Economic Participation. Members shall contribute equitably to the capital of the Company of which a portion shall remain the common property of the Company as reserves. Any surplus or profit of the Company shall be distributed as patronage to the Members in proportion to their respective contributions to the Company.

4. Autonomy and Independence. The Company shall remain an autonomous, self-help organization controlled solely by its Members. Any agreement made with a person or entity outside of the Company or an agreement to raise capital from external sources shall be done on terms that ensure the autonomy of the Company and the democratic control by its Members.

5. Education, Training and Information. The Company shall provide education and training of the nature of the Company to its Members, elected representatives, community members, and if applicable, to employees in order to ensure the successful development of the Company.

6. Co-operation among Co-operatives. The Company shall partner with other cooperatives when feasible in order to strengthen its operations and the overall cooperative movement.

7. Concern for Community. The Company shall work for the sustainable development of its broader community through

environmentally, socially, and economically sustainable policies approved by its Members.

4.2 Management. The management of the Company's business and affairs shall be vested solely in the Members. The Members shall have all powers to control and manage the business and affairs of the Company, and may exercise all powers of the Company, upon full consensus by all Members.

4.3 Officers, Agents, Employees. The Members may delegate functions relating to the day-to-day operations of the Company to officers, agents, consultants or employees as they may from time to time designate. Such officers, agents, consultants or employees shall have such duties, powers, responsibility and authority as may from time to time be prescribed by the Members, and may be removed at any time, with or without cause, by the Members.

ARTICLE V

LEADERSHIP COMMITTEE

5.1 Establishment of the Leadership Committee. A Leadership Committee of the Company (the "**Leadership Committee**") is hereby established and shall be comprised of those Members (each such Member serving on the Leadership Committee, a "**Leader**") who shall be appointed in accordance with the provisions of Section 5.2. The Leadership Committee shall be responsible for leading the regular and special meetings of the Members and for formulating and presenting the proposed actions of the Company that are to be submitted to the Members for voting at such meetings. The Leaders may not take any action on behalf of the Company, nor transact any business on behalf of the Company, without first obtaining the approval of the Members at a regular or special meeting of the Members in accordance with Section 3.9.

5.2 Leadership Committee Composition; Vacancies.

(a) The Company and the Members shall take such actions as may be required to ensure that the number of Leaders constituting the Leadership Committee is at all times no less than five and no more than seven. The Leadership Committee shall be initially comprised of the following individuals: [NAME], [NAME], [NAME], [NAME] and [NAME].^[A2]

(b) In the event that a vacancy is created on the Leadership Committee at any time due to the death, disability, retirement, resignation or removal of a Leader, then the Members shall, upon a consensus of all the Members, designate an individual to fill such vacancy.

5.3 Removal; Resignation.

(a) A Leader may be removed or replaced at any time from the Leadership Committee, with or without cause, upon, and only upon, the written request of all of the remaining Members.

(b) A Leader may resign at any time from the Leadership Committee by delivering his or her written resignation to the Leadership Committee. Any such resignation shall be effective upon receipt thereof unless it is specified to be effective at some other time or upon the occurrence of some other event. The Leadership Committee's acceptance of a resignation shall not be necessary to make it effective.

5.4 Meetings of the Leadership Committee. The Leadership Committee shall meet at such time and at such place as the Leadership Committee may designate to discuss the actions of the Company that the Leaders will propose to, and subject to the vote of, the Members at the regular or special meetings of the Members.

5.5 Compensation; No Employment.

(a) Each Leader shall be reimbursed for his or her reasonable out-of-pocket expenses incurred in the performance of his or her duties as a Leader, pursuant to such policies as from time to time are established by the Members. Nothing contained in this Section 5.5 shall be construed to preclude any Leader from serving the Company in any other capacity and receiving reasonable compensation for such services.

5.6 No Personal Liability. Except as otherwise provided in the Company Law, by applicable law or expressly in this Agreement, no Leader will be obligated personally for any debt, obligation or liability of the Company, whether arising in contract, tort or otherwise, solely by reason of being a Leader.

ARTICLE VI

CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS

6.1 Initial Capital Contributions. The Company shall maintain a Capital Account on the books of the Company. Each Member has contributed or is deemed to have contributed to the Capital Account in the amount set forth opposite such Member's name on Schedule 1 hereto. Except as otherwise expressly provided in this Agreement, no Member shall have the right to withdraw capital from the Company, to receive interest on such Member's Capital Contributions or to receive any distribution or return of such Member's Capital Contributions.

6.2 Additional Cash Contributions. Each Member shall be required to make additional capital contributions to the Company in the form of cash called Additional Cash Contributions in the amount of XXXX U.S. dollars (\$XX.XX) per month, or in such other amounts as the Members may designate. The Company shall use the Additional Cash Contributions to cover the Company's expenses with respect to the reasonable business needs of the Company (which needs may include the payment or the making of provision for the payment when due of the Company's obligations, including, but not limited to, present and anticipated debts and obligations, capital

needs and expenses, the payment of any management or administrative fees and expenses, and reasonable reserves for contingencies). No Member shall be required to lend any funds to the Company and no Member shall have any personal liability for the payment or repayment of any Cash Contribution by or to any other Member.

6.3 Maintenance of Cash Accounts. The Company shall maintain for each Member a separate cash account (a “**Additional Cash Account**”) on the books of the Company. Each Member’s Cash Account shall be increased by the amount of such Member’s Additional Cash Contributions to the capital of the Company pursuant to Section 6.2. The Additional Cash Accounts are maintained for the sole purpose of recording the Additional Cash Contributions that each Member makes to the Company and shall have no effect on the amount of the distributions made to any Members in accordance with Section 7.1.

6.4 Service Contributions. Each Member shall make additional capital contributions to the Company called Service Contributions measured by the number of **hours** performed by the Member in furtherance of the Company’s business purpose. The amount of hours to be contributed by any one Member shall be determined by a consensus of all members at a special meeting calling forth a service policy within the Company. The monetary value of each service performed shall be determined by all of the Members at this meeting for purposes of determining the value of distributions made in accordance with Section 7.1.

6.5 Maintenance of Service Accounts. The Company shall maintain for each Member a separate service capital account (a “**Service Account**”) on the books of the Company in accordance with the following provisions:

(a) Each Member’s Service Account shall be increased by the amount of: (i) such Member’s Service Contributions to the Company pursuant to Section 6.4; (ii) any Net Income or other item of income or gain allocated to such Member pursuant to Section 7.2 or Section 7.3; and (iii) Company liabilities, if any, assumed by such Member or secured, in whole or in part, by any Company assets that are distributed to such Member.

(b) Each Member’s Service Account shall be decreased by the amount of: (i) cash distributed to such Member pursuant to Section 7.1 and Section 9.2(b), (ii) any Net Loss or other item of loss or deduction allocated to such Member pursuant to Section 7.2 or Section 7.3, and (iii) liabilities, if any, of such Member assumed by the Company.

6.6 Negative Capital Accounts. In the event that any Member shall have a deficit balance in his or her Cash Account and/or Service Account, such Member shall have no obligation, during the term of the Company or upon dissolution or liquidation thereof, to restore such negative balance or make any Cash Contribution or Service Contribution to the Company by reason thereof, except as may be required by applicable

law or in respect of any negative balance resulting from a withdrawal of capital or dissolution in contravention of this Agreement.

6.7 No Withdrawal. No Member shall be entitled to withdraw any part of his or her Cash Account or Service Account or to receive any distribution from the Company, except as provided in this Agreement. No Member shall receive any interest, salary or drawing with respect to his or her Cash Contributions or Service Contributions or his or her Cash Account or Service Account, except as otherwise provided in this Agreement.

6.8 Modifications. The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Cash Accounts and Service Accounts are intended to comply with Section 1.704-1(b) of the Treasury Regulations and shall be interpreted and applied in a manner consistent with such Treasury Regulations. If the Members determine that it is prudent to modify the manner in which the Cash Accounts and/or Service Accounts, or any increases or decreases to the Cash Accounts and/or Service Accounts, are computed in order to comply with such Treasury Regulations, the Members may authorize such modifications.

ARTICLE VII

DISTRIBUTIONS AND ALLOCATIONS

7.1 Distributions.

(a) *Distributions based on Service Contributions.* Subject to Section 7.1(c), the Company shall be required to make distributions to Members at [regular monthly intervals] [A6] in the amount of the positive balance of each Member's Service Account as of the date the distribution is made.

(b) *Distributions in Cash.* Distributions made pursuant to Section 6.1 shall be made in cash.

(c) Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make any distribution to Members if such distribution would violate § 42:2C-42 of the Company Law or other applicable law.

7.2 Allocations.

(a) *Net Income.* Net Income for each Fiscal Year (or portion thereof) shall be allocated among the Members in proportion to the positive balance of his or her Service Account until the amount of net income allocated to each Member equals the balance of each Member's Service Account. The remaining net income, if any, shall then be allocated equally among the Members.

(b) *Net Loss.* Net Loss for each Fiscal Year (or portion thereof) shall be allocated in proportion to the balance of each Member's Service Account.

(c) *Tax Allocations.* For United States federal, state and local income tax purposes, items of income, gain, loss, deduction and credit shall be allocated to the Members in accordance with Sections 7.2 and 7.3, except that items with respect to which there is a difference between tax and book basis will be allocated in accordance with section 704(c) of the Code, the Treasury Regulations thereunder and Treasury Regulations Section 1.704-1(b)(4)(i).

7.3 Special Allocations. The provisions of Articles 6 and 7 and the other provisions of this Agreement relating to the maintenance of Cash Accounts and Service Accounts are intended to comply with Treasury Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such intent. In furtherance of the foregoing, this Agreement shall be deemed to include a “qualified income offset” in accordance with Treasury Regulations Section 1.704-1(b)(2)(ii)(d). The Members shall make appropriate amendments to the allocations of items pursuant to Section 7.2 if necessary in order to comply with Section 704 of the Code or applicable Treasury Regulations thereunder.

ARTICLE VIII

ACCOUNTING; FINANCIAL AND TAX MATTERS

8.1 Books and Records. The books and records of the Company shall be maintained at the Company’s office and shall be available for examination there by any Member or his or her duly authorized representatives at any and all reasonable times. Any Member, or his or her duly authorized representatives, upon paying the costs of duplication, shall be entitled to copies of the Company’s books and records; provided, however, that such information shall be used only for purposes reasonably related to such Member’s interest as a member of the Company.

8.2 Accounting Basis. The books and records and financial statements and reports of the Company shall be kept on a cash-basis. Additional determinations with respect to accounting principles shall be made by the Members.

8.3 Annual Financial Statements. As soon as available, and in any event within one hundred twenty (120) days after the end of each Fiscal Year, [audited] balance sheets of the Company at the end of each such Fiscal Year and [audited] statements of income, cash flows and Members’ equity for such Fiscal Year, and in each case setting forth in comparative form the figures for the previous Fiscal Year, [accompanied by the certification of independent certified public accountants of recognized national standing selected by the Members, certifying to the effect that, except as set forth therein, such financial statements have been prepared in accordance with GAAP, applied on a basis consistent with prior years, and fairly present in all material respects the financial condition of the Company as of the dates thereof and the results of their operations and changes in their cash flows and Members’ equity for the periods covered thereby.

8.4 Credit Union Accounts. Funds of the Company shall be deposited in a Company account or accounts in the credit union as selected by the Members. Withdrawals from credit union accounts shall only be made by those parties approved by the Members.

8.5 Tax Matters Member. Unless otherwise required by law, the Members shall take all necessary action to appoint a Member as the tax matters member (“**Tax Matters Member**”) of the Company within the meaning of Section 6231(a)(7) of the Code. Prompt notice shall be given to each Member upon receipt of advice that the Internal Revenue Service or other taxing authority intends to examine any income tax return or record or books of the Company. The Tax Matters Member is authorized and required to represent the Company (at the Company’s expense) in connection with all examinations of the Company’s affairs by Taxing Authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. Each Member agrees to cooperate with the Tax Matters Member and to do or refrain from doing any or all things reasonably requested by the Tax Matters Member with respect to the conduct of examinations by Taxing Authorities and any resulting proceedings. Each Member agrees that any action taken by the Tax Matters Member in connection with audits of the Company shall be binding upon such Members and that such Member shall not independently act with respect to tax audits or tax litigation affecting the Company.

8.6 Tax Returns. At the expense of the Company, the Members shall endeavor to cause the preparation and timely filing (including extensions) of all tax returns required to be filed by the Company pursuant to the Code as well as all other required tax returns in each jurisdiction in which the Company owns property or does business. The Members shall make all determinations as to tax elections by the Company. As soon as reasonably possible after the end of each Fiscal Year, the Members will cause to be delivered to each Person who was a Member at any time during such Fiscal Year, IRS Schedule K-1 to Form 1065 and such other information with respect to the Company as may be necessary for the preparation of such Person’s federal, state and local income tax returns for such Fiscal Year.

ARTICLE IX

DISSOLUTION; WINDING UP; TERMINATION

9.1 Dissolution. The Company shall commence its winding up upon the first to occur of the following (the “**Dissolution Event**”):

- (a) an event or circumstance that this Agreement states causes dissolution;
- (b) the consent of all the Members;
- (c) the passage of 90 consecutive days during which the Company has no Members;
- (d) on application by a Member, the entry by the Superior Court of an order dissolving the Company on the grounds that:
 - (i) the conduct of all or substantially all of the Company's activities is unlawful; or
 - (ii) it is not reasonably practicable to carry on the Company's activities in conformity with one or both of the Certificate of Formation and this Agreement; or
- (e) on application by a Member, the entry by the Superior Court of an order dissolving the Company on grounds that other Members in control of the Company:
 - (1) have acted, are acting, or will act in a manner that is illegal or fraudulent; or
 - (2) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.
- (f) A Certificate of Dissolution is filed before the delayed effective date of a certificate of formation pursuant to subsection e. of section 18 of the Company Law.

The Dissolution Event shall be effective on the day on which such event occurs and immediately thereafter, the Company shall only commence the winding up period during which its affairs shall be wound up in accordance with Sections 9.2 and 9.3. The Company shall not terminate until the winding up of the Company has been completed, the assets of the Company have been distributed as provided in Section 9.2(b) and the Certificate of Formation shall have been cancelled as provided in Section 9.2(d).

9.2 Winding Up and Termination.

(a) *Winding Up.* In winding up its activities, the Company:

- (1) shall discharge the Company's debts, obligations, or other liabilities, settle and close the Company's activities, and marshal and distribute the assets of the Company; and
- (2) shall:

- (i) deliver to the filing office for filing a Certificate of Dissolution stating the name of the Company and such other information as may be required by the filing office to correctly identify the Company and that the Company is dissolved;
- (ii) preserve the activities and property of the Company as a going concern for a reasonable time;
- (iii) prosecute and defend actions and proceedings, whether civil, criminal, or administrative on behalf of the Company and its Members;
- (iv) transfer the Company's property in accordance with the provisions of this Section 9.2;
- (v) settle disputes among Members by mediation or arbitration;
- (vi) deliver to the filing office for filing a Statement of Termination stating the name of the Company and that the Company is terminated; and
- (viii) perform other acts necessary or appropriate to the winding up.

(b) *Distributions Upon Winding Up.* Within a reasonable period of time following the occurrence of the Dissolution Event, after allocating all Net Income, Net Loss and other items of income, gain, loss or deduction pursuant to Sections 7.2 and 7.3, the Company's assets (except for assets reserved pursuant to Section 9.3) shall be applied and distributed in the following manner and order of priority:

(i) the claims of all creditors of the Company (including Members except to the extent not permitted by law) shall be paid and discharged other than liabilities for which reasonable provision for payment has been made; and

(ii) thereafter, to each Member in proportion to the combined positive balance of his or her Cash Account and Service Account.

Notwithstanding anything to the contrary in this Agreement, liquidating distributions shall be made no later than the last to occur of (1) 90 days after the date of disposition (including pursuant to Section 9.3) of the last remaining asset of the Company and (2) the end of the Company's taxable year in which the disposition referred to in clause (1) above shall occur. This Section 9.2(b) is intended to comply with, and shall be interpreted consistently with, the requirements of Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(2).

(c) *Distributions In Kind*. Company assets for distribution in kind shall be allocated to the Members. Notwithstanding any other provision of this Agreement, the amount by which the fair market value of any property to be distributed in kind to the Members (including property distributed in liquidation) exceeds or is less than the adjusted basis of such property shall, to the extent not otherwise recognized by the Company, be taken into account in computing income, gains and losses of the Company for purposes of crediting or charging the Service Accounts of and distributing proceeds to the Members, pursuant to this Agreement.

(d) *Cancellation of Certificate of Formation*. Upon completion of the distribution of the assets of the Company as provided in Section 9.2(b) hereof, the Company shall be terminated and the Members shall cause the cancellation of the Certificate of Formation in the State of New Jersey by filing a Certificate of Dissolution stating that the Company is dissolved, its name Company and such other information as may be required to correctly identify the Company and shall take such other actions as may be necessary to terminate the Company.

(e) *Termination*. When the Members have completed the winding up described in this Section 9.2, the Members shall cause the Termination of the Company by filing a Statement of Termination to the State of New Jersey stating the name of the Company and that the Company is terminated.

9.3 Assets Reserved and Pending Claims.

(a) *Assets Reserved*. If, upon a Dissolution Event, there are any assets that, in the judgment of the Members, cannot be sold or distributed in kind without sacrificing a significant portion of the value thereof or where such sale or distribution is otherwise impractical at the time of the Dissolution Event, such assets may be retained by the Company if the Members determine that the retention of such assets is in the best interests of the Members. Upon the sale of such assets or a determination by the Members that circumstances no longer require their retention, such assets (at their fair market value) or the proceeds of their sale shall be taken into account in computing Service Account balances on winding up and amounts distributable pursuant to Section 9.2(b), and distributed in accordance with such value.

(b) *Pending Claims*. If there are any claims or potential claims (including potential Company expenses in connection therewith) against the Company (either directly or indirectly, including potential claims for which the Company might have an indemnification obligation) for which the possible loss cannot, in the judgment of the Members, be definitively ascertained, then such claims shall initially be taken into account in computing distributions upon winding up pursuant to Section 9.2(b) at an amount estimated by the Members to be sufficient to cover any potential loss or liability on account of such claims (including such potential Company expenses), and the Company shall retain funds (or assets) determined by the Members as a reserve against such potential losses and liabilities, including expenses associated therewith. The

Members may obtain insurance or create escrow accounts or make other similar arrangements with respect to such losses and liabilities. Upon final settlement of such claims (including such potential Company expenses) or a determination by the Members that the probable loss therefrom can be definitively ascertained, such claims (including such potential Company expenses) shall be taken into account in the amount at which they were settled or in the amount of the probable loss therefrom in computing amounts distributable pursuant to Section 9.2(b), and any excess funds retained shall be distributed.

ARTICLE X

EXCULPATION AND INDEMNIFICATION

10.1 Covered Persons. As used herein, the term “Covered Person” shall mean each Member, Leader, Officer, employee, agent or representative of the Company, and any testator or intestate of such Covered Person.

10.2 Exculpation of Covered Persons. Covered Persons acting for or on behalf of the Company shall not have personal liability to the Company or its Members for damages for any breach of duty in such capacity, provided that nothing in this Section 10.2 shall eliminate or limit (a) the liability of any such Covered Person if a judgment or other final adjudication adverse to him or her establishes that his or her acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled or that with respect to a distribution to Members the subject of subdivision (a) of Section 508 of the Company Law his or her acts were not performed in accordance with Section 409 of the Company Law; or (b) the liability of any such Covered Person for any act or omission prior to the date of first inclusion of this Section 10.2 in this Agreement.

10.3 Indemnification. To the fullest extent permitted by law, the Company shall indemnify and hold harmless, and may advance expenses to, any Covered Person from and against any and all claims and demands whatsoever; provided, however, that no indemnification may be made to or on behalf of any Covered Person if a judgment or other final adjudication adverse to such Covered Person establishes (a) that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or (b) that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled. The provisions of this section shall continue to afford protection to each Covered Person regardless of whether such Covered Person remains a Member, Leader, employee or agent of the Company.

ARTICLE XI

MISCELLANEOUS

11.1 Amendments; Waiver. Any provision of this Agreement may be amended or waived by an instrument in writing executed by all of the Members.

11.2 Successors and Assigns. This Agreement shall inure to the benefit of, and shall be binding upon, the successors and permitted assigns of the Members.

11.3 No Waiver. The failure of any Member to seek redress for violation, or to insist on strict performance, of any covenant or condition of this Agreement shall not prevent a subsequent act which would have constituted a violation from having the effect of an original violation.

11.4 Survival of Certain Provisions. Each of the Members agrees that the covenants and agreements set forth in Sections 3.5, 5.6, 10.1, 10.2, and 10.3 shall survive the Termination of the Company.

11.5 Notices. All notices hereunder shall be in writing and shall be given by personal delivery, mailed by Federal Express, U.S. overnight mail or international air courier service, or sent by telecopy or other electronic means, and addressed: if to the Company, at its principal office and, if to a Member, to such Member at its last known address as disclosed on the records of the Company. Notices shall be deemed to have been given as of the date delivered (upon confirmed receipt by the delivery service) or telecopied (upon confirmed receipt). The Company and any Member may change the address for notices by delivering or mailing as aforesaid, a notice stating the change and setting forth the changed address.

11.6 Severability. If any term or provision of this Agreement is held to be invalid, illegal or unenforceable under applicable law in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

11.7 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. A signed copy of this Agreement delivered by facsimile, e-mail or other means of Electronic Transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

11.8 Headings, Etc. The headings in this Agreement are inserted for convenience or reference only and shall not affect the interpretation of this Agreement.

11.9 Gender. As used herein, masculine pronouns shall include the feminine and neuter, neuter pronouns shall include the masculine and the feminine, and the singular shall be deemed to include the plural.

11.10 No Right to Partition. The Members, on behalf of themselves and their shareholders, partners, successors and assigns, if any, hereby specifically renounce, waive and forfeit all rights, whether arising under contract or statute or by operation of law, except as otherwise expressly provided in this Agreement, to seek, bring or maintain any action in any court of law or equity for partition of the Company or any asset of the Company, or any interest which is considered to be Company property, regardless of the manner in which title to such property may be held.

11.11 No Third Party Rights. Except as expressly provided in this Agreement, this Agreement is intended solely for the benefit of the parties hereto (and their respective heirs, executors, administrators, successors and assigns) and is not intended to confer any benefits upon, or create any rights in favor of, any Person other than the parties hereto.

11.12 Entire Agreement. This Agreement (together with Schedule 1) constitutes the entire agreement among the Members with respect to the matters described herein and supersede any prior agreement or understanding among them with respect to such subject matter.

11.13 Applicable Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

[Signature Pages Follow]

IN WITNESS WHEREOF, the following parties, being all of the Members of [NAME] LLC, have duly executed this Agreement as of the date first written above.

Members:

New Jersey Co-op Template as prepared by Elizabeth L. Carter and Chynnique Ross of Elizabeth L. Carter, Esq., LLC

[NAME]

[ADDRESS]

[NAME]

[ADDRESS]

[NAME]

[ADDRESS]

[NAME]

[ADDRESS]

[NAME] LLC

SCHEDULE 1

**Name
Interest**

Initial Capital Contribution

Percentage

