2007

Life cycle planning : for the CPA practice : practical strategies and forms

Martin M. Shenkman

As a CPA, you have considerable business, tax, and planning expertise. You have the wherewithal to evaluate and finalize a significant range of decisions before retaining an attorney to reduce those decisions to formal agreements. But the consequences can be considerable and costly. Whether you are starting your first solo practice, retiring, or somewhere in between, this book will provide you the resources you need to really "hash out" the details of all your major practice decisions and give your lawyer clear instructions on which documents you need and what they should contain. In each chapter, you'll get an overview of the issues surrounding a specific practice milestone, such as securing office space, merging with another practice, promoting staff to partner, or winding down. The companion CD provides more than 700 pages of indexed, searchable, annotated sample forms and checklists. By reviewing the appropriate chapter and following the accompanying checklists, you'll be able to comprehensively work out the details of your next practice milestone and instruct your attorney in a way that will allow for efficient drafting of exactly the right documents to protect your interests.

Praise for *Life Cycle Planning for the CPA Practice*

"When it comes to business planning, too many accountants are like the shoemaker whose own children went barefoot because he was too busy making shoes for everyone else. We spend our lives advising clients on how to plan their businesses, but we don't apply that advice to ourselves. This book takes away any excuse we ever had for practicing without a plan. Martin Shenkman is a brilliant practitioner. He has done an outstanding job of thinking through the issues from every angle and gathering all the information and sample forms we need to plan, structure, and document our own businesses with the same care and attention to detail we counsel for our clients."

Sidney Kess, practicing CPA and nationally renowned accounting industry expert, lecturer, and author.

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AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Life Cycle Planning

FOR THE CPA PRACTICE: PRACTICAL STRATEGIES AND FORMS

Martin M. Shenkman

A Management of an Accounting Practice Publication of the PCPS Executive Committee

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This book is dedicated to Sid Kess, whose professionalism is only exceeded by his graciousness, compassion, and generosity of time and spirit.

About the Author

Martin M. Shenkman, CPA, MBA, JD, PFS, is an attorney in private practice in Teaneck, New Jersey and New York City.

Mr. Shenkman has been quoted in *The Wall Street Journal, Fortune, Money, The New York Times*, and other publications. He has appeared on *The Today Show, NBC Evening News, CNBC, CNN-FN*, and others.

Mr. Shenkman is author of thirty-five books and more than seven hundred articles. His books include: *Living Wills and Health Care Proxies; Estate Planning after the 2001 Tax Act; Homeowner's Legal Bible; Divorce Rules; The Complete Living Trust Program, The Complete Probate Guide; Beneficiary Workbook; Estate Planning After the 1997 Tax Act, Starting Your Limited Liability Company, The Complete Book of Trusts; Investing After the New Tax Act; Real Estate After Tax Reform; Real Estate Tax Planner; Shopping Center Leases: The Tax Impact; How To Do Tax Planning With Depreciation, Amortization and Tax Credits, The Accountants Role in Divorce; Marketing for CPAs;* and *Estate Planning Step by Step*.

Mr. Shenkman has served as contributing editor to *New Jersey Lawyer, The Journal of Real Estate Finance, Real Estate Insight, Commercial Leasing Law & Strategy, The Journal of Accountancy, Real Estate Accounting and Taxation, Shopping Centers Today,* and others.

He is a member of the American and New Jersey Bar Associations and various accounting and financial planning organizations and numerous charitable organizations.

Mr. Shenkman received his B.S. from the Wharton School of the University of Pennsylvania, his M.B.A. from the University of Michigan, and his law degree from Fordham University School of Law. He is admitted to the bar in New York, New Jersey, and Washington, D.C. He is a Certified Public Accountant in New Jersey, Michigan, and New York.

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Louis H. Anderson, CPA
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Herb Schoenfeld, CPA
Schoenfeld Mendelsohn Goldfarb LLP
Woodbury, New York

Deborah J. Sessions, CPA
Porter Keadle Moore, LLP
Atlanta, Georgia

AICPA Staff:
Development: Amy Stainken, Erin Valentine
Acquisitions: Laura Inge
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Introduction

While there is no standard trajectory for the evolution of an accounting practice, there are certain common milestones that most practices are likely to encounter over the years, such as:

- Setting up a solo practice
- Hiring staff
- Transitioning staff from employee to a prospective future partner status.
- Adding a partner
- Buying a practice
- Growing into a multipartner practice
- Retirement, terminating a partner, winding down a practice

If you view these milestones in a common chronological sequence, they illustrate the typical life cycle of an accounting practice. Although your practice will assuredly have its own nuances and detours along the path—skipping some, circling several times through others—this "typical" life cycle provides a generalized framework to guide your life-cycle planning. This book will walk you through each of the milestones in the life cycle with a view toward how you should plan for, structure, and document the events that shape your practice.

How to Use This Book in Your Practice

As an accountant, you play an unusual role in each milestone in your practice's life cycle. You have considerable business, tax, and planning expertise. You have the wherewithal to evaluate and finalize a significant range of decisions before retaining an attorney to reduce those decisions to formal agreements. But the consequences of that can be considerable. To really carry your analysis as far as you are able, to really "hash out" the details with your partners or colleagues, you'll need more than just a checklist of points to consider. You'll need insight into the substance of the agreements that will be required. These are the resources

this book endeavors to provide. Granted, it is unlikely that you will personally draft the actual legal documents to implement the planning decisions you make. You'll hire an attorney to handle that. However, between the steps of identifying the next milestone for your practice and signing the legal documents that will implement it, there is a wide area of issue identification, decision-making, and review of the drafted documents your attorney presents for your approval. Armed with the guidance this book provides, you will be ready to navigate those issues.

The goal of this book is for you to get a sense of the issues surrounding each milestone by reviewing the appropriate chapter and then referring to the accompanying appendix of forms on CD for sample annotated agreements and checklists. You and your colleagues can use these documents to comprehensively "work out" the details of your next practice milestone.

Plan With a Broad Perspective

For the accounting professional, each milestone in the life cycle of your practice has issues, risks, and rewards. This book will help you minimize the risks at each stage of the development of your firm so you can focus on increasing the rewards of ownership and self-employment that you anticipated when you began this process in the first place. Each chapter has checklists and annotated sample legal forms, which can be found on the accompanying CD as appendixes. These appendixes are intended to help you, your partners, and your practice plan structure and negotiate key milestone events, clarify issues, address economic concerns, and better interface with the attorneys you retain. The sample forms will sensitize you to the many issues and concerns you will have as the head of a small or growing accounting firm at each key milestone event. While better planning and documentation is not a guarantee of success, it can certainly improve your chances of identifying a problem before a deal is consummated or minimize the damage and difficulties after the fact. Having the optimal structure, plan, and legal documents to protect you and your practice will help you reach your goals faster and with less stress.

Addressing Life-Long Practice Issues 1

The focus of this book is planning for the life cycle of your accounting practice. However, before addressing the key practice life-cycle milestones, it is important to consider some basic issues which will affect your practice at *every* stage of its life cycle. These include:

- Ancillary business activities
- Practice facilities
- Malpractice concerns
- Personal asset protection

These issues can affect how you structure and document important aspects of your practice, and the decisions you make about these issues, and their impact, may evolve as your practice moves through its life cycle. We'll discuss each issue in turn.

Ancillary Business Activities

It is becoming more common for accounting practices to be engaged in ancillary services and revenue generating activities. From the outset these ancillary activities should be comprehensively considered and addressed to minimize disputes over revenue allocation, to address responsibility for expenses, to avoid ownership and succession issues, and to minimize liability concerns.

Some examples of ancillary or special activities that may warrant special planning include:

- Ownership of a building partially or wholly used by the practice
- Offering a financial planning service or Registered Investment Adviser (RIA) service
- Offering a specialized consulting practice
- Offering sports or other business management services

When structuring and planning for the ancillary activity, consider the following:

- Is there a regulatory, compliance, or licensing reason that it is required (or just advisable) to have a separate entity own the ancillary business activity or must the same entity own it?
- Is there a liability reason to have the ancillary business activity owned by a separate entity? This is clearly the case for real estate, but might be true for other activities as well.
- If the ancillary business activity is to be owned by a separate entity, what steps can be taken to support the independent legal viability of that entity so the objectives of segregating it are met? This can present challenges because many factors, from physical facilities to overhead cost allocations, may result in at least partial integration of the two entities. However, even if independence in the event of a suit or claim is not assured, every effort should be made to maintain the separate and independent nature of the ancillary business activity (for example, separate signage, separate letterhead, adherence to business formalities, or no commingling of funds).
- Who should own the ancillary business activity entity? Do you want to limit ownership to those who are members of the accounting practice? Do you want to mandate an identity of ownership for the accounting practice and the ancillary business entity?
- How are joint costs to be addressed? How are allocations to be made? What approaches can be used that will demonstrate the independence of the ancillary business entity while being fair to the partners of the accounting practice?

> **Example of a Reasonably Segregated Ancillary Business:** Able, Baker, and Carnie are principals in ABC CPAs. A, B, and C form a separate investment advisory firm, ABC Advisors, and hire an employee to run the operation. The three initial partners own ABC Advisors directly; it is not established as a subsidiary of the ABC CPAs accounting practice. Some portion of the overhead from the accounting practice is allocated, based on a reasonable arm's-length formula, to the advisory practice. The advisory practice is in the same building as the CPA practice, but it has a

separate office entrance, separate conference room, file area, and a separate office for the employee managing the advisory practice. The advisory practice pays directly to the landlord a pro-rata share of the overall rent for the building that it shares with the accounting practice. Other overhead costs are allocated to the advisory practice, which reimburses the accounting practice. When a client of the accounting practice becomes a client of the advisory business, or a client of the accounting practice purchases an investment from the registered representative of the advisory practice, the client is required to sign an appropriate disclosure statement that, among other matters, acknowledges the lack of independence between the accounting and advisory firms. The accounting practice grows, and new partners join. The accounting practice's shareholders' agreement incorporates each of the above cost allocation agreements and formulas. The new partners do not automatically qualify to own an interest in the advisory practice. The founding members, A, B, and C, can decide to extend an opportunity to a new partner to buy into the advisory practice at its then fair value.

Addressing these and other issues in advance, and in specific language in the appropriate documents for each entity, will minimize issues between the various owners and help secure the various benefits which motivated the formation of the separate entity.

Since the most common ancillary business activity for accounting practices tends to be ownership of the practice's real estate, this is addressed in greater detail below. Many of the issues evaluated in the context of practice real estate and facility decisions can be applied to other ancillary practice activities as well.

Practice Facilities

There are many different approaches you can use to obtain office space for your practice. Each approach has implications to you personally and to your practice. A key decision is whether you lease space or purchase a building or condominium.

Sublease Arrangements

At the early stages of a practice, when you are a solo practitioner or the number of personnel is small, it is common to sublease space from a client or another firm, or if you lease larger space, to sublease unused space to others. This presents a number of issues that you need to address.

Too often such agreements are made by mere handshakes, or if documented at all, a standard office supply lease or sublease agreement is used. This is a dangerous approach. Handshakes cannot be relied upon. Even if you trust your over-tenant or subtenant, a client or delivery person injured on the premises may be more problematic without a written agreement. Sublease issues are different than regular lease scenarios, and you need to have the appropriate documentation. For the typical space-sharing arrangement, a sublease form without some modification really doesn't address the arrangement you will have.

When a solo practitioner or small firm subleases space, typically a range of benefits other than the mere provision of office space are involved. Your over-tenant (the person or entity you sub-lease from) may provide a common reception area, and perhaps even a common receptionist. Copy equipment, research services and subscriptions, and other items may be shared. The reality in many situations is that the arrangement is much more akin to a "service and space sharing agreement" than a plain-vanilla sublease. The issues raised by this need to be addressed and documented. Below is a checklist of sublease/office usage items to consider.

- ✓ If you sublease space to others, you need to be certain that your lease permits you to rent out space.
- ✓ Is landlord approval required?
- ✓ Does the landlord have the right to recapture any rent you charge?
- ✓ Does your subtenant have to sign any documents with your landlord?
- ✓ Who does the subtenant lease the space from: you, your practice, or another entity?
- ✓ Does your property and casualty insurance company need to be notified? Is additional coverage necessary?
- ✓ Are you going to charge a flat rate for rent or some other arrangement? If the arrangement is anything out of the ordinary for an

arm's length rental, are there other implications? For example, if you sublet and make referrals to the over-tenant (the building tenant who you sublease space from), are there any issues that may be raised as to the arrangements?

- ✓ Security deposit: do you take one from your subtenant (or give one if you are the subtenant)? If so, how much and according to what terms?
- ✓ With subtenants, especially if you are subleasing a few rooms in a suite, the likelihood of being permitted to make improvements is usually very limited. Will the space suffice, or must you make modifications? You should be especially careful in a sublease arrangement to expressly state any modifications you may need (for example, additional electrical outlets or wiring of network,) to avoid an issue. Many standard sublease forms don't provide for any subtenant modifications.
- ✓ What about the costs of office facilities? How will costs of a shared printer, copier, facsimile, receptionist, and other items be shared?
- ✓ Is there assigned parking? If so are you entitled to any?
- ✓ Can you, as a subtenant, be listed on the building directory? When you "unofficially" sublease space in an office suite, you may not be afforded an opportunity to be listed in the building directory, which could be a significant issue.
- ✓ If the over-tenant pays for lease escalations (for example, taxes and utilities) are you to share in them? Again, many simplistic subleases are silent, and if a significant increase occurs, it could be a source of dispute.
- ✓ Do you have termination options in the event your practice grows or you find your own independent office space? If you sublet space to others, do you have options to terminate the subtenant on reasonable notice so that you can expand into the space?
- ✓ What insurance obligations do you have, and what insurance coverage do you need to address the sublet issues?

When you, as an accountant, sublease space in a larger office, there are a number of special issues you should evaluate that differ from the typical sublease situation. Security and confidentiality of your client files is vital. How can you protect them? If other accountants and related professionals lease or sublease space in the same office suite, how can you

avoid confusion on the part of clients as to who works for which firm, and which professionals are under your responsibility? Refer to Appendix 1-1 "Sample Annotated Sublease and Space/Service Sharing Arrangement" for some suggested approaches to these issues.

Space Planning for the Long Run

Before you decide whether to lease or buy space, and on what terms, it is important to consider and plan for long range issues. For example, If you sign a longer term lease or purchase a condominium or building, then the real estate will need to be addressed if you bring a junior staff member up through the ranks to partnership, if you invite a colleague to join your firm as a partner, or if you merge. Another question that might arise with a long-term lease is how to adjust for changes in the market—for example, in the case of a merger. Questions that might arise with ownership of facilities when taking in a new partner include: Does the new partner automatically share in ownership of the facilities? Does the new partner need to purchase a share of the building? If so, at what price? Does the new partner pay rent? Does this arrangement establish a precedent for future partners?

Deciding Whose Name Goes on the Lease or Deed

The issue of who should own your office facilities is not as simple as it might seem on its face. If you lease an office, it would seem to be obvious that your practice should enter the lease agreement. However, that may not be the most advantageous option. Setting up a separate limited liability company (LLC) for the lease and having your practice sublet space from your LLC can further important objectives and is an option that should not be overlooked.

Having a separate entity own the lease or building makes it easier to deal with the facility issue independent of practice issues as the practice evolves. If a colleague merges or an employee becomes a partner, having the real estate facility owned in a separate entity makes it easier to keep it separate from the partnership relationship. If there is excess space leased at a loss or for a profit, it can be your cost or benefit without involving others. If senior partners purchase a building via a separate entity, it is easier to limit the number of practice partners participating than if the building is purchased directly by the practice.

From a liability perspective, segregating the liability and issues of the facility from the practice is a basic and advisable asset protection strategy.

In some instances a lease will have to be issued to the practice, and the landlord may insist on having all partners in the firm personally guarantee the lease.

Structuring the Facility Decision

When the facility decisions are made, especially if they are long-term decisions (for example, long-term lease or purchase of property), give consideration to how you should structure the arrangement in light of future exit strategies for retirement, termination of a partner, or winding down your practice. When these issues are addressed up front, tremendous complexity and difficulty at a later date can be avoided.

> **Example of a Well Reasoned Facility Decision:** Able, Baker, and Carnie form the ABC Accounting Services, Inc., an S corporation. After a few years, the practice is growing, and they purchase a building. They opt to have the building purchased by a separate LLC, "ABC Realty, LLC." The shareholders discuss whether they should have a buy-out in the ABC Realty, LLC or simply permit shareholders who leave to continue to own their interest or upon death, to bequeath it to their heirs. They determine that although the real estate could be viewed as a passive asset, too many decisions are integrated with the practice so that the building ownership should be restricted to practice shareholders. They negotiate a buy-out formula in the event of death and fund it with insurance. They provide for the mandatory appraisal and sale, at a discounted value, of any member's interest in the LLC if that member is terminated for any reason from the accounting practice. This requires that a trigger mechanism for the buy-sell in the LLC operating agreement be based on the termination of a shareholder in the ABC Accounting Services, Inc. Coordination of the governing documents for each entity (the ABC Accounting Services, Inc. shareholders' agreement and the ABC Realty, LLC operating agreement) is essential. They make the

further decision that rent shall be set at an arm's length price every other year by an independent appraisal and limit ownership of ABC Realty, LLC to the three founding shareholders of the accounting practice. This comprehensive approach addresses, in advance, a host of issues that would have otherwise arisen as the practice evolved. Finally, they have a real estate lease prepared from ABC Realty, LLC to ABC Accounting Services, Inc., and append the lease to the operating agreement and shareholders' agreement. That avoids any issue in the future of a prospective new shareholder not being apprised of the arrangements when evaluating joining the practice.

Documenting the Relationship Between the Practice and a Facility Holding Entity

If you conclude that a separate entity, say an LLC owned by the partners, will own the building (or leasehold interest) and lease it (sublease it) to the practice, a number of points should be addressed in the business decisions and governing documents for both the building entity and your practice. Even if all the partners in your practice equally own both the practice and the building entity, it is generally advisable to build in flexibility to address circumstances when this might not be the case. This can be accomplished by working through the issues underlying the following three documents and then having your attorney draft papers for execution:

- Practice governing document (for example, shareholders' agreement if the practice is formed as a corporation).
- Lease between the practice and the real estate entity (for example, terms as to duration, renewal, or rent,).
- Real estate entity governing document (for example, operating agreement if the real estate entity is formed as a limited liability company).

Outlined below is a checklist of issues to consider in structuring a related entity facility arrangement and several sample clauses you should review and discuss with your partners before submitting documentation to the practice's attorney.

- How should rent be established? Should an appraiser be used? What if a partner does not agree with the appraisal?
- Should the appraisal be at fair market rent?
- How often should the rental payment be adjusted? Should it be adjusted by re-appraisal or some type of inflation index?

> **Example—Rent to a Related Entity:** ABC Accounting Services, Inc.'s Shareholders' Agreement, Sample Clause. "Payments to Related Parties: The Corporation may deal and contract with affiliated or related persons to provide services or materials for the Corporation, provided that such services or products are specifically described and accounted for, and the fees to be paid therefore, and the terms and conditions thereof are not less favorable to the Corporation than those which could be reasonably obtained by the Corporation from equally qualified but unaffiliated third parties. The Shareholders expressly agree to the current arrangements made for the lease of office space from ABC Realty, LLC. The parties expressly acknowledge that the rental payment shall be an arm's length rental determined by an independent appraiser every three calendar years. The rental price determined by the appraiser shall reflect the property related expenses being paid by the practice but shall not be increased to reflect the value of any leasehold improvements made by the Corporation."

- What costs should the practice bear versus what costs should the property entity bear?
- If the practice makes leasehold improvements, under the typical lease these revert to the landlord at termination. If the partners in the practice and property entity are identical when the arrangements are set up, but new partners join later, how will the resulting inequities be addressed at lease termination?

> **Example—Staff Evolution Issues at Lease Termination:** Able, Baker, and Carnie set up ABC Realty, LLC and ABC Accounting Services, Inc. The real estate entity leases the building that it owns to the practice for five years at $10,000/month, a fair market price. In year four,

> Dickson, a sports management accountant and consultant, joins the practice, which becomes ABCD Accounting Services, Inc. To accommodate the additional administrative personnel to manage sports figures' personal finances and to upgrade the office to accommodate the new clients, the firm spends $125,000 on leasehold improvements. In year five, the fair market value of the lease is re-appraised, and a higher rent is assessed by the independent appraiser. If part of the higher rent is due to inflation since the initial lease, then it is likely to be a fair adjustment. If part of the higher rent is due to the leaseholder improvements, is that fair? The practice paid for improvements which will revert to the real estate entity on lease termination. Should Dickson pay an increased rent to the other partners? Does the scenario change if there are 10 partners and only the original three A, B, and C still own the real estate entity? Does the conclusion change if the lease term were at least equal to the useful life for the improvements? Should the real estate entity pay for the improvements or some portion?

- Should a security deposit be held? If so how much, and should interest be paid?
- What utilities and expenses should each party pay?
- Should the real estate partners be permitted to engage in estate planning and asset protection planning for their interests in the real estate entity? Can they make gifts to family trusts so long as the trusts are subject to the same restrictions as the partners?
- In some instances the real estate is held in a separate real estate entity (often LLC) for liability purposes only. In fact, the decision may be made that every partner in the accounting practice must own an identical percentage of the real estate entity. This parallel structure should avoid any problems as to setting rent or making improvements, since everyone is affected in an identical manner. If this is done, then the identity of ownership between the entities needs to be preserved by requiring that anyone entering or terminating their involvement with either the practice or the real estate must do similarly with the other entity.

> **Example—Preserving the identity of ownership between the practice and real estate entity. Comprehensive ABC Shareholders' and Operating Agreement, Sample Clauses: Recital Clause:** Able, Baker, and Carnie own all of the outstanding Shares of ABC Accounting Services, Inc. equally and have determined that all issues pertaining to the ownership of ABC Accounting Services, Inc. and the related party ABC Realty, LLC shall be addressed in a single comprehensive Agreement so that in the event of a sale, death, disability, retirement, or other significant transaction (Event), any impact on any partner or member's equity interests in either entity would have a similar impact simultaneously in the other entity. Able, Baker, and Carnie have determined that at present, in the event of an Event, it would not be advisable or practical for one of them to continue in one entity but not in an equal manner in the other entity because the business activities of both entities are so intertwined. The Parties own a limited liability company, ABC Realty, LLC (LLC), which owns real estate located at 123 Main Street, Audit, New Mexico, which is leased to ABC Accounting Services, Inc. (Practice). The Parties agree that said LLC is owned equally by the three (3) Shareholders and that on the occurrence of an Event, the membership interests in said LLC shall be treated in an identical fashion as the shares in the Corporation hereunder.

- What happens if the practice is sold? Should the real estate be sold along with the practice?

  If the partners in the practice own identical ownership interests in the building, the allocation of the purchase price in the event of a simultaneous sale of the practice and building is likely to be based, to the extent reasonable, on maximizing income tax benefits. However, in many instances, the ownership of the building entity will not be identical to that of the practice (for example, only the founding partners that purchased the real estate continue to own it). If the ownership of the building and practice are not identical and the purchaser wants both, how do you allocate the sales prices

between the two? In some instances, your allocations will be constrained by what the purchaser is willing to agree to. But within whatever range of allocation of purchase price the purchaser is willing to accept, there are several common approaches. One would be to have the building and practice appraised. Then, allocate the purchase price in the sales agreement based on the relative appraised values. Another approach, illustrated below, may be to allocate based on agreed stated values. When this approach is used, the partners periodically (typically annually) would agree upon a stated value of the real estate entity and sign a certificate of stated value attached to the operating agreement. Another approach is to base the allocation on the relative gross revenues of each entity. While admittedly arbitrary, it can provide a safety valve if a partner simply won't agree to a value. In any event, these issues can apply if a partner is bought out or terminated from the practice or the practice breaks up. Hence, these issues are important to address.

> **Example—Sample Clause "Allocation of Stated Value to Various Entities:** In the event that the Stated Value must be allocated among various Corporations and LLCs comprising the entities whose equity interests are purchased hereunder, the Stated Value shall be allocated to each of the accounting practice and real estate entities in proportion to the Gross Revenues as reported on the federal income tax return for that entity for the last year for which returns had been filed, unless the parties owning both entities unanimously agree to a different allocation in writing."

Malpractice Concerns

Malpractice claims are a concern for every practitioner. Since these concerns are common to every stage of an accounting practice's life cycle, they are addressed in this chapter. You should integrate your malpractice risk reduction strategy into all of the other planning and documentation discussed throughout this book.

Every life cycle milestone in an accounting practice raises new issues concerning malpractice. For example:

- Setting up your own practice: You obviously need to obtain malpractice coverage. You also should confirm coverage for events that occurred prior to your setting up your practice (for example, tail coverage or coverage by a prior employer). If you are a sole practitioner, you should consider forming an LLC or corporation for your practice. Of course the entity can be held liable for malpractice, but it may shield you and your personal assets from other potential liability risks. What if someone is injured in your office? What about the risk on contracts that you sign in your practice entity name rather than your personal name? The modest cost of setting up an entity may be well worth the protection to your personal assets from potentially significant risks.
- Hiring staff accountants: Before hiring, you need to screen prospective employees and consider requiring execution of confidentiality agreements along with representations concerning any prior malpractice claims to ferret out issues. Contact your malpractice carrier before new staff begin work to be certain that their acts are covered. As staff move up in rank toward partnership status, review your coverage and make appropriate adjustments.
- Merger or practice purchase: You want to have a detailed understanding with legally binding representations from any practice merging into yours or into which you are merging. In general, you want to have detailed representations to help you identify—in advance of closing the deal—whether there are any prior or current situations that make you uncomfortable.
- Termination or practice sale: If you retire or otherwise terminate from a practice, you want to be assured of access to practice records and client files, if necessary, to defend yourself in a malpractice action. You should be certain that your name is no longer associated with the practice or is associated only in a manner you permit, and that you have some reasonable assurance it will not subject you to claims that you might otherwise avoid. You also need to be certain that you have bridged any gaps in malpractice coverage for any posttermination or postsale period during which the statute of limitations on a suit has not run.

Understanding the Elements of Accounting Malpractice

Accounting malpractice concerns all practitioners. As a legal matter malpractice is a hybrid action which includes complex elements of breach of contract, negligence, and breach of fiduciary duty. These elements are governed by state law and will thus vary from state to state. You should always consult an attorney when faced with any potential malpractice situation. However, there are steps you can take right now to minimize your malpractice risk. To understand those steps, a general overview of malpractice law will be helpful:

1. The accountant and the client have a relationship that creates a "duty."
2. The duty requires that the accountant's conduct meet the "standard of care" applied to accountants in the state where he or she practices.
3. Standards of care are determined by statutory law, rules of court, rules of conduct, engagement letters, client defined objectives, and specialization of the accountant. The standard of care can be defined in terms of what accountants *actually do* in their practice, rather than referring to any perceived requirement or duty. The implied duty requires that accountants perform in a way that protects the client from harm caused by the accountant's actions. Accountants may be required to use their best judgment and to utilize reasonable and ordinary care and diligence in both the exercise of professional skill and the application of professional knowledge. The law does not require that the accountant guarantee a favorable result. When the accountant exercises judgment, that judgment cannot deviate from what is required by the standards of practice for accountants.
4. For malpractice to occur, it must be proven that the accountant failed to comply with or "breached" the accepted standards of practice by failing to exercise that degree of care, knowledge, and skill that an accountant of ordinary ability would have exercised under the same or similar circumstances.
5. This breach or deviation from the standards of practice must be the "proximate cause," that is, a substantial factor in the causation of the damages that the client experiences. Often, this matter is addressed by expert testimony.

6. For a claim to be sustained, actual damages must be incurred by the client as a result of the accountant's breach. The damages must be reasonably certain and a definite consequence of the breach. Thus, if the result would have been the same to the client, regardless of what the accountant did or did not do, no causal relationship exists between the breach of duty and the detriment suffered by the client, and a malpractice claim could not be sustained.

Malpractice Avoidance Strategies

There are three distinct strategies you can use to proactively minimize potential damages from a malpractice claim:

1. Include representations and warranties in employment, partnership, merger, and other agreements so that any new employee or partner will be required to disclose any past events that may cause concern. Identifying an issue before it becomes *your* issue is an important line of defense. You should also be sure that new and merging staff commit themselves in writing to the standards you want to adhere to in your practice.
2. Operate your practice in a defensive manner. The discussion below highlights a number of practical issues, some of which you may opt to include in practice documentation.
3. Take legally appropriate steps to safeguard your personal assets from potential malpractice claims. This is a process you should begin when you start your practice and one which you should monitor and continue with throughout the life cycle of your practice.

Including Provisions to Encourage Defensive Conduct

There are a number of steps which you can and should consider incorporating in your practice documentation and in appropriate legal documentation:

- Be sure that client expectations are clear, reasonable, and can be met. Client-defined objectives and the scope of your duty to the client can be, to a significant degree, defined, and often limited, by the terms of your engagement letter. A well-drafted engagement letter may be your best line of defense. Mandate in your practice

partnership agreement that every partner must assure that every client for whom they are responsible has an engagement letter for every engagement. If the particular client has multiple entities, have the engagement letter signed by all entities. Be careful to avoid standardized or generic engagement letters. Tailor them to fit the specific client circumstance.

- To minimize the likelihood of an engagement for which you or your practice doesn't have the requisite knowledge, define in all appropriate documents, with some specificity, the scope of your practice, and what areas of work the practice will and will not provide services to clients.
- Pursue continuing professional education in a manner that goes beyond mere continuing professional education (CPE) compliance and takes the next step of helping to train you and your staff to be knowledgeable as to what the "standards of practice" are for the type of work your practice performs. Mandate this in your employment agreement with staff, in your practice's employee manual, in partnership agreements, and elsewhere. Any actions you can take to remind everyone of the vital importance of addressing these issues, and how seriously you take them, is worthwhile.
- If any of your professional staff has been involved in prior claims or issues, you need to obtain knowledge of this in order to understand the likelihood of future problems. When a new employee is hired, another practice is merged into yours, or you merge into a practice, you need to obtain:
  - ✓ Full disclosure of any prior malpractice claims and the ultimate disposition of those claims. This can be accomplished by having the persons involved represent that, except as disclosed in an attached schedule, there have been no claims against them, and they are unaware of any pending or potential claims or issues that might give rise to claims.
  - ✓ The fact that the newly joining staff or partners are insurable at standard malpractice insurance rates.
  - ✓ Assurances that there have never been any sanctions or other actions taken against them by any administrative or regulatory body.
  - ✓ Good standing status of any professional organization memberships, specific licenses, or professional designations.

Risk Reducing Operations Strategies

There are a number of steps which you and your practice can take to minimize the risk of malpractice and other suits and claims. You'll find most of these obvious, but they are included because too often they are overlooked. Further, in the context of this book, many of the milestone events in your practice life cycle can provide opportunities to memorialize, and hence, reinforce these steps.

Separate Assets and Ancillary Business Activities from the Primary Practice

To the extent feasible and practical, structure ancillary business activities in separate entities. A sports management group, a building used in the practice, a commercial Web site selling products, a financial planning firm can, and often should, be organized as separate entities. While this creates more administrative burden,, it may provide a measure of protection in the event of a claim against one entity that does not affect another.

You should also weigh practice objectives versus personal asset protection objectives in planning the structure and restrictions on any ancillary entity.

Assure Arm's Length Transactions

Every accountant knows that clients should avoid commingling personal and business matters, making loans without loan documents, or adequate interest. But too many accountants fall prey to the trap of the "shoemaker with barefoot children" and fail to apply the sound advice they give to clients to their own practice. Arm's length transactions are every bit as important for your CPA practice as they are for the clients you advise. If you fail to deal at arm's length in the management of your practice, you could expose your personal assets to risk in the event of a claim against the practice. If you are a partner in a multipartner firm, you will likely be organized as a professional corporation or other type of entity that limits your liability for malpractice committed by another partner. However, if you ignore the formalities of the corporate (or other) entity, a malpractice claimant may well endeavor to challenge the validity of the corporation (pierce the corporate or LLC veil) to reach partners'

personal assets. Reinforce the separation between personal and business dealings in the following ways:

- If a partner takes out a loan from the practice, be sure they sign a contemporaneous loan document and pay interest.
- Don't allow yourself or others in the practice to abuse credit cards with personal charges.
- Commingling funds, as you regularly remind clients, is taboo and should be avoided in all circumstances.
- Make sure the "perks" the business acquires are aligned with reasonable business needs. If your practice leases more cars than it has partners and employees, for example, the problem should be obvious.
- If a spouse or child of a partner is employed by the practice, have a simple consent to the arrangement signed by all partners. In a small firm it is too easy to forget formalities. However, should a dispute ever arise (and yes, they do) having an acknowledgement about family employment can mitigate considerable angst. Further, from the standpoint of supporting the validity of the entity and avoiding an implication of using the practice entity for personal purposes, a formal acknowledgement can prove advisable.
- Set a policy for services to friends and family and follow it strictly. If any work is to be done for a family member or friend, apart from any financial arrangements, mandate that every procedure you would use for a client has to be followed. Far too many malpractice cases arise from good-hearted practitioners doing a favor and cutting some corners since they didn't charge, or didn't charge enough. The price break is your choice; the malpractice risk is not what you are bargaining for.

Be Prudent About Malpractice Insurance

Be realistic about the limits you purchase on your malpractice insurance policy. Try, to the extent feasible, to have limits that are reasonable in light of the nature of the work that you undertake.

Also, know the requirements under your malpractice policy for reporting issues. Many policies require that you report any issue that might give rise to a claim. If you are aware of an issue, and your policy requires reporting at that point, do so.

Follow Entity Documents Requirement

Many professional practices are organized as corporations so that no partner should be responsible for the malpractice of another partner on a matter that the partner was not involved in. Merely organizing as a corporation is not enough. For a corporation to be respected as an independent legal entity (so that claims against the corporation cannot reach your personal assets), the formalities of the corporation must be observed. This means that you should operate the corporation in accordance with the legal documents (the bylaws, shareholders' agreement, and various contracts that govern the corporation) and state law. If the bylaws require that there be a certain number of directors and specified officers, these criteria should be followed. If the shareholders' agreement requires that certain documentation be provided at set time periods to various shareholders (for example, reports on revenues each quarter), the shareholders should comply with these requirements.

Remember Obvious Miscellaneous Steps

While most of the steps listed below seem obvious, they are too often contributing factors to a claim or loss. Remember to use each milestone as an opportunity to reinforce and document practice policy and precautions you believe should be taken.

- Be certain that your office premises are physically safe and that you have adequate insurance protection. If you change the form of your practice structure (for example, from a sole proprietorship to a general partnership or to an LLC), be certain that practice insurance coverage is updated to reflect any of these changes.
- Treat all clients with respect. Many suits result from annoyance with the perceived arrogance, and often nastiness, of the professional involved.
- If a client has a problem, address it. Don't ignore it or dismiss it, assuming the client will simply disappear. In many cases, the mere acknowledgment that something could have been handled in a better way may mollify an upset client. Good client communications are an effective tool to minimize malpractice claims. However, when apologizing or acknowledging a problem, exercise sufficient care to avoid documenting the basis for a later lawsuit. Consult a

malpractice attorney to review such a letter or other communication to avoid inadvertently making an admission that could later prove problematic.

- Maintain detailed records of the services provided and of cautions given to your client. For many professionals, this is addressed in their billing system. If a particular matter concerns you or a particular client is proving difficult, write a more detailed memorandum for the client files.
- Your practice does not have to accept as a client every person who wants to retain you. If a client starts off difficult or unreasonable, they usually get worse, not better. While it may be hard to walk away from a fee, it is usually cheaper (and much less aggravating) to "fire" a client when they first become difficult or unreasonable than after you've become more enmeshed in assisting them.
- Look for signs of problem clients and terminate them, or better yet, don't let them hire you. A client who cannot work within your normal methods of operation is more likely to become a problem. A client who has fired several prior professionals is often not a client you want. Consider using an intake interview form to ascertain whether you are another in a long list of professionals. A client who wants to tape record your meetings is cause for concern. A client who tells you how to do your job will too often prove nettlesome.
- Properly supervise your staff. You are responsible for their actions. Be certain that partnership and other documents reflect lines of authority and responsibilities.
- Cooperate in the defense of your case. Don't assume that it is your malpractice carrier's or lawyer's job, not yours. Your full involvement of time, effort, and thought is essential. Never dismiss a claim or treat it lightly. If a partner or employee terminates, consider including in the termination agreement that they will cooperate with the practice if a claim is filed that pertains to a client matter they worked on.
- If you terminate your relationship with your former practice, be certain that your termination agreement mandates that your former firm will provide you with access to records to defend a claim against you, and that they reasonably obligate themselves to

cooperate with you. Similarly, if a partner leaves your practice, be certain that the termination agreement provides that the practice will have access to any files he or she takes in order to defend itself from any claim, and his or her reasonable cooperation in the defense of a claim if required by the facts and circumstances of the claim.

Personal Asset Protection

Accountants often advise clients on steps to take to protect their assets, but too often accounting practitioners assume that taking proactive steps to protect their personal assets from malpractice claims is something for physician clients, not themselves. Malpractice and other risks are real and significant, even if you don't view yourself as performing anything more high risk than basic accounting and tax services. Whether the activity you are engaged in is low risk or high risk, the best practice is to take reasonable steps to safeguard personal assets. This is 100% true at every milestone in the life cycle of your practice. If you are planning a significant practice event, it is time to review your personal asset protection planning. Is a new practice merging into yours? Review your personal planning *before* the merger. A few years later, do several partners and a manager join the partnership? Time to re-evaluate your planning.

When planning the structure of your accounting practice, one of the fundamental objectives is protecting your personal assets from malpractice risks. This theme should permeate all practice and personal planning.

The structure of your practice, from the form of organization chosen, to the segregation of real estate and other significant assets in other entities (for example, an LLC owned by the partners and not the professional practice), as well as the individual planning by you and your partners to protect your personal assets, should all be influenced by malpractice concerns. You are undoubtedly familiar with many of the steps to take, so the following discussion is a brief overview, which will also highlight some of the changes or additional planning to consider at each milestone in your practice's life cycle.

If you are undertaking material asset transfers (for example, to trusts for family, setting up a family limited partnership to hold significant assets) you should obtain lien, judgment, and claim searches on all

individuals and entities to whom assets will be transferred. These can often be obtained online. You might be surprised to find that there are issues that arise which you did not even know about. Each such issue should be addressed in your supporting files to demonstrate that you were prudent.

Order a credit report on any person or entity who has or is about to receive an ownership interest in firm assets from all the major credit reporting agencies. If there are any problems with credit noted, endeavor to clear them, or if you cannot, request that the credit reporting agency reflect an explanation in the credit report. This is also an advisable step after certain key practice milestones. If a partner is terminated from your practice, and you are concerned about actions he or she may have taken, you may want to order lien and judgment searches on the practice. If you are hiring a new employee, or a new partner wants to join, have them authorize you to obtain credit reports and searches. Usually nothing is revealed, but if it is, you can take steps to avoid having their credit problem become the firm's.

Bankruptcy Law Considerations

Of course no one ever wants or expects to end up in bankruptcy court, but prudent professionals accept that it is a possibility and plan accordingly. From a bankruptcy law perspective, the earlier you implement planning steps, the better. The Bankruptcy Act provides that the bankruptcy trustee may avoid any transfer of an interest that you (the debtor) made of property within ten (10) years before the date of the filing of the petition if certain requirements are met. [Sec. 548(e)(1)]. The ten (10) year time frame is excessively long and makes planning extremely difficult if not tenuous. The bottom line, however, is simple. Plan now, and do not wait for tomorrow. This rule applies to any transfers (for example, gifts or sales for less than full fair value,) which you make that meet the following requirements:

1. The transfer was made to a "self-settled trust or similar device." It is not clear what the phrase "similar device" means, but it could prove all encompassing. Even the formation of an LLC for a personal investment you have could be caught within the above definition.

2. The transfer was made by the debtor.
3. The debtor was a beneficiary of the trust or similar device. The term *beneficiary* may be interpreted quite broadly. If you are a manager of a family LLC and receive a management fee, does that make you a *beneficiary*?
4. The debtor made the transfer with the actual intent to hinder, delay, or defraud any entity or claimant which the debtor was or became on or after the date of the transfer being made indebted. Intent is always difficult to demonstrate. Use the same planning you would for a client. Prepare a balance sheet before and after the transfer to demonstrate not only that you are solvent before and after, but that you have adequate resources to meet all reasonably anticipated personal needs.

Summary

There are a host of issues that can become critical to the security and smooth functioning of your practice. These include how you structure your facilities, how you structure and plan ancillary business activities, and how you protect against malpractice claims and attempts to attach personal assets. These should be addressed in a comprehensive manner, coordinated with practice goals and planning, and integrated into appropriate practice documents.

This chapter has highlighted many of the steps you should consider taking, matters you should consider, and issues to raise with your practice attorney when documents are being prepared. Sound planning now, and at every milestone in your life cycle, can help you to avoid significant problems down the road.

Planning for the Sole Practitioner 2

Most sole practitioners ignore the formalities of how their practice is structured and take few, if any steps (other than buying insurance), to plan for the succession of their practice in the event of disability or death. This can create tremendous risk for you, but the risk can be minimized in a relatively simple and cost effective manner. This chapter addresses these issues with planning, checklists, and practical, annotated documents tailored to your situation.

Organization of the Sole Practitioner's Practice

As a practicing CPA, you don't need another comparison of the income tax consequences of the various forms in which you can set up your practice as a sole practitioner. You understand the issues, advise clients on them, and have plenty of resources if you need more details. Therefore, the following discussion will only provide some general comments on the income tax issues, and will instead, analyze from the specific perspective of the sole practitioner, the proper selection, organization, and maintenance of each of the forms of entity you might consider. A discussion of some of the business, legal, and documentation points that practitioners sometimes overlook in their focus on tax issues will also be presented. These points are illustrated in the annotated working documents in the appendixes so that you can make the decisions necessary to implement the approach you select.

Sole Proprietorship

As a sole proprietor, your individual liability for claims against the practice is not limited in any way. Therefore, you should give serious thought to why you would consider using this form of organization. While entity status will not immunize you from malpractice liability, there are other liabilities you may be able to minimize. For example, if you sign a lease

in the name of an entity, you as an individual will have protection from future lease liabilities unless the landlord insists on a personal guarantee. Even if the landlord requires a personal guarantee, you will still afford yourself protection from other types of claims, such as a client being injured on your premises. You counter that you have insurance. But insurance doesn't always protect against every claim. The bottom line is simple. Whatever liability protection an entity affords you over the use of a sole proprietorship is well worth the cost. The cost of an unknown liability suit is potentially tremendous. The cost of setting up an LLC or S corporation is modest and quantifiable, and the ongoing compliance and maintenance are matters at which you are skilled. If you are a sole proprietorship, convert.

Limited Liability Companies

You are well aware of the advantages, in most situations, of using a limited liability company (LLC) as a form of owning and operating your accounting practice. The most significant advantage of the LLC over the sole proprietorship is that it can provide some limitations on liability, which alone is a sufficient reason to use the LLC form. If you're organized as an LLC, the operating agreement you need for a one-member CPA practice LLC is quite specialized. The standard boilerplate documents and accompanying planning will do little for you. See Appendix 2-1, "Sample One-Member LLC Operating Agreement for Sole Practitioner Including Succession Plan." While a major advantage of LLCs over S corporations and C corporations is that they are more flexible, it is not clear that the flexibility will mean much to you as a sole practitioner (however, see below, as even one-member LLCs have more flexibility than most practitioners realize) as compared to a corporation. See Appendix 2-2, "Sample Annual Unanimous Consent for One-Member LLC."

Issues Affecting LLCs

Before organizing your practice as an LLC, you should evaluate a number of issues, including:

- Are there any negative state law implications to using an LLC form?
- Are there restrictions on practicing as a licensed CPA in LLC form?

- Do unfavorable state franchise or other taxation rules apply?
- If your practice operates in several states, your LLC should be authorized to do business in all those states. Does this present any problems in one of the states?
- Will conversion from a partnership (for example, on the termination or buyout of your other partner or partners) or from a corporation to an LLC trigger income taxation?

Barring a specific issue, the LLC format is likely to be the entity of choice for those CPAs starting new practices or practitioners who have heretofore operated as sole proprietorships.

Given the tax cost of liquidating other forms of business, it is less likely that you will convert another form of operation into an LLC, although some practitioners may opt for a "wind-down" of a corporation form of ownership. You would set up a new LLC for your practice, have it purchase hard assets from your pre-existing S or C corporation, and as accounts receivable are paid down in your pre-existing S or C corporation, it winds down until it is ready to dissolve. From a practical perspective, the wind-down approach presents a number of issues, among them, billing for your accounts receivable from two separate entities at the same time.

Succession Planning and LLCs

Since this chapter is directed at accountants who are sole practitioners, if you opt to organize (or convert) your practice as an LLC, likely your LLC will be a single-member LLC, which is disregarded for income tax purposes. You might, therefore, assume that you can only have one member, and the structure of your LLC must be quite rigid, even if that simplicity inhibits succession or other planning. Not necessarily so. LLCs are really an extraordinarily flexible planning tool. Be cautious, however, as many of the nuances discussed below will depend on your state's LLC statute.

A disregarded LLC can (depending on your state's laws) have more than one member and yet still remain a disregarded entity. For example, under the Delaware statute, a person can be a member of an LLC without owning any economic interest in that LLC. Thus, if you are the principal member owning 100 percent of the equity, your practice could have

a nonequity "member" owning no equity. In this scenario there are multiple members, yet the LLC can still be treated as a disregarded entity. PLR 199911033 12/18/98. This oddity can exist in a state that has a statute permitting nonequity members. For example in Rev. Rul. 2004-77, 2004-31 I.R.B. 119 an LLC had two members, but one of the members was a disregarded entity for federal tax purposes, so the LLC could not be classified as a partnership for tax purposes.

How could this benefit you? If you want a succession plan and work out an arrangement with a colleague to step in and operate your practice in the event of your disability or death, your colleague could be a nonequity member. This would permit him or her to have authority and continuity as a member to facilitate a smooth transition. This would assure that the colleague targeted to help in the event of your death or disability has documented authority in a signed LLC operating agreement to operate the LLC. See Appendix 2-3, "Sample Letter Agreement with Colleague to Manage and Operate Practice During Disability."

As an alternative, you could name yourself a manager of your one-member LLC, and your colleague who will step in for you in the event of death or disability could be named in your operating agreement as a successor manager to you.

> **Example:** You've been operating your accounting practice for years as a sole proprietorship. You see the light and reorganize your practice as an LLC. In the event of your disability, you want some succession planning for your LLC. You include a manager role in the operating agreement, with yourself as manager. In the event of your disability, you designate another CPA with whom you share an office suite, as a successor manager. With this arrangement in place, you remain the owner of your practice, but you've created a common and understandable line of authority for someone to step in and cover for you.

LLCs Electing to be Taxed as an S Corporation

Your one-member LLC can elect to be treated as an association taxable as a corporation rather than opting to be treated as a disregarded entity for tax purposes. You, as the owner of the LLC, will be treated as if you

contributed all LLC assets to the association in exchange for the association's stock. Treas. Reg. Sec. 301.7701-3(g)(1)(iv) and (2). All the tax consequences that would affect the formation of a corporation would apply to this situation. One purported advantage to this approach is the possibility of greater latitude in paying out some portion of practice earnings as a dividend not subject to self-employment tax. Since the entity is still an LLC, presumably you could use a one-member LLC operating agreement for purposes of governing the entity, but modify it to indicate that the entity will be taxed as an association taxable as a corporation and elect S corporation status. You should not sign a shareholder's agreement and minutes, like a corporation, since legally your entity remains an LLC, albeit an LLC taxed as an S corporation.

Multimember LLC Sells Interests to Sole Remaining Member

If you are a member in a two- (or more) member LLC, which is taxed as a partnership, and you engage in a transaction where you ("Buying Member") purchase the interests of the other member ("Selling Member") so that the result is a one-member LLC, how is the transaction treated? Should it be treated as a sale of a partnership interest even though the result is a one member LLC? Or alternatively, should it be treated in some other manner?

If the transaction is structured as the sale of a partnership interest (which presumably means the documentation has to reflect the sale of a partnership interest) then, per Rev. Rul. 99-6, 999-1, CB 432:

- LLC is deemed to have distributed assets to Selling Member, who in turn, sold them to Buying Member.
- Selling Member reports gain or loss on the sale.
- The tax basis to Buying Member is the price paid to Selling Member. The tax basis in nonpurchased assets is determined under IRC Sec. 732(b).
- The holding period for the assets Buying Member acquired from Selling Member (not for the other LLC assets) begins the day following the transaction. The holding period for other assets includes the LLC's holding period for those assets, unless another result is required by 735(a)(2).

You need to determine how the purchase should be structured in order to plan and document the transaction. This should be done with consideration to what you will do as a sole practitioner to operate your practice so that you can identify steps to take during the purchase so that you have the resulting structure afterwards.

Corporation

If you form a corporation for your practice, it will likely be a professional service corporation formed under your state's laws governing professional service corporations. As the sole practitioner, you will be the sole shareholder.

You can have the corporation remain taxed as a C corporation, or you may choose to be taxed as an S corporation. The tax differences between these choices are issues with which you are well familiar and which needn't be explored further here. However, whatever decision you make should be clearly reflected in the shareholder's agreement you sign. See Appendix 2-4, "Sample Shareholders' Agreement for Sole Practitioner Including Succession Plan."

Costs and Burdens of Converting an Existing Entity to a New Entity

If you are not comfortable with your present form of entity for your practice and wish to change it, you need to evaluate the costs of the conversion, as well as the documents and steps necessary to effect the conversion.

Should you convert? If you are a sole proprietorship, yes. The liability risks of operating solely in your individual name outweigh the costs to convert to an entity format.

The transition from a professional corporation to an LLC is a potentially costly conversion. If your professional corporation is a regular corporation, the transfer results in a liquidation of the professional corporation which could give rise to double taxation. If your professional corporation is an S corporation, it will still be a liquidation which will give rise to at least one level of taxation (under certain circumstances, it will result in double taxation).

Some professionals will run parallel entities. In the typical case, the old C corporation continues to exist while it collects accounts receivable

and winds down, and the new LLC commences operations during this process. See discussion above.

Operation of the Sole Practitioner's Practice

As a sole practitioner it is very easy to ignore the legal documentation that you should have for your practice. After all, "it's just you." In the worst scenarios, this can prove a perilous mistake. Even if no negative consequences occur, it's a bit awkward for you to pester clients for nonexistent documents you need for their permanent file when you've not put your own house in order. This section will review what steps you need to take depending on the entity you selected for your structure. Each of the documents (as well as additional planning considerations) is illustrated in the sample annotated documents in the appendixes.

It is essential for any planning to succeed and for your business to withstand the scrutiny of tax audits and challenges by creditors asserting that the corporate (or LLC) veil should be pierced and that business records be in proper form. Many of the steps below can readily and inexpensively be accomplished by you with limited legal involvement and minimal cost.

Find Your Kit

If your practice entity is organized as a corporation, you should have a corporate kit from when the corporation was formed. Too often corporate kits are not looked at after they've been received following formation, and they are generally blank. This is not the appropriate way to operate. You wouldn't accept a client having no permanent corporate records; don't accept yourself doing anything less than what you would advise a client. If your practice entity was organized as an LLC, you may not have obtained a "company kit," since many attorneys don't advise it, and most filing services (if you formed the LLC yourself) don't recommend it. Order one. A company kit for an LLC (regardless of the legal requirements for it) will, from a practical perspective, serve as a magnet for holding key LLC and business documents over the years. Thus, for whatever type of entity you are using for your practice, obtain a kit. The discussions and sample annotated documents in the remainder of this chapter illustrate the documents your kit should contain.

Your kit should contain an original of the document filed in your state to organize your practice entity. While the name of the document will vary from state to state and depending on the type of practice entity you have, it will be obvious to you if you have the document. For a corporation, it might be called "Certificate of Incorporation" or "Articles of Corporation." For an LLC, it might be "Certificate of Formation," "Articles of Organization," or a similar title. If you don't have a copy, it should be relatively easy to go to your state's Web site and order a copy. Usually a certified copy can be obtained for an extra cost, but it is not really necessary.

Obtain "Certificate of Good Standing"

Consider obtaining from your state a "Certificate of Good Standing" to demonstrate that your practice entity validly exists under state law. The cost is nominal (in many states less than $100) and the effort minimal. But if you don't have a kit and have to order one, or the kit you find is pretty much empty for years (how thick is the dust on the cover?), it's a good safety measure to assure that there are no problems that you need to address. You can obtain the certificate on your own with modest effort from your state's Web site.

Issue and Deliver Stock Certificates

Stock certificates for your practice corporation (membership certificates for your practice LLC) should be properly issued and delivered (that is, removed from the kit). While it is correct that you don't need to issue certificates for an LLC, what formalities do you have to demonstrate the validity of your LLC? Very few. While a key advantage of using an LLC instead of a corporation is that the record keeping requirements for an LLC are simpler, it is really not necessarily an advantage. If you dispense with the formalities recommended in this discussion, you may be left with insufficient documentation to corroborate the independent legal status of your LLC in the event of a lawsuit or other issue. Certificates are not legally necessary. But for you as a sole practitioner, to issue yourself a membership certificate will take less time then reading these instructions:

1. Tear out certificate number one from your LLC kit.
2. Write your name on one line of the LLC membership certificate for the member's name.
3. On the next blank where ownership interests is to be indicated, write "One Hundred Percent———" (the "—" should go to the end of the line).
4. At the bottom of the certificate, sign your name, and beneath it, "Member."
5. Fill in the date.
6. On the stub left in the certificate book, fill in the same data to record the issuance of the membership certificate.
7. Finish your cup of coffee, it will still be hot.

File Appropriate State Certificates

If your practice conducts business in another state then—apart from state CPA licensing issues—you must have your practice entity authorized to do business in that other state. This is accomplished by filing the appropriate certificate in that other state to authorize a foreign (that is, out of state) corporation (or LLC) to do business in that other state. This is often a relatively simple task. Most state Web sites provide sample documents. If no sample document is available, the state will have a specific provision that will effectively provide a checklist of what has to be included in the form to obtain the authorization. It's a simple and inexpensive process that should not be overlooked. When you obtain the certificate or other document back from the state reflecting your authorization to do business in that state, file the original in your practice entity kit.

Retitle Appropriate Assets

In far too many situations, equipment, real estate lease, or other critical assets that should be in the name of your practice entity remain in your personal name. These should be retitled or transferred into your practice entity. File a signed copy of whatever documents are used to affect this in your practice entity kit.

Maintain Annual Corporate Minutes

Annual corporate minutes (or for an LLC, annual membership minutes) or a unanimous written consent should be created and executed each year. Although there are different views on the benefits and approaches of reconstructing missing corporate minutes, it is far better to keep them current and not leave them to be addressed at a moment of instability or crisis. What meaning does it have to have minutes or consents for a sole shareholder corporation or a one- member disregarded LLC? It confirms and corroborates that you are respecting the independent legal status of the entity. Like brushing your teeth, it is simply a good regular habit. In the event of suit or a claim, a record of ongoing annual records will help demonstrate the validity of your practice entity (just as it does for any client entity). It is highly unlikely with the pressures of any practice, but especially those pressures faced by a busy sole practitioner, to always comply with the formalities of your practice entity. You may sign a contract or agreement accidentally in personal and not entity name, a personal expense may be paid by the practice and not reimbursed, and so on. Stuff happens. Making it a habit to prepare an annual consent will provide some offset to this. It will also remind you of entity formalities and make you pause, at least once a year, to reflect on whether any practice, legal, business, or other issues need to be tended to. See Appendix 2-5, "Sample Minutes for Sole Practitioner Professional Corporation."

Use Appropriate Signatures

As you know, be careful to only sign practice-related matters using the appropriate entity format:

Jane Smith CPA, LLC
By: _____
Jane Smith, Member

Succession of the Sole Practitioner's Practice

Planning for the succession of your sole practice is different than for other professional practices, yet proper succession planning is critical to the success of your practice and to the protection of your practice assets.

As a sole practitioner you face a difficult task to create a succession plan to preserve your practice's economic benefit for you and your family in the event of your death or disability. If done properly, you, your heirs, your employees, and your clients will all benefit.

Succession Issues Unique to the Sole Practitioner

Succession planning for a sole practitioner presents several significant challenges that require specialized planning:

- As a sole practitioner, internal succession planning is often limited to potentially one or a few key professional employees as possibilities. In most cases, you have to look outside of your practice for assistance. This creates challenges that may not be faced by a multipartner firm.
- Since the practice is largely "you", your personal estate planning (powers of attorney and other documents) need to be tailored to address practice issues. These important steps are invariably overlooked. Your agent under your durable power of attorney will have the ability to lend money to your practice to sustain it (for example, hiring temporary help or covering overhead costs if you did not purchase business interruption insurance), and vote your shares or membership interests (that is,, control the operation of the practice). You might wish to consider having two durable (that don't lapse in the event of disability) powers of attorney: one for your practice and a second one for all other matters. The second power of attorney should expressly prohibit the agent from making practice decisions. The division between the two is not a perfect one, as your practice agent will need the cooperation of your personal agent if a cash infusion into your practice is needed. See Appendix 2-6, "Sample Clauses for Sole Practitioner to Include in a Durable Power of Attorney."
- Depending on your staffing situation, you may or may not have staff that have the knowledge to carry the practice through transition or a temporary absence (for example, a short-term disability). Take the time to set up a file and prepare a memorandum to any possible successor summarizing key information that they would need to step in if you are disabled or die. See Appendix 2-7, "Sample Checklist of Practice Points for Successor CPA."

Four Succession Scenarios to Plan For

When addressing succession planning for you as a sole practitioner, give consideration to the following situations. Each has its own issues and requires attention. Again, for the sole practitioner, these nuances are too often ignored. See Appendix 2-8, "Sample Sole Practitioner Death and Disability Buy-Out Arrangement and Earn-Out Agreement."

Temporary Disability

Temporary disability is the most likely scenario that will affect a sizeable number of sole practitioners. It presents specific planning issues that need to be addressed independently of the other succession situations. If you are temporarily disabled, you may likely want to return to your practice. If age, wealth, or other issues would favor not returning to your practice, then you would ignore planning for this scenario and merely plan for permanent disability discussed below. For a temporary disability, you need to be able to bridge your practice operations until you can return. Even if you return part time, once you've returned, you should have the wherewithal to hire additional staff or merge your practice if you will never be able to work at the same pace. The key issue is planning for that gap between illness, accident, surgery, or some other event, as well as planning for the day you are able to return in a meaningful way to your practice.

An approach to use to bridge this gap is to structure and sign a practice continuation agreement that would ensure that in the case of a disability, your practice will continue, and your heirs will be able to harvest some of your firm's economic value. The agreement is not a transactional document, meaning no sale of the practice has occurred. Rather, it ensures that another firm or practitioner will cover your clients should you become disabled. A buy/sell agreement could be appended to the practice continuation agreement so that your firm's clients are attended to while your agent or other designee endeavors to negotiate to sell your practice if the disability becomes permanent (see below).

> **Example:** Typical of many sole practitioners, you work 60+ hours a week running your practice. You have a heart attack. You're rushed to the hospital. Tests are done, and surgery follows to bypass several blocked arteries. You

> convalesce for eight weeks with no office contact for the first six weeks and very limited contact for the last two weeks. Your cardiologist permits you to begin work after week eight on a reduced basis of 20 hours a week, building up over several months to 40 hours per week. He prescribes a rigorous exercise and rehabilitation program that will really limit your maximum work hours to those indicated. You planned ahead, more than most practitioners, and have a reasonable disability income policy. As a result, your cash flow remains sufficient to meet your family expenses during this period, although you are worried about the long-term impact the reduced hours will have on the future of your practice. But what happens during your convalescence? You're out of the office for a solid eight weeks, and in very limited capacity, for another eight weeks and cannot even work extra hours after that period to catch up. You need more than disability insurance. You need a practice coverage plan for this type of contingency.

Evaluate your staffing needs, prepare a memorandum of steps to take, and consider an arrangement with another sole practitioner or small firm. Consider the concepts discussed in the initial sections of this chapter of designating your successor as a successor manager in your LLC operating agreement (or a successor director in your practice corporation shareholders' agreement). Review the various types of insurance coverage you have (for example, disability or business interruption).

Another variation of the above to consider is a sale with continued involvement through a consulting, employment, or other arrangement that permits you some modest continuation to the extent of your ability.

Permanent Disability

For permanent disability, the decision making may differ than for temporary disability. If you will never return to practice, your options might be:

- Use the same plan as temporary disability above of naming a successor colleague and working out a compensation arrangement. However, at some point in time that colleague should be required to

purchase your practice or sell it. In such event, you should have provided for a definition of permanent disability and a sale price or a mechanism to set one (earn- out, appraisal, rules of thumb).

- Provide for the immediate sale of your practice. This could work in conjunction with a temporary disability plan of a colleague managing your practice.

  Example: You make an arrangement with another CPA who works in your building that if either of you is temporarily disabled, the other will cover the practice and be paid $100/hour for work performed. The maximum period that this arrangement should exist is for 90 days. If after 90 days the disabled practitioner cannot return to practice, the covering CPA has two choices: purchase the practice based upon an agreed upon formula or hire a designated practice management consulting firm to market and sell the practice. If the latter approach is taken, the covering CPA will be paid $250/hour for hours worked after the initial 90-day coverage period and up until the date of sale. In addition, the covering CPA will receive a bonus of 10 percent of the sales price to motivate him or her to help maximize the value of the practice during that time period.

  Example: You make an arrangement with another CPA who works in your building that if either of you is temporarily disabled, the other will cover the practice and be paid $100/hour for work performed. The maximum period that this arrangement should exist is for 90 days. In the event of disability, however, before the covering CPA steps in, a letter from the disabled CPA's attending physician will be obtained. If the attending physician determines that the disabled CPA is permanently disabled (defined as unlikely to return to work at least 75 percent capacity in 90 days), then the practice will be sold. If after 90 days the disabled practitioner cannot return to practice at least 50 percent, he or she is deemed permanently disabled, and a regional firm with whom you've made a pre-arranged deal will buy the practice subject to a formula payout over time. The

> disparity between the 75 percent and 50 percent capacity was intentional to make the possible sale less likely to occur if there is any chance of the disabled CPA returning to work.

The risks and difficulties of planning for your practice's succession in the event of permanent disability are two-fold. You won't be able to avail yourself of insurance to the same extent as your heirs would in the event of death. Life insurance is often less costly than disability coverage and larger dollar amounts, especially if you are a younger practitioner, are available. In addition to the more costly and limited insurance "out", the half-life of a practice with no practitioner is short. If you don't have a plan in place, and if the trigger to make that plan happen is not pulled quickly enough, your practice will deteriorate in value rapidly. Monthly clients will have a short line of patience if their businesses need accounting help, and you have not provided for a transition. During tax season, clients will need their returns completed, and if they hire another accountant or firm, there will be less practice to sell. This is why, in the example above, if permanent disability is likely the immediate sale of the practice, rather than a stop-gap transitional measure, (coverage) was provided.

Death

Many accounting and other professional practices simply fade away with the founding practitioner. This could be due to your unique skills and reputation, the unique circumstances of your practice, and a host of other factors. However, in many situations, and perhaps even in most situations, it's simply due to a lack of foresight and planning.

Succession for you as a sole professional practice usually takes one of the following options:

- Sale to a larger firm. An immediate outright sale of the practice is often the only option for a "succession" of a solo accounting practice.
- Bringing in a younger associate. Even if the associate has not yet made partner, it does not mean that you cannot structure a buyout with that associate in the event of your demise. This is frequently done through the method of bringing in a junior associate, who after some given number of years is entitled to purchase equity. Generally, after a sufficient time frame, partnership may be offered.

Once you've become comfortable and confident enough in the junior accountant to consider a long-term arrangement, but before he or she has actually become a partner in your practice, you remain a sole practitioner needing a succession plan. Evaluate the appropriateness of having that junior accountant enter into a succession and buy-out agreement with you. Be certain to consult an employment attorney in this regard, as you may still want to be cautious that the signing of such an agreement cannot later be used against you if you opt not to offer the junior partnership.

- Buy-out provisions in the operating or shareholders' agreement. See the comments above concerning a nonequity member in an LLC. You will still have to make a determination as to who will serve in this capacity, perhaps a junior in your practice, a colleague, or another larger firm.

Retirement

Retirement from your practice requires an exit strategy that is often different from the planning for the unexpected events of disability and death. To state the obvious, you will be available to negotiate the deal you choose. As a result, most sole practitioners do little or nothing beyond exploratory discussions until they are prepared to look for and negotiate a deal. When these deals are consummated, they typically are structured in one of the following ways:

- Sale to another practitioner with an already established practice. This can be accomplished either by merging with the other practitioner or selling your practice to the other individual practice or firm and then phasing out over time. Finding a practitioner who possesses the same skills and expertise your clients expect will ensure the continuity of your practice, help retain clients, and maximize the value of payments under an earn-out arrangement. Such a transaction might typically be structured as a sale of your assets and an earnout. This type of sale is often not a clean break. The buyer may insist on your continuation in some capacity in order to effectively transition clients and goodwill. From your perspective, you may desire continued involvement if there is an earnout over time to provide you with a mechanism to better protect your interests by

monitoring client retention and keeping your name in front of clients, so the option of taking back your practice in the event of default is realistic. When the buyer is another sole practitioner or a very small firm, you really want to retain involvement and control to protect any future purchase price payments (or to minimize any future downward price adjustments).

- Have an employee accountant in your practice phase into your responsibilities gradually, while you hand over the reins of the practice in measured steps. This type of transaction may initially be structured as an employment agreement or arrangement that provides the opportunity for the employee to purchase equity. When the purchase is to be implemented, it is common to structure a partnership with both names in order to better transition goodwill, maximizing the value to the purchaser and maximizing the sale price to you. These concepts will typically be addressed in some type of documentation with the prospective staff member. In the simplest of cases, and to minimize cost and complexity, this might be a general letter of intent that is nonbinding. On the opposite end of the spectrum, you could negotiate, draft, and implement a comprehensive employment agreement that spells out the terms of purchase and attach as an exhibit the partnership agreement that will be executed (if that is the approach determined to be used). That avoids any need to renegotiate the deal when it actually happens. While this is clearly the best theoretical approach, few sole practitioners would be willing to incur the cost or negotiating time in advance of the transaction being implemented.
- Sale of the practice to a larger firm. When a larger firm is making the purchase, the partnership structure and other techniques to secure your future payments, and to transition goodwill, often (not always!) are not as necessary. The sale of your solo practice may require you, as the principal, continuing on for a period of time in a reduced capacity as a "senior" professional. This can sometimes be on a part-time basis performing the same services as before, servicing selected key clients as a consultant or as a "senior" accountant providing continuity of public image and so forth. When this approach is used, little may be necessary to address until you actually begin negotiating the deal. Nothing would be reflected in current documents of your practice.

- Some practitioners retire by simply cutting back their client list over time through attrition or other methods, limiting their practice to clients with long-term relationships, and profitable accounts that they enjoy working on. Rather than incur the costs and risks of selling or transitioning a practice (for example, will the purchaser service the clients as you wish or if there is a default, do you want to take the practice back), some prefer to simply wind the practice down in line with their willingness to work. In some instances such an approach may be more profitable. In this type of "nonarrangement" nothing would be addressed in your current practice documents.

Summary

Too many sole practitioners give short attention to the form or structure of their practice, the legal documentation appropriate to the ongoing operation of their practice, and succession of their practice in the event of temporary or permanent disability, death, or retirement. For many sole practitioners, their practice is their primary source of income and pride. It is also potentially (and hopefully), a significant asset. You should give the same care and attention to your practice that you demand that your clients give to their businesses. The proper legal structure should be selected and planned with deliberation. The structure can and should be coordinated with your succession planning, and you should take the necessary steps to assure your practice has the appropriate legal documents and other formalities you insist clients have in their permanent files.

Hiring Staff 3

In the previous chapter we discussed the first milestone in the life of many CPAs—solo practice. Unless you plan to remain a solo practitioner forever, the next milestone, inevitably, is the growth of a professional staff. Granted, this can occur at *any* stage of the life cycle of your practice, but it most significantly occurs as you grow beyond being a sole practitioner. This chapter will cover steps to take before adding professional staff, possible staffing arrangements, documenting staffing arrangements, issues to address with new professional staff, offering profit sharing or partnership to a staff member, and termination of staff.

It is important to note that this discussion is intended as a general, strategic guideline. State laws on recruitment and hiring issues vary considerably, and you should have any related documents reviewed very carefully by an attorney seasoned in your state's employment laws before they are shown to or signed by a candidate.

Steps to Take Before Adding Professional Staff

There are a number of threshold issues to consider before hiring staff accountants to grow your practice. First, before arranging a formal or informal arrangement with a new employee, you should be certain that the organization of your practice has been addressed. Get your house in order before you expand it. Refer to Chapter 2 for more detailed guidance.

Structure Your Practice

How is your practice organized? In Chapter 2, a discussion of the common forms of structuring a practice for a sole practitioner was reviewed. Although an S corporation or limited liability company (LLC) were indicated to be the most common and preferred forms of structure, the reality is that many sole practitioners are organized as sole proprietorships.

Within the framework of this chapter, you are not changing your ownership from that of a sole practitioner, yet! The "yet" is important because even if you opted for the simpler and cheaper sole proprietorship approach when you had no staff accountants, that decision should be reevaluated once you hire staff. If you think you may offer staff the chance for profit participation or equity, it's even more strongly recommended that your practice adopt a format that will minimize the risks associated with profit and equity sharing.

> **Example:** You operated a small accounting practice and did not want to bother with the formation of an LLC, although you knew it was the preferable approach. You are now in the process of negotiating with a prospective new hire—an accountant with several years experience and some portable business. You recognize that to keep her on staff, at some point, you'll have to make her a junior partner. Now, *before entering into an employment arrangement*, is the preferable time to convert your practice to an LLC. In that way, once the staff accountant becomes a partner (member) you'll have the protection of not being responsible for her malpractice.

Protect Your Assets

There is never any assurance that an arrangement with a staff accountant or junior partner will be successful. You might consider taking some steps in advance to secure your practice before structuring an agreement with a staff accountant that might lead to equity or profit participation.

> **Example:** You're about to recruit an experienced staff accountant that may require your paying a bonus based on firm profitability. You own the building in which the practice operates as part of your practice sole proprietorship. Form an LLC to own the practice (Practice LLC), and a separate LLC to own the building (Building LLC). Have the Practice LLC sign a written lease with Building LLC to use the building. Consider giving some gifts of Building LLC to your spouse, children, or trusts for your family. When you negotiate with a prospective staff accountant, junior partner, or merger candidate, for example, the build-

ing ownership is off the table, and the rent payments are documented and in place. This can minimize, and perhaps even avoid, disputes over the rent and the building.

Example: You've operated your practice for many years under the moniker "Med CPA" and specialize in serving small medical practices. To continue growing, you need to bring in an associate. Prior to starting the search process, you sell the trade name "Med CPA" to a trust previously established for your children. The trust uses other funds it has to retain a consultant to establish a website, www.yournamemedcpa.com, and to hire a graphics designer to develop a logo for your practice. These intangibles are then licensed back to your practice. In the event of an issue with a future employee or junior partner, you have the added protection that these key assets of your practice are not part of the practice. Sample documentation appears in the Appendixes.

See Appendix 3-1, "Sample License of Trade Name, Logo, and Telephone Numbers to Protect Founding Accountant."

Practice Documentation

Prior to hiring an employee, be certain that your practice documentation is current so that your practice entity will have the proper legal authority to enter into any agreement executed with your employee(s), and so that your practice entity will be properly respected in the event of any suit or challenge.

Possible Staffing Arrangements

There are a number of different arrangements that can be used for the professional staff you hire. The most common arrangements are discussed below.

Employee

For the typical employee in the typical small or solo practice, no formal documentation is used. This can be a mistake in that at least an employee

manual for your practice should be in place to address a myriad of liability issues, regulatory requirements, and so forth. Furthermore, something should be memorialized as to the nature of the employment arrangement, such as the term of employment (which may typically be "at will"). If you won't require your employees to sign a comprehensive employment agreement, at least strive for a short page or two "letter agreement" that sets forth key terms.

Employee with Potential for Equity in the Practice

An experienced accountant may need the carrot of possible partnership (or other equity or profit participation) to join your practice. As a sole practitioner (or even small firm), this enticement may be essential in order to bring on board staff that is essential to service your clients and especially to create a viable succession plan for your practice. If you are hiring an accountant to groom towards possible partnership or other equity interest, you need to carefully indicate in writing what is being promised and what is not. There is so much room for misunderstanding as to profit participation, equity entitlement, and similar arrangements that a comprehensive writing is really essential when these elements are introduced.

Contract Consultant or Employee Arrangement

Many practitioners retain a part-time accountant during tax season or at other times or for other arrangements (for example, to service a particular client). These arrangements typically differ from the typical 9 to 5 employee. This arrangement may be made with someone who has retired and only wants to supplement their income or with someone who provides services to a couple of firms. You should protect yourself and your practice by documenting at least the key terms of this arrangement: Is the person an employee or independent contractor? Who is responsible for insurance? Are they working on their own accounts in your office? What about confidentiality of your client's information (especially if the accountant is working for several firms)?

Per Diem Arrangement

A per diem arrangement could be categorized as a contract consultant or employee arrangement but has been listed separately because often,

especially in a small firm, it tends to be a less formal, less documented arrangement. A simple per diem arrangement is common in many small firms that hire part-time help for tax season or perhaps for an experienced accountant following retirement from his own practice or another firm. The nature of the agreement will vary considerably depending on the nature of the relationship. Thus it can vary from a part-time consultant who is available on a limited basis for tax season to someone almost analogous to a partner. The arrangements typically are based on a part-time accountant (whether an employee or independent contractor) working on an hourly rate on an informally agreed upon schedule. You should, however, consider at least documenting in a short letter agreement the nature of the relationship and some type of confidentiality provision. Even if you have no intent of suing to enforce such a provision, highlighting the importance of protecting your client data in writing itself sends an important message. See Appendix 3-2, "Sample Independent Contractor Agreement for Per Diem Work by Formerly Retired Accountant."

Document the Arrangement with Professional Staff

Although the most common approach may be to not have a written agreement with an employee unless there is the possibility of equity being offered, this can also be the most dangerous approach. This section will explain many of the issues you should consider in determining whether or not to document the relationship with professional staff in writing. Further, it will also explain many of the issues and options to address if and when you do document it. In all cases, any document should be reviewed by counsel. There are several ways to document key provisions of an employment relationship:

Letter Agreement

A letter agreement is a name given to what is really a contract, but one which is typically the length of a letter and printed on your letterhead, hence the name "letter agreement." It is typically much shorter, simpler, and less detailed than a typical "contract". While not as protective as a comprehensive, attorney-prepared, reviewed, and negotiated contract, it

is more apt to be used in many circumstances. Too many practitioners balk at the cost, complexity, and time involved in negotiating a contract and choose to do nothing. A letter agreement can often provide a better interim step than nothing, as long as you understand its limitations and shortcomings. Carefully prepared, a letter agreement can highlight the key terms and conditions of the arrangement with an employee without alarming the employee to the point of not accepting the position (as a 25-page employment agreement might). Possible language for such an arrangement might be:

> "Jane Doe shall be employed by ABC, CPAs, LLC as a staff accountant. Jane is an employee at will. If Jane's employment ends for any reason, she won't provide accounting or tax services to any client of ABC for 12 months, and she will not solicit ABC staff for 18 months. Jane will keep all ABC client and business information confidential. Jane will be paid $53,500, per year based on the regular payroll practices of ABC. This is not a term for the employment arrangement which remains at will. Jane will receive whatever benefits similarly situated staff receive. Jane is expected to bill not less than 30 billable hours per week during the year and 40 billable hours per week during tax season."

The letter is short and simple, but at least provides some substantiation of the agreement you reached. See Appendix 3-3, "Sample Simple Letter Agreement with Employee."

Simple Contract

A short contract will be more formal and comprehensive then a letter agreement, but less involved and threatening then a comprehensive employment contract. This is illustrated in Appendix 3-4, "Sample Simple Employment Agreement With or Without Future Equity." Again, the brevity creates risks that a comprehensive contract would address, but avoids the time, cost, and candidate intimation factors of a longer, more formal agreement.

Comprehensive Contract

Despite the required attorney drafting time and the potential to intimidate candidates, a comprehensive contract is preferable to a letter agreement

or simple contract because of the precision and clarity it can offer. Such a contract could clearly delineate the scope and extent of employment or set forth a nondisclosure or confidentiality provision. If you are offering even the possibility of equity to the staff member, a comprehensive agreement setting forth the conditions when and if any type of equity will be offered is worth the effort and should be commissioned from your attorney. You will find more discussion of comprehensive contracts later in this chapter.

Employee Manual and Ancillary Documentation

Your firm should require and maintain ancillary documentation for each employee. Obvious to you are the Form W-4 for withholding and the form I-9 for immigration (with copies of any documents presented to you attached). Although most practitioners are aware that a firm employment manual is advisable, far too few accounting firms address this issue.

Ideally, your firm manual and other documentation should serve to elaborate on points addressed in your comprehensive employment contract(s). If you do not have such contracts in place, the manual might be the only documentation you have of the terms on which you offer employment. In that case, having a clear and well-drafted manual becomes even more essential.

If you don't currently have an employee manual, the best approach is to retain a local employment attorney to prepare a document that addresses any particular laws applicable in your state. Be certain that you review and modify the attorney's draft to reflect issues pertinent to an accounting practice generally as well as issues pertinent to your specific practice. Some suggestions, comments, and sample provisions are presented in Appendix 3-5, "Sample Employee Manual for Accounting Practice: Selected Excerpts." If you opt to use a pre-packaged employee manual you prepare on your own, shop carefully and have your attorney review the final product.

Issues to Address with New Professional Staff

Employment agreements, independent contractor agreements, covenants-not-to-compete, and nondisclosure agreements are some of the essential contracts in closely held businesses. The purpose can be to memorialize

a negotiated arrangement or to protect the vital business interests of the closely held firm. These arrangements are far more complex than practitioners often recognize, raising a host of legal, tax, and business issues. Regardless of whether, how, and to what extent you memorialize the employment or consulting relationship, you should consider some or all of these issues.

Importance of a Written Agreement

If there is no written employment agreement between you and your new employee, then under most state laws the relationship will technically be presumed to be that of employment "at will." In an employment at will situation, the employer has the right to terminate the employee at any time, without cause, with no notice, and with no severance. This *sounds* straightforward enough, but beware. Although the relationship may be presumed to be at will, in the event of employment-related litigation, the terms of the relationship may be disputed, subject only to oral testimony. In some states, if the employee can satisfy the court that there was a sufficiently clear verbal agreement to terms other than employment at will, the court will enforce those verbal terms.

Another incentive which should encourage you to execute a written agreement with your staff accountants is that in the absence of a written agreement, you may not be able to have the protection of a covenant-not-to-compete or nondisclosure protection.

A written employment agreement, however, can also provide the employee additional rights. These could include, for example, employment for a particular period of time, the right not to be terminated absent demonstration of cause, and so forth. Some courts have found that these rights were granted even when there was no written employment contract because the employer had unilaterally issued a company manual governing employees. The written employment contract, however, can also specify that the parties intend a relationship which is one of employment at will. See Appendix 3-6, "Sample Comprehensive Employment Agreement for Your Practice to Bring in a Junior Accountant to Your Solo Practice with the Possibility of Future Partnership."

The moral: Put the agreement in writing and have it reviewed by an attorney.

Liability for an Employee Versus an Independent Contractor

The employer's (master's) liability for acts of an employee is different than that for acts of an independent contractor. If an employee commits a wrongful act against a third party, your practice, as the employer, may be found liable for those acts. However, if those same acts were committed by an independent contractor, known to be an independent contractor by the third party, your practice as the employer of the contractor would ordinarily not be found liable for those wrongful acts. The lesser liability with regard to a contractor is not absolute and will not apply if your practice exercises control over the activity, which is likely in the professional context of an accounting practice.

Introductory Provisions to an Agreement

Although every written employment or independent contractor agreement must be tailored to the specific circumstances, a number of generalizations can be made about clauses to be considered. Introductory clauses should indicate who the parties to the agreement are and why they are entering a contract. Duties and responsibilities of the employee or contractor should be stated. It should be clear from the name of the document and from express provisions contained in it whether the relationship intended is that of employee or independent contractor. This clause should further clarify responsibility for payroll and related taxes.

> **Example:** You document the arrangements with a new supervisory level staff accountant in a letter agreement because you choose not to incur the expense of a complex employment agreement and fear the prospective employee will choose another firm if you push for a long agreement. The letter agreement begins with statements outlining the parties and relationship: "YOUR-NAME, CPA, LLC hires EMPLOYEE-NAME, CPA, as an employee at will, with the title "Supervisor" to provide services including tax return preparation and review, handling of tax audits, review and compilations [other details as to tasks, including administrative] . . ."

Compensation and Expense Reimbursement

Compensation should be addressed in any agreement. Care should be taken that the terms for compensation not imply a term for the employment that is not intended. Possible language might be:

> "YOUR-NAME, CPA, PC, hires EMPLOYEE-NAME at an annual salary of $65,000." Could the employee argue that the phrase "annual salary" implies a one year employment term? To avoid any issue, the agreement used should clarify that the arrangement remains an employment at will."

The most difficult issues concerning compensation pertain to profit participation and similar arrangements. These are discussed separately below, as they affect a small percentage of employees and often those to which a more permanent commitment has been made.

If any expenses will be reimbursed, either a listing of qualified expenses should be indicated or a standard for corroboration should be provided. One approach is to refer to the applicable Internal Revenue Code Sections, which addresses what is a deductible and reasonable business expense and what must be shown to corroborate such an expense. Reference to these provisions provides a specific definition with substantial guidance available in the event of a later dispute. Refer to IRC Sec. 162 and 274 and the regulations thereunder.

Term of Agreement

The term of the agreement should be specified clearly. The provision addressing duration should specify whether an at will basis or specific time period is intended. This issue should be considered in light of any other provisions addressing termination "for cause" (or otherwise), renewal, and notice before termination or renewal, since these can all affect the interpretation of the term of the agreement.

Any grounds or reasons that permit you or the employee to terminate the agreement in advance of the stated ending date should be addressed. These will typically include termination "for cause" such as nonpayment by the employer or nonperformance by the employee. Termination grounds may also include death, disability, or the sale or termination of your practice. As a sole practitioner, the provisions that

address these issues must be somewhat unique as compared to agreements for multipartner firms. The agreement should address not only what happens if the employee becomes disabled, but what if you, as the sole practitioner of the practice, become disabled. You might want the employee terminated in the event of your disability to minimize the costs to your family. On the other hand, your disability may be the very time you would want the employee to continue working, perhaps while the practice is being sold or transitioned to another accountant (whether that other accountant is the employee involved or another practitioner). Possible language might be:

> "In the event of disability of YOUR-NAME, then STAFF-ACCOUNTANT shall continue to work in the practice for 120 days following YOUR-NAME's disability at his regular compensation. If YOUR-NAME remains disabled after such 120-day period, then the Practice shall be purchased pursuant to another agreement by BUYING-CPA. STAFF-ACCOUNTANT shall continue to work for the Practice for an additional 60-days to help transition the Practice to BUYING-CPA. If BUYING-CPA terminates STAFF-ACCOUNTANT for any reason during such period, STAFF-ACCOUNTANT shall be paid for the entirety of such 60-day period by the Practice. If STAFF-ACCOUNTANT has not been terminated for cause prior to the end of such 60-day period, then the Practice or its successor or assigns shall pay STAFF-ACCOUNTANT as a bonus in acknowledgement of his having helped maintain the Practice during YOUR-NAME's disability."

The "boilerplate" language from agreements for other professions or for multipartner practices will not likely suffice to address your needs.

If the agreement is silent as to the term, state law will govern how the issue will be resolved. In some instances, a jury may have to decide from the evidence at trial what the parties meant, for example, by a provision providing for termination for cause. The jury will have to consider the employee's performance of his or her assigned duties and determine whether a reasonable employer acting in good faith would have fired the employee for cause. While discharge for mere whim or caprice will not suffice, a material misrepresentation in background, training, or skills may. These concepts are critical because if they are not addressed in some

type of written document, it will be difficult to demonstrate in court that the employee made a misrepresentation. That is why even a few sentences detailing what the staff accountant's role is, as illustrated in a preceding example, could be quite important.

> **Example:** You are unwilling to present your prospective staff accountant with a comprehensive employment agreement but want some protection against a misrepresentation. So you add the following sentence to a simple one page letter agreement: "Employee represents and warrants that the resume attached, upon which YOUR-NAME, CPA, P.C. relied in hiring Employee, is complete and accurate." The simple statement is innocuous and short. Attaching the candidate's own resume would be difficult for the candidate to object to, yet you've now established a basis upon which you relied in the event of a problem in the future.

Where the arrangement is not for an employment at will, say a three (3) year minimum term, care should be taken to define whether the agreement can be terminated for poor performance (which may be less than what state law would consider "cause") and defining performance requirements. Similarly, once there is a term for the employee (that is, not at will) "disability" must be defined clearly.

You might wish to have your practice, as the employer, reserve the right to terminate the staff accountant even without cause. Typically, the employee will then negotiate a severance arrangement.

In event of termination, your employee will generally be entitled to certain rights for the continuation of medical insurance coverage under COBRA (Title 6 of Employee Retirement Income Security Act [ERISA], enacted as part of the Consolidated Omnibus Reconciliation Act) regardless of the agreement. State law may provide additional or alternative rights. These and other rights may not be terminated contractually.

Covenant Not to Compete

One of the most important provisions in any employment agreement is the restriction designed to prevent the employee from learning your practice, learning your procedures and techniques, establishing relationships with your clients, and then terminating employment to compete with your practice. To be enforceable, such a restriction must:

- Protect legitimate economic interests of your practice as the employer. Preventing a former employee from hiring your other staff,, calling your clients, and using copies of files he took while in your employ to lure them away is certainly a legitimate economic interest of your practice. The more clearly and specifically you relate the restrictions to your practice, the more likely they will meet this test and be upheld. Further, the more clearly the restrictions are stated, the more likely the former employee will understand and abide by them.
- Not impose undue hardship on the employee. You cannot prevent a former staff accountant from earning a livelihood, and you should not need to in order to protect your reasonable interests in the practice.
- Be reasonable in scope. The covenant must not be more restrictive than necessary to protect the legitimate interests of the employer.
- Be supported by adequate consideration.
- Not be harmful to the public interest. There is a public interest in assuring that accounting services will be made available.

These rules will differ greatly by state, so it is essential that you have a local labor law attorney review and address the proposed agreement.

> **Example (1):** To provide in an agreement "Employee cannot work in accounting" after leaving your employment is overbroad and an undue hardship on the employee supporting himself. It is unreasonable and would not be enforced by a court.
>
> **Example (2):** To state in an agreement "Employee cannot work in a small public accounting firm providing public accounting services within a Twenty (20) mile radius of the Practice for a period of two (2) years" after leaving your employment is far more reasonable. The employee can work anywhere outside the 20 mile radius, and the time restriction reduces the burden on the employee while still ensuring that he or she cannot learn your business and then immediately go into competition next door.
>
> **Example (3):** A somewhat more open provision, which may not compromise your protection, may be to permit work in

public accounting anywhere, but not for a firm located within 20 miles of your practice. Under this scenario, the former employee cannot work in a small public accounting firm located within twenty (20) miles of your practice, but if he works for a firm more than 20 miles away, he can provide services to any of their clients even across the street from your ractice's office.

Example (4): Depending on the physical location of your office, you may reasonably be serving a specific market within the geographic area that can further be circumscribed without significantly affecting your protection. If your practice was located in northern New Jersey, you might have some clients in New York City, but it's really a different market, and your New York City clients are a small portion of your practice and generally are businesses owned by clients living in New Jersey, where you are based. Although New York City would be within the 20 mile radius, it's really not your key market. While you would like to have the protection throughout New York City as well, you might determine that it is not worth the increased risk of having the covenant-not-to-compete not enforced by a court. Therefore, you redefine the 20 mile radius as to specifically exclude New York City or define the 20 mile radius as only including New Jersey. The key point is to determine what you really need to protect your practice, limit the restrictions to only that, and make sure that the restrictions you do have are logically supportable as reasonable for your practice and not unfair to the former employee.

Example (5): To state that "Employee cannot work in a small public accounting firm within a Twenty (20) mile radius of the Practice (limited to State X, and excluding City A), providing write-up, compilations, tax preparation, and tax planning services," is even more reasonable and would probably not compromise any reasonable concerns you have. You have now limited the restriction to the specific type of work your practice provides. The employee

could work in private industry as an accountant anywhere, in other types of accounting practices (for example, consulting or forensic services) anywhere.

Example (6): Another approach is to focus on your practice and not the former employee. "Employee shall not provide any public accounting services in the areas of bookkeeping, compilation and review, or tax-related services to any clients of the Practice for 12 months following the termination of Employee's employment with the Practice, for any reason. Clients are defined as any person or entity to or for which the Practice has provided services in the Twenty Four (24) months prior to the termination of Employee. Employee shall not solicit any employee of the Practice for a period of Eighteen (18) Months following termination of Employee's employment with the Practice for any reason." You have now focused on restrictions relating to your practice without restricting the former employee's conduct.

Example (7): Consider combining both approaches and limiting the scope of each since together they may provide better protection for your real practice concerns, with less actual restriction of the former employee, thus increasing the likelihood of the restrictions being respected. "Employee shall not work in any capacity (whether as an employee, consultant, or otherwise) for a small accounting firm (defined as a firm that holds itself out to the public as providing accounting, tax, or bookkeeping services and which has ten or fewer accountants, whether or not licensed), within a Fifteen (15) mile radius of the Practice's office (limited to State X, and excluding City A), providing write-up, compilations, tax preparation, and tax planning services. This restriction shall be in effect for the Six Hundred (600) days following Employee's termination of employment for any reason. Employee shall not provide any public accounting services in the areas of bookkeeping, compilation and review, or tax-related services to any clients of the Practice until after the 12 month anniversary of Employee's termination, for any reason. Clients are defined as any person or

> entity to or for which the Practice has provided services in the Twenty Four (24) months prior the termination of Employee, and any person or entity related to a Client as defined in Code Section 267. Employee shall not solicit any employee of the Practice for a period of Eighteen (18) Months following termination of Employee's employment with the Practice for any reason." You have now focused on restrictions relating to your practice without restricting the former employee and combined different elements of protection which might even provide a better result for your practice.
>
> **Example (8):** There is another very different approach. You could opt not to restrict the former employee in any manner, but simply to require that the employee pay your practice for any client of the practice the employee services after leaving. Any combination or variation of this and the above techniques can be used. It is usually some reasonably crafted combination of techniques that will provide you with the best protection and an arrangement most likely to be enforced.

If the provision constitutes an unreasonable restraint of trade, it will not be enforced. Drafting a covenant-not-to-compete presents a double-edged sword. If the provision is very specific, thus providing narrower protection, the court may be more likely to uphold the provision than a provision which has more general language. Where broader and more general language is used, thus providing more extensive protection, there may also be an added intimidation affect on the employee not to engage in competing conduct for fear of violating the covenant. On the other hand, the broad scope of the provision will make enforcement of the provision in court more uncertain and enhance the possibility that the court will strike the provision as unreasonably broad or will seek to read into the provision a judicial limitation. Structuring a useable, but enforceable, covenant not to compete will always be a balancing act, with the rules changing as court cases develop. You have to evaluate what protection you really need and how it can be practically achieved in the most precise and limited manner.

This provision (and the confidentiality provision discussed below), however, may be insufficient alone to provide the desired measure of protection. The agreement should also contain a clause in which the employee agrees that your practice will be entitled to "injunctive relief" as one of your remedies. This means that the employee agrees that a court can order him to stop competing, not just pay monetary damages. While this clause will not be dispositive, it does provide your practice an important advantage if litigation occurs. See Appendix 3-7, "Sample Simple Noncompete Agreement."

Confidentiality

A nondisclosure or confidentiality provision is essential to many public accounting employment arrangements in order to protect the privacy and confidentiality of your clients. This differs from the common use of a confidentiality provision by many types of businesses where the focus is protecting the economic interests of the employer corporation in its trade secrets. Thus, for most accounting practices, any confidentiality provision you include in an agreement with an employee will be focused on different issues than the standard business forms and clauses might address. If you, in fact, have trade secret information (for example, proprietary software or consulting databases such as for a valuation or forensic practice), you may wish to have both types of provisions. Be sure whatever documents are used are thus tailored to your practice's real needs, not just "boilerplate."

Another challenge is the balancing of your needs, as the employer, for protection against the right a former employee has to use his skills to earn a livelihood. For a confidentiality agreement to be effective in court, it must be reasonable, including only items which are, in fact, confidential. The provisions should reflect the specific nature of your practice's business and your practice's clients. Similar issues of breadth versus specificity, which affect a covenant-not- to-compete, discussed above, affect a confidentiality agreement. Anything which is not essential to your practice's business interests or which can be obtained in the public domain, through no fault of the employee, should be excluded. The employee should in all cases be required to leave all physical embodiments of the confidential data with the employer on termination. See Appendix 3-8, "Sample Simple Nondisclosure Agreement" and Appendix 3-9, "Sample Alternative Simple Nondisclosure Agreement."

Other Provisions

The final provisions of many employment agreements are often quickly dispensed with as "boilerplate" or standard provisions. This can be quite dangerous. Jurisdiction and choice of law must be addressed if your practice operates in more than one state. Arbitration provisions can substantially limit a party's rights in the event of a dispute. If there is an arbitration provision and an injunction provision enforceable in the state or federal courts, it may not be clear how the interplay between the jurisdiction of the court and arbitrator will be resolved. It may provide fertile ground for litigation in both before the matter can be resolved. Thus, instead of limiting disputes, an arbitration provision may tend to create an additional level of conflict. These matters should be carefully evaluated prior to inclusion. A host of additional provisions are illustrated in the various sample annotated documents in the appendices to this chapter.

Offer the Possibility of Profit Sharing or Partnership (Equity) to a Staff Accountant

To attract or retain a qualified staff accountant and to motivate him to grow professionally, more than mere salary and basic benefits may be required. Initially, a bonus based on billable hours and business generated may suffice. Possible language for such an arrangement might be:

> "If Employee bills more than 1,800 billable hours, which in the sole discretion of Employer are reasonable and likely to be at least 85 percent collectable, Employee shall receive a bonus of $25/hour over 1,800 hours, payable within Sixty (60) days of the end of the year. This figure shall be annualized for the first year, but not for any later year."

At some point, even a bonus may not suffice, and a share of profits or a bonus based on firm profitability may be necessary. If such an employee continues to advance, he or she may want more security, and you may need (or for succession planning purposes, want) to address the possibility of a future equity position. This can be done in many formats. For the purposes of this section, it is assumed that the relationship

will not progress beyond creating the offer or possibility of equity. Chapter 4 addresses the later phase in which you actually create a junior or equal partner. For the purposes of this chapter, the employee relationship will govern.

If you reach the point in your practice when profit participation or bonuses based on firm profit or the possibility of equity become likely, there are other steps to take to create the foundation for these arrangements. These steps are based on the premise that you cannot take away easily what you have given. If you want and have been taking certain perquisites or have maintained certain preferential relationships, these should be formally recognized in your practice documents now, before the employee is offered bonus or equity participation. It is far more difficult,, if not impossible (except with considerable loss of goodwill and possibly jeopardizing the relationship), to achieve this after the fact.

> **Example:** Your practice rents office space from a building you own. You've never signed a formal lease. You should determine and corroborate the rent to be charged, the rental terms, and ancillary arrangements and document them all in a signed lease before hiring the new staff accountant to whom you may offer a profits-based bonus or equity. If the lease exists, you can disclose its existence and could even provide a copy to the new employee if you wish. But the key point is that the arrangement and related party payments are "carved in stone" before the employment arrangement. Once you've hired a senior accountant and told him you will give him a bonus of 10 percent of profits, it is far harder to then add "and by the way, that's after I pay rent to myself for the office, and I'll have to figure out what that is". That approach simply doesn't work. You can still keep the discussions with the prospective staff accountant simple, and you may not have to show him the lease. But adding a single sentence to a short letter agreement you and the new staff accountant sign will preserve both your economic position and credibility: "Employee acknowledges that any bonus based on Practice profits shall be after payment of office rent to YOUR-NAME's related entity." It's now all above board.

Bonus: Profit Participation

Bonuses or participations linked to profits can be particularly nettlesome in a closely held accounting practice, since you, as the principal accountant, have almost unfettered control over salaries, expense accounts, and asset purchases. It is, therefore, essential that either a bonus is based on a formula independent of expenses (for example, hours billed or revenues collected) or that any agreement with a staff accountant who is to receive a bonus specify in considerable detail how the "profit" figure on which a bonus will be based is to be calculated. Possible language for such an arrangement might be:

> "Senior shall receive a bonus equal to Twenty Percent (20 percent) of gross revenues actually collected from all client jobs, excluding income tax returns, which Senior is designated as the supervising accountant and which, in fact, Senior runs to the extent such amount exceeds a base of $50,000 per calendar year."

Because of the complexity of a profits-based bonus in a small practice, for the staff accountant to become a partner is not a common approach unless the staff accountant is being groomed, and your practice is prepared. The starting point for a profits-based bonus calculation could be taxable income as reported on the corporation's federal income tax return. However, adjustments for elective expensing of assets under Code Section 179, your salary and other items are typically negotiated. If a real profits-based bonus is to be used, it is essential that there be a written confirmation of the agreement. Consider the following items in documenting the arrangement:

- When should the profits bonus be paid (monthly, quarterly, or annually)? How long after each measuring period?
- Should interim payments be made? If it is an annual calculation, should quarterly payments be made on prior year figures? On current year figures at full rate? At current year figures at a reduced rate?
- What specific adjustments should be made to profits to arrive at the base for bonus calculations?
- If adjustments are made based on certain tax provisions (for example, Section 179 expensing) what should be done if those provisions change?

- Should partial year adjustments be made?
- What is to be done in the year the staff accountant becomes a partner, or instead, is terminated?
- How should disputes be resolved?
- If the staff accountant is to get a profits bonus but is not yet given equity, should you protect yourself by making it clear that there is no equity being given? Should you expressly state this?
- What happens in the event of your disability or death?

Option to Buy in: Partnership Track

Depending on a myriad of possible factors including the clout of the staff accountant you wish to hire or retain, partnership track may be merely something discussed or mentioned in passing, informally discussed, or in some instances, a key negotiation point confirmed in a written agreement. If the issue of equity is raised, it is advisable to have whatever documents you sign with your staff accountant clearly reflect the parameters of any such offer. If the right to purchase equity in your practice is to be subject to any significant restrictions, it should be specified to avoid disputes if or when the rights are earned in the future. If the right to purchase equity is dependent on your personal determination, in your discretion, this should be confirmed in writing. In most instances, the initial offer of equity comes only after a trial period throughout which you reserve the unfettered right to terminate the arrangement.

Some issues to address include:

- Is there any commitment to provide equity, or merely an agreement to consider it in your sole discretion?
- How much equity will be up for discussion?
- What benchmarks or factors will be considered in evaluating the offer of equity?
- What external events may impact the offer of equity or the amount of equity?
- What if you opt to merge or bring in another partner before the staff accountant receives his equity?
- Will you specify an arrangement to purchase the equity now or leave it open pending a determination of whether it will, in fact, be granted? If specified, what type of arrangements will be made to purchase the equity?

Future Partnership Status: Protecting the Initial Partner

While a shareholders' or operating agreement for a one person accounting practice (referred to as the "governing documents") tends to be viewed as a simple and unimportant formality, you should not treat it as such. When you offer equity, the practice documents can be appended to whatever employment or letter agreement you sign with your staff accountant or incorporate by reference. These documents can and should take on a significant degree of importance when profit participation or equity is offered because they can set forth the parameters and details of what you are really offering. For example, if you are the founding member of the practice, have developed virtually all clients, and so on, you should be entitled to favorable provision when a younger staff accountant becomes partner (called "senior provisions"). You should be entitled to some preferential treatment as to certain issues, for example, the amount and scheduling of vacation time or final signoff on decisions with major impact on the practice. These points should be documented in advance so that they are part of the deal.

When you, as a solo practitioner, plan to bring in a partner for the first time, the first is a category of provisions in the governing documents for preferences afforded to the senior professionals. This is commonly done to recognize your greater time commitment in terms of historic contributions to the practice and sometimes merely your negotiating clout as the senior professional. Even if the provisions don't apply at present to the staff accountant, they set the framework of what his equity position will be before the transaction is consummated. These governing documents set the parameters for the future equity participation.

There is also a simpler, less document-intensive approach. For example, instead of having an entire shareholders' agreement prepared, ,just attach a couple of key clauses that you want included in the deal as an exhibit to a letter agreement if your staff accountant, in fact, does become a partner. This approach involves less paperwork and is admittedly less comprehensive, but perhaps simpler, cheaper, and more practical. See Appendix 3-10, "Sample 'Senior Provisions' Favoring Founding Accountant as an Exhibit to Employment Agreement Providing for Possible Future Equity."

Vacation provisions in a shareholders' agreement for your practice could include the following:

> "Senior Professional Provision. Each Junior Partner Shareholder is entitled to Three (3) weeks of paid vacation each calendar year. Each Junior Partner Shareholder shall give the Corporation reasonable advanced Notice of his intended vacation periods and shall give reasonable consideration to the needs of the Corporation in planning such vacation periods. The Junior Partner Shareholders shall not take vacations which overlap without the consent of the Principal Shareholder. The Principal Shareholder is entitled to Five (5) weeks of paid vacation each calendar year."

Another common provision in many shareholder and operating agreements is the delineation of specific fundamental transactions which require a certain level of approval, sometimes referred to as "major decisions." In the context of creating the foundation for the possible admission of a partner, you should make certain that you have some protection and control over major decisions that are of particular importance to you. The following is a sample clause for inclusion in a shareholders' agreement:

> "Major decisions, enumerated below, shall require the approval of the Principal Shareholder, which approval may be provided or withheld in the absolute discretion of the Principal Shareholder, or, in the event of the disability of the Principal Shareholder, the Designee of the Principal Shareholder ("Major Decisions"). The Major Decisions shall include: Acquisition or creation of a business other than the Practice; Incurring any debt other than trade accounts payable, or other debts incurred in the ordinary course of the operation of the Practice, or to guarantee any debt or other obligation. Any borrowing secured by Corporate assets in excess of Twenty Thousand Dollars ($20,000); Issuance of additional Shares, changes in the capitalization of the Corporation, change in the tax status of the Corporation to other than an S corporation; Sale, lease, license, or other transfer of any material asset; Any nonrenewal or change in the license of the Telephone Numbers; Any nonrenewal or change in the lease of the Practice's office; The adjustment, settlement, or the compromise of any material claim, obligation, debt, demand, suit, or judgment against the Corporation, the officers or directors of the Corporation with respect to their relationship to the Corporation."

Termination of a Professional Staff Member

Unfortunately, not every employment arrangement is successful. Even with the offer of potential profit sharing, equity, and perhaps even equal partnership, the arrangement may fail. Whatever the reason, steps must be taken to unwind the relationship. The more intertwined the staff accountant is with your practice, the more difficult this process may be.

If you wish to terminate the arrangements with your staff accountant, you can both obviously make any agreement you wish to terminate the relationship. For lower level employees, the termination may be little more than your advising the employee of the termination, paying any accrued vacation pay and other payments, offering health coverage continuation as required by federal or state law, and taking any other end of employment steps required by your state's law.

For an employee with whom you have any type of written agreement, in addition to complying with state law requirements for termination and final payments, the termination of the relationship should also follow the guidelines contained in the documentation used to create the relationship, if any relevant issues were addressed.

In addition to the required payments, notifications, or COBRA elections listed above, the termination of an employment relationship will necessarily involve a transition process:

- The first step as an employer should be to consult with a local labor lawyer to be certain that you have documented the basis for firing, complied with any applicable laws, and that the steps necessary to protect your practice post-termination have been taken.
- Arrange for the employee to turn over any documentation and materials from your practice including client files, proprietary software, address information, and other documents. A significant difficulty is how to confirm that any electronic versions of your practice documents have been deleted from any employee laptop, home computer, or memory stick. At minimum, a representation to that effect should be obtained.
- Final pay, accrued vacation pay, and other financial arrangements must be resolved, and the employee should acknowledge receipt of all amounts due and release you and your practice from any further claims.

- Post-employment issues should be addressed to the extent applicable: for example, obtain the employee's signature on any required noncompete agreements, confidentiality agreements, and releases of further claims from the employee against you or the practice. The ability to obtain many of these protections will depend on whether you had any written arrangements confirming these rights at the inception of the relationship.

As with the initial employment contract, these matters should be reduced to writing. There are again several options:

- Comprehensive termination agreement, which is clearly preferable but not always practical. This can reconfirm a covenant-not- to-compete that was set forth in the original employment contract, list all property to be returned, and delineate steps to protect practice data (for example, a requirement that the departing employee return all files, delete any practice work product from his or her home computers, etc).
- Short or simple termination "letter agreement." While not as protective as a comprehensive contract, if carefully done, at least some of the key terms of the arrangement can be documented. Showing the calculations of all final payments alone can avoid later disputes.
- Ancillary documentation. While your firm manual and other documentation should ideally serve to elaborate on points addressed in a comprehensive termination agreement, in the absence of a termination agreement the terms of your manual may be your best (perhaps only) documentation of the practice's terms for ending the employment relationship and expectations from departing employees.

Unfortunately, the norm in the accounting profession—especially in smaller practices—is to use little or no documentation for hiring junior and staff accountants and administrative staff. It is even uncommon for small practices to have much in writing with senior accountants. The lack of documentation confirming the employment terms can create considerable difficulty if the termination becomes adversarial. How can you prove what was agreed to? The safer approach, especially with employee termination, is to consult a labor attorney in your state. There are nuances of state law and a range of technical issues and exposure items

that could require professional determinations. See Appendix 3-11, "Sample General Release and Indemnification Between Nonequity Employee and Practice" and Appendix 3-12, "Sample Termination of Staff Accountant from Your Practice."

Summary

This chapter has reviewed many of the decisions, issues, and planning considerations as your practice begins the process of growing beyond solo practice. Many of these same concepts are also relevant when a multipractice partnership hires professional staff. Certain staffing issues such as payroll tax, employee versus independent contractor, pension coverage, and so forth, were not addressed in this chapter since these topics are addressed in many other resources available to you. Further, details of the laws governing noncompete agreements, discrimination, and so on are not addressed in this chapter, as they vary considerably from state to state, and in most instances, you're best advised to retain a local labor attorney to advise you through the shoals. As to the issues discussed above, the relevant point to take away is that documentation of employment terms is key. Consult the sample language of the appendices associated with this chapter for approaches to the many issues involved with bringing staff on board.

Forming a Two Partner Firm 4

In Chapter 3, your practice grew to the level at which you had to hire staff and even begin discussing the possibility of future partnership. The next milestone phase in the growth and development of your practice may occur when one or more of your professional staff has proven themselves to the point where you need or want to make them a junior partner, or a colleague joins you to create a two partner firm. This chapter focuses on the steps you should consider taking to plan, manage, and document that phase of your practice's life cycle.

Notes on Terminology

The terms *partner* and *partnership* are used generically in many cases to mean that the staff accountant you are promoting to an ownership or ownership-like status is, to the outside world, your "partner." You and your new "partner" may actually be members of a limited liability company (LLC), shareholders in a corporation, or partners in a partnership or limited liability partnership (LLP). While the correct terminology for each of you will depend on the form of business entity selected, this chapter will use the term *partner* to refer to the relationship.

The term *ownership-like* is used because in some instances your new partner may not be an equity partner at all or may have only a token profits interest. The arrangement may entail giving the status of "partner," without the associated equity or decision making authority—for example, as recognition of years of service or in an effort to retain a loyal employee. In many instances, a staff accountant who is made "partner" may have little or no decision making authority or equity in your practice.

Reasons for Adding a Partner

There are a myriad of reasons to add a partner. A few of the key ones are reviewed below. It is important that you identify your motivations for this

significant practice milestone so that the planning and negotiations are all designed to meet your intended objectives, and the documentation confirms this.

Retention

One way to grow your solo or small accounting practice is by hiring associates. When those associates have been with you for some years, you may want to solidify the relationship or acknowledge their contribution by making them a partner. This step may be necessary to dissuade the staff accountant from moving to another firm. If this is your goal, apart from the prestige of the "partner" status, consider incorporating into the arrangements a bonus arrangement, or a "kicker," based on years with the practice, or another enticement to retain the staff member. The mere act of providing a formal partnership agreement to a junior partner may give the promotion and new status concrete confirmation, thus helping achieve your objectives.

> **Example:** You promote a staff accountant to partner and provide him or her with a nominal 5 percent profits interest in your practice. Since you generate 100 percent of the clients, and it is unlikely that your junior partner will make much rain, a greater profits interest didn't seem warranted. However, you felt that to retain this valued employee it was essential to provide him or her with an interest in the firm and title of partner. In spite of a lack of business-generating skills, this individual has served many key clients of yours for years, and you realize that's key to the successful functioning of your practice. To entice this valued employee to continue to remain with the firm, you provide that for every two years he or she remains with the practice after being made partner, you will increase their profits interest by 1 percent up to a maximum of 10 percent.

Succession Planning

Creating a partnership could be an integral part of your exit strategy by bringing in a partner who will grow with and eventually buy you out of

your practice. If succession is an important goal, at minimum, state it in the negotiations and confirm it in the documentation. It would be preferable to create a mechanism to achieve this in the documents.

Image

In some cases, you may want to remain essentially autonomous but believe your practice image would be improved if you were in partnership rather than acting as a sole practitioner. If that is the primary motivation, then the documentation should carefully restrict the actions of the new junior partner and protect your decision making and control. Be wary, however, that a person designated as a partner may create liabilities that are an issue for your practice if third parties have no knowledge of the restrictions on the junior partner's authority.

> **Example:** You have four staff accountants. Your clients are primarily closely held business owners and professionals who you advise on a range of business and tax matters, including succession planning. As a sole practitioner, you've been questioned by your own clients on more than several occasions as to whether you've addressed a succession plan. Promoting a staff accountant to junior partner and creating a buy-out arrangement for the practice in the event of your disability or death (you don't wish to give up the right to sell the practice while you are alive to another firm at a greater price) not only provides needed succession planning for you and your family but may give you added credibility with your clients in selling them on similar planning.

Control Issues and Your New Partner

There are many forms that the relationship with your new partner, or newly promoted staff accountant, can take. Typically, there are four common scenarios for a small accounting firm partnership, each of which has its own unique considerations, issues, planning opportunities, and documentation:

Junior Partner in Name Only

You may feel obligated to promote a staff accountant to junior partner, but you will continue to generate most business and wish to control the new partnership. The practice documentation, whether for an LLC, LLP, or corporation should reflect this arrangement.

> **Example:** You hired a young accountant right out of school about 10 years ago. This individual has proven to be both hard working and loyal, especially during the grueling hours of tax season. You want to reward the hard work and give the title of "partner" so that this employee will continue to have the pride of ownership over the job that motivates him or her. However, for personal reasons, the employee is not interested in taking on the financial risk of being a real partner, nor the headaches of administering a practice. Since the clients, the risk, and the administrative responsibility of the practice are and will remain your responsibility a compromise arrangement of making him or her a contract partner—a partner with no equity, control, or administrative responsibility—works well for both of you. Your practice's attorney finalizes the agreement with safeguards for your junior "partner" to limit his or her liability exposure.

Junior Partner with Expectation of Becoming a Full Partner

If the expectation is that the staff accountant you are making a junior partner will grow into a full equal partner, the governing documents should reflect a mechanism for increasing the junior partner's equity position over time. The control provision is likely to be more balanced than in the preceding situation.

> **Example:** You have a staff accountant that has been with you for five years and has begun to generate clients and has done a great job serving your clients. At present, he or she is only generating about 10 percent of the practices overall billings, but you've seen steady development of this person's skills in dealing with clients and are optimistic about his or her ability to become a full partner at some future

date. In order to retain this person, you believe you need to put them on the partnership track. Subject to continued performance, you believe it reasonable to have his or her interests grow towards equal partnership. The initial arrangement can be to provide a 10 percent equity interest while preserving most key practice decisions to your control. Each year in the next five you could agree to increase the junior partner's equity interest based on a range of subjective factors including generation of clients, professionalism, and assumption of administrative responsibilities. This provides you with ultimate control, but sets up an arrangement where your junior partner expects and can be rewarded for continued contributions.

Junior Partner to Eventually Purchase Remainder of Practice

A junior partner may join your practice or be promoted to partner with the expectation of maturing into a full partner and eventually taking over the practice as part of your exit strategy as senior partner.

Full Partner

If you join together with another sole practitioner to create a partnership, the relationship may be one that is equal or unequal depending on the bargaining clout you each have. In most partnership agreements, the equality of the relationship is assumed. If the relationship is such that you are the primary partner, then provisions and documentation similar to that used with a junior partner may be more appropriate. Another common scenario is for your partner to have substantial rights as a partner more than just a junior partner. However, because of your greater business generation and experience, you may assume the role of management partner. This type of arrangement is illustrated in Appendix 4-1, "Sample Comprehensive Operating Agreement for You and a Colleague From a Two Person Accounting Practice with You as Primary and Managing Partner."

Equity Issues and Your New Partner

There are several different levels of "partnership" that may differ from the equal partnership arrangement.

Nonequity Partner

A contract partner arrangement is an arrangement in which the junior partner is referred to as a "partner" and has certain limited contract rights created under the practice's partnership agreement but not full participatory partnership. This can be offered to a valued staff accountant who does not possess all the skills for becoming a full partner. This type of arrangement could be structured in a number of ways. For example:

- Use a two member LLC naming yourself as manager and your junior partner as a member with you. The LLC would be taxed as a partnership. Profits and other benefits could be allocated in any manner so long as consistent with tax requirements (for example, Code Section 704(b) substantial economic effect).
- Create a voting and nonvoting class of stock. You can own all voting stock, and your junior partner can own nonvoting stock. You could each be paid a salary. Profits could be divided with some flexibility if the practice professional corporation were a C corporation but only equally if an S corporation.

Contract partners generally share in the income of the firm but are not part of the equity owners' compensation system. They are recognized by clients and other staff as partners but do not contribute capital and have no ownership stake in the firm. In some states they may own a fraction of one percent of stock to satisfy legal requirements for shareholder status. These partners usually do not participate in the management of the firm and may not have access to all the financial information of the firm.

Equity Partner

When adding an equity partner, either from within the firm or from the outside, you need to address whether you will require a contribution to

the practice's capital. Equity partners typically share in all the practices profits, decisions, and liabilities as full owners; however, the degree to which they share and how their share may change over time can vary considerably. The governing documentation must reflect this.

Structure Issues and Your New Partner

Prior to admitting your new partner, you need to be certain that you have selected, formed, and updated your practice entity to the format that you will use. There are two options: to evolve from the existing solo practice structure or to change to a new structure. Both methods are discussed below.

Evolving the Existing Practice Structure

When you practiced as a sole practitioner, you could have practiced as a sole proprietorship, a corporation, or an LLC. Before you can complete the transition to a partnership, the former structure may have to change, perhaps considerably. There are a number of ways in which your growing practice with your new partner can be formed. In most cases, the type of entity will be an evolution of your existing practice structure.

Sole Proprietorship

The sole proprietorship is a simplistic form of operation and can no longer be used. Either an entity has to be formed, or you will effectively operate as a general partnership under state law as soon as you have a partner. This is a disadvantageous option and should be avoided.

Professional Corporation

If you operated as a professional corporation, whether a C or S corporation as a sole proprietor, there may be little "structural" or tax change in your practice entity as you evolve into a two partner (shareholder) practice. However, if you had a shareholders' agreement as a sole shareholder sole practitioner, that agreement should be revised to address the interrelationship of you and your new partner as co-shareholders. This is illustrated in Appendix 4-2, "Sample Partnership Agreement for Two Practitioners Joining as Equal Partners in General Partnership." If you

were an S corporation, you should obtain representations from your new junior partner that such status won't be jeopardized. It is also important as you add a partner to understand the benefit of the professional corporation for limiting your liability. As a sole practitioner, having your practice organized as a professional corporation enabled you to avoid liability for nonprofessional (malpractice) issues. So for example, if you signed a lease without a personal guarantee, only your practice, not you, would be liable. If someone was injured in your office, only your practice, not you personally, should have been able to be held liable. However, you were personally liable, without limit, for any malpractice claims. The only exception to this would have been if you did not sufficiently adhere to corporate formalities, and your corporation was pierced in a lawsuit and you were held personally liable. Now that you are bringing in a new partner, this scenario changes in one important respect. If your practice professional corporation is sued for malpractice for an act your new partner committed as a partner (not a prior act as an employee) and you were not involved in the matter, then you should not be able to be held personally liable. Your new partner will be, the corporation will be, but not you.

> **Example:** You were the sole shareholder of your professional corporation which was taxed as an S corporation. You admit a junior partner as a 20 percent shareholder. You need to update your corporate documents in a number of ways. Your shareholders' agreement should be updated to address a range of issues including the following. Representations and warranties that the junior partner will meet S corporation standards should be added. A buy-out agreement, and likely insurance funding, should be addressed in the agreement. Management and control provisions should be addressed in some detail. Your corporate bylaws need to be revised, for example, to address a possible two person board or the responsibilities of officers. You might have ignored any type of annual meeting or records as a sole practitioner (a mistake as explained in Chapter 2) but now, not only should you not ignore this but an actual meeting with appropriate notice, not merely a signed unanimous consent, should be used.

Limited Liability Corporation

If you operated as an LLC, you would have been treated as a disregarded entity. If your junior partner is, in fact, a partner (member), then your practice LLC will have to transform from a disregarded entity into a partnership for federal income tax purposes. This should be accompanied by a corresponding change in your practice documents from the one member, relatively simple LLC operating agreement illustrated in Chapter 2 to a more comprehensive operating agreement illustrated in Appendix 4-3, "Sample Shareholders' Agreement for Two Person Accounting Practice: Managing Partner and Two Staff Accountants Promoted to Junior Partner." Also, see Appendix 4-4, "Sample LLC Operating Agreement for a Nonequity Contract ' Partner'."

There is an exception to this. If your state permits a nonequity member to be a member in your LLC, and the staff member to whom you are giving junior partner status is really to be a contract partner without equity, you might be able to retain your one member disregarded entity status even with your new contract partner. See Appendix 4-5, "Sample Annotated State Professional Services LLC Statute."

Changing the Existing Practice Structure

In some instances you will want to change your existing practice structure before admitting a partner. In addition to the modifications of existing practice structures above, the following options could be considered for the organization of your growing practice:

- General Partnership.
- Professional Limited Liability Company.
- Limited Liability Partnership.

These entities, and planning for them, are discussed in more detail below.

General Partnership

You and your new partner could practice as a simple general partnership. If you take no steps to form an entity, the relationship will default to general partnership by operation of law. That seems like an easy way to enter into partnership, but in fact, there are substantial detriments to this approach, the most obvious being unlimited liability for both

partners. A sample general partnership agreement for a two partner practice appears in Appendix 4-2, "Sample Partnership Agreement for Two Practitioners Joining as Equal Partners in a General Partnership." A sample general partnership agreement with a purchase agreement appears in Appendix 4-6, "Sample General Partnership Agreement Admitting a New Junior Partner on a Purchase Basis with Ancillary Documentation." In most cases standard general partnership is not an option that makes sense for the practice.

Limited Liability Partnership

Many state statutes permit the formation of a special form of general partnership (or in some instances, a limited partnership) known as an LLP. LLPs, also called registered limited liability partnerships, are recognized in many, but not all states. This form of practice entity offers greater protection than a standard general partnership form of operation, but the degree of additional protection will vary depending on the provisions of state law. The protection an LLP provides, while significant, is limited. The protection is that you should not automatically be held liable for the professional malpractice acts of another partner. However other liabilities, such as contractual liability under a lease obligation, will be an obligation of all partners in an LLP in a manner similar to an LLC. If your state LLP statute leaves room for this potential liability, unless there is an overriding reason not to use a corporate or LLC structure for more comprehensive liability protection, these other formats should be used. In contrast, some state LLP statutes provide a more comprehensive measure of liability protection analogous to that of an LLC and thus, may be safer to use.

Because of these variations, before opting for an LLP structure, you can take one or both of the following approaches. Read your state's LLP statute. The statutes are not that long and should be readily obtainable by a quick Internet search. Compared with the partnership tax statutes with which you're familiar, the LLP statutes will be light reading. Whether or not you choose to pursue the LLP statute on your own, you should then consult with a corporate attorney to make the final determination as to whether an LLP will provide the protection and format you want, and if so, to then draft the governing documents (for example, state filing to form the entity, publication or notice requirements, or partnership agreement).

If you opt for an LLP, you clearly should have a partnership agreement setting forth the duties, rights, and obligations that both you and your new junior partner have. If you do not prepare and sign a partnership agreement, then state statute default rules will govern your relationship.

Professional Service Limited Liability Corporation

Licensed professionals who wish to practice within the type of limited liability structure offered by the LLC can organize themselves as professional service limited liability corporations (PLLCs). PLLC rules are provided in many state statutes and include special provisions governing professional service LLCs. If you operate a solo practice, and the practice is in corporate form, and you add a partner, you should have limited liability from any nonmalpractice claim made against the practice. The practice can then continue as a corporation. If your practice is organized as a solo PLLC before adding a partner, it will have to transition from a disregarded entity to a partnership. Partnership tax issues, therefore, become relevant.

When a professional firm, such as an accounting firm, operates in several states, the LLC can offer an important advantage of facilitating interstate operations while maintaining the limited liability characteristic of a professional corporation.

Caution: While the LLP may at first sound to be the equivalent of a professional corporation (or professional association) providing limited liability, this may not be true. While some state statutes grant the LLC similar liability protection afforded to the P.C., many LLP statutes do not. Instead, they do not provide any limitation on liability with respect to leases or bank loans, for example. For many professional practice firms, these contractual liabilities (for example, member guarantees on a lease) are some of the largest liabilities of the entity.

Comparison of LLCs and LLPs

LLPs are commonly used for professional practices such as accounting firms. The LLP is a partnership which provides limited liability to its partners for liability arising from the malpractice of other partners. Similar to an LLC and a professional corporation, it does not protect you

from liabilities arising from your own malpractice or that of employees under your supervision. Furthermore, it generally does not provide protection for business and tort liabilities of the LLP. Therefore, each partner remains jointly and severally liable for all commercial debts such as leases, sexual harassment claims, and accounts payable of the LLP. Many professional service entities have opted to use an LLP rather than an LLC because LLCs are subject to corporate level taxes in certain states.

An LLP is a general partnership which files a registration form with the appropriate state filing authority. The registration provides information relating to the partnership and its partners, with such information requirements varying from state to state. LLPs will generally be treated as a partnership for federal tax purposes, just as most LLCs will. An LLP retains the entity's original general partnership form but provides a partial liability shield to the partners. Most state statutes provide that a partner in an LLP is not liable for debts, obligations, and liabilities chargeable to the partnership arising from negligence, malpractice, wrongful acts, or misconduct of employees not under the direct supervision of that partner. The partners in an LLP formed in those states, however, are generally liable for the commercial obligations (that is, contract liability) and tort liability of the LLP. With the recent development of the LLP, the advantage of the LLC over a partnership has slightly diminished.

> **Example:** Able, Baker, and Charles form an accounting firm. They set up the firm as an LLP. They sign a lease for an office. Baker commits malpractice, and the firm is sued and eventually dissolves. Able and Charles cannot be sued for the malpractice Baker committed (if they were not involved in the case), but all three remain liable on the LLP's lease obligations.

In contrast to LLPs, LLCs provide limited liability to the owners with respect to contractual and tort liabilities of the entity. In certain states where professional LLCs are permitted, however, a member in a professional LLC will generally not be protected from liability resulting from his or her own malpractice or the malpractice of someone directly under his or her supervision.

> **Example:** Able, Baker, and Charles form an accounting firm. They set up the firm as an LLC. They sign a lease for

an office. Baker commits malpractice, and the firm is sued and eventually dissolves. Able and Charles cannot be sued for the malpractice Baker committed (if they were not involved in the case); further, none of the members in the LLC are liable on the LLC's lease obligations.

While the LLC thus provides better protection than the LLP, it may not be an option due to legal (or tax) impediments in some situations. Further, if your landlord insisted on a personal guarantee of the partners, which is often the case, there may be little practical difference between using an LLP or an LLC, at least with respect to facilities related liabilities and claims.

There are a few states where partners in an LLP are protected from all of the LLP's debts and obligation. In such states there might be little practical difference between LLCs and LLPs.

LLPs have been primarily enacted to be used by national accounting and law firms. Large accounting firms have opted to be LLPs rather than LLCs because LLPs are taxed as partnerships at all state levels, whereas LLCs are taxed by some states at the entity level.

Converting to an LLP is a much more streamlined procedure than converting to an LLC, which necessitates the creation of a new entity. An LLP is the existing partnership which files a registration statement. The LLP may be preferred by some people because of the convenience of conversion.

Example: You and a colleague joined together to create a larger practice a few years ago. You never bothered with forming an entity and by default have been a general partnership with a simplistic general partnership agreement. You are not really concerned about contractual or other liability as you have a lease with a separate entity the two of you own and few other commitments. Further, you have adequate other insurance coverage. You do recognize the concern over malpractice, and as the new practice has grown, you realize that you do each retain separate clients. You opt to convert your general partnership into an LLP with a simple state law filing.

It is also important to note that the choice as to whether to be an LLP or an LLC may be limited by certain professional state licensing authorities. For instance, a state LLC statute may expressly permit the formation of a professional LLC to practice accounting, but the court in that state which provides the rules regulating the practice of accounting may not allow accountants to practice as LLCs. In such states, accountants would not be permitted to practice as LLCs.

In some states, professional LLCs are permitted and have become prevalent. In other states, there is still less clarity as to whether or not LLCs may be used by professionals. Furthermore, the use of LLCs will generally need to be authorized by the appropriate licensing authorities.

> **Example:** Assume you have one partner, Jones, in a practice general partnership. Your partner Jones commits malpractice giving rise to a $300,000 judgment. Each of you are liable for the entire $300,000 liability. If the entity were a professional corporation, an LLC, or an LLP, then the entity and only Jones would be liable for the $300,000 liability. This would mean any assets of your practice entity, including accounts receivable, would be at risk. You would have no personal liability.

The bottom line is that you probably should prefer an LLC or professional corporation over a general partnership or LLP if either is available and feasible.

Governing Issues and Your New Partner

The key document for the governance of an accounting firm is the partnership, shareholders', or operating agreement (referred to in the following discussion simply as "the partnership agreement"). This document should address as many critical issues to the relationship of you and your partner, and your practice's survival, as feasible. It can also provide valuable parameters for the practice being managed, the strength, position, and importance of each professional involved, and so forth. The following sections also discuss many of the ancillary uses of partnership agreements.

Governing Agreement and Personal Financial Planning

The partnership agreement for your practice should be viewed as more than just a practice document. When considering financial planning for yourself and your family, your practice's partnership agreement is an essential factor in your personal planning. Your interest in your practice may be one of the largest assets in your estate and the primary factor affecting your key financial planning milestones: death, disability, or retirement.

The key to protecting your interest in your firm is a comprehensive partnership agreement addressing not only general business issues such as management, operations, vacation, voting rights, executive committees, and so forth, but also addressing critical personal issues such as termination, disability, death, divorce, retirement, and so forth. To properly address your own personal financial planning, proper investment strategies for retirement accounts and trusts for children are simply not enough. Succession planning, insurance planning, buy-sell, and other planning are not only vital to your practice but vital to your personal planning and family's financial security as well.

A partnership agreement can provide substantial benefits in a host of matters beyond the mere death benefit buyout, which is typically addressed through a cross-purchase or redemption arrangement.

Divorce

If you divorce, your partnership agreement is a key document analyzed in performing the inevitable valuation of marital assets for purposes of equitable distribution. Partners may insist on some protection from each other's spouses. The simplest step sometimes used is to have spouses sign the partnership agreement acknowledging the existence of certain restrictions and covenants. A more comprehensive approach would be to include a clause in the agreement that all partners must execute a prenuptial or postnuptial agreement preserving the integrity of the partnership interest. Where the partnership interest is marital property, depending on the facts and circumstances, the firm partnership agreement, especially where the buy-out provisions make a reasonable arm's-length attempt at determining a fair market value for a partner's interest, may simplify the valuation and investigative process. This could avoid what might otherwise be significant disruption to the practice.

> **Example:** You were a member of a small accounting partnership many years ago, and one of your partners went through a venomous, litigious divorce. The practice was embroiled in a valuation battle that sapped considerable resources and created ongoing disruption as various forensic accountants dug through endless records. You're about to give partnership to a staff accountant but don't want to relive the same problems. The partnership agreement provides for a mandatory formula to be used for all buy-out situations, so there is no intent to be unfair to anyone's spouse. You both agree that you don't want to go back to your respective spouses and demand postnuptial agreements (and the validity of such agreements may be questionable in your state). Instead, you have each of your spouses endorse a copy of the partnership agreement formally acknowledging the buy-out provisions as being mandatory in all situations, including divorce. You recognize that since your respective spouses were not represented by independent counsel, their agreement to this could be challenged, but this seems like an acceptable middle ground between doing nothing or creating the cost and unpleasantness of formal postnuptial agreements.

Death of a Partner

In the event of your death or the death of your partner, the binding buy-out provision contained in a partnership agreement will likely serve as the evidence of value for federal estate tax purposes. Most importantly, it will assure an orderly transition of the practice to the survivor and the payment of needed funds to waiting heirs. Funding is often in the form of life insurance used to pay the buy-out price. In other instances, the estate of a deceased partner is left to rely upon the continued financial stability of the firm to pay out a death benefit over time. Where this latter approach is used, consider contingency plans to mitigate against financial difficulties in the event the firm is unable to meet its commitments on a timely basis. This could take the form of additional personal insurance or an extra effort to fund savings. Your personal insurance coverage should be coordinated with the insurance coverage and payments provided under

your practice's partnership agreement. Personal insurance should not be overlooked since a mere promise to pay by a professional firm, especially considering the many firm failures, may not be sufficient to protect your heirs. Further, it is these same payouts that can result in forcing a firm to the brink. Often the preferable approach is an insurance or other funded arrangement to avoid undue pressure on the surviving firm. Where the firm is small, additional planning to avoid an undue burden on the firm is vital to firm survival.

Death of a Senior Partner

Your death as the senior or founding partner of a firm could wreak havoc within the firm and result in the breakup of a firm where no partnership agreement provisions are inadequate or inexistent. Even where adequate provisions exist, if they have not been properly and adequately funded, the demise of the firm could ensue.

For example, your death as the senior partner who owns a major interest in the firm's capital could trigger a financial hemorrhage that could sink the practice if there is no insurance on your life. Your junior partners in the firm could have their financial security jeopardized as a result of the breakup of a firm in such circumstances. The partnership agreement, coupled with adequate planning and funding, is thus essential for every partner's financial well being.

Disability of a Partner

Will your practice provide for business interruption insurance, disability insurance, disability buy-out insurance, or salary continuation during disability? For a small accounting practice, there is usually little disability protection as the cost is often too significant. Salary continuation may be provided for a month or two, often not more. Whatever benefits will be provided through the practice should be considered in planning your personal disability insurance needs, investment planning, and so forth.

Disability provisions are sometimes the most difficult to address. Unlike a death benefit buyout, which is more readily funded with insurance, disability buy-out provisions can be more difficult to quantify and fund. Also, when you as the senior accountant have spent many decades working hard for a firm, it is unfair to terminate your interests totally,

after even a long illness, if there is a chance you will be able to return even on a part-time basis and become productive again. Too often the disability provisions are quite simplistic and do not provide adequate opportunity for a partner to return or do not spell out clear compensation and other arrangements for this situation.

One approach is to provide that where a partner is able to return from a disability leave within some stated period of time, perhaps even as long as two or three years in some instances, a reduction in capital account or a profit interest will occur, but the partner will be assured the ability to return.

Where disability insurance is maintained, attempts should be made to coordinate disability provisions in the partnership agreement with the disability insurance policies. For example, many disability insurance policies have a 90-day waiting period before payments commence. Consideration should be given to having a percentage of the base salary on draw continued for the first 90 days of a partner's disability until such time as the disability insurance payments begin. The coordination of disability payments and salary continuation arrangements is vitally important to the financial planning of accountants, especially for a younger accountant only recently promoted to junior partner status, who may not have a significant nest egg to fall back on in the event of such an emergency.

Where disability insurance does exist, many agreements tend to tie the definition of disability into the definition contained in the insurance. While this may be acceptable, provisions should be made for the possibility of the disability insurance lapsing or changing in its terms. Consider including a provision providing that in the event disability insurance is in force, the definition of disability under that policy will govern, and in the event such a policy is not in force, then a definition of disability contained in the governing agreement will apply.

Governing Agreement and Business Provisions

Too many partnership, shareholder, or operating agreements are nothing more than buy-out provisions. This is a mistake since operating decisions can often be those that can wreak the most havoc for a firm.

Management and control issues (how much control will you have regardless of the opinion of a junior partner or how should a deadlock

between two equal partners be addressed) are vital to deal with while both you and your new partner are cordial and optimistic. Compensation arrangements, allocation of client work load, and administrative responsibilities should all be specified. Even if specific details cannot be agreed to, a general framework can prove quite useful in the event of a dispute. Many smaller firms, especially if you are just making the transition from solo to small partnership, will not wish to spend the time or effort addressing these details. Taking the attitude that if there is a problem, it will get worked out, is short sighted and risky. You would counsel your clients not to approach their business this way and you should demand no less of yourself and your practice.

Don't view a partnership agreement as just another administrative burden that detracts from your client work. Instead, view it as a productive opportunity to assure that you and your partner are on the same page on key issues, goals, objectives, and so on. When properly handled in a constructive and nonadversarial manner, drafting a partnership agreement is a process that can clarify and cement your understandings with your partner, rather than merely serving as a legal formality to address what happens in the event of your demise.

> **Example:** Continuing the example illustrated earlier in this chapter, you join with another practitioner to create a two partner accounting firm. Your practice had been focused on serving medical practices, and your new partner had focused on tax, financial, and insurance planning. How should the fees earned by your new practice (assuming no legal or ethical impediments) for sales of insurance products be shared, if at all? Your new partner may have assumed that your relationship was based on two premises: sharing overhead and expenses and expanding your respective practices by serving each other's clients. You, on the other hand, may agree with that but also feel that if an insurance product is sold to one of your long-time clients, the revenue from that should be shared in some manner as well. Not addressing these issues in detail could lead to ill will, or worse, at a later date when your partner sells every physician in your largest client medical practice a large universal life policy. Addressing these issues in the abstract,

before such a significant sale is even on the horizon, will almost assuredly result in a smoother relationship in the future.

Major Decisions Provision

Another important business matter to address in the governing agreement is the process for handling "major decisions." These are decisions with such a fundamental impact on the practice that special provisions must be spelled out as to how the decisions are made, and by whom. If you are the clear dominant and controlling partner, you might wish to carve out specific areas of decision making that cannot be undertaken without your express approval. Below is a list of "Decisions You Should Control as Principal Partner:"

- Admitting new partners or committing to consider a staff accountant for partnership.
- Signing any contract for an obligation in excess of some amount you specify. Even a junior partner should be able to make regular commitments, which are routine and necessary to ongoing practice operations. But if you own 75 percent + of the capital, perhaps you should have final say on larger commitments, since they are primarily your financial responsibility.
- Committing to loans or lines of credit. You might wish to leave an exception for routine trade payables that are not inconsistent with those which have been historically incurred in the practice.
- Changing the terms of a lease, or not renewing a lease, that exists between a separate entity that you control and the practice (for example, you set up a FLP owned by your children that owns the building in which your practice rents space).
- Lowering the level of the malpractice coverage, or even property and casualty insurance coverage.

If you are being joined by a staff accountant who is a meaningful contributor to your practice, and not a mere contract partner, the allocation of some of the above decisions may be altered to reflect that. If the new partner is a mere contract or "in name only" partner, then you may be left with all decision making rather than detailing specified decisions you can control.

If you and your new partner are relatively equal colleagues, then certain key decisions should be identified in the agreement that should require unanimous consent from both of you. Remember, however, that a unanimous consent requirement is tantamount to a deadlock on contentious issues. This can freeze practice actions when a decision may be vital to the practice's survival. However, there may not be any other option agreeable to you and your partner on certain key issues. Below is a list of decisions requiring unanimous consent if you and your partner are relatively equal colleagues:

- Any fundamental change in the nature of the practice, which may include the types of clients served, the nature of the services provided, and so on. For example, you may have always believed that the risk of providing audit services was too great for a small practice. If so, you would not want your partner to be able to commit to provide such a service without your consent.
- Admission of new partners or commitment to consider a staff accountant for partnership.
- Purchase of any asset with a cost in excess of some agreed-upon dollar figure. This figure should be reasonably high so that either of you can take advantage of lower cost opportunities without unnecessary delay.
- Signing any contract for an obligation in excess of some amount you specify. But since you are equal partners, you may wish to exclude from this restriction any contract that is ordinary and necessary to the practice and that pertains to a service or product the practice has used in the past. If a dollar amount is specified, it should be greater than the amount you would use to restrict a junior partner.
- Bank loans or lines of credit in excess of some amount you both agree upon. Similar to the restrictions on a junior associate, you might both agree to an exception for routine trade payables that are not inconsistent with those which have been historically incurred in the practice.
- You might wish to provide an exception to all of the above requirements in the event of an emergency.
- Lowering the level of the malpractice coverage, or even property and casualty insurance coverage.

Dispute Between Partners Provision

The first and best means of addressing a dispute between you and your new partner, whatever the relationship or capacity, is to avoid the dispute by having invested the time, effort, and money to secure a comprehensive agreement when the partnership relationship began. It is not the details of the contract that will avoid the dispute, but rather, as noted above, the process of you and your partner clarifying in some detail what your understandings are about key issues.

In the event of a serious dispute between you and your partner, a comprehensive partnership agreement providing for a dispute resolution mechanism, as well as the various percentages of approval necessary to make certain fundamental changes to the operation of the partnership, may well serve to prevent the breakup of the partnership and thereby preserve your practice. This can, in part, be addressed by detailed "major decision" provisions as discussed above. You may wish to provide for some type of arbitration or another mechanism to address other disputes.

Funding Buy-Out Provision

There are many different approaches which can be used for funding retirement, death benefits, and disability benefits. A common approach is to have the firm commit itself to making payments over some specified future number of years or aggregating, subject to various percentages of revenue or income limitations, a certain dollar amount based on a formula in order to effect the death, disability, or retirement buyout. This is typically done in order to preserve the maximum cash flow distributions to the partners on a current basis and under the assumption that the firm will indefinitely continue profitably and be able to support these types of payments.

Not Funding Buy-Out Provision

The result that frequently occurs is that the firm becomes overburdened with payments to a partner who is no longer productive. Profitability can be substantially impaired. This is all especially problematic in a very small firm. Thus insurance, when feasible, may be a better approach. Another option, which sounds inadequate and even distasteful to many initially, is a contractual arrangement for each partner to stand independently. Each partner must be responsible for his or her own life

insurance, retirement plan, and disability insurance. This avoids any burden on the practice. It also addresses the economic reality of many small firms. If you don't work, bill, and collect, there is little economic value to your interest other than a buyout of receivables and fixed assets and transferable goodwill which might be limited. If your firm, instead, opted to purchase insurance, the costs of the insurance would decrease the funds available for distribution to the partners. There is only one source of funds, however they are applied. This approach also gives consideration to the fact that you and your partner may view different risks differently. You may be a big believer in having substantial life insurance to protect your family. Your partner may believe that if something should happen to him, his family would fare reasonably well, and he is less concerned then you about this issue. If the practice has to purchase insurance, then you have to agree on a cross-purchase arrangement and the amount of insurance. If you each purchase whatever coverage you want personally, and the practice has a buyout based on accounts receivable and book value of other hard assets, there is no need to dispute values.

Thus, a more pragmatic approach for many small practices, if possible, is to require that each year the partners fund maximum retirement, disability insurance, and life insurance subject to certain minimums for themselves. In other words, each partner would, in effect, be required to apply a certain portion of his or her annual earnings to fund his or her own eventual buyout. This approach to sharing the burden is far more financially secure than the "pay as you go" approach, which is more frequently used.

S Corporation Shareholder Agreement Provision

If your practice is organized as a professional corporation that has elected S corporation status, the shareholders' agreement should include representations about adhering to S corporation shareholder requirements and perhaps should address the potential "phantom income" if for any reason distributions may be less than taxable income. Since most accounting practices would likely distribute a substantial portion of their income, this issue is unlikely to be as significant as for many client businesses. However, if you are making a staff accountant into a junior partner with limited or no rights or control, addressing the "phantom income" issue is a reasonable safeguard to offer.

> **Example:** Include a requirement that distributions should be made equal to, not less than, 85 percent of actual taxable income, so that not only will sufficient cash be available to pay any likely federal and state income tax incurred by the junior partner, but he or she will have some additional assurance that some reasonable distribution of profits will be made on whatever minority equity interest he or she has.

Buy-Out Agreement Provision

As an accounting practitioner, you are well familiar with the choices and the pros and cons of each choice as to how to structure a buy-sell agreement. Therefore, rather than repeating information you know and on which you have comprehensive resources, only a few comments will be made about this topic.

Apart from determining the method of establishing a buy-out price, consideration must be given to the overall structure of the transaction. Who will actually consummate the buyout and how should the buyout be funded. The two general approaches are: (1) The partnership redeems your interests (a redemption), or (2) Your other partner repurchases your interests (a cross-purchase arrangement).

> **Example:** You and a colleague join forces in a new practice organized as a professional corporation in order to minimize liability exposure. When drafting your shareholders agreement, a buy-sell provision is structured as a cross-purchase arrangement because you don't want to risk placing permanent insurance (which will eventually have substantial value) at the risk of potential malpractice claimants. If a redemption arrangement was used instead, the corporation would own the insurance, and the cash value of the policies would be subject to the risk of malpractice claimants.

A problem with many buy-out provisions is the use of terms which are not clearly defined. This makes implementation a problem. If net book value is used in a calculation, how should that net book value be calculated and by whom? What other adjustments should be made? Should goodwill be added? How should it be calculated? The key point is that

when drafting any buy-out agreement, care should be taken to analyze the detailed terms of the agreement to endeavor to address all potentially important adjustments with sufficient details in the agreement so that you and your partner can, in fact, implement it. For purposes of valuing accounts receivable, the use of a formula can minimize conflicts over their valuation. Sample language for a formula approach is below.

> "In the event that any partner's interests have to be purchased, the price to be paid for tangible assets other than goodwill shall be the net book value of all assets determined with all tangible property being depreciated using the straight line method and a twelve year life, except for computer hardware, photocopy machines, and other office equipment, which shall be depreciated using the straight line method and a five year life. Accounts receivable shall be valued based on the following formula: 85 percent × [prior three calendar years gross revenues from the provision of professional services only/3]. Gross revenues shall be the gross revenues reported on the Federal income tax return form 1065 for the practice. Gross revenues shall not include revenues from the sale of any insurance or financial product."

Note there are a myriad of approaches for valuing a practice. The key is to pick an approach that is reasonable to implement, precise, and not subject to dispute, and that is reasonably reflective of the underlying economics of your practice. Descriptions of several approaches to establishing a buy-out value are outlined below.

"Certificate of Stated Value" Method One approach is to have you and your partner sign a certificate of stated value, at some periodic interval, setting forth an agreed upon value for the practice, and then any buy-out that occurs during the year will be governed by that value.

Unfortunately, the reality of certificates of stated value is that too often they are neglected or treated superficially until they are needed, at which point no one agrees. To address this common risk, consider a time limit on an older stated value figure, after which adjustments to it will be made or a formula used instead. If that is done, what are the modifications that should be made to a stale value? The provisions of your practice partnership agreement may state the following:

> If the stated value is more than eighteen (18) months old, certain adjustments should be made: (1) 50 percent of the stated value shall be used as a proxy for goodwill and tangible assets not addressed in this formula; (2) Accounts receivable will be valued based on a formula of 175 percent × total partner wages for the prior calendar year; (3) Real estate owned by the practice will be added at its appraised value without regard to any lease agreement with the practice; (4) Any tangible personal property purchased and expensed under Code Section 179 during the prior calendar year shall be added back in its entirety, and 50 percent of any tangible personal property purchased and expensed under Code Section 179 during the second prior calendar year shall be added.

"Three Appraisers" Method Both you and your partner could hire an appraiser to determine the value of the interest involved, and if they cannot agree on a value (or be within some tolerable margin of error, such as 10 percent of each other), they jointly select a third appraiser whose decision is final. While this technique can be useful in some businesses, such as rental real estate, it is difficult to use productively in an accounting firm where the real issue will be a determination of a value of goodwill. In a small accounting firm it is even more difficult to utilize because the cost of implementation will be far too great relative to the values involved, and the time period required for the analysis is likely to be too long.

"Dutch Auction" Method This can be a useful method to resolve a conflict between two approximately equal partners. It would not likely be appropriate for resolving a conflict between you and a junior associate with a modest equity holding. The objective of a "Dutch Auction" (sometimes referred to as "reciprocal buy-sell" or other names) is to enable a disgruntled or unhappy partner to get out peacefully or to enable two partners who no longer get along to resolve their problems by having one leave. This approach is useful to address since mere death or disability buyouts will do nothing to resolve a partner dispute. The language for the Dutch Auction approach is below.

> "Should any Shareholder (the "First Shareholder") wish to buy the interests of any other Shareholder, or alternatively sell such First Shareholder's interests to the other Shareholder or the Corporation, such Shareholder shall do so under these procedures.

The First Shareholder shall initiate the reciprocal buy/sell procedures of this provision by providing Notice to the Corporation and the other Shareholder (the "Second Shareholder") that such First Shareholder wishes to engage in a reciprocal buy/sell transaction (the "Buy/Sell Notice"). The Buy/Sell Notice shall designate a price (Purchase Price) at which such First Shareholder is committed to purchase the entire interest of the Second Shareholder, or alternatively, to sell such First Shareholder's Shares in the Corporation to the Second Shareholder. The Second Shareholder shall have the right within Thirty (30) days of the effective date of the Buy/Sell Notice (see "Notice", below) to indicate by a reply Notice to the First Shareholder whether or not such Second Shareholder shall agree to sell such Second Shareholder's Shares in the Corporation to the First Shareholder pursuant to the terms contained in the Buy/Sell Notice, or whether in the alternative the Second Shareholder shall purchase the First Shareholder's Shares in the Corporation pursuant to the terms contained in the Buy/Sell Notice. If the Second Shareholder agrees to sell, or does not otherwise provide a reply Notice within such Thirty (30) day period that such Second Shareholder rejects the Buy/Sell Notice offer and shall instead purchase the Shares of the First Shareholder, then the First Shareholder must purchase, and the Second Shareholder must sell, the Second Shareholder's Shares in the Corporation to the First Shareholder for the Purchase Price set forth in the Buy/Sell Notice. If the First Shareholder is required to purchase the Shares of the Second Shareholder pursuant to the application of the Reciprocal Buy/Sell provisions above, then the Second Shareholder shall be entitled an opportunity, exercisable in the Second Shareholder's absolute discretion within Thirty (30) days of any such default by the First Shareholder, to purchase all of First Shareholder's Shares in the Corporation for the Seventy Five Percent (75 percent) of the Purchase Price. In addition, Second Shareholder shall be permitted to repurchase and redeem any of Second Shareholder's Shares held in escrow or previously transferred to First Shareholder pursuant to this Reciprocal Buy/Sell for the Purchase Price paid for such Shares. The Parties acknowledge that the purpose of this provision is to dissuade any Shareholder from initiating a Reciprocal Buy/Sell where such

> Shareholder does not have the financial wherewithal and intent to consummate such transaction. If the Second Shareholder shall provide a reply Notice to the First Shareholder that such Second Shareholder rejects the offer to sell such Second Shareholder's Shares in the Corporation pursuant to the terms contained in the Buy/Sell Notice, then the Second Shareholder must purchase, and the First Shareholder must sell, the First Shareholder's Shares in the Corporation for the Purchase Price set forth in the Buy/Sell Notice."

Audit Rights Provision

Audit rights must be addressed in the practice agreement. Should any shareholder, member, or partner have the unlimited right to audit the entity's books and records? Probably not. However, some reasonable rights should be negotiated so that perhaps once a year, or prior to certain major events (such as the determination as to the sale of a major portion of the business' assets) audits or investigations would be permitted. In contract to your clients, who must bring in an outside accountant, you may prefer to limit these rights to firm members, designated independent colleagues, or even to specified procedures.

Consideration should be given to whether the entity, or partners requesting the audit, should be responsible for the cost. A limitation could also be placed on the number of audits which could be conducted during any period in order to avoid the use of this technique as a method of harassment. Specifying some type of audit right is especially important to protect the interests of your new junior partner, and is illustrative of the types of provision which you can include in the practice documentation to demonstrate good faith, for example.

Summary

Once you've organized your practice and hired professional staff, the next practice milestone may be promoting a staff accountant to a junior partner status, or your joining with another colleague. The planning, negotiations, and documentation for this next phase of your practice development is critical for your protection and is quite different from the matters you should have addressed as a sole practitioner. It is also quite

different from the documentation used for larger accounting practices or many client situations. The appendices to this chapter provide sample annotated documents that illustrate the types of documents and many of the issues and considerations relevant to planning and documenting this phase of your growth.

Growing From a Two Partner Practice Into a Multipartner Firm

5

As the number of partners in your practice grows beyond an informal two member partnership, a number of changes must be made to the underlying agreement, structure, and operations of the firm for the following reasons:

1. Growth typically requires more structure and formality. While you and only one other partner may have relied on a handshake or a simple general partnership agreement, as more partners join, such informality becomes less tenable and more dangerous. The relationship between parties must be addressed with greater specificity in a larger firm.
2. With two partners, you may have simply taken a draw each month and worked out the profit allocation every quarter or when the bank account permitted. With 5 or 10 partners, structured financial arrangements are preferable, if not essential. The relationships should be memorialized to control profit distributions.
3. As your practice grows from a two partner firm into a true multipartner practice, at some point, management becomes too unwieldy to be handled by all partners. While certain key matters may remain subject to the approval of all partners (see "Majority Decisions," below), it becomes more practical to delegate certain management functions to a committee. Establishing one or more management committees is often one of the key signs that your practice has made the transition to a true multipartner practice.
4. In a multipartner firm, succession planning and retirement often become more important to address with some formality. Continuation of the firm name becomes more of an issue when the practice only includes the names of a few of the professionals (in contrast to a small professional practice for which all professional

names are often listed in the firm name). While insurance funding of buy-out arrangements (death and disability) remains important, it becomes more feasible for some portion of a buyout to be funded from operating cash flow.

The result of the above factors is that provisions that were glossed over or ignored when you planned, structured, and documented the arrangements for your practice's growth into a partnership, need to be addressed in greater detail, as that initial and often simple partnership transforms into a multipartner practice.

As with prior chapters, the term *partner* will be used generically to refer to a partner in a partnership, a member in a limited liability company, or a shareholder in a corporation.

Major Considerations for a Multipartner Firm

There are scores of decisions to make in planning, negotiating, and implementing the structure and relationships of a multipartner practice. However, these many issues will generally fall into the following key categories: entity, relationship of partners, and documentation. Each is discussed below.

Entity

One of the threshold decisions you need to make before creating any practice documentation for the next phase of your practice's growth is the form of entity to be used for the practice and ancillary assets. You should consider structure, malpractice, and ancillary business activities.

Structure

Should you change the structure or formality of your existing practice entity? Unlike forming a practice entity for the first time or adding your first partner, a multipractice firm usually is a result of the growth of a smaller partnership into a larger one (or the merger of two partnerships into a larger practice), so there is a greater tendency to retain the preexisting practice entity. The pros and cons of this, as well as the options, have already been discussed in Chapter 4. However, before every milestone event in your practice's life cycle, revisit those decisions.

Example: Your practice has been organized as a professional corporation (which in your state has a designation of "P.A.") since you founded it many years ago. You added a junior partner a number of years ago and opted to retain the corporate format. Sometime after that you reviewed the decision to make an S election, but opted not to. You are not in a position to add two more junior partners and to be joined by a colleague. The corporation format is workable for your growing practice. It will provide for limited liability in the event that if one of your partners is sued, and you did not work on that file, you should not be personally liable for any malpractice involved. However, since this is a major practice life-cycle event, evaluate whether there are better options. If the business deal you've negotiated with all the partners is that the accounts receivable and work in process from the practice prior to the date of the three new partners joining will belong solely to you, perhaps this is an opportune time to restructure the practice entity. Perhaps a new professional limited liability company (PLLC) can be formed for the new practice. The old C corporation, in which you basically own all the equity (except for a modest interest of your initial junior partner), can be wound down. This may simplify the transition and provide a more flexible and simpler practice structure for the future.

Malpractice

With a multipartner entity, there is greater need than with a smaller practice to have the ability to insulate yourself from the malpractice liability of other partners. The reality is that for many small, two partner practices, it may be impractical to really insulate yourself from your partner's malpractice because you may work so closely together that each of you is involved, on some level, with almost every client matter. However, as your practice grows into a multipartner practice, this situation is likely to change. Thus, additional attention should be given to protecting each partner by selecting an entity format that limits malpractice liability to the partner responsible and assuring that all formalities necessary to that entity being respected are adhered to. The limited liability company

(LLC), limited liability partnership (LLP), PLLC, or professional corporation (PC) (PA in some states) become more increasingly essential. These have been addressed in Chapter 4.

Ancillary Business Activities

Ancillary entities should also be addressed. If the practice owns, or the partners own separately, the building in which the practice is conducted, evaluate the form of owning the building (or other nonpractice asset) as well as the relationship between that entity and the practice entity.

Relationship of Partners

A key issue, and potentially the most volatile issue in the negotiation process, is the structure of the general relationship between the partners of your growing practice.

Equality of Partners

Partners can be treated equally in all respects: one partner-one vote and equal compensation. Many firms, even as they grow, are able to retain this simplistic yet effective structure. With pure equality, your practice should be the model of "one for all and all for one." Most of the issues discussed in this chapter, and the detailed negotiation and drafting of a governing partnership or other agreement for the practice, become simple. The proverbial "KISS" (that is, Keep It Simple, Stupid) principle reigns supreme. The real issue is whether, in your practice's circumstances, this will work. While it is common in a two partner practice, as you add more partners, it becomes more of a challenge to retain such pure equality.

Tiers of Partners

Another option is to create tiers of partners. This often occurs when there are senior or founding partners who control the bulk of the client business and retain a superior position in terms of control, profit shares, and retirement buyouts. The sample partnership agreement for a 10-person practice in Appendix 5-1, "Sample Partnership Agreement for Multipartner Accounting Practice" illustrates some of the preferential

treatment afforded to the senior founding partners of the practice. One common approach to tiers of partners is to place the senior or founding partner(s) as Tier I and all other partners as Tier II.

Another approach to tiers of partners is to have equity and nonequity tiers. The nonequity partners are contract partners, which is discussed later in the section.

Does it pay to address a tier structure in your practice even if one of the tiers only has one (or even no) members at the present time? It may. As your practice grows, having a template in place to inform the process and educate future partners or merger candidates on your structure might be worthwhile.

> **Example:** A, B, and C have worked together for years in a loose nonpartnership affiliation of sharing office space, facilities, and helping review client matters. Finally, A, B, and C have opted to formalize their relationship as partners. They each have several staff accountants, some of whom have worked with them for years. Several of the staff accountants will have to be made junior partners in the near future to avoid loosing them. Although A, B, and C have agreed to be equal partners in all respects (with only an allocation of a portion of the new combined practice's profits based on hours or collections, or both), a second junior partner tier is created in their partnership agreement. The junior partner provisions are the model to show the staff accountants under consideration for partnership. This approach sets the stage for what will be offered to them, and thus, makes it reasonable to provide them with copies of the partnership agreement to begin to consider.

In larger firms, a tiered partnership structure is often used to attract and retain high profile, rainmaking partners. In a smaller practice, a tiered structure is more likely to reflect career staff accountants who are loyal, solid workers but not rainmakers, or to reflect your dominance as the founder, rainmaker, manager, and continuing partner. Because the motivation can differ, exercise caution in applying techniques or using sample documentation intended for a larger practice.

Management of Partners

At the initial stages of practice growth, an informal arrangement of certain partners assuming certain administrative and management functions is common. Often, if your practice started with you as a sole practitioner, and then you were joined by a junior partner or two, you may have always been and remained the managing partner, absent the title. However, as the number of partners increases, a more formal arrangement of designating a specific partner or partners to assume management roles is often used. For example, a managing partner or management committee may assume responsibility for all operational issues other than a limited list of substantial issues that are identified as requiring a vote of all partners or certain partners.

Note: You will simplify the negotiations and drafting process for your growing practice if you break the components involved in these arrangements into categories and deal with each separately, even if the same answer results for several or all categories:

Control Control issues are issues dealing with major practice decisions, such as, for example, the name of the practice or admitting a new partner. Too often control and administrative responsibilities are commingled when trying to allocate responsibility, which only complicates the process.

> **Example:** You're the founding partner in a five partner practice. A partner is designated to handle all personnel matters including insurance, compensation, hours, and performance reports (administrative functions). However, you want to have veto power over any new partners to be added (control). An agreement may be reached that you and any two other partners approve a new partner. You alone, or any three other partners (that is, collectively, they can outvote you even if you want to make someone a partner), can disapprove any prospective new partner.

Administration Administration issues are responsibilities that are assigned to one or more partners for administering the practice. Decisions need to be made as to how formal the allocation of tasks should be (written, oral, or just "as it happens").

Economics Economic provisions pertain to compensation and the allocation of profits. For example, should partners assuming some or all administrative functions receive additional compensation or other benefits or accommodations? If the provision of administrative services will occupy significant time that other partners can devote to billing or rainmaking, what should be done to address the partner with administrative responsibilities?

Contract Partner

Some junior partners may have the name or title of "partner," but not the control or profit participation. In those respects, these junior or contract partners may be more akin to employees. Many different options exist for these types of arrangements.

The contract partner may:

- Share in profits fully with other partners, but not have any vote.
- Be on a fixed compensation base independent of profits, but have an equal vote.
- Receive a base compensation and a bonus based on profits or his or her contribution to profits, but not share in profits in the same manner as a full partner.
- Receive a base compensation even if partners experience a downturn or reduced compensation because of a loss.
- Have limited voting on certain selected issues.

> **Example:** Junior Associate has been with your practice for 12 years. You've made her a junior partner, although she will continue to work part-time and not generate any business. Because of her longevity with the firm and her importance to many key clients, you give her the right to vote on new partners admitted to the practice so she can feel part of the firm and have some input on her work environment, although she is not given any other voting privileges.

Most contract partner arrangements are hybrids of employee or partner relationships and are often uniquely crafted for small firms to fit the exact circumstances you face and the personalities and needs of the partners involved.

Documentation for Firm

Yes, it's the necessary evil: legal documentation. As your practice grows in revenue, complexity, and in particular, number of partners, the importance of having clear and comprehensive legal documents increases as well. Even if you opted for a handshake or simpler and informal legal documents as a sole practitioner or two partner practice, growth should be accompanied by documentation.

Documentation Formalities

As the number of partners grows, it becomes more problematic to rely on the partner's understandings. With each new partner, the interrelationships (politics) between the partners are inevitably going to increase. Addressing in writing issues that are potential friction points can minimize or avoid problems at a later date. These formalities can be observed in a number of documents, some of which are discussed below.

Meetings and Voting

It is more important to have a regular, annual (or more frequent) meeting, preceded by a formal notice of the meeting and followed by signed minutes or a consent documenting key decisions. Even for an entity such as an LLC, which does not require annual meetings, documenting each partner's written agreement to key decisions can avoid significant issues at a later date, even if not legally required. Formal meetings minimize the likelihood of misunderstandings, and further, support that the form of entity is respected to shore up your defenses against a claimant seeking to pierce the entity veil and claim that the insulation of each partner from the malpractice of other partners should not be respected. If a key contract, such as a new lease, is approved by vote at a partners' meeting, attach a copy of the approved lease (or loan or other significant transaction) to the minutes, and have all partners sign it.

Governing Agreement

As the practice grows, the sophistication and formalities of the governing document should increase. Having a complete, signed agreement governing your practice (operating agreement for an LLC, partnership

agreement for a partnership, or shareholders' agreement for a corporation) is essential. Furthermore, the agreement is likely to grow in sophistication as the number of partners increases.

> **Example:** ABC, CPAs is a three partner firm. All decisions are made by majority vote. Simple, workable. ABC merges with a five partner practice and promotes a staff accountant to partner, resulting in a nine partner firm. Some decisions are agreed to be made by majority vote, such as approving a line of credit under $25,000 or a new office lease. Other decisions, such as buying a building for the practice or any other capital expenditure in excess of $100,000, require a two-thirds approval. Hiring or firing a partner or making a new partner requires unanimous consent. At its original three partner size, these types of varying control provisions would not have been worth addressing (although ABC could have differentiated majority and unanimous decisions). Growth brought with it the need for a more complex agreement.

Provisions to Include in Firm's Governing Agreement

The following is a discussion of many of the myriad of issues to address in your practice's governing documents. For many explanations, optional approaches and sample clauses are provided. The sample partnership agreement in Appendix 5-1, "Sample Partnership for Multipartner Accounting Practice" of this chapter illustrates some, but not all, of these issues, as well as provisions not presented below. Several points should be considered when reviewing the following discussions for purposes of planning and structuring your multipartner practice governing document. Every practice is unique. While you can use sample clauses as a starting point, everything should be modified to fit your particular circumstances. State laws vary considerably, and input from a local attorney is essential. Some provisions will be important to you and your partners and will require detailed negotiations and documentation. Other provisions, that at first appear critical, may turn out to be easy for all to

agree on, and the agreement can be quite simplistic as to those points. Thus, your governing document need not be complex and lengthy for *every* provision.

> **Example:** Your practice has grown to a ten partner practice. Your partners have worked together for many years, and all get along quite well and respect each other's professional judgment. Thus, all control provisions, which can be quite complex for some firms, are addressed with a simple, "one vote per partner," majority vote governs provision. Even compensation, which can be very thorny for many practices, has been reasonably addressed by providing that 65 percent of earnings are distributed equally per partner, 25 percent of earnings are distributed based on revenue originated, and 15 percent based on billable hours. Whether reasonable or not, it has worked. However, in spite of the amicability on all other matters, partners are quite territorial about business origination. First, the 25 percent profit allocation based on origination is important, and secondly, every partner wishes to control and protect his or her business. Thus, while most provisions of the agreement are quite simple, the provision addressing credit for client revenues is long and complex. Special provisions are made for clients of the original practice that belonged to all. Special rules are provided to determine what occurs when a client refers another client. Rules for allocating joint origination are provided and so on.

Sample documentation intended for larger firms will often address these issues in a manner that may not be practical for a smaller practice. Consult the appendices to this chapter for sample language that is appropriate to the smaller growing firm.

Firm Name

For a one person or two partner practice, the choice of name is often simple: yours or both names are typically included in the practice name. Some practitioners opt for a practice name independent of theirs. Often name decisions are handled informally (however, see the discussions in

prior chapters). But as your practice grows into a multipractice firm, the issues concerning practice name become more important to formally address. A checklist of issues to consider follows:

- ✓ When you reach the point where there are more partners than can be listed in the firm name, who gets in and who gets left out?
- ✓ What parameters apply to future partners admitted to the practice? Are their names even available for consideration?
- ✓ With multiple partners, if the practice name includes your name first, what happens if you die? Can the practice continue to use your name? What if you retire? Should the result be different if you withdraw from the practice? What arrangements apply to other partners?
- ✓ Do you have a distinctive logo, phone number, Web domain name, or other intangible assets associated with the practice name? Who should own these in the event of a name change? Who should own these in the event of the practice dissolving?
- ✓ Are all the intangibles associated with the name of the practice owned by the practice? Have you evaluated the pros and cons of setting up a separate entity (for example, a limited liability company) to own some of these intangibles? If the practice has, or may in the future develop a Web site that may have independent financial viability, entity ownership of this asset can be an advantageous from a personal estate and asset protection perspective. If such an arrangement is used, all the issues noted above concerning the impact of practice events (for example, departure or death) must be addressed with respect to such an entity as well.

Purpose and Business of Firm

The practice governing document should state with some specificity what types of business the practice will engage in. This can be done both in the positive and the negative to narrow the scope of what is intended. A simplistic statement, "to engage in accounting," is of little help. If you, for example, have certain practice areas in which you specifically don't want the practice to be involved, you might wish to so state this in the governing agreement.

> **Example:** Having been involved in a practice years ago that issued projections for syndications and the resulting lawsuits, you don't want to revisit that situation again. When discussing the content of the practice partnership agreement with your partners, you request that this exclusion be added to the practice definition. Expressly excluding this from the scope of the practice does not mean that the practice can never engage in projections on these transactions. What should be done is the definition of the scope of the practice should be defined as a "major decision" that requires a super-majority or unanimous vote of the partners to modify. Thus, if years after the agreement is signed, a new partner merges her practice with the firm and has the expertise and client base to do this work, a vote of two-thirds of the partners (or whatever percentage your agreement designates for major decisions) can override and modify the previous exclusion.

Why go to these lengths? It can provide you with protection from practice areas that you deem too risky by assuring you some level of control. It can bring to everyone's attention what practice areas cannot be pursued without a formal agreement. If these exclusions are not named, it would be quite possible as the practice grows for a partner to accept and begin an engagement in such an area without you or the other partners being aware of it.

Voting

There are two concerns when defining the voting process in your governing agreement: voting requirements and voting arrangements. Each is discussed below.

Voting Requirements

There are three issues that can be used to define voting requirements: proxies, quorums, and decision tiers.

Proxies Your partnership agreement can state that any partner can designate another partner to vote on his or her behalf. Proxy powers should be required to be in written form to avoid any disputes as to their

validity. You might wish to provide flexibility by stating that a partner can designate another partner as his or her proxy for voting on one particular issue, one meeting, or a specified time period. The proxy could permit the partner granting it to specify how the proxy holder must vote. You should consider including default provisions in the event that the proxy is hastily or informally drawn. Thus, your governing agreement could provide that if the proxy document is silent as to scope, than it shall only apply to the next meeting following the date the proxy was signed. It could further provide that if the proxy document doesn't specify a manner in which the proxy holder must vote, the holder can vote in any manner he or she wishes. These default rules will address the common issues that arise in interpreting proxies.

> **Example:** There are five partners in your practice. Three partners are away on vacation. Before leaving, each partner designated one of the remaining partners a proxy to vote until the vacationing partner returned. If you need a majority vote and have an urgent matter to address, the vote will be taken with two partners actually present and three voting by proxy.

Quorums You can designate a quorum, or minimum number of partners that must be in attendance at a meeting, for a valid vote to occur. A quorum could be stated in terms of a percentage of the partners, say 75 percent. Stating that no vote can be taken without a quorum prevents a small number of partners from carrying a vote on an important matter.

> **Example:** A critical partnership issue has arisen. A meeting is called. Six of the ten partners show up at the meeting. Can four of the six partners vote and have their decision carry since they are a majority of the partners at the meeting? No. In fact, the meeting itself is not a valid partnership meeting since the required eight partners (75 percent × 10 partners) have not shown up at the meeting.

Decision Tiers You can create tiers of decision making so that decisions that are more important require a greater percentage vote of the partners. For example, certain decisions can be mere majority, others, 75

percent super-majority, and some unanimous. If you are the founding partner, you could require your approval for certain decisions of particular importance to you.

> **Example:** Your practice has seven partners. If you have decided a majority vote carries all, do you need to provide a minimum for a quorum? Should at least five partners attend a meeting to have a valid vote? If so, a majority vote of a quorum of partners is only three votes (3 of 5). However, your practice's partnership agreement provides for tiered voting. Daily operating decisions are by a majority of the partners available to vote. Contracts or agreements, including hiring secretarial and administrative staff, can be approved by a majority of the total partners, which means 6 of the 10 partners. Hiring a partner or approving a related party transaction requires unanimous consent of all of the partners. Since you are the founding partner, you reserve to yourself a veto power over any change in the firm name.

Voting Arrangements

There are several possible arrangements for voting in a multipartner firm. Several of these options are described below.

"One Partner, One Vote" The simplest management and control process for a multipartner firm is "one partner, one vote," with all decisions decided by a majority vote of the partners.

Revenue-Weighted Voting In some instances, voting weighted by partnership interests can be used as a method of voting. Voting based on generation of revenue reflects contribution to the practice, and for some, the fair basis of allocating control as well.

> **Example:** There are four partners in the practice. You share in profits and voting based on revenues generated by each partner as a percentage of practice revenues. Voting is based on prior year revenue shares (because current year revenues may not be determined until year end). Last year you generated $500,000 of the $1,000,000 practice revenues, and hence, control 50 percent of the vote in the following year.

Point-Weighted Voting In some instances, voting weighted by points assigned according to a formula can be used as a method of voting. This is analogous to a point-weighted division of profits. Voting based on a point system can provide a relatively flexible means of allocating voting control to reflect a variety of factors.

> **Example:** There are four partners in the practice. Voting is based on the following factors: 1 point for every five full years of tenure with the firm (to recognize longevity with the practice); 1 point for every $100,000 of revenues generated (to recognize rainmaking); 1 point for you for serving as managing partner (an acknowledgement of the often uncompensated and underappreciated role of management); and 1 point for each partner (the base voting right).

There are a myriad of methods to allocating voting rights. Some variant of one of the above approaches should be able to be tailored to fit almost any small practice need.

Management and Control

Management and control are often integrally related to voting issues in a small partnership. As the partnership grows, the differentiation between the voting and management becomes greater. Thus, with a small partnership, there is likely to be a uniform structure for most decision making, perhaps with the exception of a few significant decisions like hiring or firing a partner or merging the practice, which might require unanimous consent.

> **Example:** Your firm has three partners. All decisions are made by consensus. There is no need for any agreement or management and control provisions other than to provide in the agreement that all management decisions shall be made by a majority of the partners. Voting provisions might be the same.

As the firm expands, a more complex and detailed structure differentiating between management decisions and voting decisions becomes more likely.

> **Example:** Your firm has five partners. One partner is designated to handle daily operational matters since its proven too difficult for partners to convene for ongoing issues. Two partners have been designated to handle personnel decisions. The governing agreement could provide that all operating decisions that are ordinary, routine, and consistent with historic practice may be made by the managing partner, with the exception of two items. Staff employment decisions are made by the two partners designated as an "Employment Committee." Both the managing partner and the Employment Committee's powers are specifically limited to exclude any item identified in the governing document as a "Major Decision," which is to be decided by partner vote. The practice has simply reached a size and complexity where major voting issues need to be separated from daily activities to efficiently operate the practice.

At some level of growth, but likely the size of practice beyond the 5 to 10 partners envisioned in this chapter, the person designated as the manager may not even be a partner but rather an outside management professional.

Management Committee

As the firm grows, it becomes inefficient to have the partners meet on all daily operational or management issues. Even if the firm is small enough for an informal meeting by the coffee pot, it might still be practical to designate one or more partners to handle all daily operational decisions.

Certain functions are important enough that you might wish to designate more than one partner to make the decisions involved, but at the same time, recognize that it is impractical to have all the partners in the practice make a decision on the matter. The example above illustrated a specialized subcommittee, with two partners being designated as an Employment Committee to handle all nonpartner professional staff employment matters. This type of arrangement can loosely be referred to as a committee. Typically the committee will report to all the partners.

In the corporate context, you may have a structure such that all the "partners" (shareholders) are directors, and two of the directors are designated as a management (or other) committee of the board. The bylaws

for the corporation should be revised to reflect the structure of the board and the committee designations. If your practice entity is a partnership or LLC, since these formats don't have arrangements for directors or committees, the partnership or operating agreement should be amended to incorporate this type of structure. A detailed illustration of how to structure an LLC to have directors and committees (and officers as well) is presented in the Appendix 5-2, "Sample Language to Add to LLC Operating Agreement to Permit Directors, Committees, and Officers."

Managing Partner Liability

If an LLC, LLP, or corporation is used as your practice entity, each professional partner may escape liability for malpractice when he or she wasn't involved in the particular client matter. Instead, only the member who supervised the person committing the malpractice would be held accountable. This situation can create a practical dilemma. Since you will likely wish to be the managing partner of your firm, you may unintentionally also be increasing your liability profile by assuming the role. So if you serve as managing partner, you may wish to insist on a commitment from your other partners to make a contribution in the event of a lawsuit. Thus, an agreement for all Members to contribute may be inevitable. When evaluating the use of an entity, care must be taken in analyzing and drafting the provisions to include in the entity's governing agreement. If the governing agreement requires a partner to contribute where the entity's assets are exhausted, the limited liability benefits of the entity format could be compromised. This risk may be addressed to some extent by stating that no third parties are to be beneficiaries of the provision requiring contribution. Further, the contribution provision could be made inapplicable in the case of fraud, willful misconduct, and other acts where contribution by other partners is inappropriate. The reality, however, is that where a claimant is aware that the governing agreement includes a contribution provision, claims may be made for greater amounts, and the prospect of settling lessened.

Expense Reimbursements

Expense reimbursements are often ignored in small accounting firm partnership agreements or treated with a vague, generic provision. The partners then simply "work it out." While this type of informal approach

might continue to work in a three or four partner firm, as the practice grows, the informality becomes more difficult to police. Though petty, a result often is that some partners resent other partners charging disproportionately high expenses or items so tainted by a personal element that they raise concerns about audit exposure. The preferable approach is to take the time to work out something more specific and detailed. Addressing basic expense procedures and limitations in the governing document will set a structure to minimize later conflicts. Too often petty arguments over expense reimbursements can exacerbate other practice issues.

> **Example:** Expenses incurred by partners in carrying out their duties, which are ordinary and necessary trade or business expenses as defined by Internal Revenue Code section 162, shall be reimbursed within thirty days of the end of the month in which written corroboration of that expense is submitted to the practice. Automobile, entertainment, and travel expenses shall only be reimbursed if in addition to the above requirements, they are approved by two other partners initialing the expense report or documentation submitted agreeing to the same. Country club, vacation home, foreign travel, and similar expenses shall not be reimbursed regardless of the circumstances. In the event any expense reimbursement is disallowed on a tax audit of the practice, the partner who received such expense shall refund the reimbursement to the practice.

A checklist of issues to address in the practice's governing document concerning expenses follows.

- ✓ What global parameters should be set for expenses? Must they meet all requirements for a tax deductible ordinary and necessary business expenses in order to be claimed?
- ✓ What documentation should be submitted? Should the practice have a formal expense report?
- ✓ What corroboration for expenses must be provided? Must original receipts be submitted? Should practice business credit cards be used rather than personal cards to minimize the reimbursements? Or

should personal credit cards be used so that an approval process can occur before the practice bears the cost?

- ✓ Should there be a formal approval process? How many partners or which partners need to approve expenses? If the managing partner has to approve expenses, who approves the managing partner's expenses?
- ✓ What should be done, if anything, if an expense is disallowed on audit?
- ✓ How should travel for CPE be treated as contrasted to other travel?
- ✓ How should automobile expenses be handled?
- ✓ How should cellular telephone expenses be handled? Should a maximum dollar amount per month or year be placed on this category?
- ✓ Home internet access is a common issue. Clearly there is a personal element, but without access, partners cannot work at home. Should it be reimbursed at all? Should it be reimbursed with specific limits or maximum payments? What corroboration should be provided?
- ✓ Should any limits be placed on memberships in organizations? Should only specific dues be reimbursed?
- ✓ Entertainment expenses can be a sore spot. How should they be handled? What if two of the five partners generate most of the business? Will nonrainmaking partners be unfairly treated? Will they perceive the reimbursements as unreasonable?
- ✓ Subscriptions for professional journals, newspapers, and the like should be addressed. Should a maximum dollar amount be placed on this category or should only certain publications qualify?

Reporting Requirements

Don't forget the old adage about a shoemaker with barefoot children. Yes, especially since your practice is an accounting practice, you should address in the practice governing documents reporting requirements to the partners. The scope and frequency of reports to be circulated to partners should be stated, as well as the more extensive documentation to be provided at year end.

If you are the managing partner, if specific reporting provisions are included and you meet those requirements, in the event of a major problem with the practice, you will have provided yourself some level of pro-

tection that you have properly informed the partners of the practice about performance and developments.

> **Example:** One partner who joined the practice a year ago becomes antagonistic, claiming he is not earning the money promised when he joined. The situation escalates to the point where he hires a lawyer, departs, and threatens suit, alleging that he has not received the compensation he is entitled to, the credit for clients originated, or a bonus that was discussed. The practice partnership agreement he signed mandated that the following reports be issued monthly: "Monthly reports shall be issued within Ten business days of each calendar month end consisting of the following: Quickbooks P&L and balance sheet with a comparison to the same period for the prior year, a year to date P&L, all unadjusted, an accounts receivable aging, a work in processes report, a report listing billable and non-billable hours for all professional staff, and a listing of new business generated by the partner receiving credit for that business." The former partner/antagonist may be hard pressed to argue that he was not properly allocated credit for clients he generated if monthly reports were issued, and he did not object to the manner in which you as the managing partner allocated origination in those reports for the 16 months he was with the practice. If he asserts his bonus wasn't adequate but had 16 monthly reports of overdue receivables from his clients, this issue, too, may be resolved. If he wants to make accusations that he was not informed, the fact that he agreed to what the reports were that were to be issued, and you complied, may de-fang that argument as well. If certain information he believed was important to have known wasn't included in the required reports, then your counter-argument is that he should not have signed an agreement accepting the level of reporting that was provided.

The issue of audit rights should be addressed and limited. If each partner receives reasonable monthly and year-end information, should

there be any right to audit the books and records in disagreement? How should that right be limited so that it does not become a hammer to burden the practice?

Capital and Drawing Accounts

There are a number of components to address in the context of capital accounts. A partner may have a drawing account to which all distributions are charged. Profits from the practice may be credited periodically to the drawing account (and similarly, losses charged periodically).

The timing of the activities might be as follows: Each partner has to make an initial contribution to partnership capital upon becoming a partner in the practice. This amount will be paid in over some specified time period and constitute the partner's capital. Distributions may be made to each partner each month based upon an agreed amount that each partner shall withdraw. At the end of each month, quarter, or year as the case may be, each partner's drawing account may be credited with that partner's share of practice profits. The excess of drawings over the share of profits (negative drawing account) may have to be made up according to specified criteria. The excess of a partner's share of practice profits over the actual drawings, that is, a positive drawing account balance, can be required to be distributed within some other time periods, such as quarterly or annually.

Many smaller accounting firm partnerships opt not to have complex drawing and capital account provisions (for example, detailed rules for when to charge interest on a deficit balance in a partner's drawing account and how much interest to charge). Rather, most small accounting firms rely on informal solutions to address deficit balances. However, memorializing a specific procedure is always preferable. The partners can certainly agree to change the provision agreed upon in the partnership governing document, but the dynamic is changed in that the partner creating the issue has rules to follow unless the change is made. This is preferable to your having to sit down and negotiate an arrangement with a recalcitrant partner with chronically overdrawn capital accounts.

At minimum, specify in the governing document whether or not interest is to be charged or paid on drawing or capital account balances and the rates if it is to be charged or paid.

Distributions

As a sole practitioner, distributions are simple. You take all, less any bonus you might decide to pay a staff accountant. When you bring in your first partner, the approach to distributions will depend on your relationship to your partner. If you remain the dominant partner, and the new partner is, in reality, very much a junior partner, the distribution provisions may be economically not much different then if you had remained a sole practitioner. If you have a colleague who is an equal partner, an equal profit or distribution split is not uncommon. However, for many two person accounting practices, you and your partner will simply work out something informally each year to divide profits. Failing to work out something agreeable to both of you would mean the end of the partnership. For a larger firm, partnership profit allocations may be based on the decision of a distribution committee. The distribution committee might be a "black box" from which no input is provided as to the basis of allocations, a point system which is open information to all, but over which the committee allocates points or in some instances equal distributions per partner. A myriad of variations of these and the gradations in between (that is, in between you and your partner "working it out" and a committee "black box") are likely in a small partnership. The informal "work it out" each year becomes more difficult, and the still small number of partners makes a "black box" approach unacceptable in most, but not all, situations.

> **Example:** You have six partners. You generate 90 percent + of the clients. Each partner has an agreed salary. Profits after salaries are allocated in your sole discretion. While this is not the norm, your dominant position in the practice enables you to solely determine allocations. Since your revenues are so substantial, you have a significant incentive to allocate profits in a manner that will keep the partners you need to service the clients that you have generated. The governing document for the practice should set forth this arrangement.

Ancillary Profit Allocation

The methods of allocating profits in your practice will all depend on how your practice governing document defines revenues and profits. A key

issue which should be addressed in the governing document with specificity is which items are to be included in revenues and which are not. In many instances, these items or categories may be the subject of specific negotiated exceptions. But in all events, clarifying which items should be treated in which manner and which exceptions apply, can minimize or avoid conflicts later.

> **Example:** It is expressly provided for in the partnership agreement that all nonprofessional revenues that are directly or indirectly connected with the practice shall be treated as, and paid to the practice as, practice revenue. The agreement expressly includes all fees any partner receives as a trustee or executor. However, the agreement expressly excludes from this rule any fees earned for serving as a fiduciary for a family member. The term *family member* could (and should) be defined by reference to specified relationships, or perhaps to an independent definition such as under Internal Revenue Code Section 267 (family attribution rules). The agreement might provide for an additional exclusion. You have a major family as a client and have been named executor. For years when you operated as a sole practitioner you under-bid fees on work for the family, believing that when the matriarch of the family eventually died, you would recoup the years of investment with your executor fees. That fee should be negotiated by you as an express exception to the rule that fiduciary fees have to be treated as practice revenues.

The following is a checklist of revenue items that should be addressed in your practice governing document as included or excluded, and whether any exceptions apply:

- ✓ Executor fees
- ✓ Trustee fees
- ✓ Guardian fees
- ✓ Fees for speaking engagements
- ✓ Honorariums
- ✓ The fair value of noncash perquisites or gifts for speaking or publishing
- ✓ Teaching fees or salary if done during business hours

- ✓ Teaching fees or salary if done during nonbusiness hours
- ✓ Revenues from a practice-related Web site
- ✓ Fees, royalties, and other payments for publishing books, articles, or other materials
- ✓ Client gifts
- ✓ Fees for serving as a member of a board of directors of a client
- ✓ Fees for serving as a member of a board of directors of a nonclient
- ✓ Brokerage fees, investment advisor fees, commissions on the sale of life insurance, and other investment products sold to clients
- ✓ Brokerage fees, investment advisor fees, commissions on the sale of life insurance, and other investment products sold to family members
- ✓ Fees for services rendered to immediate family members

Cash Flow and Working Capital Issues

Once the issue of determining the target distribution formula is resolved, the mechanics of the provision, particularly when and to what extent deviations from the target distribution level should be permitted or required, should be addressed. For example, a distribution provision to address distributions and S corporation phantom income could be incorporated into the practice governing agreement. Sample language is presented below:

> "In the event that an S election is made, the Board of Directors, shall distribute not less than the greater of (i) 75 percent of taxable income as shall be reported on the Corporation's federal income tax from 1120-S ("Net Income"); or (ii) distributable cash flow. Distributable cash flow is Net Income per Form 1120, decreased by: (i) the minimum level of working capital required to be maintained under this Agreement; (ii) amortization of mortgage principal payments; (iii) other nondeductible cash outlays deemed appropriate to be adjusted by the Board of Directors in their reasonable discretion; and (iv) Reserves for liabilities established by the Board of Directors and approved by not less than 75 percent in interests of the Shareholders; and increased by (i) tax exempt income; and (ii) other nontaxable cash receipts deemed appropriate to be adjusted by the Accountant. Such distributions shall be made within 60 days of the Corporation's fiscal year end."

If this approach is used, various terms and concepts should be defined. What is the acceptable minimum level of working capital and how should it be determined? Precisely how should taxable income be determined? Should it simply be the figure reported on the federal income tax return? How should the accounting and economic concept of cash flow be reconciled with the tax concept of "taxable income?" This could be significant since cash flow and taxable income could differ substantially. Once a decision is reached, what should be done in the event of a tax audit? Should an additional distribution be made? What if corporate assets are damaged and insurance proceeds are received? How should these be treated? While insurance proceeds may not be taxable if reinvested, what if they are insufficient to restore essential corporate property? The ability for the Board to establish reserves subject to shareholder approval is one mechanism to address this.

Failure to address these issues could result in a substantial hardship to the minority shareholder who was not involved in the decision making process. This is one reason why consideration should be given to specifying accounting methods in the shareholders' agreement.

Alloction by Compensation Committee

As noted above, in many smaller accounting partnerships, the idea that one or two partners will determine the compensation of all six or eight partners is an anathema. However, in some instances, the practice dynamics support such an arrangement.

> **Example:** You and your long time partner control about 80 percent of the clients of the practice, perform most management services acting as de facto practice managers, and are many years senior to the other six partners. The two of you have historically made all compensation decisions and will continue to do so. You are the compensation committee and have managed to reasonably allocate profits between yourselves and the six very junior partners in a manner that has been more than fair and reasonable to all, have kept the junior partner's motivated, and might be superior in result to any more formal arrangement. The governing document should confirm this.

Allocation by Equal Distributions

The simplest method to allocate profits is equally. If there are five parters, each shares one-fifth of the profits. Simple, but is it effective for motivating partners to perform? In the appropriate circumstances, equal sharing of profits can motivate everyone to do what is best for the practice. Unfortunately, in many, if not most circumstances, optimal practice performance won't be achieved. These potential detriments must be weighed against the increased complexity, record keeping, and potential disputes a more complex profits allocation will involve.

Allocation Based on Fixed Percentages

The next simplest approach after the allocation of profits equally to the partners is to allocate profits based on agreed upon percentages. Under this approach, each partner is agreed to receive a set percentage of firm profits, and those percentages will be continued until another arrangement is agreed upon.

> **Example:** You're a partner in a three partner practice. Profits are to be shared as follows: You are to receive 45 percent of profits, Partner-2 is to receive 40 percent of profits, and the new junior partner, Partner-3, is to receive 15 percent of profits. You negotiated these percentages based on your relative "clout," business generated administrative responsibilities, and other factors. The partnership agreement also provides that losses are shared in the same proportions.

The problem with the above approach is that its seductive simplicity is really ephemeral. There is really no documentation in such agreements as to the factors considered in arriving at the allocation percentages or in the importance placed on each factor. Thus, if circumstances ever change, the negotiation process will have to begin anew each time. This might not only be unproductive, but it can create a greater chasm between the lower profit share partners as they seek to improve their share of profits. No guidance is given to them as to what steps to take.

Allocation Based on Revenues

Another approach to use for the allocation of profits is to make the allocation of profits in proportion to the revenues generated by each partner.

> **Example:** There are four partners in the practice. Each partner is to have the same voting percentage as profit share. Thus, if you have a 40 percent profit share, you are entitled to 40 percent of the voting "credits" on any issue. The voting percentage is thus based on revenues generated as a percentage of practice revenues. However, voting percentages have to be based on prior year revenue shares since current year revenue shares are not known until after the current year, and voting must occur during the year. Draws are based on the same percentage. Profits for the current year are adjusted following the current year and profits distributed in a manner necessary to bring the current year's draws into proportion with the current year revenue shares.

Another challenge in using a profit allocation based on revenue generated is defining the type and source of the revenue at issue. If you brought in an old college buddy's business as a client, but your tax partner did all the work, to whom should the revenue be credited? Is it your revenue as the originating partner? Is it your tax partner's revenue as the service partner? Or is it some allocation between the two of you? If you determine to allocate revenue generation 50/50 between originating and service partner, how do you determine the service partner?

The most disputed issue for a revenue generated profit allocation system is whose client is it? A checklist of origination issues to address follows:

- ✓ On what basis is the client attributed to a particular partner?
- ✓ On what basis is a client attributed to the practice rather than to a specific partner?
- ✓ Can client revenue be deemed to be shared by two or more partners?
- ✓ How are disputes over origination to be resolved?
- ✓ How should a client's allocation to a particular partner be made?
- ✓ How long should a client's revenues be generated to a specific partner?

- ✓ Should a service partner who effectively takes over the client origination ever be given origination credit for the client?
- ✓ Should clients of deceased, retired, or terminated partners be credited to the practice or to other partners?
- ✓ If the practice has a Web site, advertising campaign, firm newsletter, sponsors charitable events, and other similar activities, when should a client's revenues in whole or part be mandated to be attributable to the firm (that is, effective to all partners) rather than to a specific partner?
- ✓ If a partner happens to take the initial phone call from a prospect or happens to get the initial email, should that partner be treated as the originating partner?
- ✓ Is the sharing of origination dollars to be permitted? How and when?
- ✓ How should the time of work in process, the duration, and collection levels on accounts receivable and other economic factors be considered, if at all?

Example: One of your partners has been generating increasing revenues. But there are problems with the raw revenue figures. The average number of days for which practice receivables are outstanding for all partners, excluding her, is 38 days. The average for her accounts receivable is 89 days. Work in process similarly seems to linger longer. Further, whereas the average collection ratio for the practice excluding her clients is 89 percent, for her clients, it's 72 percent. Should she receive full credit for her revenue generated in determining profit allocation? Or should some type of adjustment be made? One lesson from this type of scenario is that consideration could be given to including an equitable adjustment provision in the revenue allocation formula. If a super-majority, perhaps two-thirds of the partners, believe based on reasonably objective evidence that a partner being allocated a pro rata share of profits based on revenues generated misstates that partner's contribution because of collection practices, overhead, or other factors. An adjustment can be made so that the allocation is equitable for all partners.

Allocation Based on Point System

A more sophisticated and complex approach, which provides greater flexibility, is to allocate profits based on a point system. There are a number of advantages. Points can be allocated based on a wide and customizable array of factors, (but the factors should be selected and weighted in a manner that motivates optimal partner performance). Points systems are reasonably related to practice goals and objectives and they're feasible to implement. A checklist of point system factors follows:

- ✓ Base points. For example, every partner may be entitled to 10 or some other number of points simply for being a partner. This is a recognition of the simplest concept illustrated above, equal allocation of profits per partner. This assures service partners, junior partners or partners assuming administrative or management responsibilities, for example, that they will receive some reasonable base compensation even though they are not generating clients or performing in a manner that generates other profit allocation points.
- ✓ Business origination points. These can be allocated based on revenues generated by each partner and with consideration of the many factors and issues discussed earlier in this chapter.
- ✓ Work production points. If your practice tracks professional billable hours, these points could be awarded based on billable hours. Further refinement might be desirable. For example, one point could be allocated for every 200 hours of legitimate, nonbillable time in order to acknowledge and reward partners assuming administrative and managerial functions. One point could be allocated for every 100 hours of billable time. The weighting in favor of billable versus nonbillable time is to encourage all partners to generate billable hours. An incentive arrangement could also be built into the formula so that, for example, 1.2 points will be awarded for every 100 billable hours in excess of 1,700 billable hours in any calendar year. An adjustment factor may be noted so that if three-fourths of the partners raise documentable evidence of significant inefficiency in hours billed or significant collection issues, the points can be adjusted downward in order to preserve fairness for the other partners.

- ✓ Duration or longevity points can be issued to provide some benefit to those senior practitioners who have remained with the practice for many years. For example, one point might be awarded for every 10 years with the practice.
- ✓ Miscellaneous points might be awarded by a vote of the partners in some specified fashion. For example, a single bonus point may be awarded to the one partner in each calendar year that the partners vote has made the greatest contribution to the administration and management of the firm. Another bonus point may be awarded to the partner that has done the most to promote, market, or gain public relations for the business. For example, if one partner was quoted during the year in several local papers, even though no business was directly traceable to that coup, recognition, even if modest, is an important method to acknowledge and foster future endeavors. A bonus point could be awarded for the partner making the most contribution to charitable and other causes. A bonus point could be awarded to the partner who has done the most for the professional development of the practice. For example, one partner may have taken it upon himself to develop a new series of checklists or forms for the practice. Any points the partners do not vote to award will not be awarded that year.

Once all points have been allocated, each partner will share in practice profits on the basis of the ratio of his or her points to the total of all points awarded for the year. While this sounds more complex and more likely to lead to disputes than a simpler method, it is often easier and less volatile since there is a defined structure, and partners can be acknowledged and rewarded for almost any type of contribution to the practice. When setting up a point system, your practice should be cautious to make certain that while every partner and every contribution is acknowledged, that too many points are not awarded to secondary functions, so that a major rainmaker feels short changed and begins looking at other practices.

Allocation Based on Tier Structure

The allocation of profits can be accomplished in tiers or levels. For example, perhaps 65 percent of profits can be allocated by revenue generated. This will assure that the rainmakers of the practice are well rewarded.

The remaining 35 percent of profits can be allocated based on a point system to consider the other factors (see discussion above) identified by the practice as worthy of reward.

> **Example:** Your practice opts for a tier system of profit allocation:
>
> - 40 percent of profits are allocated in predetermined percentages: 35 percent to you, 20 percent to Partner-1, 20 percent to Partner-2, 15 percent to Partner-3, and 10 percent to Partner-4.
> - 25 percent of profits are allocated in proportion to the percentage of total client revenues each partner originated.
> - 20 percent of profits are allocated by longevity of each partner. This is calculated by adding up the total number of years each partner has been with the firm or an agreed upon predecessor, and allocating this tier of profits based on each partners share of longevity years over the total longevity years for all partners.
> - 10 percent of profits is to be allocated by agreement among the partners so that whatever unusual factors or special performance that might have affected that year's profitability can be acknowledged. No negative allocations may be made.
> - 5 percent of profits are allocated to a reserve for funding retirement of partners in the future and for the payment of buy-out requirements to disabled or deceased partners.

Another approach to a tiered structure might be to pay certain allocations from gross revenues and then allocate the remaining net profit according to a point system. Using this approach, your practice might pay the originating partner 10 percent of every client dollar of revenue actually collected. The managing partner may receive 4 percent of gross revenues as a fee for managing the practice. After these allocations and all practice expenses are deducted, then the profits of the practice may be allocated in set percentages or by using some type of point or other allocation system.

Withdrawal, Termination, Death, Disability, and Dissolution

These provisions are important to address in the process of negotiating and preparing a partnership agreement or other governing document for your practice. The ideal time to address all these issues is early in the partnership relationship when everyone is optimistic about how the partnership will succeed. If you wait to address these issues when they are real and not theoretical, it is often too late to do so effectively. If a former partner has recently left, and you just received the letter from her attorney, it's really not the optimal time to discuss and implement provisions to address a voluntary withdrawal. While the sample agreement in the appendix to this chapter, Appendix 5-1 titled, "Sample Partnership Agreement for Multipartner Accounting Practice" illustrates and comments on these provisions, these are all discussed in more detail in Chapter 7.

Addition of a Partner

The addition of a new partner is usually deemed a "Major Decision" that should require some super-majority (that is, more than 50 percent) vote to approve. In many smaller partnerships, this is required to be a unanimous vote on the premise that no one should be required to be a partner with someone with whom they are not comfortable and in whose professionalism they are not confident. This is especially important if your practice is organized as a general partnership.

> **Example:** Your practice is a three person partnership, and your two partners, by majority vote, choose to bring in a fourth partner. The new partner does forensic accounting work in matrimonial cases. You are not comfortable with the decision as you feel that the nature of this new practice area is risky, and more so, that the manner in which the new partner practices her craft is both aggressive and antagonistic and likely to lead to a lawsuit. If such a suit does occur, you are personally liable for the result since there is no insulation for malpractice of other partners in a general partnership structure.

If you opt for the simplicity of a general partnership, the partnership agreement for your practice should require unanimous consent for admitting a new partner, changing the nature of the practice, and other key decisions that affect each partner's personal liability exposure.

In no event should a person be admitted as a partner unless they sign a counterpart to the practice's governing document, agreeing to all its terms and provisions.

Summary

As your practice grows from a sole practitioner or small two partner practice into a true multipartner practice, management, control, voting, profit allocation, and other issues require more complex, comprehensive, and sophisticated treatment. Growth to a small multipartner firm often requires the addition of a manager or management committee and the formalities attendant to the growth of any business. This chapter builds upon the decision making, planning, practice structure, and documentation presented in Chapter 4 to provide checklists, sample language, case studies and examples, to help you and your partners make clear determinations as to how specific issues should be handled.

Buying, Selling, or Merging Your Firm 6

The purchase, sale, or merger of your practice is one of the most significant milestones in your practice's life cycle. Properly accomplished, it can be the opportunity to achieve a major goal ranging from expansion, growth, and profitability to exit strategy. Improperly structured, it can be financially and emotionally ruinous. This chapter will explore many of the structural, due diligence, and documentation aspects of these significant practice events.

In reviewing the purchase of a practice, the flip side is selling a practice. This chapter will address both sides of the transaction, but for consistency and simplicity of reading will speak as if you are the purchaser.

Structure of the Transaction

You can purchase a practice, or an interest in a practice, in many different ways:

- Another accountant joins your practice, bringing his or her practice into yours. This might be structured with a purchase price being paid for an interest in your practice. In some instances, the two practices are relatively similar, no payments are made when the new accountants join, and the transaction is really a merger.
- Your five partner practice merges with a much smaller two partner practice. Although structured as a merger, the transaction is better characterized as your practice's purchase of the smaller practice.
- You join a senior practitioner as his or her retirement and exit strategy. There is no formal purchase or merger, but your compensation over the next three years is by agreement less than what you could earn elsewhere, and the key document is an employment agreement. Although nominally structured as primarily an employment agreement, you are effectively purchasing the practice. This format is discussed next.

Purchase Through Sweat Equity Arrangement

A common approach to structuring your purchase of a small accounting practice as the senior partner retires is a sweat equity arrangement (sometimes referred to as a "salary reduction method"). This method is an ideal choice when a practitioner is seeking to phase out over time, and you're a young practitioner with a modest practice base, shy on the funds for a down payment. The concept is simple; you, as a new staff accountant or junior partner, earn less income from employment than would normally be expected. The amount you earn typically increases over time as does your percentage ownership in the practice. You fund the purchase of an interest in the practice through earning less than you would normally; essentially you "work it off." The senior practitioner, who is effectively the seller, earns more than he or she would for the time he or she expends in the practice (that is, his or her earnings may not increase, but might stay constant as his or her hours decline with you picking up the slack).

In many situations, especially if you were not a former staff accountant of the senior practitioner, there may be a trial period during which you both determine if the transaction is appropriate. For example, there may be an initial period of one year during which you work as an employee for a set wage and bonus. At the end of that year, if you and the senior practitioner are comfortable, you sign additional documentation confirming the phased transfer of the practice to you.

This phased transfer may be structured with your purchasing the equity interests of the practice entity at some agreed value (however, if accounts receivable are excluded from the sale, it may be a modest amount).

> **Example:** You agree to purchase Senior's Practice over the next three years. Over the following three year period he or she receives, in succession, only 27 percent, 33 percent, and then 39 percent of the profits. The difference between these profit shares and the share you would have otherwise been entitled to is effectively applied towards the paying for your interest in the practice goodwill. If you are providing approximately 70 percent of the services (billable hours, for example), your earnings in each of the three years is significantly less than that proportion. The following table

illustrates the amount of profits that would effectively be allocated towards your purchase of the practice, assuming that in year three the profits of the practice in the first year are $550,000 (further assuming, profits increase each year by 10 percent over the prior year):

Year	*Work %*	*Profit %*	*Estimated Profits*	*Payment for Goodwill*
1st Year	.70	.27	550,000	236,500.00
2nd Year	.70	.33	605,000.00	223,850.00
3rd Year	.70	.39	665,500.00	206,305.00
Total	—	—	—	666,655.00

As a result of the use of the sweat equity method, you will report a lower amount of income as salary than you would ordinarily have received (and lower than the economic benefit you receive if the value of the practice interests that inure to you are included). You pay less payroll taxes and income taxes, but the earnings you would have received inure to the senior/selling practitioner as income.

There are certain risks to the sweat equity arrangement. In the example above, conceivably the IRS could argue that the "fruits" of your labor (that is, the difference between what you report, that is, 27 percent of profits, and what you should have reported) should be taxed to you under the assignment of income doctrine. In addition, this sweat equity method disguises what is, in effect, a sale of the practice from the senior practitioner to you. The price of this sale should be equal to the fair market value of the interest being transferred resulting in capital gains to the senior practitioner.

The documentation for this type of transaction should include an employment agreement which sets forth the agreed salary provisions, and a stock purchase agreement which provides a purchase price for the equity interests.

Purchase or Sale of a Practice

There are a myriad of reasons to purchase a practice. It might provide a means to reduce your administrative burdens, an exit strategy (in the postmerger, larger firm there may be more partners to buy out your

interests as you retire), an opportunity to expand services provided or the geographic areas where you provide them, skills and services (among the new firm's staff and partners) that compliment your own, economies of scale, and other benefits.

There are also significant issues and risks with the purchase of a practice. There is never any guarantee as to how profitable the purchased practice will be. Clients may leave, staff may leave, equipment may fail, and more. Economies of scale may prove to be hidden costs and have the opposite effect.

The reasons for selling a practice are similarly varied. If you are merely selling an interest in your practice, you might seek to retain current staff with equity, obtain additional professional staff or colleagues to share practice responsibility, cash out some of your investment to purchase a retirement or vacation home, and so forth. If you are selling your entire practice, it may simply be time due to age, health, or other factors to hang up your spurs.

There are potentially significant risks to a sale, depending on how it is structured and implemented. If you are paying the seller over time, will you in fact pay the entire price? If you don't pay in full, what recourse will the seller have? If the seller is an older practitioner or is ill, the typical recourse which most purchase documents provide is for the seller to recoup the practice from you. This may be impractical. If the seller is concerned about long time clients with whom he or she has had a close relationship, there is no assurance that you will retain those clients or service them in the same manner. If the seller had hoped to continue with the practice for some transitional period, you might so change the culture of the practice that it becomes difficult or unpleasant.

The due diligence steps outlined in this chapter and the sample documents will illustrate some of the steps you can take to identify and potentially protect against these risks or to insure the success of your goals. You must endeavor to tailor all the steps and documentation to address the specific objectives and risks the transaction you are engaging in faces.

The manner in which the target practice is identified will provide indications in the type of steps you should take or perhaps can avoid (to keep the transaction simpler and less costly). For example, if you are buying the firm of a senior practitioner you have known for decades you may need less due diligence and less invasive representations and warranties in the contract (or perhaps the opposite is true).

If you've hired a practice broker that has facilitated the purchase and sale of hundreds of practices, there are several important factors introduced into the transaction. First, you must have your attorney review the contract with the broker or consultant. Some of the provisions of that contract may highlight issues to address or deal with more lightly. Further, if you have a reputable firm assisting you in the search, find out what capabilities and services they offer. They may, either as part of their standard level of service or for an additional fee, assist you in some of the due diligence. Also, no broker will benefit from a deal that blows up. Involving a broker means not only having an objective and independent professional involved, but he or she is someone else that has a vested interest in the transaction succeeding (not just closing). You might be able to entice the broker to further assure the transaction's success with a payout over time, not just at closing, or a bonus or incentive fee if certain postpurchase milestones are met.

Merger of Practices

There are many types of mergers. A merger could be your joining with a colleague to create your first small practice partnership (Chapter 4). When a staff accountant who has some portable business becomes a junior partner, the transaction is, in many ways, akin to a merger, or perhaps his or her purchase of an interest in (rather than an entire) practice. These types of transactions can, in part, be distinguished from your purchase of a practice discussed in this chapter in that the due diligence you will likely undertake in this context will be much more substantial, the representations you will expect in the contract documents more extensive, and the formalities much greater.

A merger, which in many ways is quite similar, may really be your exit strategy from the practice (Chapter 7). If you merge a practice into a larger, dominant practice, the merger may be almost indistinguishable from a sale.

A merger of practices can provide a host of possible benefits including increased staffing capabilities, the joining of complimentary practices and services, economies of scale, a larger client base, better staff retention (by offering more benefits and opportunities for growth), better succession planning, expanded geographic coverage, a broader work schedule (if your practice was largely confined to tax season work, and you merge with a practice that focuses on consulting work, the flow may be better

scheduled throughout the year), a more diverse client base (for example, you handle primarily professional practices, and the merger target primarily services manufacturing and retail clients), and so forth.

Just as with the purchase of a practice, there can be a number of possible detriments to a practice merger, including clash of cultures, disparate work practices, differing billing rates, loss of clients, loss of staff dissatisfied with the merger, and so forth. If a merger is being pursued to address costs of operation, be forewarned that a merger is a costly undertaking. The initial postmerger period often is typified by more costly operations, not more efficient ones. Another problem with mergers that can arise is if your practice, or the target, is hoping to use the merger as an opportunity to address underproductive or otherwise problematic partners.

How different a merger is from a purchase of a practice is a matter of degree. In many purchases, you will want the selling practitioner to stay involved to some degree for some period of time to transition goodwill. As that time period lengthens and the scope of involvement broadens, what initially was conceived of as a purchase appears more akin to a merger.

Sequence of Events During the Transaction

The typical sequence of events in a practice purchase, sale, or merger transaction is important to bear in mind as it affects each step you must take, the documentation to use, and the issues you must focus on.

Decision to Pursue a Purchase, Sale, or Merger

At this stage, there is not likely to be any formal documentation or steps required. However, if you are a sole practitioner and have not yet formed a practice entity, you could do so before the transaction proceeds.

Initial Discussions

Once you have identified a potential candidate for the desired transaction, informal discussions will usually begin. Before these discussions proceed to a meaningful level, consider signing a nondisclosure agreement. There are a number of good reasons for this. For example, let's say you are purchasing a practice from an accountant who is retiring due to health issues. Before the sale is finalized he or she may not want you disclosing a health

issue that his or her clients don't know about. Conversely, if you have to disclose information about your practice's revenue or other confidential information at this preliminary stage, you don't want the potential seller to disclose this information to others. See Appendix 6-1, "Sample Nondisclosure Agreement Short Form" and Appendix 6-2, "Sample Nondisclosure Agreement Longer Form."

Letter of Intent

Once the discussions become more serious and specific, the next step is often to document some of the key terms and issues in a signed letter of intent. Although these agreements are often informal and nonbinding (many include a specific statement that you are not bound to the deal by signing), they can be an effective way to identify key points of agreement, open issues, future steps, and move the transaction forward. See Appendix 6-3, "Sample Letter of Intent."

Contract Negotiation

The next step is almost always the negotiation of a formal contract that embodies the terms you and the seller (merger partner) agreed to in the letter of intent, and a host of additional terms that often arise for the first time as the general parameters of the letter of intent are refined into actual deal terms.

Be certain that the template of the contract you are negotiating includes, as early on in the process as possible, anything necessary for the following:

Representations and Warranties

Representations and warranties for any due diligence issues that might concern you should be addressed early on. For example, if the practice facility lease is key to the deal, you will want a representation that the lease is assignable.

Indications of Schedules

You will need to attach an indications of schedules that addresses all the significant concerns you have about the deal. If the practice's lease is a deal point, then indicate that a copy of the current lease and the assignment or sublease to be approved by the landlord will be attached as an

exhibit. Whether or not the lease is available now and the indication that you want a full copy of the executed lease early on avoids complaints later if you keep adding new requests. Also, indicating a caption and exhibit number for the lease assignment or sublet document (which is unlikely to be available at this early stage) confirms that obtaining it is a vital deal point.

Steps Necessary

Indicate the steps necessary to meet your objectives for the deal. Continuing the above example concerning the lease, the provision in the contract that addresses the preconditions to your closing or the provision that addresses the documents that the seller will present to you at the closing, or both, should include an executed assignment or sublet of the premises to your practice.

Contract Signing (Maybe)

The next step, theoretically, is the signing of the contract to purchase. For larger practices, this is often the case. However, for a smaller accounting practice transaction, the signing of the contract is sometimes deferred to the actual closing of the transaction so that you have a simultaneous signing and closing. While this is not always the desirable approach, it has several important merits that should be considered in smaller transactions. The simultaneous signing and closing greatly simplifies the purchase contract and can avoid another series of often costly legal meetings. In a transaction in which the signing and closing are not simultaneous, the contract is signed, due diligence is completed, and then a closing is consummated. This usually means the contract must be drafted to include detailed provisions governing how the practice should be operated during the interim period from signing to closing. Also, there will, by necessity, be a duplication of due diligence, legal work, (and fees) because some due diligence is completed before the contract is signed and again at closing. Schedules attached to the purchase agreement when initially signed will need to be updated for the closing. For example, if a list of accounts receivable is attached to the contract, at closing, a current list (or at least an update to the initial list) has to be provided. This duplicates preparation and professional time so it is inherently more costly. If it is feasible, you should consider proceeding through your due diligence process without a binding and comprehensive contract and holding a

simultaneous signing and closing. While there are some risks to this approach, for smaller transactions the reduced cost may well outweigh those risks. The manner in which you identified the seller (merger) candidate may be a factor worth considering here. If the seller/merger candidate is a colleague you've known for years, you may prefer the cost savings and simplicity to the more comprehensive approach. If you identified the candidate through a blind advertisement, you might opt for a more comprehensive and involved due diligence process with a delayed closing.

Formal Due Diligence

The next phase of the process is a comprehensive due diligence investigation whereby you try to ascertain the veracity of the representations made to you during the negotiations and those contained in the contract (whether draft or signed), and to ferret out issues that might effect the purchase price, other deal terms, or even the viability of the deal itself. While there is some detailed discussion of many common due diligence steps later in this chapter and scores of treatises and articles addressing the process, the following is a checklist of key concepts should be kept in mind:

- ✓ There is no substitute for a healthy dose of skepticism. Be a skeptic.
- ✓ The old adage, "better safe then sorry" should not be forgotten.
- ✓ Standard due diligence checklists are not sufficient. The due diligence process must be specifically tailored to the specific deal you're doing. The documents you seek and the information you gather must all be pertinent to the transaction.
- ✓ Every practice and every transaction has a "story." Understand in a broad and global sense what the practice you are buying is about. Why is it as successful or unsuccessful as it is? What makes it what it is now? Good or bad, the broad understanding gives you a framework to evaluate more quantitative data. What is the history of the practice and its partners? Much of this data can be "coffee talk" in between the "real" negotiations. Don't dismiss it, and don't overlook it.
- ✓ Often it's the minor "fringe" issues that alert you to something. The seller lives a luxurious lifestyle, the practice has a sterling reputation, and everyone you talk to thinks you're stealing it. Everything is too good to be true. But a credit check or Google search on the seller

seems "odd." Not problematic, just "odd." What doesn't fit? Perhaps the level of turnover in his or her personal secretaries is unusually high, with no one lasting a year. What does it mean? Don't just focus on the financials and other "hard" data. Be alert to small items on the periphery as well.

- ✓ Although you may be a brilliant and insightful practitioner, hire someone to help you anyhow. It's really hard to be objective when it's a purchase you're making. It's easy to be clouded by the excitement of all the optimism of what a new deal can do. At minimum, have a trusted colleague not involved in the deal play contrarian to make sure you don't overlook something.
- ✓ Anything that is worth looking into is likely to be worth documenting. If the seller makes representations as to the tax returns, include those representations in the contract, but go a step further. Attach practice tax returns as an exhibit to the purchase contract and tie the representations into those actual exhibits. This level of documentation and precision can be much safer in assuring that the representations are real, that both you and the seller understand the issues in the same way, and that you are given a better basis to demonstrate something wrong if the representation proves incorrect.
- ✓ Don't dismiss any "gut" feeling about the target. Follow-up on intuitive feelings and verify that any concern is addressed.

Simultaneous Signing and Closing

As discussed above, in some smaller transactions, it is more cost effective and simpler to sign and close at the same time. If the contract wasn't signed earlier, it is signed at the closing.

Closing

If you've made it through the due diligence phase, and you and the seller (merger candidate) are still on target, you can close or consummate the transaction. Regardless of whether the contract was signed earlier, or if you're doing a simultaneous closing, you still need to address the interim period between contract discussion and signing and the actual closing. Is all your due diligence still current? If not, what updating is necessary?

Postclosing

There are always matters to address following the closing. Be sure that you create a checklist at the closing of open items, and then review it with your attorney shortly afterwards to be certain all required steps are eventually completed. In too many instances, once the contracts are signed and the checks exchanged, everyone forgets about addressing what are often a significant number of important administrative issues.

In addition, assemble an organized closing binder with copies of ever document relating to the transaction so that you have a permanent reference with all materials when a postclosing issue arises. This should also be done to assure that you have all the documents. Scan it for an extra measure of safekeeping.

Many of these steps can add significantly to the legal bill for the transaction as they can be time consuming. If you really won't address them, bite the bullet and pay your attorney to do so. If you can diligently follow-up, take that approach, then have a postclosing meeting with your attorney to review the closing binder and postclosing checklist.

Due Diligence and Documentation of the Transaction

There are numerous items to consider when performing due diligence and documenting a transaction. This section will discuss structure of the documents, business plan and analysis, initial due diligence, and drafting the agreement.

Structure of the Transaction Documents

The following are some basic steps you can take to simplify and shorten the purchase or merger agreement, make it cheaper and more efficient to conduct due diligence, and update that due diligence for the closing and minimize the potential for future conflicts.

Attach and Reference Exhibits

Simplify and shorten the documents by attaching and referencing exhibits. Instead of including detailed statements in the representations and warranties, try to simplify the statements by referring to information

in an attached exhibit. If accounts receivable are being purchased by you, refer to the exhibit with the accounts receivable aging report. Instead of indicating ages and other data in the purchase contract totals, simply indicate that the attached exhibit is complete, accurate, and not misleading. Then attach the exhibit. This approach can shorten the legal documents, relegate more of the work to matters which you and the seller can put together as exhibits, minimize legal fees, and assure you the data needed.

Designate a Lead Document

Use a lead contract document with ancillary documents attached as an exhibit. When many purchases or mergers are completed, there may be a half dozen or more contract documents. It can be difficult at a closing with so many contracts, exhibits, checks, and other documents to keep track of everything. But if an issue arises at a later date, will all these disparate documents be coordinated? Will inconsistent terms or provisions in documents create legal nightmares?

> **Example:** The asset purchase agreement may state that you are to receive an assignment of the target practice's lease and indicate some of the terms. At the closing, the terms in the "Lease Assignment" differ. For example, in your contract, since you and the seller are both in State X, State X law applies. However, the landlord is a large commercial landlord in State Y and the "Lease Assignment" not only has some terms you had not anticipated based on contract, but provides that State Y law applies.

Instead, have your attorney designate the main legal document, such as the purchase agreement, as the lead document, and make all other legal documents exhibits to it. This will force the organization of the documents. Also, have construction clauses included in all the secondary documents stating that if a conflict arises between those documents and the lead document, the provisions of the lead document will control. This can minimize interpretation issues and problems from potential conflicts in the documents.

Business Plan and Analysis

An important step to assure the success of your practice purchase or merger is the business plan and analysis that you develop to assess the business, economics, and other aspects of the transaction. Your analysis will be invaluable to the attorney assisting you in the preparation of the transaction documents, as it will provide specific detail as to why the transaction is being done, what the specifics of the transaction are, and some of the factors you deem critical to the success of the transaction. The following is a checklist of some of the matters to address in your analysis:

- ✓ Goals and objectives for the purchase or merger.
- ✓ Assess and review your practice's strengths and resources.
- ✓ Assess and review your practice's weaknesses and needs.
- ✓ Assess and review the target practice's strengths and resources.
- ✓ Assess and review the target practice's weaknesses and needs.
- ✓ Evaluate how your practice's strengths and resources will benefit the target practice and address the target practice's weaknesses and needs.
- ✓ Evaluate how the target practice's strengths and resources will benefit your practice and address your practice's weaknesses and needs.

Below is a checklist of areas to address in the above analysis:

- ✓ Client base. Who are the major clients and what type of volume is done with them? What types of services are provided to these clients? What types of services might be provided? To what industry categories do the clients belong?
- ✓ Practice skills. What practice areas are serviced? What is the level of expertise of each practitioner?
- ✓ Culture of each practice, including marketing activities and compensation systems. How involved are partners in operations and management? How does each firm bill: monthly, quarterly, annually, when a project is completed, or haphazardly?
- ✓ Firm name. What name or names do your practice and the target practice prefer to use postclosing?
    - Will clients be lost as a result of postmerger conflicts or regulations?

- What are the compensation structures and levels of each practice, and how will the postclosing compensation be addressed? What will be done during a transition period until the postclosing compensation structure goals are achieved?
- Will the postpurchase or postmerger practice collect accounts receivable, or will each preclosing entity bill, collect, and retain its own receivables? What about work in process? What is the magnitude of each practice's work in process? If one of the practices has a significant fee awaiting billing and collection, should that be addressed differently?
- Physical facilities. Which offices will be occupied: one, both, or a new facility? How will relocation expenses be shared?
- What accounts payable exist on each practice? Have they all been identified? Which practice will be responsible for which payables?
- Capital Requirements. How much capital is needed, how does it compare with the current capital structure of each practice, and, will partners in both firms be willing to contribute additional amounts to capital? What, if any, differences in current capital structure will necessitate each practice's partners contributing different amounts?
- How is each practice managed presently, and how will the postclosing practice be managed?
- Malpractice coverage. What maximum coverage has each practice maintained? What levels of deductibles and what claims history? What levels should be maintained postclosing?

Initial Due Diligence Steps

There are several issues to consider when conducting due diligence on a possible purchase or merger candidate. This section will discuss the following types of due diligence—general, practice, financial, contingencies, labor and employment, and physical assets.

General Due Diligence

There are many avenues for gaining general information about a firm. A checklist of possible methods is listed below:

- ✓ Google the name of the practice and any partner's name to see what information is identified, good or bad.
- ✓ Obtain a title report on real estate if you are purchasing real estate as part of the assets of the practice. If you are merging, and the merger target owns real estate, have your attorney order a title search in all events so that you can ascertain if there are any issues with the property. Often liens or judgments pertaining to the owner may be identified in that manner.
- ✓ Conduct or have your attorney conduct Uniform Commercial Code (UCC) and lien searches. You should order searches on the names of the practice and its partners to identify outstanding lawsuits, claims, or other issues. Have searches made for judgment against the practice and partners.
- ✓ Obtain a credit report and a Dunn and Bradstreet report on the target practice.
- ✓ Obtain from or ask the seller to provide a personal credit report from all three major credit reporting agencies on all partners. They may refuse, but a credit report can often be telling as to the real financial status of a purportedly successful practitioner.
- ✓ Give consideration to retaining a private investigator to identify any relevant information on the seller.
- ✓ Entity searches should be obtained. Whether you are buying assets or stock (partnership or membership interests), obtain a good standing certificate for the entity to be sure it is properly formed and obtain copies of all filed corporate, limited liability company (LLC), or partnership documents. Have your attorney review them.
- ✓ Obtain a state level tax search on the target practice entity to ascertain that all required tax filings have been made.
- ✓ Intellectual property searches should be conducted if there are any meaningful intangible assets. Consider hiring an outside expert. If the target practice operates under a trade name (that is, not the names of the partners), has that name been properly registered? If the target practice has a Web site, who owns the domain name? If you find that you are purchasing a practice and the Web site is a

draw, but turns out to be owned by someone other than the target practice, you need to identify this so that you can assure that you receive the rights you anticipate in the deal. If the practice uses a logo, does it have the rights to do so?

Practice Due Diligence

Review sample working papers. Conduct the equivalent of a peer review of the target practice's working papers, procedures, and quality control. Request copies of prior independent peer review results. Draft representations to add to the contracts regarding any issues that concern you. Request copies of prior peer review results to attach as exhibits to the purchase (merger) agreement.

Financial Due Diligence

As an accountant, financial analysis is your bread and butter, so don't "rely on your gut." Do the numbers. Obtain five years of tax returns and financial statements or reports (whatever is available), including year-end work in process and accounts receivable. Review the returns, compare the results over the years, track changes, and crunch the numbers. Calculate some basic ratios like accounts receivable at year-end to sales, work in process as a percentage of sales, and salaries and profits as a percentage of sales. Review the relationships between different balance sheets or income statement items. Ratios can be telling of themselves or through comparison to norms, such as industry data for comparable small firms. For example, use the valuation resources or Internet searches to identify relevant comparison data. If you've hired a broker or practice consultant, they may have a wealth of data.

Contingencies Due Diligence

Contingencies and existing condition situations or set of circumstances involving varying degrees of uncertainty may, as a result of possible events at later dates, result in the occurrence of a loss of an asset or liability. Loss contingency could occur as a result of collectability of accounts receivable; pending or threatened litigation claims or assessments (this is especially important to evaluate in the context of reviewing a target firm); catastrophic losses; or collectability of receivables and work in process,

for example. You should keep a list as you go through the due diligence process of possible issues to amend the contract before closing to obtain representations as to issues that are identified.

Labor and Employment Due Diligence

Review all pertinent contracts and documents relating to the firm. A checklist of possible items to obtain is below:

- ✓ Employment agreements, letter agreements, or any other documentation of employment relationships.
- ✓ Resumes for each employee and staff member.
- ✓ Schedule of billing rates, and if possible, how they have changed in recent years.
- ✓ Forms 941 and other payroll tax returns for prior years to verify the amounts of payroll, to what extent consultants were used, and how diligent the selling practitioner has been about keeping her own shop in order.
- ✓ Consulting agreements and forms 1099 for prior years. Who was treated as a consultant? This might indicate practice issues (for example, large 1099s to law firms). This might also indicate staff incorrectly treated as independent contractors, for whom you will want to pay payroll taxes. Not only should you adjust the numbers if the figures are meaningful, but you might wish to clearly document in the purchase agreement that the seller retains sole responsibility for any payroll taxes relating to the prepurchase (or premerger) period.
- ✓ Staff benefits. In many small practices, the sole, formal benefit might be a health insurance plan. Find out the nature of the plan, level of deductibles, co-pay, staff contributions towards premiums, and so forth. If the plan is substantially different then what your practice offers, changes may be in order and dissatisfaction will need to be dealt with. Determine whether there are any pension plans and summary plan documents: tax filings 5500 series, cafeteria plan documents, or health and hospitalization plans. What types of coverage and benefits were provided to the target firm's staff? This will indicate what types of expectations they will have from you postpurchase (postmerger). It will also afford you another opportunity to see how careful the seller (merger) was with their own compliance

matters. If there are no pension or retirement plans, it doesn't mean you can thereafter ignore the issue. It means you should include an express representation in the purchase agreement: "There are not currently any pension or retirement plans for the Practice's employees, and there have never been such benefits offered."

- ✓ Firm manuals. If there are none, you should include a representation on the contract that your firm manual (you have one, don't you?) will be distributed to the staff prior to closing, and they will each sign an acknowledgment of having received it and that they are bound by it.

Physical Assets Due Diligence

A checklist of steps to take when performing due diligence on physical assets follows:

- ✓ Inspect all physical assets. If the target practice is small, this should not take more than a short site visit. Make a point of formally doing this with a clipboard and digital camera. Record and list all properties and assets and their conditions. If there is real estate involved, hire a real estate inspector. If the computer and other equipment is significant, have your computer consultant conduct a review.
- ✓ Be alert to any possible hazardous waste or asbestos. Yes, even for professional practices.
- ✓ Obtain appraisal reports for any significant fixed assets, such as real estate and fixtures. Obtain a depreciation "lap" schedule from the target. Verify that all equipment and personal property that you are purchasing is owned by the target and not leased. If leased, request copies of the lease agreements.
- ✓ Verify the condition of assets. Most sellers will insist that all physical assets are being sold "AS IS," meaning you have no claim based on the condition of the assets. You should endeavor to negotiate something a bit more substantive like: "All equipment and fixtures are in reasonable working order." Whatever language is eventually agreed upon, understand the caliber of what you are getting and consider including specific representations on specific assets.
- ✓ Inspect leases of personal property or other assets. As noted above, obtain copies of all leases, even for insignificant equipment like a

postage meter, and obtain an assignment of that lease to you post-purchase or postmerger. Also, list these items in the notes to amend the contract so that the seller either cancels these leases prior to closing, transfers them to you, or keeps them outside of the transaction.

- ✓ Inventories. While the figures may not be significant, be certain that the contract is clear as to what is available and what is and is not being transferred to you.
- ✓ Insurance valuations could be informative. Obtain copies of the seller's (target's) insurance records and see the level of coverage that exist, and the values placed on furniture or computer equipment, for example.
- ✓ Cut-off procedures for final adjustments need to be ascertained. If you are purchasing receivables or taking the practice subject to accounts payable, what are they now? What will they be at closing? How can you be sure that they are current as of the closing? Are there any accounts payable you could be responsible for that relate to purchases or contracts the seller is retaining?
- ✓ Accounts receivable aging. Compare the accounts receivable and work in process to the client lists. Look for any trends or patterns in old accounts, variations over time, changes in ratios compared to gross revenues and net profits, and other factors. How long have major clients been with the firm? Continue to identify issues to include in the representations and warranty provisions of the purchase contract and identify documentation to be attached as exhibits to the purchase agreement.

Purchase or Merger Agreement Drafting Considerations

Given the similarity of many provisions in an asset purchase and merger agreement, most of the following discussion will apply to both situations. The discussion below on merger agreement provisions will supplement this asset purchase agreement discussion with some of the additional or different provisions that may apply to a merger. A sample agreement for a merger is included in Appendix 6-4, "Merger: Sample Operating Agreement for Two Individual Practitioners Merging

Accounting Practices Into One," and a sample agreement for a purchase is included in Appendix 6-5, "Purchase: Sample Documents to Purchase a Small 1040/Bookkeeping Practice."

Introductory Paragraph

The initial paragraphs should include key transaction data including identification of parties, addresses for notice, date of contract, and the effective date of the contract if different. In many cases, it will be prudent to set a specific date, often the end of a month or even a quarter end, to ease the record keeping for the transaction and determination of allocations and adjustments.

Recitals

Set forth in simple English the basis and reasons for the deal. If the recital clauses aren't clear, the lawyer may not understand the business aspects of the deal. Why are you purchasing or merging with the target? Why is the target selling to or merging with you? The key factors noted in your analysis above should be summarized in the recitals to set the framework for the transaction.

Transfer of Assets

Define the assets of the seller being transferred. Details should be attached in the form of supporting schedules. Be certain that every asset is addressed: for example, detailed listing of all accounts receivable, work in process, contract rights, furniture and fixtures, trade name, other intangible assets, and inventory and supplies listings (there should be an assignment document in addition to the asset purchase agreement).

Purchase Price

The purchase price needs to be established and documented. The simplest approach might be a down payment and the payment of the balance of a fixed fee at closing. However, many deals will contain more complex arrangements, including earn-outs or postclosing adjustments to a fixed price (for example, to address the risks of clients not following the buyer or of misrepresentations by the seller). This provision should set forth the terms, formula payment calculations, fixed payments, percentage payments, earn-outs, contingent price adjustments, down payment, and

so forth. All payment terms must be clearly specified. Run sample calculations to verify that the drafting and formulas work as anticipated. Sometimes a formula may sound reasonable the way the attorney drafted it, but when put to the test of number crunching, it proves cumbersome or unworkable. If the formula doesn't work, neither will the deal.

If the formula purchase price has payments based on, or limited to, a formula based on "taxable income" (or similar concepts), precisely how should taxable income be determined? Should it simply be the figure reported on the federal income tax return? What should be done in the event that a tax audit results in a change in the figure on which a calculation was based? Should an additional adjustment be made? What if corporate assets are damaged and insurance proceeds are received? How should these be treated? Address any postclosing or other adjustments.

Methods of payment should be specified along with the price. These can include or exclude any or all of the following: certified or bank check, wire transfer, deferred payment evidenced by Secured Promissory Note and related security documentation, installment payments, or escrow arrangements. If notes are involved to secure deferred purchase price payments, be certain that the interest imputation rules have been addressed properly, and other methods of security (collateral, mortgage, personal guarantees) are obtained if feasible.

Liability Assumptions

Specify which, if any, liabilities are being assumed. To protect your interests, you might state in the purchase agreement that you are not to assume any obligations or liabilities of the seller unless expressly provided for. In an asset purchase, the buyer should know exactly which liabilities are being assumed.

Adjustments

At closing, several items may have to be adjusted, including inventory, accounts receivable, and supplies.

Insurance

At the time of closing, you may have to reimburse the seller for the unamortized premiums on any insurance policies assumed by you as buyer.

Accounts Receivable

Address whom should collect accounts receivable. What assumptions will be used to determine whether payments received postclosing will be credited to buyer or seller where all accounts receivable are not sold? If the buyer is to collect accounts receivable for the seller, what about the costs to be incurred? Consider the following sample language as one of many approaches:

> "The Seller's interests in accounts receivable for work completed prior to the Closing Date (as defined below) are not included in the Sale. A listing of all accounts receivable as of the date of this Contract is attached as Exhibit A, Schedule A-8(I), and an updated list current as of the Closing Date shall be attached hereto as Exhibit A, Schedule A-8(ii). Seller affirmatively represents as of the date of this Agreement, and shall so represent at Closing, that all accounts receivable are for work which has been completed in its entirety, and that none of such receivables constitutes deposits or advances or other arrangements for work to be completed (the "Accounts Receivable"). If any account receivable represents, in whole or in part, a retainer for future services agreed to be rendered (as described in Exhibit D), and said services are, in fact, rendered by the Buyer, Buyer may take either of the following actions ("Remedies"):
>
> (i) Collect and retain One Hundred Percent (100 percent) of such accounts receivable, or alternatively in Buyer's discretion; or
>
> (ii) Offset the next payment to be made on the Purchase Price by the value of the services rendered. By way of example and not limitation, if Seller has billed a client for monthly work, and such amount is listed as an accounts receivable, but the work for that month has not yet been performed, Buyer may offset the Purchase Price by the portion of the account receivable attributable to the work performed by the Buyer to satisfy the client.
>
> The Practice shall collect the Accounts Receivables on behalf of the Seller, in name of Seller, and shall pay Seller monthly Ninety Five Percent (95 percent) of the monies collected on these Accounts Receivables. The Seller shall be fully responsible for the actual

> out-of-pocket costs which the Practice will incur in collecting the Accounts Receivable, including but not limited to legal fees, collection fees, and the like.
>
> In the event that a payment is received from a client which owes money on Accounts Receivable to Seller, and has accounts receivable incurred following the date of Closing due to Buyer, then any payment (regardless of any designation on such payment made by the client) received by the Practice, Buyer or Seller, shall be applied pro rata towards the payment of Accounts Receivable and accounts receivable of Buyer. For example, should a client owe Seller $2,000 on Accounts Receivable and owe at the time a payment is received $1,000 to Buyer for accounts receivable arising post Closing date, the payment shall be allocated Two-Thirds (2/3) to Seller and One-Third (1/3) to Buyer.
>
> If Seller, pursuant to any engagement letter, entered into by Seller prior to the Closing Date where Seller has already collected monies for services, but which requires, additional services to be provided after Closing then Buyer, in Buyer's discretion may pursue either of the Remedies set forth above."

Supplies

In many practices, supplies are not material in dollar amount. However, it may still be advisable to provide for a physical inventory in the transaction documents. If the transaction is a merger, the inventory may have to be made up of both practice's supplies.

Allocation of Purchase Price

The Purchase Price should be allocated to specified assets. This is critical not only for tax purposes, but to establish the value of different assets in the event of a misrepresentation. See Code Section 1060 filing requirements. Form 8594 should be attached to the contract as an exhibit, completely filled out, and signed by the parties.

Closing

The closing date, and conditions to it, must be set. The closing requirements should be specified, for example, delivery of documents of title,

payment of purchase price, location, or time. Closing documents should be listed in detail and actual documents attached as exhibits. Be certain the closing is reasonable in light of audit steps, due diligence, and other items for which you will be responsible.

As discussed above, endeavor to simplify the transaction, if feasible, by having a simultaneous execution and closing.

Target's Obligations at Closing

At the closing, the target (seller or merger entity) should be required to deliver to you as the buyer the items specified in the contract. These can include instruments of assignment (for example, assignment of a domain name or equipment lease); bills of sale (for example, for equipment sold or transferred to your practice); opinion of counsel of seller (for example, as to key legal issues in the transaction that affect the buyer); instruments of assignment with respect to any trademarks and trade names; certificates of the officers of seller (as to operations and compliance with applicable laws). Sample language follows:

> "Documents Delivered to Buyer at Closing: Schedule __ hereto is a complete and correct list as of the date hereof or all of the existing operating agreements, leases, lease assignments, contracts, understandings and commitments, trademarks, copyrights, mortgages, deeds of trust, indentures, and credit agreements to which the Seller and the Company are a party, or to which the Seller or the Company or any of their assets or properties are subject, except (a) contracts or commitments involving payment by or to the Company of less the $NUMBER with respect to any one contract or commitment, and (b) contracts or commitments for the purchase or sale of merchandise or services entered into in the ordinary course of business not involving with respect to any one contract, more than $NUMBER, the performance of which will not, individually or in the aggregate, have any material adverse effect on the financial condition, results of operations, or business of Seller or the company.
>
> a. The names of all full-time, salaried personnel of the Company as of *,* specifying the compensation and job title of each person.

b. All arrangements concerning loans to, or guarantees of loans to, employees or shareholders of the Company by the Company or any affiliate thereof. All material licenses, permits, consents, approvals, authorities held by the Seller of the Company (other than sales and use tax permits and franchise tax registrations).

c. All insurance now in force with respect to their property and business and any personnel showing the names of the insurance carriers, the policy converges and limits, the policy termination dates and premiums payable thereon.

d. Each bank in which the Company or the Seller have an account (including, without limitations, those accounts represented by a certificate of deposit) or safe deposit box and the names of all persons authorized to draw thereon or to have access thereto, together, in each case, with the most recent balance thereof furnished by the bank.

e. All claims for liability pending or threatened of which the Company or Seller has received notice not set forth in the Disclosure Statement."

Buyer's Obligations at Closing

At the closing, your practice as buyer (or merger entity) will similarly have to deliver documents that should be listed in the purchase or merger agreement. If the transaction is a merger, then both your obligations, and the target's obligations, for delivery of documents will include many of the items listed in this provision for the buyer and in the preceding provision for the seller.

As the buyer, your practice may be required to deliver to the seller the following items: certified or bank checks in the amount of the purchase price; certificates of the officers (directors, partners, or managers, for example) of your practice (attesting to certain financial parameters); certified copies of corporate actions and agreements of buyer authorizing the transactions; opinion of counsel to buyer (as to legal issues that affect the seller); security documentation supporting any deferred purchase price amounts (escrow agreement, mortgage, guarantee or pledge agreement, for example); employment agreements; and sublease or license.

Subsequent to the Closing

Provisions governing postclosing steps can be important. For example, if the transaction includes a significant deferred payment still pending postclosing, requirements will be essential to protect the seller's interests. The seller will want to be protected with adequate reporting and auditing rights to assure, for example, that postclosing payments can be monitored. Sample language follows:

> "Buyer shall allow Seller (including but not limited to partners, consultants, employees, representatives, and others affiliated with Seller), full and complete access to financial statements, contracts, books, records, and other relevant business information of Buyer."

Problems abound. What time limits should apply? What, at minimum, does the phrase "books, records, and other relevant business information" include? Should more specific reports and time periods be used? Audit rights must be addressed in the agreement. Should any shareholder, member, or partner of seller have the unlimited right to audit your practice's books and records? Some reasonable rights should be negotiated so that perhaps once a year, or prior to certain major events, such as the determination as to the sale of a major portion of the business' assets, audits should be permitted. Consideration should be given to who should be responsible for the cost. A limitation could also be placed on the number of audits which could be conducted during any period in order to avoid the use of this technique as a method of harassment.

Inspection

As the buyer, you should specify in the purchase agreement the right to make inspections within specified time periods during the due diligence process. It is advisable that details of what documents you will need or what steps you will have to perform, for example, be set forth in the purchase or merger agreement. Client confidentiality issues must be addressed in planning this.

Representations and Warranties

The selling practice, and often the individual partners of the selling practice, will be requested to make numerous representations and warranties

in the purchase agreement. In many instances, the seller will insist on the buyer providing similar representations. If the transaction is a merger, each party to the transaction will likely insist on a combination of the type of representations a buyer and seller make, from the other party to the merger. General considerations in drafting these provisions which the purchase or merger agreement should address are listed in the checklist below.

- ✓ How should the agreement define the term *material* when it is applied to representations?
- ✓ At what point should a violation of a representation be considered a default? What should the consequence of the default be? Should the consequences vary depending on the degree of violation?
- ✓ How should the purchase or merger agreement define the standard for the level of representation: (I) absolute; (ii) "to the best of knowledge;" (iii) "to best of knowledge without duty of inquiry;" or (iv) "to the best of knowledge after due inquiry." In most transactions, different standards are used for different representations.
- ✓ If instead of an asset purchase, you are purchasing stock, consider the following representation for inclusion in the purchase agreement (other modifications will have to be made as well). If instead you're purchasing membership interests in an LLC or partnership interests in a partnership, the language below can be modified. You need representation warranties that the stock (partnership or membership interests) are owned free and clear and that the seller has the rights to sell those interests to you.

  > "Purchase and Sale of Capital Stock. At the closing contemplated by this Agreement, seller shall sell, assign, and transfer to Buyer and Buyer shall purchase from Seller an aggregate of NUMBER shares of its common capital stock without par value representing all of the issued and outstanding shares of the capital stock of the Company (the "Sale Shares")."

- ✓ Consider what survival terms or periods are acceptable to the parties for each representation and warranty. The seller wants representations to end as of the closing. The buyer wants them to continue forever. Some reasonable middle ground can often address the legitimate concerns of each. Often, if there is significant disputes

over survival periods, addressing the survival of groups of representations separately, rather than one global survival period, will facilitate achieving a resolution to the decision. Sample language follows:

> "All representations and warranties of Seller and Buyer set forth in this Agreement (including the Schedules and Exhibits and disclosure statements) and in any other document or instrument delivered by or on behalf of Seller or Buyer will be true on the Closing Date, and, except where otherwise specifically provided herein, will survive the Closing and the transfer of the Assets to Buyer [periods to be specified for each representation]."

✓ When there is a deferred payment, seller will want buyer's representations to survive at least the period of the deferred payment and to hold some assets in escrow until significant payments are made. The buyer should negotiate to have the following representations survive for lengthy periods: due authorization of transaction, title, and excluded liabilities, for example.

> Power and Authority Relative to Transaction: Seller and the Company each have full power and authority to execute and deliver this Agreement and to execute, deliver, and perform all of their obligations contained herein. The execution, delivery, and performance of this Agreement by Seller and the Company and the consummation of the transactions contemplated hereby will not violate, with or without the giving of notice or the elapse of time, any provision of law, and will not conflict with, or result in the breach of, or result in the acceleration of the performance of the obligations of Seller or the Company under the Company's charter or bylaws or pursuant to any instrument or agreement, judgment, or decree to which either is a party or by which either or any of their assets or properties is bound, or result in the creation of any claim, lien, charge, or encumbrance upon, any of the properties, assets or business or Seller or the Company."
>
> "Valid and Binding Obligation: This Agreement constitutes, and each instrument to be executed and delivered by each of the

> Sellers in accordance herewith will constitute, the valid and legally binding obligation of each of Seller and the Company, enforceable against each of them in accordance with their respective terms."
>
> "Litigation and Claims: Except as set forth in the Disclosure Statement, there are no actions, proceedings or investigations pending, or threatened, against or affecting the Company or the Seller or any of their properties or rights, in any court or before any governmental agency or authority."

Supplies Inventory

Attach an inventory count of supplies to be transferred with the practice as an exhibit. Representations concerning condition and any other relevant factors could be included if the amount and value of the materials warrants this.

Material Adverse Change

Restrictions should be set forth in detail that there should be no material changes in financial condition from the date the contract is signed to the date of the closing. Obviously, this provision is omitted if your transaction is a simultaneous signing and closing.

Taxes, Returns, and Payments

This representation should include, among other matters, a statement that all income, unemployment, and other tax, franchise and similar returns and reports required by federal, state, and local law have been duly and timely filed, and all taxes, assessments, and other governmental charges on either or both practices, or upon their properties and assets which are due and payable, have been paid. There have been no audits of the seller's tax returns, and the seller is not aware of any imminent or pending audit or any basis for any additional assessments against it. There are no waivers in effect of the applicable statutes of limitations in respect of federal income taxes for any year. The seller and buyer shall each be responsible for responding to all tax audits for tax periods ending on or before or subsequent to the closing date, at its expense, and for all tax liabilities arising with respect such an audit.

Title to Assets

The seller should represent that it has (or in a merger, both parties should represent that they each have), and on the closing date will give, the buyer (or in a merger, the postmerger entity) good and marketable title to the assets. This is particularly problematic for many poorly run (from a legal perspective), closely held businesses. As a precaution, have the principals execute transfer documents transferring any interests in business assets which they may have in their individual names to the corporation before having the entity make the sale or engage in the merger.

Condition of Assets

This representation should address the physical characteristics of furniture, fixtures, equipment, and other relevant assets.

Litigation and Claims

Identifying existing and potential claims and suits as well as similar issues is a key objective of the entire due diligence process. As discussed above, be alert for indications of issues throughout the process and update the purchase or merger agreement accordingly. Endeavor to "smoke out" any possible problems. In a merger, both parties should endeavor to do this. In a sale arrangement, the buyer clearly wants to identify these issues. However, since most practice purchases include some form of deferred payment or continued employment of the selling professionals, the seller will also reasonably want full disclosure from the buying practice.

Compliance with Contracts

If there are any significant contracts between the practice and third parties that will be assigned as a part of the transaction, a representation should be obtained that they are not in default. A summary of key terms of the contracts may be included in the body of the agreement or as an exhibit. Copies of complete executed contracts should be attached to the purchase or merger agreement as an exhibit.

Books and Records

Representations as to the completeness, accuracy, and other attributes of the tax returns, accounting records, and other reports you may rely upon should be included.

Operation of Practice Prior to Closing

The seller (or in the event of a merger, both parties) should covenant and agree as to how the practice will be operated between the date of the purchase or merger agreement and the closing. For example, nothing out of the ordinary course of business or in excess of specified targets can be done without the buyer's (other party to the merger's) permission. The seller will not want any restrictions on operations in the event that the deal falls through, so a balance needs to be achieved between each party's goals.

Compliance with Closing Conditions

Once the contract is signed, the due diligence process should proceed as the transaction moves towards closing. Although investigation, disclosure, and analysis typically begin before contract signing, the depth of analysis is often limited until the contract is signed. One focus of your due diligence is to meet the requirements in the contract that are listed as conditions you must satisfy for the transaction to close and to obtain from the other party the items necessary for you to proceed to closing.

Use the specified conditions in the contract as a checklist of what you must prepare and what you must receive. These items might include providing an opinion of counsel as to a particular legal matter, satisfying certain peer review criteria, obtaining bank or other financing approvals, and receiving the landlord's approval of an assignment or sublet of a lease. Most purchase and merger contracts provide every party the right to terminate the transaction if specified conditions and requirements are not met. While the violation of the conditions should be restricted so that only a material failure could have such an effect, at this stage, you are bound by whatever terms or conditions the contract contains. What due diligence should be taken with respect to the following sample? What conditions may be missing? How would financial reporting decisions affect them? Sample language follows:

"Conditions Precedent to Buyer's Obligations. All obligations of Buyer hereunder are subject to the fulfillment prior to or at the closing of each of the following conditions, unless they are expressly waived in writing by Buyer:

a. All representations and warranties made by Seller [that is, the practitioner selling assets to your practice] or the Practice [the practitioner's practice entity] shall be true and correct as of the Closing as though made and as of that date.

b. All agreements and conditions in the Purchase [Merger] Agreement required to be performed or complied with by Seller or by the Practice prior to or at the Closing shall have been so performed or complied with, and Buyer shall have received a certificate [a written statement attesting to the compliance] of the Seller and of the Practice to that effect.

c. All disputes with and litigation concerning EMPLOYEE-NAME of the Practice shall have been settled without limitation, and that all payments to be made with respect to all such settlements shall have been completed.

d. An assignment, but not sublet, and extension of the Practices premises lease, consistent with the terms and conditions in the Purchase Agreement, assuring Buyer not less than 10 years use of the premises.

e. The Practice shall have been operated during the interim period between the execution date of the Purchase Agreement and closing in a manner that is not materially [how do you define the term?] consistent with past operations.

f. Nothing shall have come to the attention of Buyer which in Buyer's reasonable judgment [how can this term be defined?] would constitute a material [define materiality?] adverse change in the Practice, operations of Practice, or the prospects of the Practice."

Postclosing Follow-up

There can be a host of issues that need to be addressed after closing. The following is a partial checklist of some of the steps that may arise. You can use the purchase or merger agreement to develop a checklist.

- ✓ Issue stock, membership, or partnership interests. Whoever is to receive equity interests in the surviving entity should actually receive the certificates of that entity, if certificates are to be issued. Many attorneys don't issue certificates for LLCs or partnerships, and rather, the operating or partnership agreement serves as evidence of ownership. In the later cases there would be no certificate.
- ✓ Close the escrow arrangements if used in the transaction. If funds, stock certificates, or title documents, for example, are to be held in escrow, not only should the escrow agreement be fully executed (the escrow agent may not have been at the closing to sign, although you and the seller may have). All of the original documents that the escrow agent is to hold should be physically transferred to the escrow agent. Too often these documents remain in one of the attorney's files until years later, and then you need them when you are bringing in a new partner or you have decided to sell the practice.
- ✓ File all tax returns reflecting the transaction.
- ✓ Verification of contingent payout.
- ✓ File any entity documents with the appropriate state authorities, such as the dissolution of the selling entity or the change in the name of your practice entity (for example, to add a merger partner's name to the practice name).
- ✓ Complete the transfer of ownership (title) of contracts, equipment, real estate, and leases, for example. In many transactions, these items are not finalized until the closing occurs to avoid problems in case for any reason the deal is not concluded. Formal recording by the practices' attorneys will often occur after closing.
- ✓ Review postclosing adjustments to determine if any apply. Create a checklist at the closing of any postclosing adjustments and monitor the factors that may trigger them. The following is an illustration of how one such adjustment may occur. In this hypothetical, a loss of clients retroactively reduces the purchase price agreed to, with different formula applied for individual 1040 clients.

  > "Purchase Price Reduction. The Purchase Price shall be reduced retroactively if any of the following occur ("Reduction") for the calendar years 200X1, 200X2 or 200X3: Billings for the purchased business client list (Exhibit A, Schedule A-6.1) decreases by more than Twenty Percent (20 percent) for any calendar year

during the payout period from the billing for 200X0 listed in Exhibit A. Billings for the purchased individual tax client list (Exhibit A, Schedule A-6.2) decreases by more than Twenty Five Percent (25 percent) for any calendar year during the payout period.

The Reduction shall be calculated as follows: [(Revenues from Business Clients per Schedule) × 80 percent] – [Actual cash basis revenues received from Business Clients listed in Exhibit X, Schedule Y during the calendar year involved] × 150 percent. PLUS

[(Revenues from Individual Tax Clients per Schedule) × 75 percent] – [Actual cash basis revenues received from Individual Tax Clients listed in Exhibit X, Schedule Y during the calendar year involved] × 140 percent.

The amount of the Reduction shall be applied by Buyer to reduce the next payment due Seller on the Deferred Purchase Price. If no further payments are due Seller, then Seller shall promptly refund to Buyer the amount of such Reduction from Purchase Price payments made previously.

The Reduction amount shall be reduced by the amount of revenue realized during such year by a new client introduced by Seller to Buyer where Seller replaces any client who is lost to Buyer's reasonable satisfaction."

Summary

Other than adding associates and growing new clients, the major path to your continued growth is for you to acquire a practice or merge with another practice. The corollary to this is that if you've reached the stage of your professional career when you want to slow down or changes in the economic, professional, or technological environment makes your practice deficient, merging into another firm or selling your practice with some level of continued involvement may provide a needed exit strategy. This chapter explores the purchase and sale of a practice and the merger of practices. The appendixes illustrate several documents that can be used as checklists or templates for negotiating and structuring your practice purchase, sale, or merger before finalizing documents with your attorney.

Terminating the Firm or a Partner 7

The final stage in the life cycle of your accounting practice is the station stop. There are many ways that you may exit your practice or have the practice itself come to a close. Although this chapter focuses on the final inning, the significant milestones in your practice's life cycle don't always follow a sequential pattern, so some of the topics of this chapter have been addressed previously.

Withdrawal and termination provisions, including the following, are discussed in this chapter:

- Dissolution of your practice.
- Selling your interest pursuant to a stated value purchase price sale.
- Dividing the practice into independent smaller practices.
- Negotiate a termination with the practice other than a previously planned retirement.

As with prior chapters, the use of the term *partner* is in the generic sense and is intended to refer to a principal in your practice, whether a shareholder in a corporation, partner in a partnership, or member in a limited liability corporation (LLC).

Dissolution of the Practice

In some instances, the relationship between the partners in a practice degenerate to the point where the partners must simply go their separate ways, and the practice dissolves. Some partners may choose to use the trauma of the event as the final excuse to retire, others may vow to remain sole practitioners for the rest of their careers to avoid the aggravation of partners, and still others may move on to new firms.

When should dissolution of your practice be permitted? A simple agreement might merely provide: "The Practice may be dissolved by agreement of the partners."

What should occur if the practice is dissolved? A typical provision might provide a sequence for the application of funds from the practice. Payment of third party debts is usually first. Next, debts due partners are often paid, followed by partners' capital accounts. Finally, any remaining funds are distributed in accordance with the partners' interests in the partnership. This approach, however, is too simplistic to address some of the issues that can become problematic in the event of dissolution.

> **Example:** Your practice has grown to comprise eight partners. You are the most senior, living partner. You joined John Richards decades ago. After five years, you were made a junior partner, and the practice name became Richards & Smith, CPAs. Several years later, two additional junior partners were named, and the practice name was changed to Richards, Smith, & Co., CPAs which has remained the name throughout the next four partners joining. Richards died shortly after the last two partners joined. Now, unfortunately, such a rift has grown between the partners that the practice has to be dissolved, with two factions of partners going their separate ways. You obviously can practice under your name "Smith," but what of the name "Richards?" You had been with Richards as a partner for decades. Half of the partners joined the practice after Richards passed away. Shouldn't you be able to retain the use of the name "Richards?"

These types of issues should be addressed in the practice governing document while the relationship between the partners is amicable. The governing document must address not only the allocation of funds, but also the procedures to be followed in dissolution, a determination of which assets shall be distributed to which partners, provisions for what is to be done with the office, and more. If these matters are not addressed in advance, then at the time of dissolution you will need to negotiate a division of the practice and a termination agreement.

Disability Buyout

Disability buyout is a common issue affecting most accounting firms. Practice governing documents (shareholder, partnership, or operating

agreement) should provide for a mechanism and price for the repurchase of a partner's ownership interests in the event of disability. These were illustrated in prior chapters, including such concepts as preliminary and permanent disability. It is generally only in the event of a permanent or total disability that a partner's interest in the practice is repurchased. The repurchase can be handled by the other partners, or by the practice itself, as a redemption. While disability buy- out insurance can be a practical method of funding a disability buyout, few small firms are willing to invest the time and effort to address this type of planning, or if they do, to incur the cost involved. Thus, because of the difficulty of financing a disability buyout (as compared to retirement, where the professional may continue working and generating revenue, or death, where life insurance may provide a ready solution), many (perhaps most) governing agreements ignore disability buyouts, or ignore the funding issue. The result can be litigation, which is costly for all involved. Various disability buy-out provisions have been illustrated with comments and analysis in the appendixes to Chapters 3, 4, and 5.

Death

Provisions governing the repurchase of a partner's shares in the event of death are commonly included in most practice documents. In fact, death buy-out provisions are often too dominant in that many practice governing documents contain little more than death buy-out provisions.

Death buyout under an insurance funded or business funded (for example, from working capital and future earnings) arrangement or a combination can be used. These provisions are often combined with caps or ceilings to prevent an undue burden on the surviving partners.

A cross-purchase agreement could exist under the governing agreement for your accounting practice. Your partner would own insurance on your life, and you on your partner's life. On your death, your partner uses the insurance proceeds to purchase your equity interests from your estate. Less common for a small partnership, a redemption arrangement is used whereby the practice purchases your interests. The tax issues of redemption versus cross purchase have been adequately addressed in a plethora of other sources and hence are not dealt with in this book. The mechanics of these provisions are illustrated and annotated in the sample documents in the appendixes to Chapters 4 and 5.

A key issue is the establishment of the price at which the repurchase should occur. Some of the commonly used approaches to this are discussed in the next section.

Stated Value Purchase Price Arrangement

A common method used for the valuation of interests in small accounting practices for setting the price for a death, disability, or other buyout, is the "stated value purchase" approach. Other approaches include agreed upon formulas or appraisal methodologies. The use of independent appraisals tends to be complex and costly, and as a result, partners tend to favor a stated value method or formula. As discussed in prior chapters, when a stated value method is used, alternative approaches should be addressed in the event the stated value has not been recently updated at the time of the event triggering a buyout.

At the heart of the stated value approach are a few simple concepts:

- No one knows the value of a closely held business better than the owners.
- If the owners collectively agree on a value prior to any event triggering a transaction, the price set will have to be objective because none of the partners knows if they will be buying or selling at that price.

The key problem with the implementation of a stated value method is that the partners will too often avoid or ignore the need to update the figure at least annually.

If the stated value is not revised at some reasonable interval, the old stated value should be rejected. Eighteen months is suggested below, however, a longer or shorter period may be preferable depending on the volatility (or stability) of the business. Some alternative arrangement could be provided.

> **Example:** You and your partners set a value for the practice at $1 million. If a buyout occurs prior to the next stated value being set, the $1 million figure, prorated to reflect the partner's interest involved, will be the price used. Six months later, a profitable two partner firm merges into your firm, and the new partners sign the partnership agreement. However, no one signs a revised stated value certificate. A

partner owning a 20 percent interest dies the next month. His estate is paid $200,000. Does this properly reflect the value? Perhaps not, but unless the stated value provision in the partnership agreement provided that if some specified period of time lapses or a major practice event occurs that an adjustment will be made, then the value will hold.

Example: The partnership agreement governing your practice states that if more than 12 months or a major event occurs that affects the practice and grosses revenues by more than 20 percent, then an independent appraiser will be hired by the practice to adjust the prior stated value to reflect an estimate of the event, or lapse of more than 12 months, on the prior stated value. In this way, at least some recognition will be given to the change.

Consideration must also be given to the application of the stated value in the agreement. For example, if life insurance is held and designated as specifically for buy-out purposes, if the stated value is less, perhaps the buy-out price should be the greater of the life insurance proceeds or the stated value. Sample language follows:

"Initial Stated Value: (i) The Parties agree that the Stated Value of all of the issued and outstanding Shares at the execution date of this Agreement is the value set forth in "Exhibit A: Certificate of Stated Value", attached. (ii) On or before November 15 of each year hereafter the Shareholders shall agree upon an updated Stated Value of the Shares, which updated Stated Value shall be set forth in either a certificate similar to that in Exhibit A, or minutes or a unanimous consent of the Corporation executed by each of Shareholders, and annexed to this Shareholder's Agreement, or maintained in the minute book or other permanent records of the Corporation. The Stated Value shall be deemed to include the value of any goodwill of the Corporation as a going concern.

In the event that the Shareholders have failed for a period of Twenty Four (24) months [or some other period] prior to the date of the death or disability buyout [or some other event for which it will be used] to update the prior Stated Value figure then [The following approach increases the old Stated Value by the relative change in Net Book Value over approximately the same time

period] the Stated Value last determined shall be increased 120 percent of the increase in the Net Book Value, determined in accordance with the Corporation's regular method of maintaining its books and records, as of the last calendar quarter preceding the determination of such Stated Value to the Net Book Value as of the calendar quarter preceding the death or disability triggering the buyout hereunder. The Net Book Value shall be the net book value as generally defined in the reasonable discretion of the Accountant for the close of the last calendar quarter immediately preceding the date of death, Disability or other event triggering the use of the Stated Value here. The net book value as of such quarter end shall be further adjusted as provided for below, in accordance with the accounting procedures and practices regularly followed by them, with the following adjustments or rules, or both:

(1) The Net Book Value of the shares of any wholly owned subsidiary, determined in the same manner as the Net Book Value of the Corporation (including the adjustments herein), shall be substituted for the cost of such shares on the books of the Corporation.

(2) The fair market value of any security publicly traded (except for the shares of any wholly owned subsidiary) or real estate, including any improvements thereon, shall be substituted for the cost of such securities and real estate on the books of the Corporation. The value of real estate shall be determined by a written report of an independent appraiser selected by the Partners.

(3) No intangible assets shall be included, except for purchased intangibles or purchased goodwill, as same may be regularly and usually reflected on the books of the Corporation, and there shall be no allowance for goodwill of the Corporation.

(4) Accounts receivable, and an estimated cost of fixed assets previously deducted by the Corporation under Code Section 179 elective expense deduction shall be adjusted in the reasonable discretion of the Accountant. If the fair market value of such fixed assets could reasonably exceed Fifty Thousand Dollars ($50,000) then the Accountant shall engage an appraiser and obtain a written report estimating the value of same."

In addition to setting the value to be used, the governing agreement should set terms for the buyout (closing date and location, method of payment, timing of payment, whether interest will be charged, and if so, at what rate, for example). A sample agreement for termination of a partner is included in Appendix 7-1, "Sample Termination Agreement for Partner in a Small Accounting Firm."

Voluntary Withdrawal

Many governing agreements include a provision permitting a voluntary withdrawal in the discretion of the withdrawing partner. Generally some notice period is required. Often, the payment to be provided is reduced if less than some minimum advanced notice period is provided. Sample language follows:

> "A Partner may voluntarily withdraw from the Partnership by giving advanced written notice of not less than One Hundred Eighty (180) days of such Partner's intent to withdraw. The withdrawing Partner shall receive a refund of his or her capital account as of the end of the month preceding the month in which the withdrawal is effective ("Month"); his or her pro rata share of any undistributed profits through the end of the Month; as payment for any interests in his or her pro rata interests in goodwill, accounts receivable and work in process an amount equal to 175 percent × the average earnings of such partner for the Three (3) complete tax years preceding the year in which the withdrawal is effective (whether earned as an employee or partner). If the Partner worked for less than Three (3) years then for the period for which he or she worked annualized. If the withdrawing Partner gives less than 180 days advanced notice the 175 percent figure shall be reduced to 100 percent. If the withdrawing Partner gives less than 35 days advanced notice the 140 percent figure shall be reduced to 60 percent."

Negotiated Purchase

In a situation where the accounting practice has grown sufficiently beyond the founding professional and has several partners, a founding or

senior partner's exit might result in a purchase of the practice by the remaining partners. This can be accomplished by:

- A retirement buyout (see below) included in the practice documents years in advance of the event.
- Approaching the partners and requesting that your interests be purchased, and a price and terms to be negotiated at the time of purchase.

Retirement

In some instances, the retirement provisions of the shareholders' (or other) agreement governing your accounting practice will be intentionally structured to affect a substantial portion or all of the buyout through the payment structure put in place for junior professional(s). This can be analogous to the sweat equity purchase arrangement discussed in Chapter 6. In this scenario the younger professionals earn less than they otherwise would over a period of years, thereby enhancing your earnings. This is effectively part of the payment for your equity interests in the practice. After several years of this negotiated price arrangement, the junior partner(s) purchase your capital interest pursuant to a binding stock purchase agreement signed when the initial arrangements were negotiated.

> **Example:** Your practice grows to a five partner firm. You're reaching retirement age, and your partners have been groomed and are ready to take over. Your profits have averaged about $200,000/year while you've worked full-time. You all meet and agree that you'll cut your hours to 20 hours per week, but continue to earn $200,000/year for the next three years. After the end of the third year, your four partners will each pay you $25,000 for one fourth of your equity interests, and you'll retire.

Voluntary Division

The partners may simply divide the practice into successor firms, and each continues to practice thereafter independently. This process, however, requires considerable detail and planning to implement. A detailed division agreement is presented in Appendix 7-2, "Sample Division

Agreement for Dividing Existing Accounting Practice into Two Separate Firms." The annotations to that agreement highlight a host of issues to consider.

Termination for Cause

Perhaps the least pleasant, and sometimes most contentious basis for a partner to be terminated from an accounting firm is to be fired for cause. The first step in such a process is to carefully review the governing documents for the practice to determine what the process is, what steps must be taken, and what payments made. In most governing documents, significant hurdles must be met to terminate a partner. Depending on the provisions agreed to, there may be reduced or penalty payments for the terminated partner's interest in the practice. If there is a firm employment manual, it may provide some insight into how these decisions should be made and corroborated. If the documents are silent, state employment law on terminations for cause should be carefully reviewed by your practice's counsel, and all your actions in the termination should be vetted for compliance with these laws. In all instances, gird your practice for a potential suit by the terminated partner. They won't always occur, but it is more prudent to be prepared. Thus, before the termination is finalized, have corporate and perhaps employment counsel advise you on the steps to take.

The key contentious issue in many terminations "for cause" is what constitutes cause and whether the partner's actions rise to that level. When the issues are "grey," as they often are, caution is in order. Many agreements will provide the alternative of termination for a partner *without* cause, but on the basis of a more generous payment to the terminated partner. This approach can eliminate the risk of contentious litigation over the "cause" definition and resolve the matter with a minimum of legal fees. Many partners bristle at the inclusion of such a clause in the governing documents, so that this option is often not available.

> **Example:** Your practice's partnership agreement includes a provision, "Expulsions for Cause," which provides a list of reasons for which a partner may be expelled. The reasons are sensible, objective, and significant events: loss of CPA certification, professional misconduct, and the like.

> Determination to expel a partner for cause requires a majority vote of the Executive Committee. However, under Article XII, section 2, "Expulsions Without Cause," by majority vote, the Executive Committee can also expel a partner without determining that there was cause.

In this agreement, as in many that include both optional provisions, the existence of "cause" justifying termination would not preclude terminating the partner under the "without cause" provision. This "without cause" approach permits the Executive Committee to expel a partner without having to go on record for its reasons. This approach could be favored to protect the Executive Committee from a libel claim (and more) by the terminated partner.

There are financial distinctions between being expelled with cause and without cause under your partnership agreement. The partner expelled with cause is typically entitled to a lesser percentage of the accounts receivable of the practice than the partner expelled without cause.

Ordinarily, the removal of a partner or member of a company for cause requires a lesser standard than removal without cause. In other words, a partner found to have committed fraud could be expelled by majority vote, whereas a partner being removed without any cause (or at least, any stated cause), could only be removed by a vote greater than majority, perhaps even the unanimous approval of all of the other partners.

No Waiver Clause to Back Up Termination Provision

Common law concerning waiver clauses in contracts states that the failure to enforce a right under a contract acts as a waiver of that right in the future. In other words, a party who has a right under a contract and fails to enforce the right at least once cannot enforce it ever thereafter. Because of the extremely harsh effect of this principle, typical contracts include a waiver clause which provides that notwithstanding common law to the contrary, failure to enforce a contract right on a specific occasion will not be deemed to be a waiver of enforcement rights as to that provision in the future. Discuss with your practice's attorney whether your practice's governing document should contain a waiver clause. This provision is important to consider in the context of discipline and termination provisions for

partners. These acts are severe, and often partners and practices endeavor to overlook problems to avoid exercising these provisions. However, you would not want your graciousness and generosity in overlooking a partner's inappropriate and actionable conduct to later undermine your practice's ability to act when the misdeeds continue.

Good Faith

There is case law to suggest that if a partnership agreement is a contract (and courts generally take this position), then there may be an implied covenant of good faith dealing imposed upon the agreement. However, in cases where the partnership agreement includes express expulsion provisions, courts generally take the view that the negotiated terms of the agreement control, and good faith is not imposed on the overall deal with respect to those terms. However, in a situation where the partnership agreement contains negotiated terms governing expulsion, courts may nevertheless impose a good faith requirement on the expulsion provisions to prevent partners from expelling a partner solely to appropriate the departing partner's share of the profits (so called "opportunistic expulsion"). These, and related state law issues, should be reviewed by your practice's attorney in the preparation, and certainly before the implementation, of the provisions permitting the termination of a partner.

Merger

Your practice may merge into a larger practice. A merger can be akin to the sale of your practice and thus affect your end plan. Merger can be an exit strategy for you in that the larger practice may have a retirement policy that suits your goals of winding down and being bought out over time or provides a mechanism and the financial resources to start buying out your equity.

Statutory Buyout

Many states have mandatory buy-out provisions for interest in professional corporations to protect the public from the risk that a nonlicensed professional owns shares. If the state law governing your practice includes such a provision, then care must be taken to override it with mandatory

death buy-out provisions in your shareholders' agreement (these provisions may only apply to corporations, not professional LLCs).

Purchase or Valuation Provisions of State Law

If a shareholder in your professional accounting corporation is disqualified by death or loss of license, if a buyout is not consummated pursuant to a shareholders' or other agreement, the state default statute may apply to the transaction.

A typical such state law provides as follows:

> "Within 375 days following the date of death of a shareholder . . . all of the shares of such shareholder shall be transferred to, and acquired by, the corporation or persons qualified to own such shares. If such transfer and acquisition is not otherwise effected within said period, the corporation shall forthwith purchase and redeem all of his shares at the book value thereof, determined as of the end of the month immediately preceding death . . . For this purpose, the book value shall be determined by an independent certified public accountant employed by the professional corporation from the books and records of the corporation in accordance with the regular methods of accounting used by it. Such determination shall be conclusive on the professional corporation and its shareholders. Nothing contained in this section shall prevent the parties involved from making any other arrangement or provision in the certificate of incorporation or bylaws, or by agreement, to transfer the shares of a deceased or disqualified shareholder to the corporation or to persons qualified to own the same, whether made before or after the death . . . of the shareholder, provided that within the period herein specified, all the stock involved shall have been so transferred."

Application of the Statute to the Purchase of the Shareholder's Interest

This type of statute provides that within 375 days following the date of the death of a shareholder of a professional corporation, like your accounting practice, if organized as a corporation, all of the shares of a deceased or disqualified shareholder must be transferred to, and acquired by, the practice corporation. If the transfer is not effected within this

period than the professional corporation must purchase and redeem all of the deceased shareholder's shares "at the book value thereof, determined as of the end of the month immediately preceding death." The Statute goes on to state that "the book value shall be determined by an independent certified public accountant employed by the professional corporation from the books and records of the corporation in accordance with the regular methods of accounting used by it."

The application of this formula to the value of an interest in your accounting practice is quite simple and direct. Most small accounting practices use the cash basis method of accounting and maintain only one set of books—those required for federal income tax reporting purposes. Applying the literal language of the Statute, the book value or net worth of the practice might be construed as the information contained on the most recent federal income tax return.

Issues Raised With Respect to Applicability of the Statute

The first issue to address where the shares of a deceased shareholder in a professional corporation are to be purchased is whether the state statute is applicable to the purchase/valuation. If you and your fellow shareholders have not contracted between yourselves as to the treatment of a shareholder's interest on death, so that such contract would override the Statute, and the Statutory 375-day time period (or whatever period your state statute provides for, if any) within which to act has elapsed, the provisions of the statute are mandatory. Thus, in these instances, the calculations of the amount to be paid to purchase the deceased shareholder's interest must be based on the formula contained in the Statute, that is, book value, which on a cash basis will probably substantially understate true economic value.

Issue Raised With Respect to Interpretation of the Statute

The second question which must be raised about the application of the Statute is the definition of the application of the term *book value* contained in the Statute. This issue can be addressed from a number of different perspectives. The key phrase is the statutory language: ". . . book value . . . determined from the books and records . . . in accordance with the regular methods of accounting . . ." Book value is the amount of net assets. It is computed by dividing the total stockholders' equity by the number of shares of stock outstanding. A simpler definition for the book

value of any asset is simply the cost of the asset minus the total amount of recorded depreciation. Applying this definition to a balance sheet or financial statement simply requires the summation of the cost of all assets, less the summation of all recorded depreciation applicable to each such asset.

The use of the cash method of accounting by accounting firms was (and remains) so prevalent that when Congress passed restrictions on the use of the cash method of accounting in the Tax Reform Act of 1986, it specifically carved out exceptions for personal service corporations operating in the fields of accounting, as well as health, engineering, and law, for example. Further, it is likely that the legislature was well aware of the potential implications of the statute. The professional corporation statutes were specifically directed to protect those with whom professionals deal and not to permit any degradation of professional responsibility by virtue of the existence of a corporate form. Requiring the qualified shareholders or professional corporation to purchase the interest of a disqualified shareholder (in this case, the estate of a deceased shareholder) serves the public policy purpose of protecting the public by limiting the potential risk of a nonlicensed professional influencing the actions of a professional corporation. The mechanism used to achieve this was to require a buyout at a readily determined price and within a short time frame if the parties couldn't reach an agreement between themselves. Thus, it appears that the purpose of these statutes was to protect the public, not to assure that the seller receives a fair market value price. Give careful thought to this if you're still putting off signing a shareholders' agreement.

Issues to Address in the Governing Document

There are a host of issues to address in the provisions in your practice's governing document as to withdrawal, termination, retirement, and other exit strategies. Many, but not all, of these issues have been discussed in this chapter. The following checklist will serve to highlight additional issues that you and your partners may wish to consider:

- ✓ Should there be a mandatory retirement age?
- ✓ Should partners be permitted to scale back hours and workload rather than an "all or none" retirement? If so, how?

- ✓ Can the practice force a partner to retire? Under what conditions and for what compensation?
- ✓ Can a partner be terminated for cause? If so, on what payments and how should "cause" be defined?
- ✓ Can a partner be terminated without cause? If so, on what voting margin and for what amount of severance?
- ✓ Should different termination provisions apply to different classes of partners? For example, should special privileges be given to senior or founding partners? Should contract or junior partners have privileges that are less than regular partners? Should there be gradations for each?
- ✓ Should the payments on repurchase of a terminated partner's interests differ depending on the cause for the termination?
- ✓ What arrangements should be made with partners posttermination to enhance the likely transfer of client goodwill?
- ✓ How should the price for buyouts be determined?
- ✓ Should different prices be provided for different buy-out provisions (for example, death based on life insurance, disability based on disability buy-out insurance at a much lower level)?
- ✓ Should caps or ceilings be placed on aggregate payments to all terminated, retired, disabled, and other former partners to protect the remaining partners?
- ✓ What assets in kind should a terminated partner have the right to receive?
- ✓ If a partner terminates himself or herself voluntarily, what type of notice must be given? Should the payout be reduced in inverse proportion to the notice period?
- ✓ What rights should the remaining partnership have to use the name of a terminated partner? Should the answer differ depending on the cause for the termination?
- ✓ What provisions have been included in the governing document to override otherwise mandatory state law buy-out rules?
- ✓ What closing terms should be included in the governing document for buyouts? Where should the closing occur? How long after the event should the closing be scheduled?
- ✓ What can be done to address liability exposure created or left by a departing partner?

- ✓ How many gradations for disability should be provided for? Temporary, partial, final? Should personally owned disability insurance payments be applied to reduce practice payments to a disabled partner? Should partners agree or be mandated to purchase agreed minimum disability coverage in order to coordinate with lower payments by the practice?
- ✓ What access to records of the practice should a terminated partner have?
- ✓ Should a noncompete be applied to a terminated partner and to what extent?
- ✓ Should a nondisclosure agreement be applied to a terminated partner and to what extent?
- ✓ Should a terminated partner be required to sign a confidentiality agreement acknowledging that they will not discuss or disclose the terms of the termination with anyone?
- ✓ Should the practice insist on obtaining a release from the terminated partner?
- ✓ Should the practice be willing to give a terminated partner release?
- ✓ What alternative or safety valve valuation methodologies should be included to assure at least a minimum buy-out payment or to assure a buyout that has some relationship to current values?
- ✓ Do the remaining partners assume partial, total, or no personal liability on the payments to terminated partners?
- ✓ Should any terminated partners have the right to veto a merger of the practice or to accelerate deferred payments of their termination or retirement payments on such a transaction? If not, how can the terminated partners be protected without unduly restricting the remaining partners that are paying them? Should different provisions be provided based on the reason for the termination (for example, most favorable provisions for retired partners who still consult with the practice and the least favorable ones for a partner terminated for cause)?
- ✓ Should a covenant not to compete apply? What terms should be applicable to which partners?
- ✓ Should adjustments be made based on uncollectible work in process or accounts receivable?
- ✓ Should the practice retain a right to offset deferred payments to the terminated or retired partners in the event of a violation of a covenant not to complete, nondisclosure, or other agreement?

- ✓ Should any funding of future payments be initiated? How much and how should it be held?
- ✓ If the staff accountant you've hired quits, and you had hopes of him or her eventually taking over and buying your practice, what options do you have for an exit strategy?
- ✓ If there are several events in a short time period (partner's leaving for death, disability, retirement, or termination, for example), can the practice survive? Are the caps or ceilings sufficient to protect the remaining partners with multiple payout obligations?
- ✓ Are the different exit strategies coordinated to prevent a race for a particular exit? In some situations, a voluntary withdrawal may pay more than a retirement withdrawal. If problems develop with the firm, the race for who leaves first and under which provision of the governing document can create conflicts and interpretive issues.

Summary

This chapter addresses the final stage of your practice's life cycle. There are a host of methods and scenarios through which you can retire, sell, or phase out of your practice. The approaches that were addressed in prior chapters are summarized here for completeness, and additional approaches have been discussed in more detail. The appendixes to this chapter illustrate a sample provisions for terminating a partner in a small firm and for division of an accounting practice into two separate practices when the partners no longer get along.

Life Cycle Planning for the CPA Practice

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F. Allocations and Distributions
    1. Allocations
    2. Distributions
    3. Basis for Distributions
G. No Disposition of Membership Interests
H. Management of Business
I. General Powers of the Manager
J. Unanimous Membership Approval for Certain Acts
K. Standard of Care; Liability
L. Exculpation of Liability: Indemnification

M. Disability
N. Deceased Member
O. Disability or Death of a Member Calculated Buyout
P. Other Activities of Members
Q. Representations and Warranties of YOUR-NAME [and the Practice]
    1. Power and Authority
    2. Binding Agreement
    3. No Default
    4. Suits, Claims, Judgments, etc.
    5. Statements Herein Complete and Accurate, etc.
    6. No Further Approvals Necessary
    7. Financial Matters
    8. Good Title
    9. Books and Records
    10. Insurance Coverage
R. Representations and Warranties of PROFESSIONAL-2NAME
    1. Power and Authority
    2. Binding Agreement
    3. No Default
    4. Suits, Claims, Judgments, etc.
    5. Financial Matters
    6. Conflicts
    7. No Untrue Statements
    8. Valid and Binding Agreement
    9. Insurance Coverage
S. Dissolution and Winding Up
    1. Dissolution
    2. Winding Up
T. Miscellaneous Provisions
    1. Terms
    2. Article Headings
    3. Independent Advice of Counsel
    4. Counterparts
    5. Entire Agreement
    6. Severability
    7. Amendment
    8. Notices
    9. Binding Effect
    10. Governing Law
    11. Further Assurances
    12. No Waiver

Exhibit 1: Certificate of Stated Value

Appendix 4-2: Sample Partnership Agreement for Two Practitioners Joining as Equal Partners in a General Partnership

A. NAME OF THE PARTNERSHIP
    1. Change in Partnership Name Generally
    2. Use of the Name "PARTNER-ONE and PARTNER-TWO"
B. FORMATION OF PARTNERSHIP; OFFICES; TERM
    1. Formation
    2. Office
    3. Term
C. CAPITAL CONTRIBUTIONS
    1. Initial Capital Contributions
    2. Capital Accounts
    3. Profits and Losses
        a. Generally
        b. Partner Draw
    4. Participation in Profits and Losses
G. WITHDRAWALS BY PARTNERS
H. MEETINGS
    1. Annual Meeting
    2. Special Meetings
    3. Requirements for Notice of Meeting
I. MANAGEMENT
J. PARTNERS VOTING
    1. Partners' Voting Generally
    2. Amendment of Partnership Agreement
K. CHANGES IN PARTNERS
    1. No Classes of Partners
    2. Addition of Partners
L. DISABILITY
    1. Definitions and Provisions Concerning Disability
    2. Consequences of Disability
M. DEATH OF A PARTNER
N. ACCOUNTING CALCULATION ON DISABILITY TERMINATION, RETIREMENT OR DEATH OF A PARTNER
O. BANKRUPTCY OR INSOLVENCY OF A PARTNER
P. TERMINATION OF A PARTNER FOR CAUSE
    1. Definition of Cause
    2. Effects of Expulsion for Cause
    3. Payments to Terminated Partner in Full Payment of His Interests in the Partnership

Appendix 4-3: Sample Shareholders' Agreement for Two Person Accounting Practice: Managing Partner and Two Staff Accountants Promoted to Junior Partner

5. Shareholders' meetings
6. Share Transfers

D. Employment
    1. Employment Terms
    2. Compensation
    3. Full Time Devotion Primarily to Professional Services
    4. Duties
    5. Professional Obligations
    6. Health and Other Insurance
    7. Vacation
    8. Participation in the Corporation's §401(k) Plan

E. Restrictions; Limitations; Confidential Information
    1. Clients
    2. Nondisclosure Provisions Applicable To Minority Shareholders
    3. Remedy For Breach of Nondisclosure Provisions

F. Control and Management
    1. Board of Directors
    2. Officers
    3. Replacement of Principal Shareholder
    4. Compensation of Officers

G. Major Decisions

H. Disability or Death of the Principal Shareholder
    1. Definition of Disability of Principal Shareholder
    2. Return To Work Following Preliminary Disability
    3. Compensation of the Principal Shareholder When Under A Preliminary Disability
    4. Compensation of Principal Shareholder Following A Final Disability
    5. Consequences of Final Disability or Death of the Principal Shareholder
    6. Purchase of Principal Shareholder's Shares in Event of Final Disability or Death
        a. Required Purchase
        b. Date of Purchase
        c. Required Purchase of Shares
        d. Closing
        e. Terms of Purchase
        f. Personal Guarantee from Purchasing Shareholders
        g. Documents Held in Eascrow
    7. Life Insurance

I. Disability or Death of a Minority Shareholder
    1. Definition of Disability of Minority Shareholder
    2. Consequences of Disability and/or Death of A Minority Shareholder

J. Term
    1. Extension

2. Consequences of No Extension
3. Termination for Death or Disability
4. Termination For Cause or No Cause
5. Automatic Termination

K. Termination of Minority Shareholder
1. Definition of Cause
2. Effects of Termination for Cause

L. Appointment of Corporation as Attorney In Fact To Facilitate Termination of Shareholder

M. Indemnification

N. Tax Matters
1. S Election
2. Disqualifying Payment Saving Provision
3. Distributions to Avoid Phantom Income

O. Miscellaneous Provisions
1. Applicable Law
2. Counterparts
3. Severability of Provisions
4. No Exclusivity
5. Notices
6. Further Assurances
7. Captions, etc.
8. Entire Agreement

P. Certificate of Stated Value

Appendix 4-4: Sample Annotated LLC Operating Agreement for a Non-Equity Contract "Partner"

A. Organization
1. Formation
2. Name
3. Duration
4. Registered Office and Resident Agent
5. Tax Status for Company

B. Books, Records and Accounting
1. Books and Records
2. Fiscal Year; Accounting
3. Member's Capital Accounts

C. Compensation

D. Capital Contributions

E. Allocations and Distributions

F. General Powers of Sole Member

G. Standard of Care; Liability

H. Exculpation of Liability: Indemnification

I. Other Activities
J. Death, Disability, Dissolution
    1. Death of Sole Member
    2. Disability of Sole Member
    3. Dissolution
K. Miscellaneous Provisions
    1. Terms
    2. Article Headings
    3. Entire Agreement
    4. Severability
    5. Amendment
    6. Binding Effect
    7. Governing Law

Appendix 4-5: Sample Annotated State Professional Services LLC Statute

§ 1201. Definitions
§ 1202. Limited liability companies organized under other provisions of law
§ 1203. Formation
§ 1204. Rendering of professional service
§ 1205. Professional relationships and liabilities
§ 1206. Purposes of formation
§ 1207. Membership of professional service limited liability companies
§ 1208. Reserved.
§ 1209. Disqualification of members, managers, and employees
§ 1210. Death, disqualification, or dissolution of members
§ 1211. Transfer of a membership interest
§ 1212. Limited liability company name
§ 1213. Limited liability company act applicable
§ 1214. Reserved.
§ 1215. Regulation of professions
§ 1216. Mergers and consolidations

Appendix 4-6: Sample General Partnership Agreement Admitting New Junior Partner on a Purchase Basis A with Ancillary Documentation

A. Name Of The Partnership
    1. Change in Partnership Name Generally
    2. Use of the Name "RETIRING-PARTNER"
    3. Use of Other Partners' Names in the Partnership Name
    4. Limitation on Use
    5. Announcements
B. Formation Of Partnership; Term
    1. Formation
    2. Term

C. Buy-in By Newly Admitted Partner
    1. Buy-Ins In General
    2. Alienation of Partnership Interest
    3. Sale Of Partnership Interest
D. Capital Contributions
    1. Capital Accounts
    2. Additional Capital Contributions
    3. Mandatory Loans By Partners
    4. Mechanics of Making Additional Capital Contribution or Mandatory Loan
E. Withdrawals By Partners
    1. Maintenance of Drawing Account
    2. Drawing Account Reduced To Zero; Capital Account Below Minimum Required
    3. Limitations on Amount To Be Withdrawn
F. Profits And Losses
    1. Generally
    2. Participation in Profits and Losses
G. Partner Conduct
    1. Full Time Devotion Primarily to Professional Services
    2. Duties
    3. Nature of Partner's Services
    4. Charging for Professional Services
    5. Professional Obligations
    6. Implement Major Decisions
    7. Limitation on Authority
H. Operations
    1. Credit
    2. Banking
    3. Related Party Transactions
    4. Compensation
        a. Compensation of Partners
        b. Guarantee for NEW-Partner
        c. Heath and Other Insurance
    5. Vacation
I. Restrictions; Limitations; Covenant Not To Compete/ Confidential Information
    1. Clients
    2. Covenant Not To Compete
    3. Confidential Information
    4. Equitable Relief
    5. Damages
J. Meetings
    1. Quarterly Meeting

2. Special Meetings
3. Requirements for Notice of Meeting

K. Governance
    1. Managing Partner
    2. Partners' Voting Generally
L. Changes In Partners
M. Disability or Death of MAIN-PARTNER
    1. Definition of Disability of MAIN-PARTNER
    2. Return To Work Following Preliminary Disability
    3. Draw By MAIN-PARTNER When Under A Preliminary Disability
    4. Draw by MAIN-PARTNER Following A Final Disability
    5. Consequences of Final Disability or Death of MAIN-PARTNER
    6. Purchase of MAIN-PARTNER's Interest in Event of Final Disability or Death
        a. Required Purchase
        b. Date of Purchase
        c. Required Purchase of Partnership Interest
        d. Closing
        e. Terms of Purchase
        f. Personal Guarantee
        g. Documents Held in Escrow
N. Disability or Death of A Partner Other Than MAIN-PARTNER
    1. Definition of Disability of Partner Other Than MAIN-PARTNER
    2. Consequences of Disability and/or Death of A Partner other than MAIN-PARTNER
    3. Accounting by Withdrawing Partner
O. Independent Advice of Counsel
P. Bankruptcy or Insolvency of a Partner
Q. Termination Of A Partner For Cause
    1. Determination of Cause
    2. Effects of Expulsion for Cause
R. Termination without Cause
S. Retirement of a Partner
T. Miscellaneous Provisions Concerning a Retirement, Death, Separation of a Partner, etc.
    1. No Partial Liquidation
    2. Withdrawal Shall Not Trigger Dissolution
    3. Continuation and Successor Partnership
U. Appointment of Managing Partner as Attorney In Fact
V. Finances and Records
    1. Books of Account
    2. Files and Work Papers
W. Indemnification

X. General Provisions
    1. Burden and Benefit
    2. Applicable Law
    3. Pronouns and Plurals
    4. Counterparts
    5. Entire Agreement
    6. Construction
    7. Captions
    8. Effect of Amendment

Y. Notice

Z. Exhibit: Listing of Each Partner's Fiduciary Positions

AA. SAMPLE NEW-PARTNER BUY-IN AGREEMENT
    1. Amount of Buy-In
    2. Payment of the INITIAL-YEAR Buy-In
    3. Departure of NEW-PARTNER before CUT-OFF-DATE

AB. Exhibit: Sample Promissory Note of NEW-PARTNER to Purchase Partnership Interest

AC. Sample RETIRING-Partner Termination Agreement from the PRACTICE-NAME & Co., CPAs Partnership
    1. Certain Fees
    2. Repayment of Advance

CHAPTER 5

Appendix 5-1: Sample Partnership Agreement for Multi-Partner Accounting Practice

A. NAME OF THE PARTNERSHIP
    1. Change in Partnership Name Generally
    2. Use of the Names "CPA1NAME" and "CPA2NAME"
    3. Use of Other Partners' Names in the Partnership Name
    4. Limitation on Use

B. FORMATION OF PARTNERSHIP; TERM
    1. Formation
    2. Term

C. CAPITAL CONTRIBUTIONS
    1. Capital Accounts
    2. Additional Capital Calls
    3. Mandatory Loans By Partners
    4. Mechanics of Making Additional Capital Contribution or Mandatory Loan

D. PROFITS AND LOSSES
    1. Generally
    2. Participation in Profits and Losses

E. WITHDRAWALS BY PARTNERS

1. Maintenance of Drawing Account
2. Drawing Account Reduced To Zero; Capital Account Below Minimum Required
3. Limitations on Amount To Be Withdrawn

F. MEETINGS
1. Quarterly Meeting
2. Special Meetings
3. Meeting To Vote on Executive Committee Members
4. Requirements for Notice of Meeting

G. EXECUTIVE COMMITTEE
1. Purpose and Powers of Executive Committee
2. Vote on Election of and Termination of the Executive Committee
3. Term of Executive Committee Membership
4. Subcommittees of the Executive Committee

H. PARTNERS VOTING
1. Partners' Voting Generally
2. Disqualification from Voting
3. Right To Vote
4. Voting on Disability, Expulsion, Retirement, New Partner
5. Amendment of Partnership Agreement

I. Duties of Partners
1. Devotion Primarily to Professional Services
2. Charging for Professional Services
3. Professional Obligations

J. Finances and Records
1. Life Insurance
2. Other Insurance
3. Disbursements
4. Books of Account
5. Files and Work Papers

K. CHANGES IN PARTNERS
1. No Classes of Partners
2. Addition of Partners

L. DISABILITY
1. Definition of Disability
2. Consequences of Disability

M. Retirement or Death of a Partner
1. Accounting
2. Calculation of Retirement or Death Benefits
3. Timing of Payments to Retired Partner/Deceased Partner's Estate or Successors
4. Mandatory Retirement Age
5. Early Retirement

4. Transactions Between Director and the Company
5. Specified Power and Authority of Directors
6. Resignation of Director
7. Directors Have Exclusive Duty to Company
8. Committees

B. Officers
    1. Officers
    2. Powers of Officers
    3. Officers
    4. Compensation of Officers
    5. Duties of Officers
    6. Other Provisions Governing Officers

CHAPTER 6

Appendix 6-1: Sample Nondisclosure Agreement Short Form

Appendix 6-2: Sample Nondisclosure Agreement Longer Form

Appendix 6-3: Sample Letter of Intent

Appendix 6-4: Merger: Operating Agreement for Two Individual Practitioners Merging Accounting Practices Into One

A. Incorporation of Recitals
B. Organization
    1. Organizational Fees
    2. Formation
    3. Name
    4. Purpose
    5. Duration
    6. Registered Office and Resident Agent
    7. Intention for Practice
    8. Share Certificates May Be Issued
C. Operations of LLC
    1. References to Titles
    2. LLC Property
    3. Banking
        a. Bank Accounts
        b. Separate Bank Accounts
        c. No Borrowing
        d. Large Disbursements Require Additional Signatures
    4. Qualification
    5. Expenses Generally

6. Staffing
7. Insurance
8. Payments to Related Parties
    a. Related Party Payments Generally
    b. Office Building Lease
9. Accounts Receivable

D. Books, Records and Accounting
1. Books and Records
    a. Fiscal Year; Accounting
2. Reports
3. Member's Capital Accounts
    a. Definition of Capital Account
    b. Increases in Capital Account
    c. Decreases in Capital Account
    d. Capital Account of Transferee
    e. Capital Accounts Shall Comply with Code Section 704(b)

E. Capital Contributions
1. Initial Commitments and Contributions
2. Additional Contributions
3. Failure to Contribute

F. Allocations and Distributions
1. Allocations
2. Distributions
3. Basis for Distributions

G. No Disposition of Membership Interests

H. Meetings of Members
1. Voting
2. Disqualification from Voting
3. Required Vote
4. Meetings
5. Consent

I. Management of Business

J. General Powers of Managers; Managing Partner

K. Unanimous Membership Approval for Certain Acts

L. Standard of Care; Liability

M. Exculpation of Liability: Indemnification

N. Disability

O. Deceased Member

P. Disability or Death of a Member Calculated Buyout

Q. Other Activities of Members

R. Mutual Representations and Warranties of CPA-1NAME and CPA2-NAME

1. Power and Authority
2. Binding Agreement
3. No Default
4. Suits, Claims, Judgments, etc.
5. Statements Herein Complete and Accurate, etc.
6. No Further Approvals Necessary
7. Financial Matters
8. Good Title
9. Books and Records
10. Insurance Coverage

S. Dissolution and Winding Up
    1. Dissolution
    2. Winding Up
T. Miscellaneous Provisions
    1. Terms
    2. Article Headings
    3. Independent Advice of Counsel
    4. Counterparts
    5. Entire Agreement
    6. Severability
    7. Amendment
    8. Notices
    9. Binding Effect
    10. Governing Law
    11. Further Assurances
    12. No Waiver

Exhibit A: Member Listing, Draws, Capital Contributions

Exhibit A-1: Fixed Assets Contributed by CPA-1NAME

Exhibit A-2: CPA-1NAME Accounts Receivable and Work in Process

Exhibit A-3: Other Assets Contributed by CPA-1NAME

Exhibit A-4: Fixed Assets Contributed by CPA-2NAME

Exhibit B: Certificate of Stated Value

Exhibit C: CPA-2NAME's Malpractice Insurance Coverage

Exhibit D: CPA-1NAME's Disclosure Statement

Exhibit E: CPA-2NAME's Disclosure Statement

Exhibit F: Lease for the Practice to Lease the Building

Exhibit F-1: Leasehold Improvements Owned by CPA-1NAME or A Party Related to CPA-1NAME and not by the Practice

Appendix 6-5: Purchase: Sample Documents to Purchase a Small 1040/Bookkeeping Practice

A. Asset Purchase Agreement

1. Purchase and Sale of Assets
    a. All Assets of Practice Sold
    b. No Liabilities
    c. Tax Allocations
    d. Excluded Assets
    e. Accounts Receivable
    f. Documents of Title
2. Purchase Price
    a. Purchase Price
    b. Payment of the Purchase Price
    c. Purchase Price Reduction
3. Consulting Agreement and Covenant Not To Compete
    a. NAME-SELLING CPA
    b. VALUED-EMPLOYEE-NAME
4. Lease of Premises
    a. New Lease Required
    b. Seller's Rights
5. Tax Protection of Seller
6. Representations, Warranties and Covenants of the Parties
7. Conditions Precedent to Buyer's Obligations
8. Further Assurances
9. Cross Default; Buyer and Seller's Remedies
10. Insurance
11. Indemnification
12. Brokers and Expenses
13. Governing Law; Savings Clause and Construction
14. Entire Agreement
15. Notices
16. Nonassignability
17. Exhibit A Assets Sold
18. Asset Schedule A-2 Telephone Numbers
19. Exhibit Individual Client Listing
20. Asset Schedule A-6.3

CHAPTER 7

Appendix 7-1: Sample Termination Agreement for Partner in Small Accounting Firm

1. Parties
2. Recital Clauses

A. Incorporation of Recitals
B. Timing

C. Audit of Partnership Accounts
D. Purchase of TERMINATING-CPANAME Interest
    1. Determination of Underlying Elements of Purchase Price
    2. Determination of Purchase Price
    3. Payment Terms
E. Representations and Warranties
F. Liquidated Damages
    1. Breach Defined
    2. Liquidated Damages to TERMINATING-CPANAME
    3. Liquidated Damages to Partners
G. Nonmolestation
H No Waiver
I. Governing State Law
J. Entire Agreement; Amendment
K. Severable Provisions

Appendix 7-2: Sample Division Agreement for Dividing Existing Accounting Practice into Two Separate Firms

A. Incorporation of Recitals
B. Compliance with Regulations
C. Transfers, Payments, Distributions
    1. Accounts Receivable; Work in Process; Client Files and Matters
    2. Additional Assets Transferred To TERMINATED-PARTNER
    3. Compensation and Payments to TERMINATED-PARTNER
    4. Tax Consequences of Property Division and the Arrangement
    5. Life Insurance
    6. Documents of Title
    7. Acknowledgement of Title to all Other Property
D. Waiver of Required Notice to Relinquish Interests
E. TERMINATED-PARTNER's Relinquishment of All Interests
    1. Equity and Related Interests
    2. Positions and Titles
F. Use of Firm and Individual Names
G. Confidentiality and Nondisclosure
H. Mutual Releases
I. Legal Fees
J. Work Product, Papers, and Other Corporation Materials
K. YEAR Tax Information
L. Representations and Warranties of TERMINATED-PARTNER
    1. Power and Authority
    2. Binding Agreement
    3. Agreement Will Not Trigger Defaults

4. Accounts Receivable and Work in Process
5. Suits, Claims, Judgments, etc.
6. Statements Herein Complete and Accurate, etc.
7. Documents
8. Good Faith Actions
9. Notices and Announcements
10. Insurance Coverage

M. Representations and Warranties of the Predecessor Firm
    1. Power and Authority
    2. Binding Agreement
    3. Agreement Will Not Trigger Defaults
    4. Title to Assets of Practice
    5. Accounts Receivable and Work in Process
    6. Suits, Claims, Judgments, etc.
    7. Statements Herein Complete and Accurate, etc.
    8. Documents
    9. Good Faith Actions
    10. Notices and Announcements
    11. Insurance Coverage
    12. Limitation
N. Representations and Warranties of the Real Estate Entity
    1. Power and Authority
    2. Binding Agreement
    3. Title to Assets
    4. Suits, Claims, Judgments, etc.
    5. Statements Herein Complete and Accurate, etc.
    6. Good Faith Actions
    7. Insurance Coverage
    8. Limitation
O. Termination of Any Agreements
    1. Predecessor Firm Shareholders' Agreement
    2. REAL-ESTATE-ENTITY
P. Notice
Q. Miscellaneous
    1. Captions
    2. Further Assurances
    3. Governing Law
    4. Savings Clause
    5. Counterparts
    6. Independent Advice of Counsel
    7. Notices

8. Successors and Assigns
9. Headings
10. No Waiver
11. Entire Agreement
12. Nonassignability

Exhibit A: Relinquishment - Documents Transferring TERMINATED-PARTNER Equity Interests

a. Exhibit A-1: TERMINATED-PARTNER's Stock Power Transferring All Shares of Stock in the Predecessor Entity
b. Exhibit A-2: TERMINATED-PARTNER's Partnership Assignment Transferring All Partnership Interests in the Realty Entity

Exhibit B: Resignation of Positions and Titles by TERMINATED-PARTNER

a. Exhibit B-1: Resignation of Positions and Titles in The Predecessor Firm by TERMINATED-PARTNER
b. Exhibit B-2: Resignation of Positions and Titles in The Real Estate Entity by TERMINATED-PARTNER

Exhibit C: Assets Transferred to TERMINATED-PARTNER

a. Exhibit C-1: Chart of Assets Transferred to TERMINATED-PARTNER
b. Exhibit C-2: Bill of Sale To Transfer Assets to TERMINATED-PARTNER

Exhibit D: Corporate Documents of the Predecessor Firm

a. Exhibit D-1 Minutes of the Predecessor Firm
b. Exhibit D-2: By Laws

Exhibit E: General Releases and Indemnifications

a. Exhibit E-1: General Release and Indemnification From TERMINATED-PARTNER
b. Exhibit E-2: General Release and Indemnification To TERMINATED-PARTNER

Exhibit F: Termination of Bank Signature Authority

a. Exhibit F-1: PREDECESSOR-FIRM
b. Exhibit F-2: REAL-ESTATE-ENTITY

Exhibit G: Client Files of Predecessor Firm

a. Exhibit G-1: Named Accounts Transferred to FIRM-A PRACTICE
b. Exhibit G-2: Named Accounts Transferred to TEAM-B PRACTICE

Exhibit H: Amendment of REAL-ESTATE-ENTITY Partnership Agreement

Appendix 1-1: Sample Annotated Sublease and Space/Service Sharing Agreement

AGREEMENT OF SUBLEASE made this MONTH DAY, YEAR, and effective EFFECTIVE-DATE, between SUB-TENANTNAME, doing business at OVER-TENANTADDRESS ("Under Tenant"); OVER-TENANT, a STATENAME LLC corporation doing business at OVER-TENANTADDRESS ("Over Tenant").

R E C I T A L S

1. **WHEREAS**, Over Tenant, OVERTENANT-NAME hereby sublets the Premises pursuant to this sublease agreement with Under Tenant, UNDERTENANT-NAME. Over Tenant has leased the Office Suite from LANDLORDNAME ("Landlord"), pursuant to a lease, a copy of which is attached hereto as Exhibit B (the "Master Lease", or "Over Lease").

2. **WHEREAS**, Under Tenant wishes to sublet, pursuant to the terms and conditions hereof, and Over Tenant is willing to sublease the Premises to same for the payment of the rent, and performance of the other services, and provisions of certain facilities and arrangements and covenants contained in this Sublease.

NOW THEREFORE, in consideration of the mutual premises contained herein, the parties hereto agree as follows:

A. Basic Sublease Provisions

The following are certain lease provisions which are part of, and, in certain instances, referred to, in subsequent provisions of this Lease:

1. Landlord's Name and Address.
2. Date of Master Lease Between Landlord and Over Tenant.
3. Over Tenant's Name and Address.
4. Under Tenant's Name and Address.[i]
5. Premises. Consisting of approximately _____ square feet, as shown in Exhibit "A", in part of an Office Suite, as shown in Exhibit A. The space subject to this Agreement includes certain rooms in the suite of offices occupied by Over Tenant. These rooms include a private office of approximately #' x #' square feet, and the use of the following common areas: a reception area approximately _____, all generally located in the # portion of the #____ Floor of the building commonly known as PREMISES-ADDRESS and which are highlighted in Exhibit C attached (the "Office Suite"),

6. Commencement Date of Sublease.

7. Expiration Date of Sublease. The end of the first complete calendar month following the #One#*Ten (*) year anniversary of the commencement date TERMINATION DATE.

8. Execution Date of This Sublease. The last date set forth next to the signatures at the end of this Agreement.

9. Fixed Minimum Rental Under Sublease. $__.00, per __Annum __Month.

10. Permitted Use. A business of operating an accounting, bookkeeping, financial planning and business consulting practice, and the provision of related services ("Permitted Use").

11. Late Fee. In the event that Under Tenant's payment of any amount denominated as Rent under this Agreement is late then Under Tenant shall be liable to pay Over Tenant *LATE FEE Dollars ($__.00) as provided below.

12. Security Deposit. $__.00.

13. State.

B. Premises

The premises which Under Tenant shall let shall be comprised of the designated portion (the Premises) of the __ Floor of PREMISES (the "Location") presently occupied by Over Tenant and used in its dental practice, as more fully described in the Master Lease.

C. Term

The term of this Sublease shall begin on the Commencement Date set forth in the Basic Sublease Provisions and shall end on Expiration Date of Sublease, unless the Master Lease or this Sublease is terminated at an earlier date in accordance with their respective terms.

D. Rent Payments

1. Rent shall be at the rate of Fixed Minimum Rental Under Sublease, payable in advance on the First (1st) business day of each calendar month for such month, and without notice or demand. Under Tenant shall pay his monthly rent and any other expenses to Over Tenant using a check drawn on a *STATE bank account. Under Tenant shall make all rent checks payable to Over Tenant and deliver same to Over Tenant at the Location, or such other address as Over Tenant designates by Notice to Under Tenant.

2. If Under Tenant shall be late in paying any Rent (inclusive of the Fixed Minimum Rental Under Sublease, and any other payment designated as "Rent" under this Agreement) to the Over Tenant, as provided herein, the Under Tenant shall pay to Over Tenant, as additional rent hereunder, a late charge after a grace period consisting of Five (5) calendar days in the amount of the Late Fee set forth in the Basic Sublease Provisions. Such Late Fee shall run from the Sixth (6th) day of the month. However, no more than Two (2) day grace periods shall be allowed during the term of this lease. After the second grace period the penalty shall run from the 1st day of the month.

3. Under Tenant shall promptly prepare and file the _____ Commercial Rent and Occupancy Tax, and any other required tax applicable to subtenants and sub-subtenants. Under Tenant shall promptly file and pay all tax returns due on a timely basis and shall furnish a copy of every tax return and proof of payment, and of any correspondence regarding such tax to PRINCIPAL and to Over Tenant.[ii]

4. Under Tenant shall be provided with heat, light, water, air conditioning, internet access via cable connection, and electricity at no charge. Any increases in utility charges passed through by Landlord to Over Tenant shall be allocated pro-rata [actual square footage of office space in the Premises subject to this sublet divided by actual square footage of office space in the entire area subject to the Master Lease (exclusive of common areas and halls] to Under Tenant. No other expenses except as specifically provided for herein shall be provided without charge to Under Tenant.[iii]

5. Under Tenant shall be solely responsible for the costs of all telephone service, OTHER EXPENSES [list here] and any other expense not specifically listed herein as being provided at no charge.

6. Over Tenant shall provide Under Tenant with OTHER EXPENSES at Over Tenant's actual cost, plus Ten percent (10%) additional charge as an administrative fee.[iv]

E. <u>Use of Premises</u>

1. <u>Use</u>. Under Tenant shall use the premises solely for the Permitted Use, and shall conduct such activities in a professional and business-like manner, and for no other purpose, unless the Over Tenant, in the exercise of absolute discretion, should consent, in advance and in writing to another use.

2. <u>Nature of Operations</u>. Under Tenant acknowledges that Over Tenant operates a high quality and professional accounting practice at the Location and that Under Tenant's use

of the Premises may not disrupt such practice or in any manner negatively affect the appearance, operations, professional nature, or quality of Over Tenant's business or practice.

3. Security and Confidentiality Generally.[v] Under Tenant acknowledges and understands that Over Tenant keeps and maintains highly sensitive and confidential client data, files, papers, records and other documentation (electronic, paper and other formats) in the Office Suite and Under Tenant acknowledges and understands that the loss, theft or unauthorized disclosure of such Data could be irreparable to the Over Tenant and Over Tenant's clients. Therefore, Under Tenant shall limit the duplication of keys, and the dissemination of alarm and other pass codes to only employees of Under Tenant who Under Tenant reasonably believes will respect and uphold such confidentiality.

4. Keys. Over Tenant shall provide Under Tenant with a full set of keys to the Office Suite and, if required for access to the Office Suite a key to that portion of the Location necessary to enter the Premises. Over Tenant shall make one or more duplicate sets of the keys, at Under Tenant's expense, for use by Under Tenant's employees. Under Tenant, however, shall not make any copies of any keys. At the termination of this Under Lease, the Under Tenant shall deliver all keys back to the Over Tenant.

5. Alarm. Under Tenant acknowledges that an alarm system exists in the Office Suite and that the proper and regular use of such alarm is vital to maintaining the security and safety of the Office Suite, the area subject to the Master Lease and all persons and files occupying said area. Under Tenant shall not disclose the alarm codes given Under Tenant to any person other than the individual person or persons whom Over Tenant approves. Under Tenant specifically covenants and warrants to provide Over Tenant with notice of any person to whom Under Tenant has given alarm code information.

6. Reception Room. Under Tenant shall be permitted reasonable use of Over Tenant's main reception room which is not part of the Premises. This use shall include Under Tenant's clients awaiting their appointments, and reasonable notification by Over Tenant's personnel to Under Tenant that such client has arrived. [vi]

7. Conference Rooms. Under Tenant shall be permitted reasonable use of Over Tenant's conference rooms which are not part of the Premises. This use shall include Under Tenant's client appointments, after advance notification and reservation in any manner reasonably required from time to time by Over Tenant.

8. Telephone. Under Tenant shall be permitted adequate space for installation of Under Tenant's existing telephone control unit in a manner and place approved by Over Tenant.[vii] Under Tenant shall be permitted use of Over Tenant's existing telephone equipment. Under Tenant represents and warrants that at termination of this Sublease, for any reason, all such equipment shall be surrendered in a condition as good as such equipment was in at the Commencement of this Sublease. Under Tenant shall be solely responsible for all telephone company charges, repairs, maintenance and replacement of any equipment in Under Tenant's control or use, or otherwise damaged by Under Tenant. Under Tenant shall be solely responsible for any costs of additional equipment, lines, etc. required to be installed by Over Tenant to accommodate Under Tenant's telephone line or related usage. Immediately upon such installation, any such additional lines or equipment shall become the sole and absolute property of Over Tenant and Under Tenant may not remove same upon termination of this Sublease.

9. Alterations.[viii]

    a. Under Tenant shall not be permitted to make any alterations or additions unless the advance written consent of Over Tenant is obtained, in Over Tenant's absolute discretion, which may be withheld for any reason whatsoever.

    b. Any such improvements shall only be made after Under Tenant has received the written consent of Over Tenant as to location, type of improvement, manner, time and method of installation. Any such work, if approved, must be in conformity with all of the terms of the Master Lease.

    c. Under Tenant shall not make any improvements or alterations, of any type or nature, including but not limited to painting, carpeting, wallpapering, and so forth, to the Premises without first obtaining the written consent of Over Tenant, in Over Tenant's sole and absolute discretion. Such consent may withhold for any reason, in the exercise of absolute discretion.

    d. Under Tenant, however, shall be permitted to install additional telephone equipment, and equipment reasonably and usually necessary for the conduct of his accounting practice, so long as such installations are completed in a professional manner, with no more than minimal disruption of the Over Tenant's business, and at times which Over Tenant reasonably agrees to. For these purposes, reasonable and necessary access to and through the location may be

had by Under Tenant and its agents.

10. Kitchen. Under Tenant shall be permitted reasonable use of kitchen facilities provided by Over Tenant in the Office Suite. Under Tenant shall reasonably assist in the maintenance of such area and shall abide by any rules and regulations which Over Tenant may from time to time establish for the use of such facilities.

11. Condition of Premises Sublet. Notwithstanding anything herein to the contrary, Under Tenant shall be solely responsible for removing any equipment or improvements (other then telephone equipment and computer wiring) installed by it, and restoring the Premises to the condition it was in at the commencement of this Under Lease.

12. Signs.[ix]

    a. Under Tenant may place one sign with his name, second sign with the name of his practice in Over Tenant's main reception room.

    b. Any such sign of any nature must be approved in advance by Over Tenant, in Over Tenant's sole and absolute discretion. Any sign which is approved must be consistent with and similar to the size, style, type and character of the other signs presently posted in the Office Suite, and shall be attached in a location and manner acceptable to Over Tenant in Over Tenant's sole and absolute discretion.

    c. Under Tenant's name and practice name shall both be listed in the building directory if the Landlord consents.

    d. Over Tenant shall install a sign on the front door to the Office Suite listing Under Tenant's practice's name and each Certified Public Accountant's name who is employed, from time to time, by such practice.

13. Hours. The business hours of the Office Suite shall be the regular business hours maintained by the building and for which tenants are permitted to enter and use the building in which the Office Suite is located. However, no use may be made of the Premises during any time for which such use is prohibited by the Master Lease. Over Tenant has no obligation, and shall not be required under any circumstances, to open the Premises or Location, or to provide Under Tenant access to the Location or Premises.

F. Under Tenant's Responsibilities[x]

1. Maintenance of Premises. Under Tenant shall maintain the portion of the Premises used exclusively by him in good order and repair, however, notwithstanding anything in the Master Lease or this Sublease to the contrary, Under Tenant shall not be responsible for any capital expenses, repairs or improvements to the Premises, the heating or air conditioning units, or other portions of the Premises, except where repairs are required because of actions taken by Under Tenant, or due to Under Tenant's negligence or misconduct. Under Tenant shall clean and maintain the Premises. Under Tenant shall assist Over Tenant and any other subtenants in maintaining any common areas in the Over Tenant's space to which Under Tenant is permitted access.
2. Rules and Regulations. Under Tenant shall abide by the rules and regulations contained in the Master Lease and those adopted from time to time by the Landlord and Over Tenant as fully as if Under Tenant had been a party to the Master Lease.
3. No Dealing with Landlord. Under Tenant shall have no authority to deal with the Landlord, and shall not directly deal with the Landlord. [xi]

G. Equipment[xii]

This Sublease Agreement does not provided Under Tenant with access to, any rights in, or use of, any equipment, furniture, fixtures or other facilities in the Location or Office Suite #other than reasonable use, reasonable use of kitchen and other common facilities. Any use of Over Tenant's photocopy, facsimile, postage or other equipment shall be on a per usage basis with fees to be set by Over Tenant from time to time.

H. Insurance[xiii]

Under Tenant shall procure his own insurance and shall not look to Over Tenant for same. Under Tenant shall maintain insurance with a reputable insurance carrier rated not less than A rated by Bests. Under Tenant shall procure and maintain in full force and effect throughout the term of this Sublease, at its sole cost and expense, comprehensive general public liability insurance against claims for bodily injury, death and property damage occurring upon or in, about or adjacent to the Premises, including coverage against occurrences. Such insurance shall not be less than Five Hundred Thousand Dollars ($500,000) for bodily injury or death per occurrence and not less than Three Hundred Thousand Dollars ($300,000) for property damage per occurrence. All such policies shall name Over Tenant and *PRINCIPAL as named insured.

Proof of such insurance shall be provided to Over Tenant, including a duplicate original of the policy.

I. Security Deposit

Upon the signing of this Sublease Agreement, Under Tenant shall deposit with Over Tenant the Security Deposit required under the Basic Sublease Provisions, above which Over Tenant shall hold as security for Under Tenant's performance of his responsibilities under this Sublease ("Security"), including but not limited to unpaid rent and to the repair of any damage for which Under Tenant is responsible, unpaid use of equipment and facilities, etc. Any Security remaining thereafter shall be refunded to Under Tenant. Under Tenant agrees that Under Tenant has no claim or right to the Security Deposit which Over Tenant has paid to Landlord pursuant to the Over Lease. The Security Deposit shall be held in a non-interest bearing account, established by Over Tenant.

J. Furniture [xiv]

This Lease of the Premises shall not include any furniture or fixtures of any nature, however, Under Tenant shall be permitted reasonable access and use to conference room, kitchen and library facilities.

K. Over Tenant's Responsibilities

Over Tenant is not the Landlord and shall not be responsible for providing services which Landlord is obligated to provide pursuant to the Master Lease. Over Tenant, however, shall cooperate with Under Tenant to assure the provision of all services and amenities which Landlord has agreed to provide Over Tenant pursuant to the Master Lease. Over Tenant shall notify Landlord and demand performance from Landlord to the full extent of Over Tenant's rights under the Master Lease of all services and duties Landlord is obligated to perform or provide pursuant to the terms of the Master Lease.

L. Indemnification

Under Tenant agrees to indemnify and hold harmless, including reimbursement of reasonable attorney fees, Over Tenant, each principle shareholder and officer of Over Tenant, and PRINCIPAL, and all persons included in the term Landlord (as defined above) for any violation by Under Tenant of any provision of this Under Lease (inclusive of the items designated herein to be attached as exhibits hereto), for any negligent conduct or misconduct of Under Tenant with respect to the Premises and Location.

M. Relationship of Parties

1. Not Agents. The Parties do not intend, and shall not be, partners, co-venturers or agents for each other. Under Tenant has no authority to make any agreement, payment or arrangement to or with the Landlord with respect to the Premises subject to this Under Lease. Under Tenant has no authority to make any agreement, payment or arrangement to or with any person with respect to the Premises subject to this Sublease which extends beyond the term of this Under Lease.[xv]

2. Independent Firms. A sign shall be posted in the reception room indicating that:

> The persons whose names are listed on the directory merely use certain shared facilities and are not part of the same firm.

Under Tenant shall abide by such announcement and shall not convey or indicate a contrary relationship.

N. No Recording

Under Tenant shall not record this lease or any memorandum or other document relating to this lease.

O. Notices

Any notices provide herein or pursuant to this Under Lease shall be sent via certified mail return receipt requested, registered mail, facsimile, overnight courier, or by hand delivery. Notice sent via mail shall be effective on the Third (3rd) business day after dispatch. Notice sent via facsimile or hand delivery shall be effective upon receipt. Notice sent by overnight courier shall be effective on the next business day. A copy of every notice of any nature which Under Tenant receives from Landlord, or any utility company shall promptly be provided to Over Tenant and *PRINCIPAL. All Notices shall be given to the party to be notified at the address first above written, unless notice in accordance with the terms hereof is given of a change in such address. A copy of any notice to Over Tenant shall be sent to:

NOTIFICATION PERSON

P. Successors and Assigns

The Covenants, conditions and agreements contained in this Sublease, to the extent permitted herein and by the Master Lease, bind and inure to the benefit of the Over Tenant, the Under Tenant and the Landlord, and their respective heirs, distributors, successors and assigns.

Q. Landlord's Consent

Landlord's Consent in General.[xvi]

1. Over Tenant Shall Apply for Landlord's Consents for this Under Lease. Should such consent be forthcoming, the Under Tenant shall be given a copy of same.
2. Over Tenant Has Not and Shall Not Apply for Landlord's Consent to this Sublease. Under Tenant understands, recognizes and agrees to same, and hereby holds Over Tenant and PRINCIPAL harmless in the event of any cost, damage, liability or responsibility for same. Further, by way of example and not limitation, Under Tenant agrees not to hold Over Tenant or PRINCIPAL responsible if Landlord demands, at any time, the termination and vacation of the Office Suite by Under Tenant, or any fees or costs for continuing Under Tenant as an occupant of the Premises.
3. Directory Listing.[xvii]
    a. If such consent is granted Over Tenant or Master Tenant shall apply for Master Landlord's consent to the listing of Under Tenant's names in the building directory. If such consent is granted Under Tenant shall be given a copy.
    b. Over Tenant will use reasonable efforts to obtain Under Tenant a listing in the Building's directory, but makes no representations or warranties concerning same.
4. Termination if No Consent. If these consents are not obtained by *#FINAL DATE, then this Under Lease shall be void and Over Tenant shall return all monies delivered to it by Under Tenant to Under Tenant, following Under Tenant's vacating the Premises and restoring the Premises as provided in this Under Lease. Should the consents be obtained, this Under Lease shall be retroactively effective as of the Commencement Date set forth in the Basic Sublease Provisions.

IN WITNESS WHEREOF, Over Tenant, Under Tenant and Landlord have respectively signed and sealed this Sublease as of the day and year first above written.

Under Tenant:

_____ Date: MONTH DAY, YEAR

TENANT-NAME, Under Tenant

TENANT-NAME

By:_____ Date: MONTH DAY, YEAR

OFFICER-NAME, President

Over Tenant:

TENANT-NAME

By:_____ Date: MONTH DAY, YEAR

OFFICER-NAME, President

Master Tenant/Landlord:

_____ Date: MONTH DAY, YEAR

LANDLORD-NAME

_____

[i] In many shared office arrangements, the use of one or two offices, perhaps a cubicle, plus certain shared facilities (for example, a conference room) is common. Attach, as an exhibit, a marked up copy of the floor plan that shows space that the subtenant may use as well as shared space.

[ii] Consider any applicable tax, maintenance fee, cooperative, or condominium association fee.

[iii] Review carefully the services and utilities that are expected and should be provided, and whether any restrictions or other charges should be added.

[iv] Consider the "hassle" of providing certain services to a subtenant and whether there should be an administrative markup. If several accountants are sharing space, a markup of each service over its variable cost (for example, monthly phone usage) may provide funds for expenses such as upgrades and repairs.

[v] The security and confidentiality of your client files is of paramount importance. You should expressly state this in the sublease and restrict the subtenants' use of and distribution of, for example, keys and alarm codes.

[vi] Every space sharing or sublet/use arrangement is different. You will need to review and modify the arrangements to fit the specifics of your circumstances. The sample provisions herein are merely intended to raise the issues for your consideration.

[vii] An alternative provision would permit the subtenant to use your phone equipment. A similar arrangement may be made, for example, for internet access and tax research services (subject to the license agreements with the providers of those services).

[viii] Several alternate provisions are provided below.

[ix] Signage may seem trivial, but can become a touchy issue that undermines otherwise good working relationships. For instance, you may want to require consistent signage to avoid a cluttered appearance. You must also be certain that your subtenant abides by any building signage requirements. You do not want to find that building regulations prevent you from having a listing in the building directory *after* you sublet space. Several optional or alternate provisions are included for your consideration.

[x] If you are subleasing space, what are your responsibilities to your over tenant (the person leasing you space)?

[xi] If it is your lease, and you are subletting an office, you do not want your subtenant to circumvent you and go directly to the landlord.

[xii] What equipment, facilities, and utilities must the over tenant provide? What equipment, facilities, and utilities may the under tenant, who is subleasing, use; and when and at what cost?

[xiii] Any insurance requirements that apply to a subtenant in the over tenant's lease should be addressed. The under tenant should be required to carry liability and other coverage.

[xiv] In many sublease and office sharing arrangements, the suite is furnished in advance of the sublease. Whatever the arrangement, the sublease should specify, for example, who owns the furniture, who can use it, and who repairs it.

[xv] Shared office suite arrangements require that clients understand the relationships of the various professionals. The confusion that will otherwise arise is apt to trigger endless problems. Consider the signage solution, given below, as one step to take. Other steps may be appropriate depending on your circumstances.

[xvi] The two sample clauses below illustrate the opposite ends of the spectrum of landlord approval.

[xvii] See discussion above concerning listing on signage and in building directories. The provisions below illustrate various (but inconsistent) means of addressing this issue.

Appendix 2-1: Sample One Member LLC Operating Agreement for Sole Practitioner Including Succession Plan

OPERATING AGREEMENT

FOR

YOUR-NAME, CPA, LLC

A STATE-NAME Single Member Limited Liability Company

THIS OPERATING AGREEMENT is made and entered into as of MONTH DAY, YEAR by and among YOUR-NAME, CPA, LLC, a STATE-NAME Limited Liability Company (the "Company") and the one person executing this Operating Agreement as the sole member of the Company ("Member") and hereby states as follows:

W I T N E S S E T H:

a. Whereas, the Member desires to enter into this operating agreement ("Operating Agreement" or "Agreement") for the purposes of governing the Company, and providing for the succession of management and continuity of the business described below.

b. Whereas, the Member had operated the Business heretofore as a sole proprietorship and intends through this Operating Agreement and the Exhibits attached to transfer all assets of such predecessor sole proprietorship to the Company.[i]

c. Whereas, the sole Member intends to operate an accounting and tax practice ("Practice"), as a Certified Public Accountant, in conformity with applicable rules and regulations of STATE-NAME governing the operations of an accounting practice, and the rules and regulations of STATE-NAME State Society of CPAs and the American Institute of CPAs ("Regulations"), and provide for operation of the Company.

NOW, THEREFORE, in consideration of the mutual premises below, and other good and valuable consideration receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

A. Organization.

1. Formation.[ii]

The Company has been organized as a STATE-NAME Limited Liability Company under and pursuant to the STATE-NAME Limited Liability Company Act (the "Act") by the filing of Articles

of Organization ("Articles") with the Department of State of the State of STATE-NAME as required by the Act.

2. Name.[iii]

The name of the Company shall be the "YOUR-NAME, CPA, LLC". The Company may also conduct its business under one or more assumed names, including but not limited to "Big Bad Books".

3. Duration.

The Company shall continue in existence perpetually, or until the Company shall be sooner dissolved and its affairs wound up in accordance with the Act or this Operating Agreement.

4. Registered Office and Resident Agent.[iv]

The Registered Office and Resident Agent of the Company shall be as designated in the initial Articles or any amendment thereof AGENT-NAME, c/o AGENT-ADDRESS. The Registered Office and/or Resident Agent may be changed from time to time. Any such change shall be made in accordance with the Act, or the terms of this Agreement if different. If the Resident Agent shall ever resign, the Company shall promptly appoint SUCCESSOR-AGENT, who resides at SUCCESSOR-AGENT-ADDRESS, who shall serve as the successor Agent. If SUCCESSOR-AGENT is unable or unwilling to so serve, then the Company shall promptly appoint NEXT-AGENT, who resides at NEXT-AGENT-ADDRESS, who shall serve as the successor Agent. If he/she is unable or unwilling to serve as Agent, then the Member's attorney in fact, executor, or committee shall designate a successor Agent.

5. Tax Status for Company.[v]

The Company shall be taxed as a sole proprietorship for tax purposes unless and until at least one additional Member is added in which event the Company shall thereafter be treated as a partnership for tax purposes.

B. Books, Records, and Accounting

1. Books and Records. The Company shall maintain complete and accurate books and records of the Company's business and affairs as required by the Act and such books and records shall be kept at the Company's Registered Office and shall in all respects be independent of the books, records and transactions of the sole Member.

2. Fiscal Year; Accounting. The Company's fiscal year shall be the calendar year.

3. Member's Capital Accounts. A Capital Account for the sole Member shall be maintained by

the Company. The Member's Capital Account shall reflect the Member's capital contributions and increases for any net income or gain of the Company. The Member's Capital Account shall also reflect decreases for distributions made to the Member and the Member's share of any losses and deductions of the Company.

C. Compensation[vi]

D. Capital Contributions[vii]

By the execution of this Operating Agreement, the initial Member hereby agrees to make a Capital Contributions of DESCRIBE-CONTRIBUTIONS [E.G. EXISTING SOLE PROPRIETORSHIP] for the capital interests of the Company. Future Capital Contributions may be made in the sole discretion of the sole Member. However, in the event of the disability or death of the sole Member, the agent, executor, guardian or other representative of the sole Member may make additional Capital Contributions or loans.

E. Allocations and Distributions[viii]

Except as may be required by the Code as amended net profits, net losses, and other items of income, gain, loss, deduction and credit of the Company shall be reported by the sole Member on said Member's income tax return. The sole Member may make distributions from time to time after the sole Member determines that the Company has sufficient funds available.

F. General Powers of Sole Member[ix]

The sole Member has authority to:

1. Conduct the ordinary and usual decisions concerning the business and affairs of the Company.

2. To do all things necessary or convenient to carry out the business and affairs of the Company so long as they are in accordance with the Regulations.

3. Purchase, lease or otherwise acquire any real, personal, tangible or intangible property.

4. Sell, convey, mortgage, grant a security interest in, pledge, lease, license, exchange or otherwise dispose of or encumber any real, personal, tangible or intangible property.

5. Open one or more depository accounts and make deposits into and checks and withdrawals against such accounts and to designate and authorize any additional signatory on such accounts. The Sole Member, in the event of the Sole Member's disability or death, expressly

authorizes COLLEAGUE-NAME as an authorized signatory on the Practice checking account.[x]

6. Borrow money, incur liabilities and other obligations, and establish lines of credits, mortgages, and other credit and financing facilities relating to the Practice. However, any Manager, other than the Sole Member, shall only borrow funds for actual use in the Practice, and when such funds are reasonably expected to be used or needed by the Practice within Twelve (12) months of the date of borrowing.[xi]

7. Obtain insurance covering the Practice and affairs of the Company and its property.

8. Commence prosecute or defend any proceeding in the Company's name or relating to the Practice.

9. Enter into any arrangements or agreements, and execute any contracts, documents and instruments relating to the Practice.

10. Engage consultants and agents, define their respective duties and establish their compensation or remuneration.[xii] This right shall include the right to designate a person to operate the Company and conduct the Practice in the event of the illness, disability or demise of the sole Member. If such person is appointed, such person shall be referred to as the "Manager" and shall have any rights, powers and obligations granted or created herein to the sole Member except as the sole Member shall otherwise restrict or limit in a document appointing said Manager. As an express limitation on the nature of the Practice and the powers granted the Manager herein, the Company is intended solely to serve as a Certified Public Accounting firm, operated in all respects in accordance with the Regulations. No powers are granted herein to any Manager, except those reasonably necessary or ancillary to such purpose. The interpretation of each power and right indicated above shall be limited to this purpose.[xiii]

G. Standard of Care; Liability

The sole member shall discharge such Member's duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner such member reasonably believes to be in the best interests of the Company. The sole Member shall not be liable for any monetary damages to the Company, or in any other manner, for any breach of such duties except:

1. If the sole Member receives a financial benefit to which the sole Member is not entitled.

2. Takes an action, or refuses to act, in violation of this Operating Agreement or the Act or which is a knowing violation of the law.

3. Acts in a manner which is grossly negligent of which constitutes willful misconduct.

4. A person serving as Manager who is not the sole Member shall also be liable for professional acts that were committed in a manner that is negligent. Any person serving as Manager, even for a temporary or short duration, may purchase at the expense of the Practice, malpractice insurance coverage for such Manager.[xiv]

H. Exculpation of Liability: Indemnification

Unless otherwise provided by law or expressly assumed, the sole Member, or any Manager, shall not be liable for the acts, debts or liabilities of the Company.

I. Other Activities[xv]

The sole Member, and any Manager, may engage in other business ventures of every nature, including, without limitation by specification, the ownership of another business similar to that operated by the Company. The Company shall not have any right or interest in any such independent ventures or to the income and profits derived therefrom. It is expressly acknowledged that a Manager may operate or participate in an accounting practice that competes directly with the Practice and no restrictions shall be placed on the Manager because of this.

J. Temporary Disability, Permanent Disability, Death

1. Temporary Disability of Sole Member. Upon the Temporary Disability (defined below) of the sole Member, COLLEAGUE-NAME shall be appointed as Manager of the Company and shall operate the Practice until the sole Member recovers, becomes Permanently Disabled, or dies. If COLLEAGUE-NAME is unable or unwilling to serve then SUCCESSOR-NAME shall serve.

If the sole Member has not appointed a Manager who is then willing to act, then the guardian, committee, or conservator of the disabled sole Member may act as Manager hereunder or appoint a person to so serve.[xvi]

The sole Member shall be deemed Temporarily Disabled if: (i) any other method allowed by law; or (ii) the successor Manager appointed to act hereunder receiving sworn statements executed by any Two (2) doctors properly licensed to practice who have evaluated the Sole Member and concluded that such Sole Member is disabled, and therefore unable to serve as a Sole Member or Manager, and their provision of written confirmation of same; or (iii) for a period of Twenty (20) consecutive days, the sole Member is unable, as a result of any physical, mental or emotional illness, ailment or accident to effectively discharge sole Member's duties hereunder to

operate the Practice; or (iv) the sole Member shall be deemed disabled if under any disability insurance policy on the sole Member, the conditions for disability under such policy are met (without regard to any waiting period contained in such policy, and regardless of whether the insurer has commenced making payments on such policy).

If the Sole Member later recovers from such Temporary Disability the same mechanism above may be asserted by that formerly Temporarily Disabled Sole Member to resume his or her responsibilities as Sole Member hereunder as if such Temporary Disability had not occurred.

2. Permanent Disability of Sole Member. Upon the Permanent Disability (defined below) of the sole Member, the person named in the preceding provision as Manager, if not already appointed shall be appointed and shall operate the Practice until the Practice is sold in accordance with the provision below "Death of Sole Member".

If the sole Member has not appointed a Manager who is then willing to act, then the guardian, committee, or conservator of the disabled sole Member may act as Manager hereunder or appoint a person to so serve.[xvii]

The sole Member shall be deemed Permanently Disabled if: (i) any other method allowed by law; or (ii) the successor Manager appointed to act hereunder receiving sworn statements executed by any Two (2) doctors properly licensed to practice who have evaluated the Sole Member and concluded that such Sole Member is Permanently disabled, and therefore unable to serve as a Sole Member or Manager, and their provision of written confirmation of same; or (iii) for a period of Ninety (90) consecutive days, the sole Member is unable, as a result of any physical, mental or emotional illness, ailment or accident to discharge any of sole Member's significant duties hereunder to operate the Practice and that it is unlikely that sole Member will be able to effectively discharge a significant portion of such duties in the foreseeable future; or (iv) the sole Member shall be deemed disabled if under any disability insurance policy on the sole Member, the conditions for disability under such policy are met (with regard to both the waiting period contained in such policy having been met and the insurer has commenced making payments on such policy); (v) The Manager to succeed the sole Member may have the issue of the disability of any Sole Member adjudicated by a court of competent jurisdiction in which event the holding of such court shall be binding on all persons.

3. HIPAA. The sole Member expressly authorizes Manager or successor to request, obtain, receive, and inspect any and all information bearing upon Sole Member's health (including, but not limited to, all medical treatments and procedures), to sign whatever authorizations for

release of information which may be required by providers or others, and to waive any rights sole Member may have for breach of confidentiality for the release of such information to the Manager or successor for purposes of determining or corroborating the sole Member's Temporary Disability, recovery from Temporary Disability, or Permanent Disability.

4. No Power of Attorney for Medical Care In no event shall the provisions herein give the Manager or successor Manager hereunder any powers to make medical or health care decisions for sole Member. These rights and powers are granted solely with respect to the implementation and conducting of the rights and powers granted herein.

5. Death of Sole Member[xviii]

Upon the death of the sole Member, the person named in the preceding provision as Manager, if not already appointed shall be appointed and shall operate the Practice until the Practice is sold in accordance with the provisions below.

If the sole Member has not appointed a Manager who is then willing to act, then the personal representative of the estate of the deceased sole Member shall act as Manager hereunder or appoint a person to so serve, until the Member's Interests and Capital Account of the deceased sole Member have been transferred or distributed. The Manager or personal representative of the sole Member's estate is encouraged to begin negotiations as soon as feasible with a mid-sized accounting practice in the regions where the Practice operated for purposes of selling the Practice. The Sole Member has had exploratory talks about such a transaction with BIGGER-FIRM-NAME, but neither the Manager nor personal representative shall be bound to pursue or consummate a sale to such firm. The Sole Member or personal representative is expressly authorized to retain a practice consultant or broker to identify a buyer and assist in negotiating the sale of the Practice and to have the Practice and/or the sole Member's estate bear the cost of any consultant or brokerage fee. If the Manager arranges for the sale of the Practice the Manager shall be entitled to a fee comparable to the arm's-length fee that an independent broker would charge for such work, independent and in addition to any other compensation provided to the Manager under any written agreement between the Manager and the Practice.

K. Dissolution

The Company shall dissolve and its affairs shall be wound up on the first to occur of:

1. At a time, or upon the occurrence of an event, specified in the Articles of Organization or this Operating Agreement.[xix]

2. By the written consent of the sole Member. However, no third party dealing with the LLC shall be adversely affected by such action unless it receives notice, or should have reasonably been aware of such action.

L. Miscellaneous Provisions.

1. Terms. Nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the person or persons, firm, company, or corporation may in the context require. The term "Code" shall refer to the Internal Revenue Code of 1986, as amended.

2. Article Headings. The Article headings and numbers contained in this Operating Agreement have been inserted only as a matter of convenience and for reference, and in no way shall be construed to define, limit or describe the scope or intent of any provision of this Operating Agreement.

3. Entire Agreement.[xx]

This Operating Agreement constitutes the entire agreement among the sole Member and the Company and contains all of the agreements among said parties with respect to the subject matter hereof. This Operating Agreement supersedes any and all other agreements, either oral or written, between said parties with respect to the subject matter hereof.

4. Severability. The invalidity or unenforceability of any particular provision of this Operating Agreement shall not affect the other provisions hereof, and this Operating Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

5. Electronic Copy or Image. A photocopy, pdf file, facsimile or other electronic image of this signed Operating Agreement shall be as valid as any original and any third party may rely on same unless they have received notice of the revocation of same.

6. Amendment. This Operating Agreement may be amended or revoked at any time by a written document executed by the sole Member.

7. Binding Effect. Subject to the provisions of this Operating Agreement relating to transferability, this Operating Agreement will be binding upon and shall inure to the benefit of the parties, and their respective distributees, heirs, successors and assigns.

8. Governing Law. This Operating Agreement is being executed and delivered in the State of STATE-NAME and shall be governed by, construed and enforced in accordance with the laws of such State. The sole Member and any Manager or successor Manager who serves

hereunder agrees to personal jurisdiction within the courts in such state.

IN WITNESS WHEREOF, the parties hereto make and execute this Operating Agreement on the dates set below their names, to be effective on the date first above written.

Dated: DAY MONTH, YEAR COMPANY SEAL:

YOUR-NAME, CPA, LLC

By:_____

YOUR-NAME, Sole Member

AS TO MANAGEMENT PROVISIONS WHICH

BECOME EFFECTIVE ON SOLE MEMBER'S DEATH OR

DISABILITY:

_____

MEMBER-NAME

[i] Add a paragraph describing a conversion of a predecessor sole proprietorship into LLC, if applicable.

[ii] The title of the form filed to establish your LLC will vary by state, but the concept is similar. Verify before filing whether your state licensing body requires the inclusion of special language or provisions. Regardless of such requirements, you may want your attorney to expressly limit the permissible business endeavors of your LLC to the practice of accounting as a certified public accountant in the certificate.

[iii] Some practitioners establish trade names for part or all of their practice. If you have, or will, consult an intellectual property attorney to confirm that the use of such names is consistent with all applicable regulations and guidelines and determine whether an additional state filing is required to use and protect the names. (For example, some states require that an "Assumed Name Certificate" or "Fictitious Name Certificate" be filed.)

[iv] You must designate a person and address as the registered agent. Most practitioners name themselves and their office address. Although this is the simplest and least costly approach, consider the implications: If you have one or more partners and you become disabled or die, the other partners will receive and act upon any legal notification received. But if you are a sole practitioner setting up an LLC, and you become disabled or die, who will step in? Many companies inexpensively provide the service of sending you and another named person any notices received. At minimum, provide for a successor in your LLC operating agreement as part of your succession plan.

[v] The tax status should be clearly identified in the operating agreement. In most cases, if you are a sole practitioner, your practice LLC will be a one-member disregarded entity. If, by making an S corporation election, you opt to be treated as an association taxable as a corporation, state this as shown herein. As part of your succession plan, you might consider the inclusion of the second sentence herein, which acknowledges the change in tax status that will occur if you add a new member. If you pursue a growth strategy that contemplates adding a nonequity member as part of your succession plan, confirm with a corporate attorney that your state permits this, and address it through modifying the provision given herein.

[vi] You may wish to insert language to corroborate and support the compensation and self-employment tax positions that you have taken (albeit in a self-serving provision) if you believe some portion of the distributions to you should not be subjected to self-employment tax.

[vii] If you are transferring a sole proprietorship to your new practice LLC, this provision should be expanded to reflect all assets transferred. Consider the last sentence, or some modification of it, as a direction to those who may be involved in your succession planning. The sentence does not create any obligation but

is an expression of your wishes that the agent under your personal durable power of attorney advance funds to the practice to keep it going while a transition is in process. For example, this will serve as a reminder to the colleague taking over your practice during your disability that this source of funding may be available. It will also serve as an encouragement to your agent to assist. If you use a second nonequity member arrangement as part of your succession plan, the reference to "sole" member herein (and elsewhere) should be modified.

[viii] If you have a key employee, for example, and you don't go through the formality of an employment agreement (most practitioners do not) you might want to memorialize any incentive compensation arrangement your practice has with him or her in this provision. This will give greater assurance to the key employee that the amount will be paid, and it will give a clear directive to any successor that the arrangement exists. If your practice gives a key employee a quarterly bonus of 5 percent of gross revenues and you become disabled, the goodwill and assistance of that key employee will become more important. You would not want the key employee, at such a crucial time, to be at odds with the colleague taking over your practice or the agent under your durable power of attorney over the payment.

[ix] Consider modifications to restrict or expand the powers based on the succession plan involved. You could provide for different powers for a successor manager. If you name a successor colleague as a manager of the practice in the event of your disability, you should provide a separate listing of powers which that person will expressly have and not have as manager. Consider the provision to authorize an additional signatory on your practice bank accounts in the event of your illness, disability, death, or absence.

[x] Consider and modify this sentence, the last one in this paragraph. As part of your succession plan, if a colleague that you've arranged to step in for you, even temporarily, has a signed operating agreement for your practice LLC to show the bank his or her designation as a signatory on the practice bank account, it will facilitate obtaining the rights to be signatory.

[xi] You may wish to put limits on borrowing if a successor colleague is serving in the event of your disability.

[xii] The approach taken in this provision is for you to sign a separate side letter agreement with the colleague who will step in as manager in the event of your illness or disability. The concept is to keep the documents simpler. Instead of the colleague having to review and sign your entire operating agreement, you would have a side letter summarizing the general terms of the arrangement made. Although a comprehensive single document addressing all these issues is preferred, the complexity and length of such a document may deter a colleague from agreeing to step in to help you.

[xiii] Although the recital clauses clearly state that the objective of your practice LLC is to serve as an accounting firm, you may wish to consider making this an affirmative restriction, as provided, on the scope of the exercise of powers granted. This is an important restriction to prevent abuse by the colleague designated to take over your practice.

[xiv] You may want a more limited indemnification of a colleague who steps in to manage your practice following your disability or death. However, the inclusion of some form of indemnification is a reassuring protection for the colleague helping you.

[xv] A colleague stepping in to cover for you during disability or following your death will likely have a practice that competes directly with yours. Your operating agreement should expressly acknowledge this to provide protection to the colleague.

[xvi] The provisions below contemplate a low threshold for temporary disability since the consequence is a colleague coming in to help operate your practice.

[xvii] The provisions below contemplate a higher threshold for permanent disability since the consequence is the sale of your practice.

[xviii] The value of your practice will decline rapidly if no succession plan is in place at the time of your death; therefore, consider formulating an express plan. The suggested language in the following paragraph is one possible approach, absent more formal arrangement, to the sale of your practice following your death. It might be useful as a starting point while you refine a plan.

[xix] The document may be referred to by different names in different states, for example, "Certificate of Formation."

[xx] If you sign a separate side letter agreement with a colleague to manage your practice during disability, reference that agreement or letter below.

Appendix 2-2: Sample Annual Unanimous Consent for One Member LLC

YOUR-LLC-NAME

Unanimous Consent of Sole Member

of YOUR-LLC-NAME In Lieu of Meeting

The undersigned, being all of the Members and Managers of the limited liability company ("LLC"), hereby take the following actions:

RESOLVED, a certified copy of the Certificate of Formation [Articles of Organization], the original of which has been filed in the State of STATE-NAME on DATE-FILED, was ordered kept in the company kit.

RESOLVED, that the Operating Agreement, substantially in the form attached hereto, is adopted as the Operating Agreement of the LLC, and that a copy be kept permanently in the company kit attached to this Unanimous Consent.

RESOLVED, that the seal of this LLC is circular in form, and has the name of the LLC around the circumference, and the words and figures, "Limited Liability Company Seal, STATE-NAME, YEAR-FORMED", in the center.[i] This Seal is impressed on this page, below, and is adopted as the Seal of the LLC:[ii]

RESOLVED, that the form of share certificate attached to this Unanimous Consent is adopted as the share certificate of the LLC.

RESOLVED, that the sole Member [Manager] is authorized and directed to issue the membership interests of the LLC for cash or property to such persons and in such manner as such person from time to time may determine.[iii]

RESOLVED, the Company hereby adopts any and all acts heretofore done or undertaken by the Organizer as an authorized person, ORGANIZER-NAME. The LLC hereby agrees to indemnify and hold harmless the Organizer for any acts done or undertaken on behalf of the LLC. The Organizer hereby tenders his or her resignation and the LLC hereby accepts the resignation of the Organizer.

RESOLVED, that the LLC shall be treated as a disregarded entity for income tax purposes, and that the necessary tax elections be made to obtain this status.[iv]

RESOLVED, that the sole Member [Manager] is directed and authorized to undertake any acts necessary to carry out the above resolutions.

Dated: DAY MONTH, YEAR COMPANY SEAL:

_____

YOUR-NAME, MEMBER

[i] A seal for an LLC has no legal significance in most (perhaps all) states. However, from a practical perspective, banks and others often request seals on official documents because, in the past, corporations commonly used seals. It's easier to simply purchase, adopt, and use a seal.

[ii] As with the LLC seal discussed above, there is no legal requirement in most (perhaps all) states for an LLC stock certificate. However, as discussed in this chapter, the very limited formal requirements for LLCs are easily ignored. Thus, from a practical perspective, adhering to formalities, even those not technically required, will generally enhance your practice LLC. As discussed in the chapter, issuing a membership certificate is simple and will likely take less time than reading this paragraph.

[iii] As discussed in the chapter, you could simply serve as the sole member of a one-member, member-managed LLC. Alternatively, you could name yourself manager, and designate successor managers, i.e., the colleagues who are willing to step in to help in the event of your disability. Under either approach, the provisions of this consent should be consistent with those of the operating agreement illustrated above. The modifications for either approach are simple, logical, and not difficult to make.

[iv] If you opt for your practice LLC to elect to be taxed as an association and make an S election, this paragraph would be modified accordingly. If, instead, you opt for the LLC to be treated as an association that elects C corporation status, the paragraph should be modified accordingly.

Appendix 2-3: Sample Letter Agreement with Colleague to Manage and Operate Practice During Disability[i]

Your Name, CPA

YOUR-NAME, LLC

123 Main Street

Any-town, Some-State Zip-Code

Colleague Name, CPA

456 Big Street

Some-town, Some-State Zip-Code

Dear COLLEAGUE-NAME:

This letter is to confirm our agreement concerning the operation of my accounting practice in the event of my disability or death. You have agreed to help me protect my practice in the event of my disability or death. I appreciate your willingness to provide me with this help and protection.

- If I am temporarily disabled, as defined in the Operating Agreement for my practice LLC, you will operate my practice until either I recover, or become permanently disabled.
- If I am permanently disabled, or die, you will operate my practice while attempting to sell it on my behalf to anyone you choose including yourself. But if you sell it to yourself, you will first retain a practice consultant to confirm in a letter to my family that the price you are paying is reasonable.
- My practice will pay you [$150/hour] [other pay arrangement] for your services based on time records you submit, and if you sell my practice, 5% of the gross proceeds.
- I hold you harmless from any claim relating to the management or sale of my practice if you operate in good faith, and your actions don't constitute gross negligence.

- By signing this agreement you are not obligating yourself to fulfill this agreement, but if you do act on my behalf, my practice and estate shall be bound to fulfill the commitments made to you in this agreement.

In the file room of my office is a lock box, combination number [R1-L45-R94] which contains a listing of all computer and other passwords, key practice information, bank and other data, that will facilitate your stepping in quickly in an emergency. The staff will be able to fill you in on work in process, accounts receivable, and other matters.

Thanks for your help.

Sincerely,

YOUR-NAME, CPA, LLC

By: _____

YOUR NAME, MEMBER

ACKNOWLEDGE, ACCEPTED AND AGREED:

_____

COLLEAGUE-NAME

[i] This letter agreement is quite simple and short, and fails to address many key issues. These inadequacies are in part addressed in the operating agreement illustrated previously in Appendix 2-1. Clearly, a comprehensive contract would assure that implementation, legal, and other issues are addressed. Realistically, however, requesting such a contract is unreasonable and probably unobtainable; the colleague who agrees to help you is providing a significant favor and will not want to be bound to such a significant commitment (unless, of course, you reciprocate by providing him or her with a comparable commitment).

Appendix 2-4: Sample Shareholders' Agreement for Sole Practitioner Including Succession Plan[i]

THIS AGREEMENT, entered into this ___ day of MONTH YEAR between and among YOUR-NAME, who resides at YOUR-ADDRESS ("Shareholder"); and PRACTICE-NAME, P.A., a STATE-NAME professional corporation, with its principal place of business at BUSINESS-ADDRESS (the "Corporation") (collectively, the "Parties").

R E C I T A L S

1. WHEREAS, the Shareholder is a licensed certified public accountant ("CPA") admitted to practice in the State of STATE-NAME and a member of the American Institute of Certified Public Accountants ("AICPA") and the STATE-NAME Society of CPAs ("State Society").

2. WHEREAS, the Shareholder is the sole owner of all of the equity in the Corporation which is engaged in the general practice of accounting focused on tax consulting, tax compliance, and general accounting, in the State of STATE-NAME (the "Practice"). The Shareholder desires to provide for arrangements for the operation of the Practice, including the continued operation of the Practice in the event of the Shareholder's disability or death.

3. WHEREAS, the Practice shall be conducted in strict conformity with the rules, regulations, and ethical standards governing the practice of accounting, including the State Board of Accountancy of STATE-NAME, the rules and regulations of the AICPA and the State Society, and any other applicable licensing body. The Shareholder shall remain in good standing with or properly authorized by such organizations or departments ("Duly Qualified").

4. WHEREAS, in order to provide for a succession of the Practice in the event of the disability or death of the Shareholder, the Corporation has or shall enter into a separate letter agreement with one or more persons to serve as Successor managers of the practice ("Successor") and provisions below are intended to facilitate the activities of the Successor in order to assure some continuity of the Practice.

NOW THEREFORE, the Parties hereto, in consideration of the mutual promises and covenants herein contained, agree as follows:

T E R M S

A. Incorporation of Recitals

The Recital clauses above are incorporated into and made a part of this Shareholder's Agreement.

B. Conduct of Practice

1. Name of the Corporation. The Practice shall only be conducted under the name of "YOUR-NAME, P.A." (the "Name"). The Name of the Corporation shall remain the property of the Shareholder and shall continue until it is changed by the Shareholder.

a. In the event of the disability (either the Preliminary Disability or Final Disability, as defined below) of the Shareholder, the Name of the Corporation shall continue unchanged. It is the express intent of Shareholder to permit Shareholder's name to be used in the name of any successor firm in order to facilitate the succession of the Practice.

b. In the event of the demise of the Shareholder, the Name of the Corporation shall continue unchanged unless the Shareholder's executor votes the Shareholder's Shares to change the Name.[ii]

b. In the event of the demise of the Shareholder, the Name of the Corporation shall continue unchanged unless the Shareholder's executor votes the Shareholder's Shares to change the Name.

2. Banking.

a. All funds of the Corporation shall be maintained in a bank account or accounts and no funds of the Corporation shall be commingled with funds or accounts of the Shareholder or person related to any Shareholder. The Shareholder shall have the authority to deposit and withdraw funds from any Corporation bank account, or sign checks or other instruments on behalf of the Corporation.

b. If the Shareholder is unable, due to unforeseen circumstances including but not limited to disability, SUCCESSOR-NAME may individually sign checks in the Shareholder's absence.[iii] SUCCESSOR-NAME has been given limited authority to sign checks of the Corporation. In the event that SUCCESSOR-NAME cannot serve, then NEXT-SUCCESSOR-NAME shall serve in such capacity. Such authority may be terminated at any time in the sole discretion of the Shareholder or the Board of Directors.

3. Loans.[iv]

Loans made by the Shareholder, or the Shareholder's agent under a durable power of attorney, committee, or personal representative, to the Corporation may be made in order to meet the reasonable working capital needs of the Corporation. Such loans shall bear interest at the interest rate as determined under Internal Revenue Code of 1986 (the "Code") Section 1274(d), applying the federal short-term rate, as of the month preceding the date of the transaction on which interest is to be charged (the "Interest Rate"). Such loan shall be evidenced by a written note, and shall have a maturity of not more than Twelve (12) months.

4. Expenses.

a. The Corporation shall provide to the Shareholder and the Successor reimbursement of professional subscriptions, dues to professional organizations, gasoline expenses, parking, tolls, fees for seminars, CPA functions, and meals and entertainment expenses incurred in furtherance of the Corporation's Practice, and accounted for by them to the Corporation in accordance with applicable provisions of the Internal Revenue Code of 1986 Section 274, as amended and the Treasury Regulations thereunder (the "Code"). Reimbursement shall only be made where the expense is a reasonable, necessary and ordinary expense of the Corporation, incurred in the furtherance of the Corporation's Practice and which is substantiated in accordance with the rules and regulations established from time to time by the Corporation.

b. The Corporation shall provide the Shareholder, and to the Successor, in furtherance of the Corporation's Practice, with one or more cellular telephones and an automobile selected, from time to time, by the Shareholder. The Corporation shall reimburse the Shareholder and the successor, for all necessary and ordinary expenses, including but not limited to, professional subscriptions and dues to professional organizations, automobile expenses (including fuel, oil, tires, repairs and maintenance, insurance, parking fees and tolls, licenses, etc.), seminars and functions, and any other necessary and ordinary business expenses of the Corporation.

c. The Successor may deal and contract with affiliated or related persons to provide services or products for the Corporation, provided that such services or products are specifically described and accounted for, and the fees to be paid therefore and the terms and conditions thereof are not less favorable to the Corporation than those which could be reasonably obtained by the Corporation from equally qualified but unaffiliated third parties. As an express restriction and requirement on the Successor, the Shareholder, or the Shareholder's agent (attorney in fact) under the Shareholder's durable power of attorney, or if the Shareholder is an estate, the

personal representative of said estate ("Representative"), shall receive written disclosure of such related party payments with an explanation of why they were used and reasonable corroboration that the cost is not significantly in excess of what an unrelated person would have charged.[v]

C. Shares

The aggregate number of shares which the Corporation shall have authority to issue shall be one class of capital stock consisting of NUMBER shares of common stock without par value ("the Common Stock" or "Shares"). The shares issued to the Shareholder shall be voting shares.

D. Successor

1. The Corporation shall retain the Successor in the capacity of an independent contractor and not as an employee with such duties and responsibilities as may reasonably be necessary for the Successor to operate the Practice during any time period that the Shareholder is Disabled, or for any period following the Shareholder becoming Permanently Disabled or dying, while the Successor endeavors to sell the Corporation and/or Practice. The Successor shall:

a. Adhere to all applicable codes of conduct and professional ethics.

b. Perform services in a professional and dignified manner.

c. Keep accurate records of all time spent on Practice matters and affairs. Such records shall be submitted to the Representative.

d. Maintain and prepare reports and documents and underlying work papers, files, and other documentation reasonably appropriate to support the actions taken with respect to any file and to track and meet any deadlines and due dates (collectively the "Papers").

2. Successor shall receive $150/Hour worked [other arrangement]. In addition, Successor shall receive on the sale of the Practice a bonus equal to Ten Percent (10%) of the gross sales price reduced only by any brokerage or consulting fees or commissions incurred on the sale of the Practice and/or Corporation.

E. Control and Management

1. Board of Directors.[vi]

a. The Board of Directors shall consist of the Shareholder or his designee (the "Designee").

b. In the event of the Preliminary Disability (and Final Disability or Death subject to the

limitations, below) of the Shareholder, the first of the following persons who is able and willing to serve shall be the Designee:

(1) FIRST-NAME.

(2) SECOND-NAME.

(3) THIRD-NAME.

The above persons shall be referred to as the Temporary Director. If an event occurs which triggers the appointment of a Temporary Director, the Successor shall assume responsibility of daily business affairs of the Corporation.

c. The provisions governing Temporary Directors shall only apply in the event of death or Permanent Disability of the Shareholder.

2. Officers.

a. President	- YOUR-NAME
b. Vice President	- YOUR-NAME
c. Secretary	- YOUR-NAME
d. Assistant Secretary	- SUCCESSOR-NAME
e. Treasurer	- YOUR-NAME
f. Assistant Treasurer	- SUCCESSOR-NAME

In the event of the disability of the Shareholder where the Shareholder is unable to conduct the daily affairs of the Corporation for more than a Sixty (60) day period the Designee of the Shareholder, as defined above, shall be automatically and without further action deemed elected to serve on the Board of Directors. The Board of Directors, in such instance, shall designate persons to serve as officers of the Corporation during the period of the Shareholder's continued Disability.

F. Major Decisions[vii]

Major decisions, enumerated below, shall be solely in the purview of the Shareholder. In the event of the Shareholder's Disability or death, these decisions shall require that the Successor give reasonable advanced notice of any intended decision on the matters below to the Representative ("Major Decisions"). The Major Decisions shall include:

1. Sale of a material portion or all of the Practice.

2. Incurring any debt other than trade accounts payable, or other debts incurred in the ordinary course of the business, or to guarantee any debt or other obligation, or any borrowing secured by Corporate assets in excess of Fifty Thousand Dollars ($50,000).

3. Issuance of additional Shares, changes in the capitalization of the Corporation, change in the tax status of the Corporation to other than an S corporation.

4. Sale, lease, license or other transfer of any material asset.

5. Any nonrenewal or change in Web site, Practice email addresses or telephone numbers.

6. Any nonrenewal or change in the lease of the Practice's office.

7. The adjustment, settlement, or the compromise of any material claim, obligation, debt, demand, suit, or judgment against the Corporation, the officers or director of the Corporation with respect to their relationship to the Corporation.

G. Disability or Death of the Shareholder

1. Definition of Disability of the Shareholder. The Shareholder shall be deemed temporarily disabled ("Preliminary Disability") if for any period aggregating Thirty (30) days the Shareholder is unable, as a result of any serious physical, mental or emotional illness, ailment or accident, to effectively discharge a significant portion of the ordinary services of the Shareholder in a manner sufficient to maintain the Practice. In the event of such a Preliminary Disability, the Successor shall assume the position of operating the Practice.

2. Return To Work Following Preliminary Disability. The Shareholder, subject to Preliminary Disability as defined above, may return to work at any time.

3. Final Disability or Death of the Shareholder.[viii]

If the Shareholder is absent for more than Ninety (90) consecutive days, and the Successor obtains written opinion of the attending physician of Shareholder that a return to work in the foreseeable future in a manner reasonably able discharge his duties as principal of the Practice is unlikely in accordance with the provisions below and with a written consent and acknowledgement of the agent under Shareholder's durable power of attorney (however, in no event may the agent be the Successor, in which case a different agent shall so act in this regard), then the Shareholder shall be deemed permanently disabled and the Successor shall endeavor to sell the Practice and/or the Corporation ("Final Disability")."

The physician letter referred to above shall be a separate letter obtained from Two (2) doctors properly licensed to practice in the State of STATE-NAME (and at least one of whom is board certified in the specialty relating to the illness, disability or ailment suffered by Shareholder) and certify in writing that there is no reasonable likelihood of Shareholder resuming his normal daily functions in the Corporation and Practice on a basis of more than a 10-hour work week in the period for Preliminary Disability, then the Shareholder is subject to a Final Disability.

4. Sale of Shareholder's Shares in Event of Final Disability or Death.[ix]

In the event of the death or Final Disability of the Shareholder, the Successor shall retain an independent consultant or accounting practice broker, at the expense of the Corporation, and such person shall endeavor to sell the Practice as quickly as feasible, but in a manner intended to reasonably maximize the proceeds to be received from the sale. The sale may be made in such person's discretion to the Successor.

5. HIPAA. The Shareholder expressly authorizes the Successor to request, obtain, receive, and inspect any and all information bearing upon Shareholder's health (including, but not limited to, all medical treatments and procedures), to sign whatever authorizations for release of information which may be required by providers or others, and to waive any rights Shareholder may have for breach of confidentiality for the release of such information to Successor for purposes of determining or corroborating the Shareholder's Preliminary Disability, recovery from Preliminary Disability, or Final Disability.

6. In no event shall the provisions herein give the Successor any powers to make medical or health care decisions for Shareholder. These rights and powers are granted solely with respect to the implementation and conducting of the rights and powers granted herein.

H. Indemnification[x]

The Successor shall be held harmless from any claim unless guilty of gross negligence or intentional misconduct which results in any liability or cost to the Corporation which is not covered by malpractice or other insurance maintained by the Corporation.

I. Tax Matters

The Shareholder acknowledges that the Corporation is presently taxed as an S corporation and shall continue to maintain such election

J. Miscellaneous Provisions

1. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of STATE-NAME (the "State"). The parties hereto, by executing this Agreement, consent to personal jurisdiction in any court of competent subject matter jurisdiction within the State. The Successor, if serving under the provisions of this Agreement by such serving agrees to the service of process in such State.

2. Counterparts. An electronic copy or reproduction of a fully executed copy of this Agreement, including but not limited to a facsimile, photocopy, PDF or other file, shall be deemed to be an original which any third party who does not have notice of a modification or amendment, may rely upon.

3. Severability of Provisions. Each provision of this Agreement shall be considered severable and if for any reason any provision which is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any then existing law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

4. Captions, etc. The captions, Section designations and numbers are inserted for convenience only and shall not affect the interpretation of any provision. The use of any particular gender, or neuter, or the use of singular or plural, shall be interpreted as appropriate to the specific provision involved.

5. Entire Agreement. This Agreement sets forth all of the promises, agreements and understandings among the Parties hereto with respect to the Corporation and the Practice. However, it is acknowledged that from time to time Shareholder may execute a separate letter agreement with a Successor or several Successors.

IN WITNESS WHEREOF, the parties have set their hands on the date first above written.

_____

YOUR-NAME

YOUR-NAME, P.A.

By_____

YOUR-NAME, President

AS TO PROVISION GOVERNING SUCCESSOR

ONLY:

_____

SUCCESSOR-NAME

AS TO PROVISION GOVERNING DESIGNEE DIRECTOR

ONLY:

_____

PERSON'S-NAME

[i] If your solo practice is organized as a professional corporation under your state's professional corporation law, your official corporate records (kit) should include the issuance of shares, initial minutes, bylaws, and a shareholder's agreement. The shareholder's agreement, in contrast to the typical "boiler-plate" documents usually completed, should be a document tailored as part of your succession plan (similar to the LLC operating agreement illustrated above).

[ii] In the alternative to this paragraph, you might wish to give more authority to your executor. If you do not address the sale of your practice while you are alive, dealing with any succession will fall to your executor.

[iii] A key step in protecting a sole practitioner's practice through disability or death is to establish a succession of persons authorized to sign key bank accounts and take other actions. This provision can help. If it is comfortable to do so so, consider immediately authorizing a key employee or other trusted person, rather than conditioning the ability to act on proof of your disability or death.

[iv] Providing for loans from yourself or your agent (the attorney in fact under a power of attorney) and executor, signals that they are to provide assistance if your practice needs funding during a transition period (for example, while your named successor is endeavoring to sell the practice). Though you need to also authorize such a loan in your durable power of attorney and under your will (the "boiler-plate" language in those documents as well as a typical life insurance trust, will often permit these types of loans), it's advisable to include the authorization here as well.

[v] The person serving as successor, especially if he or she has her own practice, may need to use staff or other services from his or her practice to operate your practice during a transition period. This should be permitted, but as a precaution, this provision provides that some reporting to you or a representative for you should be made. In order to avoid hindering the successor, who is likely endeavoring to help you, the reporting and criteria are not particularly restrictive.

[vi] You could designate the successor as a director or even an officer to give the successor more formal authority to operate your practice if you are disabled or die. However, you might name another person instead to provide some oversight function.

[vii] While you are practicing as a sole shareholder of a solo practice, there is no need to address decision making. However, in the event of your disability, the provision below provides that your named successor can make major decisions, but must give your agent or personal representative notice. The provision as illustrated expressly did not create any requirement for the representative to approve the decision, just to

receive notice. The intent is not to interfere with the actions of the person you have designated to make practice decisions. If you believed a check and balance was appropriate, the provision illustrated could be modified.

[viii] You need to consider the definitions and triggers of disability. As discussed in the illustrative clauses in the operating agreement in Appendix 2-1, the trigger for temporary disability should be simple and short so that the successor can step in quickly (especially, for example, during tax season). In contrast, the trigger for permanent disability should be preceded by a significant hurdle because permanent disability will lead to the sale of your practice. Nevertheless, the difficulty of the hurdle must be tempered by considering the risk of your practice not being in operation for a period of time. If, realistically, you will not be able to return to practice, the sooner the sale can be negotiated and consummated, the more value you are likely to realize.

[ix] This agreement presumes that the successor must retain an outside consultant to sell the practice. Although, you may be able to structure a deal that allows the person who steps in to operate your practice to also purchase it, retaining a consultant is still wise. The presumption of the mechanism illustrated in this agreement is that requiring the successor to hire an independent person provides both independence and a check and balance that protects you and your heirs. On the other hand, the successor is better insulated against any claim by your heirs that the practice was sold for too little. This measure of security for the successor will encourage a colleague to accept the responsibility. Absent this arrangement, if the successor endeavored to sell your practice, or purchased it, the risk increases that one of your heirs could object and challenge the price paid.

[x] To motivate the successor to step in and act on your behalf, you should consider some degree of indemnification. The standard below is very high, and you may wish to have a lower standard in order to protect your interests. However, the lower the standard of indemnification, the less likely you are to find a colleague who is willing to step in.

Appendix 2-5: Sample Minutes for Sole Practitioner Professional Corporation

The undersigned, being the sole director and sole Shareholder of YOUR-NAME, CPA, PA (the "Corporation"), hereby take the following action by unanimous written consent:

RESOLVED, a certified copy of the Certificate of Incorporation, the original of which has been filed in the State of STATE-NAME on the DATE-FILED, was ordered kept in the minute book.

RESOLVED, that the By-laws now submitted to the meeting are hereby adopted as the By-laws of the Corporation, and that a copy be kept permanently in the minute book, attached to this Unanimous Consent.

RESOLVED, that the seal of this Corporation is circular in form, and has the name of the Corporation around the circumference, and the words and figures, "Corporate Seal, STATE-NAME, YEAR-INCORPORATED", in the center. This Seal is impressed on this page, below, and is adopted as the Seal of the Corporation:

RESOLVED, that the form of stock certificate attached to this Unanimous Consent is adopted as the stock certificate of the Corporation.

RESOLVED, that the Board of Directors is authorized and requested to issue the capital stock of the corporation for cash or property to YOUR-NAME.

RESOLVED, YOUR-NAME is elected Director of the Corporation, to serve until his/her successor is elected and qualified.

RESOLVED, the following persons are elected to serve as officers of the Corporation until their successors are elected and qualified:

President - YOUR-NAME

Vice President - YOUR-NAME

Secretary - YOUR-NAME.

Assistant Secretary - PERSON-NAME

Treasurer- YOUR-NAME

Assistant Treasurer- PERSON-NAME

RESOLVED, the corporation hereby adopts any and all acts heretofore done or undertaken by the Incorporator. The Corporation hereby agrees to indemnify and hold harmless the Incorporator for any acts done or undertaken on behalf of the Corporation. The Incorporator hereby tenders his or her resignation and the Corporation hereby accepts the resignation of the Incorporator.

RESOLVED, That the Corporation elect to be taxed as a Subchapter S Corporation for income tax purposes, and that the necessary tax filings and elections be made to obtain this status.

RESOLVED, that the officers are directed and authorized to undertake any acts necessary to carry out the above resolutions.

Dated: MONTH DAY, YEAR CORPORATE SEAL:

_____

YOUR-NAME, Shareholder and Director

Appendix 2-6: Sample Clauses for Sole Practitioner to Include in a Durable Power of Attorney[i]

SPECIAL DURABLE PRACTICE POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that I YOUR-NAME (the "Grantor"), residing at YOUR-ADDRESS, being of the age of majority under the laws of STATE-NAME, and of sufficient capacity to conduct my business affairs concerning my accounting practice operating as a sole proprietorship under the name of "YOUR-NAME, CPA" ("Practice"), in order to provide for management of Grantor's financial, legal and related affairs concerning said Practice in a more orderly fashion, hereby provide this Power of Attorney.[ii]

The Agent may conduct, engage in and transact any lawful business of any nature concerning the Practice on Grantor's behalf and in Grantor's name. These powers to operate the Practice shall include, by way of example and not limitation the power and authority to maintain, improve, invest, manage, insure, lease, or encumber, and in any manner deal with any real, personal, tangible, or intangible property, or any interest in them, that the Practice now owns or may acquire (or that an Agent hereunder may acquire), in Grantor's name or in the Practice's name, upon such terms and conditions as Agent shall deem proper; conduct or participate in any business of the Practice of any nature for Grantor and in Grantor's name; execute partnership, limited liability company or shareholder agreements and amendments thereto; incorporate, reorganize, merge, consolidate, recapitalize, sell, liquidate, or dissolve any business; elect or employ officers, directors, and agents. Carry out the provisions of any agreement for the sale of any interest in the Practice, or the stock or membership interests therein; and exercise voting rights with respect to stock, partnership or membership interests as the case may be, either in person or by proxy.[iii]

Notwithstanding anything herein to the contrary, my Agent shall not, under any circumstances, modify, amend, restate or otherwise overturn the appointment of the designated person under an Operating Agreement dated MONTH DAY, YEAR in which I have designated SUCCESSOR-NAME as the successor manager of the limited liability company operating my Practice.

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[i] If you have an attorney prepare a separate power of attorney to name an agent to handle your practice, there are a number of considerations. If the power is only supposed to cover practice matters, and you have a different power of attorney for all other matters, then the business power

should be labeled as a "special" power to imply its restricted scope. Further, the power itself should expressly be restricted to the practice decisions. Most significantly, the format in which your practice is organized must be considered. If your practice is a sole proprietorship, the agent under your power of attorney can use the authority so given to manage the practice. If your practice is organized as an LLC or a professional corporation, your agent can only indirectly influence your practice by voting the membership interests or stock. If you've prepared a document, similar to those illustrated previously in this chapter's appendixes to designate a successor, your power of attorney should prohibit the agent (unless it's the same person you are designating to manage your practice) from voting LLC interests or professional corporation stock in a manner that undoes the agreement you signed to govern your practice's succession.

[ii] The following is an excerpt of a business power provision for authorizing your agent under your durable power of attorney to operate your practice organized as a sole proprietorship.

[iii] Consider adding a provision similar to the following to prevent an agent from undermining your intended transition plan. Consider, however, that preventing the agent from having any authority over modifying the agreement governing your practice may eliminate an important check and balance on the successor you named. The preferable way to assure a transition may be to have a separate individual named in your power of attorney intentionally monitor your successor. Will the person you name tolerate such oversight? If the named successor views himself or herself as providing you with a favor, the imposition of another person acting as your agent may cause your named successor to have second thoughts.

Appendix 2-7: Sample Checklist of Practice Points for Successor CPA

It is vital that you prepare a summary memorandum, at minimum, or preferably a "Succession Binder" for a colleague to use if required to step in and operate or take over your practice in the event of your temporary disability, permanent disability, or death. The disclosures should be tailored to your specific practice, but might include:

- Location of key documents, keys, combinations, and related items (or disclose them in the list).
- Passwords for all software, Web sites, on-line banking, and related materials.
- List of accounts for key vendors, credit cards, bank accounts, and related materials. These should include full name and telephone number and email address of a key contact person, along with the expected name of company, address, and account information.
- Emergency cash sources (for example, line of credit, and business interruption insurance).
- Insurance summary - type of coverage, carrier, policy number, policy limits, contact person name, telephone number, and email address.
- Filing system explanation. How do you organize your files, do you have off site storage, where and how are permanent files kept? While you may assume that this is all obvious to everyone in your office, it might be of significant help to someone stepping in during a crisis.
- Source and method of obtaining a current client listing (for example, succinct explanation of how to obtain this from a client billing system, including the software and access codes). If you have any clients not billed through the general billing system, provide a separate list of their contact information.
- Work in process and deadlines. Explain calendar and other systems so a successor can quickly step in and "do damage control" until your return or until a longer term solution can be implemented.
- Employee data along with a realistic explanation of what services they could provide to a successor (which may be different from the services they are presently providing to you).
- Possible contacts that may be of assistance.[1]

[1] For example: The bookkeeper who started with your practice 20 years ago retired last year. Out of loyalty to you, she would step up to the plate to help out during an emergency, bringing along her

considerable knowledge of your practice and clients. Her availability will be useless, however, if your successor is not aware of her existence. Since the bookkeeper is no longer a current employee, current payroll and other records would offer no clues about her. New hires would not know her; other staff may simply be unaware of her willingness to pitch in.

Appendix 2-8: Sample Sole Practitioner Death and Disability Buy-Out Arrangement and Earn-Out Agreement[i]

AGREEMENT dated MONTH DAY, YEAR between SUCCESSOR-NAME, P.C., a STATE-NAME professional corporation, and with its principal place of business at SUCCESSOR-ADDRESS ("Successor"), and YOUR-NAME, an individual who resides at YOUR-ADDRESS ("Practitioner").

RECITALS:

a. WHEREAS, Practitioner is engaged in the business of bookkeeping and write-up work, tax consulting and preparation, and general accounting services, but does not perform any reviews or audits (the "Practice") for selected closely held businesses and individuals, a current list of which is set forth in Exhibit A ("Clients").

b. WHEREAS, Successor is a professional corporation, whose shareholders are all Certified Public Accountants in STATE-NAME, and which corporation is engaged in the general practice of accounting, tax compliance and consulting, and other consulting and accounting services.

c. WHEREAS, Practitioner wishes to provide for the limited management and operation of the Practice in the event of Practitioner's disability. Successor wishes to assist Practitioner by providing an arrangement for Successor to manage Practitioner's Practice on a temporary basis until Practitioner can return to working in the Practice ("Disability Transition").[ii]

d. WHEREAS, Practitioner wishes to provide for the transition of the Practice in the event of Practitioner's total permanent disability or death. Successor wishes to assist Practitioner by providing a guaranteed exist strategy for Practitioner's Practice by Successor agreeing to purchase from Practitioner's personal representative, all of the assets used in the Practice, and Practitioner wishes to bind Practitioner's personal representative to sell all of such assets, on the terms and conditions set forth herein ("Death Transition").

NOW, THEREFORE, based on the mutual premises herein contained, and for Ten Dollars ($10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

A. Temporary Management of Practice During Practitioner's Disability

1. Determination of Disability. The Disability Transition shall only occur in the event of the disability of Practitioner. Practitioner shall be deemed to be disabled when: (i) Practitioner signs a statement delivered to Successor stating that Practitioner is Disabled; (ii) Two (2) physicians provide written opinions to Successor that Practitioner is unable, as a result of any mental or physical injury, ailment or other condition, to perform and carry out Practitioner's duties for the Practice on any reasonable basis, and that such condition is likely to persist for more than a Four (4) week period.

2. Practitioner's Veto Right. Since the purpose of this Agreement is solely to provide a Transition for Practitioner's Practice it is expressly agreed that Practitioner, in his sole and absolute discretion, may give Successor Notice that Practitioner is not disabled (which Notice shall override any medical letters or other methods of determining disability). It is the express intent to grant Practitioner the widest latitude in revoking or not carrying out this Agreement should he so choose.

3. Transition Phase. The first business day after the Successor has actual knowledge of Practitioner's Disability shall begin a period referred to as the "Transition Phase". The Transition Phase shall end on the earlier of: (i) Practitioner's Permanent Disability (as defined below); (ii) Practitioner's death; (iii) Successor terminating this arrangement on not less than Thirty (30) days notice. During the Transition Phase Successor shall operate the Practice as provided below.

4. Successor's Operation of the Practice.

a. Successor and Practitioner agree that, in the event of the Disability of Practitioner, Successor shall endeavor to provide the services to the Clients that Practitioner had theretofore provided to them prior to Disability which Successor deems feasible and efficient to do. Such services include write-up work, tax preparation and tax advice. Such services shall only include, in Successor's discretion, issuing reports to be used by third parties, estate planning, or consulting services.[iii]

b. Successor shall reasonably endeavor to operate the Practice for the benefit of the Practitioner during the Transition Phase. The operation of the Practice shall be done in a professional and business-like manner, in accordance with the historical operations of the Practice and in conformity with the rules and regulations affecting the operation of a Certified Public Accounting business. Successor shall open and review all mail, forwarding any personal

non-Practice mail to the Representative (defined below), deposit all receipts, pay all bills, advise the Representative periodically of cash flow needs and balances in the Practice, meet with staff to discuss the Transition Period and efforts to maintain the Practice pending Practitioner's return, and other matters reasonably deemed advisable by Successor. However, it is expressly understood that the purpose and objective of the Transition Phase is to maintain the Practice and generally preserve its client base and value, pending Practitioner's return to practice or a Permanent Transition, below. Therefore, by way of example and not limitation, it would be anticipated that Successor may opt to file extensions for tax returns due during the Transition Period rather than completing the actual returns, and that Successor may opt for the shortest renewal periods available or hold over periods under a lease or other contractual arrangements if Successor deems that to be advisable rather than negotiating new contracts or longer term renewals for the Practice.

c. The services to be rendered are referred to as the "Services".

d. Practitioner agrees that in the event of Practitioner's disability, then Practitioner, Practitioner's guardian, committee, successors or assigns ("Representatives") shall provide Successor with a complete current list of Clients and records and any other information reasonably necessary for Successor to operate the Practice. Further, Practitioner requests, but does not require, that Practitioner's Representatives make reasonable advances of funds to the Practice to meet ongoing operational costs during the Transition Phase.

e. Successor shall endeavor to retain intact all of the employees and independent contractors associated with the Practice during the Transition Phase.[iv] In particular, however, Practitioner requests that Successor endeavor to retain, as an employee [independent contractor and not as an employee], KEY-STAFF, who resides at KEY-STAFF-ADDRESS, who has been associated with Practitioner ("Key Employee"), to provide services to the Clients, to the extent feasible. If Successor is unable to obtain or retain the services of Key Employee then Successor shall have authority to retain any other certified public accountant to assist in providing the Services. Notwithstanding anything herein to the contrary, Key Employee is explicitly not made a third party beneficiary under this Agreement and shall have no rights hereunder.

f. Successor shall devote reasonable efforts to professionally serving the Clients, but shall not be held liable for any matter, professional service or administrative in nature, where Successor has taken reasonable actions in good faith.

B. Sale of Practice in the Event of Practitioner's Permanent Disability or Death

1. Permanent Transition.

a. The Permanent Transition shall only occur in the event of the Permanent Disability or death of Practitioner.

b. The Practitioner shall be deemed Permanently Disabled if: (i) Practitioner is deemed Permanently Disabled under any other method allowed by law; or (ii) the Successor receiving sworn statements executed by any Two (2) doctors properly licensed to practice who have evaluated the Practitioner and concluded that Practitioner is Permanently disabled, and therefore unable to manage the Practice in a significant manner (defined as more than Ten hours per week) during the following Six (6) month period, and their provision of written confirmation of same; or (iii) for a period of Ninety (90) consecutive days, the Practitioner is unable, as a result of any physical, mental or emotional illness, ailment or accident to discharge any of Practitioner's significant duties hereunder to operate the Practice and that it is unlikely that Practitioner will be able to effectively discharge a significant portion of such duties in the foreseeable future; or (iv) the Practitioner shall be deemed disabled if under any disability insurance policy on the Practitioner, the conditions for disability under such policy are met (with regard to both the waiting period contained in such policy having been met and the insurer having commenced making payments on such policy); (v) The Successor having the issue of the Permanent Disability of the Practitioner adjudicated by a court of competent jurisdiction in which event the holding of such court shall be binding on all persons.

c. In the event of Practitioner's Permanent Disability or death the Parties agree that the objective shall be to transfer ownership and operation of the Practice and all Practice assets as quickly as feasible to Successor in order to maximize the value of the Practice, the payments to Practitioner or Practitioner's successor and to best serve the Clients by maintaining continuity.

2. Transfer of Files, Records, and Assets

a. Practitioner agrees that in the event of his death, then the Representative shall transfer immediately to Successor any assets the Representatives have concerning the Practice, the Clients and related or ancillary matters, and shall arrange as soon as practicable to transfer ownership and title to any Practice assets, including but not limited to furniture, equipment, laptop computers, copying equipment, files, and other Records ("Hard Assets"), to the Practice.

b. Practitioner or the Representative shall sell to Successor, and Successor shall purchase the following assets of the Practice: All books and records relating to the Practice including, without

limitation, all client lists, client correspondence, address lists, customer tax returns, permanent and workpaper files and schedules, correspondence with customers, accounts receivable, work in process, and Practice Hard Assets ("Assets").

c. Successor shall take control of all of the Assets as soon as practical following the death or Permanent Disability of Practitioner. Successor shall then give written notice to each Client that Successor is holding the Records of such Client. Such notice shall include a letter from Practitioner encouraging each Client to use the services of Successor. A copy of such letter, without date, is attached hereto as Exhibit B.

d. Successor shall not perform any services for, nor review (beyond what is reasonably necessary to carry out the Notice in the preceding paragraph) any Records relating to any specific Client until Successor shall first receive approval of the Client for same.

e. If a Client does not approve Successor providing services Successor shall return the relevant files to such Client.

f. Where Successor cannot identify a Client or does not receive a response within Sixty (60) days of sending the Notice, then Successor may return the Records for such Client to Practitioner or Practitioner's Representative and have no further responsibility therefore.

g. Successor may require the Practitioner or the Representative to arrange for the purchase by Practitioner, his estate, successors or assigns, of a "tail" malpractice policy.

3. Purchase Price; Payment Terms[v]

a. Successor agrees to purchase the Practice by paying Practitioner or the Representative, an amount equal to Twenty Percent (20%) of Successor's Adjusted Gross Revenues (defined below), over a Five (5) year period. The period shall begin on the first day of the first month following Practitioner's death or Permanent Disability and shall continue, for a period through the Fifth Anniversary of such date ("Payment Date"). The stub period from the date of Practitioner's actual death or Permanent Disability until the first day of the first month following shall be included in the payments made for the first year ("Purchase Price").

b. Adjusted Gross Revenues shall be defined as the gross receipts actually received by Successor for services rendered to the Clients of the Practice that had historically been rendered by Practitioner to such Clients.[vi] By way of example and not limitation if Practitioner merely provided tax return preparation services to a particular client, and following the Permanent Transition, Successor provides divorce consultations, tax planning and valuation

services to that client, Adjusted Gross Revenues shall only include the value of Revenues pertaining to income tax preparation. Only cash basis revenues actually received shall be included in the calculation.

c. Adjusted Gross Revenues may also reflect any reduction for any unusual or unanticipated item which was reasonably beyond Successor's control and which the Parties could not have anticipated, and the inclusion of which would be a hardship to Successor ("Adjustment").[vii]

d. Successor shall render an accounting to Practitioner or the Representative, within Sixty (60) days following the Payment Date, and shall remit payment for such prior period with the accounting. The accounting shall include a detailed explanation of any Adjustment made, as well as corroboration of same, a listing of all gross receipts from every Client, details of any items excluded from those gross receipts.

e. Successor shall have absolute control over the fees charged and Services rendered.

D. HIPAA

Practitioner expressly authorizes Successor to request, obtain, receive, and inspect any and all information bearing upon Practitioner's health (including, but not limited to, all medical treatments and procedures), to sign whatever authorizations for release of information which may be required by providers or others, and to waive any rights Practitioner may have for breach of confidentiality for the release of such information to the Successor for purposes of determining or corroborating the Practitioner's Temporary Disability, recovery from Temporary Disability, or Permanent Disability.

In no event shall the provisions herein give Successor hereunder any powers to make medical or health care decisions for Practitioner. These rights and powers are granted solely with respect to the implementation and conducting of the rights and powers granted under this Agreement.

E. Liabilities and Indemnification

Successor shall not assume any of Practitioner's or the Practice's obligations and liabilities with respect to the Practice or any Clients or any Records, or any bank loans, debts or other liabilities.

Practitioner expressly represents covenants and warrants, and said representations, covenants and warranties shall be reaffirmed by Practitioner and the Representative as part of the

Temporary Transition or Permanent Transition, that there are no claims, for malpractice or otherwise, or any other liabilities (collectively "Liabilities") associated with the Practice, Clients or Records.

Any costs incurred by Successor as a result of any Liabilities, including but not limited to reasonable attorney fees and the value of Successor's time expended in addressing such Liabilities, shall be reimbursed to Successor during the Transition Phase, or shall constitute a reduction against the Purchase Price to be paid on a Permanent Transition.

F. Miscellaneous Provisions

1. The Parties agree that this document represents an integrated agreement and cannot be changed orally.

2. This Agreement shall be construed and enforced in accordance with the laws of the State of State-Name. The Parties hereto, by executing this Agreement, consent to personal jurisdiction in any court of competent subject matter jurisdiction within the State of State-Name.

3. All pronouns used herein shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the Person or Persons may require in the context, and the singular form of nouns, pronouns and verbs shall include the plural, and vice versa, whichever the context may require.

4. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto.

5. This Agreement, together with the Exhibits attached, and to be attached, sets forth all (and are intended by all parties to be an integration of all) of the promises, agreements and understandings among the parties hereto with respect to the Practice. There are no promises, agreements, representations or warranties, understandings, oral or written, expressed or implied, among the Partners other than as set forth herein.

6. In the event of any conflict between a provision of this Agreement and any Exhibit attached hereto, the provision of this Agreement shall control.

7. Section captions and Article captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

8. The failure of a Party to insist upon strict adherence to any term of this Agreement on any

occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence subsequently to that term or any other term of this Agreement. Any waiver must be in writing.

9. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors, but shall not be assigned by either Party without the written consent of the other. Notwithstanding the foregoing, Practitioner may cancel this Agreement at any time upon Thirty (30) days Notice to Successor.

10. The Parties shall, subsequent to the Transition, execute and deliver such further instruments, documents and agreements, and take such further action, in each case without cost to the other Party, as may be reasonably requested or may be necessary or desirable to evidence and perfect the completion of the transactions contemplated herein.

11. Any notice required or permitted to be given under this Agreement or any Exhibit shall be deemed duly given if sent by facsimile, certified mail return receipt requested, Express Mail by the U. S. Postal Service, Federal Express or another recognized overnight courier, or by hand delivery, postage and expenses prepaid, addressed to the Partner at the address set forth hereinabove, or as in Exhibit A, unless notice of a change of address is provided in accordance with the terms of this Section.

YOUR-NAME Practitioner, agrees to the terms of this Agreement for the buyout of the Practice in the event of my disability or death. I further state that I have reviewed the above document and have either received the advice of counsel in this matter, or voluntarily waived such advice. I, SUCCESSOR-NAME, agree to the above terms for the temporary operation and/or buyout of YOUR-NAME, CPA's Practice in the event of my disability, and/or the buyout of the Practice in the event of death. I further state that I have reviewed this Agreement and have either received the advice of counsel in this matter, or voluntarily waived such advice.

IN WITNESS WHEREOF, the Parties have set their hands on the date first above written.

Practitioner

_____

YOUR-NAME

_____

Successor

[Exhibits Omitted]

[i] This arrangement, an emergency succession plan to take effect in the event of your disability or death, is simpler and more practical than the protection and formality of a more comprehensive arrangement. It is quite difficult to identify another practitioner or a small firm willing to take on the responsibilities involved in helping you provide for a "bridge" that will carry your practice through your disability or death. Therefore, this arrangement intentionally lessens the liability and responsibility that will face the person or firm helping you. If you believe you can offer incentives to motivate or reward the person or firm helping you, consider revising the structure as well as the language of this agreement. This agreement contemplates that the successor CPA has extensive knowledge of the practice based on a long-term relationship with the senior or selling practitioner. Otherwise, more representations, warranties, and indemnifications would be warranted before undertaking the management or purchase of a practice.

[ii] This arrangement is intended to sustain your practice by enabling another practitioner to manage and eventually purchase the practice if you become permanently disabled or die. This approach is simpler than the alternative approach in which the successor retains a practice consultant or broker to sell the practice. Yet another approach would be to have a seasoned, capable staff employee in your practice provide the bridge during your disability and structure an arrangement with another practitioner or small firm to purchase your practice on death. This agreement has different provisions for addressing disability and death; if you have significant health issues or are quite elderly, you might want to further simplify this arrangement by providing for the automatic sale of your practice even in the event of disability.

[iii] If the concept is for a colleague to preserve your practice during a temporary disability, you might prefer to limit the scope of activities so that when you return you can make long-term practice decisions. Limiting the scope of what the successor has to do will also make it easier to negotiate a succession arrangement.

[iv] If there are one or more key staff members, you may wish to identify them and direct the successor to take steps to retain them to preserve your practice.

[v] The following indicates a simple earn-out arrangement, which is not uncommon for many professional practices, under the circumstances. If you can fix a specific price or formula based on a percentage of prior year's gross revenues, it would simplify the process and the payments. The key issue is if you, as a sole practitioner, are unexpectedly permanently disabled or die, your unavailability to transition the practice to a buyer, which is common in a practice sale, will adversely affect the value. The measure of this is uncertain. Further, if you implement this type of agreement in advance, it is more of a risk to the named successor or buyer then in a planned sale because the time period from signing to triggering of the sale is unknown, and the changes in your practice and the circumstances are unknown.

[vi] If the successor is a multiple-partner firm to whom you would have referred specialized work that you did not handle, perhaps that specialized work (in the illustration below, work you simply did not provide to the client) should not be counted in determining the payments to you or your successors.

[vii] Consider whether some type of safety valve should be included to protect the successor.

Appendix 3-1: Sample License of Trade Name, Logo, and Telephone Numbers to Protect Founding Accountant[i]

AGREEMENT made DATE, between YOUR-NAME, who resides at ADDRESS ("Licensor") and FIRMNAME., a STATENAME professional corporation, with its principal place of business at ADDRESS (the "User").[ii]

WHEREAS, the User desires to obtain the use of certain designs, logos, name, trade names including but not limited to "CPA-DOCS", and telephone numbers including but not limited to CPA-DOCS, the domain names www.cpadocs.com and www.cpa-docs.com, www.cpadocs.net and www.cpa-docs.net, and the website operated at www.cpadocs.com, and related rights now owned solely by Licensor as more fully described in Schedule 1, attached [the schedule should have a physical representation of all designs and logos, copies of any trade mark rights, etc.] (the "Rights") in connection with a business of operating a Certified Public Accounting practice specializing in providing closely held medical and health care professionals, providing a full range of bookkeeping, business consulting services, tax planning, tax compliance and related financial planning ("Practice"). User desires to avail itself of such Rights in exchange for certain license fees per year paid by the User to the Licensor (the "Fee"), and other good and valuable consideration.

NOW, THEREFORE, based on the mutual premises set forth below, and upon other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Grant of License

Subject to the User's compliance with all the terms and conditions of this Agreement, Licensor grants for the period set forth in the provision below entitled "Term", to the User a license to use the Rights in its Business (the "Grant"). The Grant shall be exclusive for all areas of the following counties COUNTY-NAMES where the Business is operated by User (the "Trade Area"). This Grant shall not extend beyond the Trade Area or Term and User shall have no rights whatsoever to use the Grant or Rights beyond the Trade Area.

2. Limitation on Licensor's Liability

Except as specifically provided herein, licensor makes no warranties, express or implied. Licensor warrants only that it has the right to grant this license and shall indemnify User

against liabilities, damages and expenses arising out of any breach of this warranty and as a result of its use of any Rights granted herein. Any liability of Licensor herein is contingent on User providing Licensor with prompt Notice (as defined in the Section "Notice", below) of any claim of infringement or otherwise by any third party asserting a claim against User. Licensor further warrants that it will use its best efforts to make the Rights available as provided herein.

3. Limitations on Grant

User shall only be entitled to the specific rights granted under this License.

4. Ownership of Rights

All Rights shall at all times be Licensor's property, subject only to the User's limited rights as expressly provided herein.

5. License Fee

The User shall pay to Licensor a License Fee of DOLLARS Thousand Dollars ($____,000.00) payable annually (the "Fee") in accordance with this License Agreement.

6. Assignment

Assignment of this Agreement or the Rights is prohibited. This Agreement may not be assigned by User and the Rights may not be made available by User to any other person. However, Licensor may assign the Rights to a spouse, child, a limited liability company or partnership owned by Licensor and/or a child and/or spouse, or a trust for the benefit of licensor and/or a child and/or spouse. This restriction shall apply to such transferee so that no further transfer to any person other than set forth herein shall be permitted.

7. Term[iii]

The term of this Agreement shall commence on the date first above written and shall remain in effect for the lesser of the following periods: (i) so long as User complies with its obligations hereunder; (ii) the cessation of the Business of the User; (iii) the termination or resignation for any reason of Licensor as an Officer, Director, or Shareholder of the User for any reason whatsoever; or (v) the Tenth (10th) anniversary date hereof, unless no notice is issued by either party canceling this License by Ninety (90) days advance Notice, in which event this License shall continue for additional One (1) year terms until cancelled by Ninety (90) days Notice (the "Term").

8. Construction

This Agreement expresses the entire understanding between the parties relating to the subject matter hereof and may not be modified, renewed, extended, or discharged, except by an Agreement in writing signed by the party against whom enforcement of the modification, renewal, extension or discharge is sought, or by such party's agent.

This Agreement shall be construed in accordance with the laws of the State of STATE and any actions hereunder shall be brought in the State court system. Waiver of any breach of this Agreement must be in writing and shall not be deemed a waiver of any preceding or succeeding breach of the same or any other provision.

9. Breach

Any party hereto who has been found to have breached any of the representations, covenants or other provisions of this Agreement shall be liable to the nonbreaching party for all damages, including reasonable attorneys fees, interest, reasonable experts fees and costs of suit.

10. Injunction

User acknowledges that it may be difficult to measure the damages resulting from any breach of this License Agreement and that even if damages would be measurable, a temporary and permanent injunction or other equitable remedy would be an effective and appropriate remedy. User further acknowledges that the restrictions herein are reasonable, are reasonably necessary for the protection of the interests in the Rights, including but not limited to the interests in the goodwill of the Licensor in the Rights and by virtue of the circumstances of the Licensor's interests in the Rights, a violation by the User or any such covenant may cause irreparable damage to the Licensor. Therefore, the User hereby agrees that any breach or threatened breach by him of any provision of this License Agreement shall entitle the Licensor, in addition to any other legal remedies available to it, to apply to any court of competent jurisdiction for a temporary and permanent injunction or any other appropriate decree of specific performance (without any bond or security being required) in order to enjoin such breach or threatened breach.

11. Notice

Any notices provided herein shall be sent via certified mail, return receipt requested, registered mail, or personal delivery, to the addresses first above listed, or to such other address as is designated in accordance with the terms hereof ("Notice"). In the case of any Notice, a copy shall be sent to: YOUR-LAWYER.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above written.[iv]

_____

YOUR-NAME

YOUR-NAME, CPAs, P.C.

By_____

YOUR-NAME, President and Director

ACKNOWLEDGED AND AGREED:

_____

STAFF-ACCOUNTANT

[i] This document is part of a comprehensive plan to safeguard your goodwill and intangible asset values in the event you retain a staff accountant with the objective of possible future partnership. This agreement illustrates the license of intangible assets referred to in the sample shareholder agreement provisions in the preceding Appendix 2-8. The concept is that you, a family LLC, or trust for your heirs, could own and develop a logo, trade name, Web site, domain name, telephone number, and other intangibles, and license them to your practice.

[ii] The fact that you don't have an existing trade name other than your name or perhaps a logo does not preclude the type of planning discussed in this document and Appendix 2-8. In fact, developing a name and logo independent of your name as a sole practitioner can be a significant step toward an exit strategy and the feasibility of transitioning your practice. If you don't have these intangibles, you could, for example, create a family partnership or LLC, a trust for your children or other heirs. You could then gift cash to the entity or trust, and have the entity or trust hire a marketing consultant to develop a plan to fit your practice profile. The plan could entail designing of a logo, securing a domain name and developing a website, and the development of other intangibles.

[iii] The term of the illustrated license is ten years. You could consider a term long enough to be consistent with your retirement or transition goals. A staff accountant that in fact becomes a partner (see Chapter 4) will likely pursue one of two strategies. At some point he or she, or the practice, will purchase the intangible rights or begin at some point to develop new intangible rights for use in the practice. These matters would be addressed in the governing documents when partnership actually occurs.

[iv] Consider having the staff accountant to whom you're offering the possibility of future equity or profit participation sign this agreement, simply acknowledging his awareness of the arrangements. This will avoid any misunderstanding as to the existence of the arrangements and the economic impact of the arrangements on the practice in which participation of the staff accountant will hopefully grow.

Appendix 3-2: Sample Independent Contractor Agreement for Per Diem Work by Formerly Retired Accountant

AGREEMENT made on MONTH DAY, YEAR by and between STAFF-ACCOUNTANT, an individual who resides at ADDRESSS ("Accountant"), and PRACTICE-NAME, a STATE-NAME limited liability company, doing business at ADDRESSS (the "Firm"), collectively the Accountant and the Practice are referred to as the "Parties".

WHEREAS, Accountant had heretofore retired from the full-time practice of public accounting as a partner in the firm of OLD-FIRM, and is currently receiving a payout of his retirement from, and equity in, OLD-FIRM, and is seeking part-time employment [during tax season] as a reviewer of tax returns with the Practice.

WHEREAS, Accountant, represents and warrants that he has the full authority to enter into and be bound by this Agreement and to provide the services hereunder, and, by way of example and not limitation, is not subject to any covenant not to compete or other restriction by OLD-FIRM.

WHEREAS, The Practice is desirous of hiring Accountant on a per diem basis on the terms and conditions herein, and Accountant is desirous of accepting such employment on the terms and conditions herein, and for the compensation set forth below.

NOW THEREFORE, for good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. The recital clauses above are incorporated into and made a part of this Agreement.

2. This agreement will be for a term of One Year [Four (4) calendar months, from January through and including April of YEAR, commencing on January 2, YEAR and ending on April 30, YEAR] [or, indicate term] (the "Term").

3. It is the Firm's expectation that a mutual decision regarding Accountant becoming an Equity Partner in the Firm will be made at or prior to the conclusion of the Term.[i]

4. Accountant's compensation for the services to be rendered under this Agreement shall be:[ii]

a. DOLLAR-AMOUNT per month [week, year, etc.] annualized, payable semimonthly [indicate period]

b. In addition to the above compensation as perquisites Accountant shall receive an automobile allowance of ALLOWANCE-DOLLARS per month or partial month worked.[iii]

c. In addition to the base compensation above, Accountant shall receive an amount equal to PERCENT (___%) of Accountant's aggregate "Source Collections", as defined below, in excess of DOLLAR-AMOUNT. Source Collections with respect to any client shall be the product obtained by multiplying: (i) the Source Collections (total fees and nonrefundable retainers) collected by the Practice [during the Term, and for a period of thirty (30) days following the conclusion of the term] [prior to June 1 YEAR], from that client by (ii) Accountant's percentage share [for example, 0 percent for a client of the Practice, and 100 percent for a client of Accountant]. Aggregate Source Collections shall be the sum of Source Collections for all clients. This additional compensation shall be computed semi-annually [describe duration] and paid to Accountant on or before PAYMENT-DATE as to the Aggregate Source Collections in excess of BASE-AMOUNT.

5. Accountant shall

[Be treated for state and federal income tax purposes as an independent contractor, and no withholding taxes shall be taken from payments due Accountant, and Accountant shall be solely responsible for same]

[Be treated for state and federal income tax purposes as an employee and all applicable withholding taxes shall be taken from payments due Accountant in accordance with the regular payroll practices of the Practice].

[For tax purposes only, Accountant will be compensated as if he were an equity partner (member) of the Practice].

6. Accountant hereby agrees that he shall have no ownership interest in the work in process, accounts receivable or goodwill of the Practice. Accountant hereby agrees that if he leaves the Practice during or after expiration of the Term, he will use his best efforts thereafter to assist the Practice in collecting on the unpaid work in process and unpaid accounts receivable from those clients for which he was the original source or shared source Accountant.

7. If Accountant so elects, he will be covered under the Firm's medical, disability, life, and other insurance plans at his own expense, as is the case for the Practice's equity and contract partners [members].

8. The Practice shall afford Accountant the opportunity to pay for malpractice insurance coverage for Accountant on the same basis, if at all, as such insurance protection is afforded to equity partners [members] of the Practice, and will pay for his parking and

dues for the AICPA and other accounting association dues on the same basis as for equity partners [member].

9. In light of the Practice's desire that Accountant actively develop and promote the Practice's business, Accountant shall be reimbursed for reasonable and documented business expenses in accordance with customary Practice procedures applicable to equity and contract partners. Further, the Practice may pay the membership dues for such trade associations as it determines in its discretion.

10. As an independent contractor, Accountant is not required to contribute capital to the Practice, nor will he have any formal voting rights at any Practice meetings. Otherwise, he will be welcome to participate in discussions and meetings of the Practice. In addition, Accountant may be given copies of periodic Practice financial information normally distributed to contract partners [members]. Accountant will not share in or be liable for any profits or losses of the Practice, including any malpractice liability not arising from his acts. Accountant shall be designated as the billing accountant on clients for whom he is the source accountant, subject to the approval of the Practice.

11. Section [describe] of the Practice's Operating Agreement, a copy of which section is attached hereto and incorporated herein, shall be applicable to this Independent Contractor arrangement.

12. Accountant may assign his rights and delegate his duties under this agreement to a professional corporation of which he is the sole shareholder and employee.

In accordance with the foregoing, the parties hereby execute this Agreement as of the date set forth below.

_____ _____

Accountant Date

PRACTICE-NAME, LLC

By: _____ _____

YOUR-NAME, MEMBER Date

[i] If you want to adapt this type of agreement to reflect the possibility of bringing the accountant in as a partner in the future, add an additional provision and modify the rest of the agreement accordingly.

[ii] Compensation can be handled in a myriad of different ways. Several sample provisions follow, which can be modified and adopted in any combination or manner to reflect the arrangement negotiated.

[iii] Perquisites can similarly vary across the board from nothing (a desk!) to a range of benefits. Be certain that the agreement is clear as to what will be provided, the consultant's responsibility for these items, and so forth.

Appendix 3-3: Sample Simple Letter Agreement with Employee

Employment Letter Agreement[i]

STAFF-ACCOUNTANT ("Employee") shall be employed by YOUR-FIRM, CPAs, LLC ("Practice") as an accountant with the title of TITLE. Employee shall be an employee at will.

Employee represents and warrants that Employee is a Certified Public Accountant, and a member in good standing of the AICPA and the STATE-NAME Society of CPAs, and that Employee has never been sanctioned or subject to disciplinary action, and has never been convicted of a felony or greater crime.

Employee shall be paid an annual salary of DOLLARS, in accordance with the regular payroll policies of the Practice. This annual salary shall not imply a minimum term for employment. Employee shall receive benefits made available to Practice employees generally. Employee is expected to work the regular hours of the Practice 9:00-5:30 during the year, and 8:30-6:30 and half a day on Saturday during tax season from February 1 through and including April 15. Employee is expected to bill not less than 35 billable hours per week on average.

Employee shall maintain all Practice client and business information confidential.

In the event of termination for any reason, Employee shall not provide any public accounting services in the areas of bookkeeping, compilation and review, or tax-related services to any clients of the Practice for 12 months following the termination of Employee's employment with the Practice, for any reason. Clients are defined as any person or entity to or for which the Practice has provided services in the Twenty Four (24) months prior to the termination of Employee. Employee shall not solicit any employee of the Practice for a period of Eighteen (18) Months following termination of Employee's employment with the Practice for any reason.

Upon termination of Employee for any reason Employee shall return all client and Practice files and delete any Practice information, data and software from any computer or other electronic storage medium or device.

_____

Employee Name

YOUR-NAME, CPAs, LLC

By: _____

YOUR-NAME, Member

[i] Long, formal employment agreements are not underused. Although the following is not completely protective, it illustrates that some of the more important provisions of a "letter agreement" can be reduced to a single page. The provisions included in such a short "agreement" will vary by transaction and the nature of your practice.

Appendix 3-4: Sample Simple Employment Agreement With or Without Future Equity

AGREEMENT dated DAY MONTH, YEAR, between STAFF-ACCOUNTANT, an individual who resides at EMPLOYEE-ADDRESS (the "Accountant"), and PRACTICE-NAME, a STATE-NAME professional corporation doing business at PRACTICE-ADDRESS, (the "Practice").

(1) WHEREAS, the Practice operates a public accounting practice specializing in servicing closely held business clients and providing them with bookkeeping, accounting, consulting, including cost accounting reports and studies, inventory analysis, reports for factors and bank lenders [list in some detail the nature of your Practice], and related services (the "Practice").

(2) WHEREAS, the Accountant is a Certified Public Accountant ("CPA") [list any other credentials the Accountant has], and the Practice wishes to retain the Accountant, and the Accountant wishes to be retained in such capacity and perform certain services for the Practice as a certified public accountant with expertise in management accounting.

THEREFORE, the parties hereto agree as follows:

A. Employment

1. The Practice hereby retains Accountant and Accountant hereby accepts such engagement, for the term and under the conditions and requirements specified herein, as an employee of the Practice, with such duties and responsibilities as may reasonably be assigned to a CPA pursuant to this Agreement.

2. Accountant's principal duties shall include the provision of full time accounting and management consulting services for conducting the Practice's business, and as required from time to time by the Practice. However, Accountant shall have no authority to accept, reject or modify any agreement or contract entered into by the Practice.

3. Employee shall receive an annual salary of Amount Thousand Dollars ($__,000.00) [insert salary figure and any bonus or other arrangements] (the "Compensation").

4. Employee shall account to the Employer for all ordinary and necessary business expenses in the manner designated from time to time by the Employer, and the Employer shall pay such amounts which are ordinary and necessary expenses reasonably necessary, in the opinion of the Practice, for Accountant to fulfill his

responsibilities as an employee of the Practice.

5. The Accountant shall devote his or her best efforts, and substantially all of the Accountant's business time and effort, at the times and places the Practice reasonably deems appropriate, to the Accountant's duties hereunder. However, it is expressly agreed that Employee may [insert any exceptions, for example, services to a family businesses.].

6. The principal place of business of the Accountant shall be at such places as the Practice, in its reasonable discretion, may choose from time to time, within STATE-NAME.

7. The Accountant shall be responsible to maintain a membership in good standing with the American Institute of CPAs, STATE-NAME Society of CPAs [list other organizations], at the Practice's expense. The Accountant shall provide any information necessary to the Practice's obtaining malpractice insurance coverage for the Practice and for the Accountant. The Accountant represents and warrants that attached to this Agreement is a listing of all malpractice coverage Accountant has been covered by for the past Six years, including any claims or reports made on such policies.

B. Confidentiality

Accountant shall retain all confidential Practice and client information in strict confidence. This provision shall survive the termination of this Agreement.[i]

C. Term of Retainer

The term for which Employee shall be retained hereunder shall commence on the date of this Agreement, and shall terminate upon the earlier of: (i) the cessation of the Practice's business; (ii) the death, or substantial disability of the Accountant; (iii) the death, or substantial disability of YOUR-NAME; or (iv) the last day of the 24th complete month following the date of this Agreement.

D. Disability or Death[ii]

The Accountant shall be deemed substantially disabled if: (i) the Accountant and the Practice agree that the Accountant is substantially disabled; or (ii) for a period of Sixty (60) consecutive days, the Accountant is unable, as a result of any physical, mental or emotional illness, ailment or accident to effectively discharge Accountant's duties hereunder. If the Accountant shall be substantially disabled as defined herein, the

Practice may then immediately upon Notice to the Accountant terminate this Agreement and the Practice's obligation to pay the Accountant the Compensation hereunder.

E. Notices

All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed, by either registered mail or certified mail return receipt requested, to the parties hereto at the addresses listed herein, or at such other address for a party as shall be specified by notice given pursuant hereto ("Notice").

F. Waiver

The failure of the Accountant or the Practice to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation.

G. Miscellaneous

(1) This Agreement constitutes the entire agreement between the parties hereto, supersedes all existing agreements between them and cannot be changed or terminated except by a written agreement signed by the parties and may not be assigned by either party.

(2) This Agreement shall be construed in accordance with the substantive law of STATE-NAME and the parties agree to personal jurisdiction in STATE-NAME.

Practice:

By:_____

YOUR-NAME

Accountant:

_____

ACCOUNTANT-NAME

[i] More extensive confidentiality and noncomplete provisions can be added if appropriate.

[ii] Depending on the nature of the relationship, the terms for disability should be modified. For example, if there is a part-time or per diem employee who is providing services following retirement, there may be no need for any significant disability period. In contrast, for a younger employee staking his or her career with your practice, a longer period should be used to provide some measure of financial security.

Appendix 3-5: Sample Employee Manual for Accounting Practice: Selected Excerpts[i]

A. No Promises Made to Employee[ii]

Employee warrants and represents that no written or oral promises, assurances, or representations whatever, whether express or implied, have been made to Employee in order to induce Employee to accept employment from Employer [other than as set forth in a letter agreement dated DATE, which in the event of any conflict with the provisions of this Employee Manual and the letter agreement, the letter agreement shall control]. Employee understands that no one at Employee was or is authorized to make any such promises, assurances, or representations and that any such unauthorized promise, assurance, or representation could not and cannot be relied upon.

B. Employee Status[iii]

1. Employee and Not Partner

Employee and employer and do not intend to be, and shall not be characterized as, partners, joint ventures, or any other relationship other than employee and employer.

2. At Will Employment[iv]

a. Employee understands and agrees that Employee's employment is "AT WILL" which means that either Employer or Employee may terminate Employee's employment at any time either desires with or without any reason. Employee warrants and represents that no written or oral promises, assurances, or representations, whether express or implied, to the contrary have been made to Employee at any time whether before or during Employee's employment.

b. Employee's employment with Employer may be terminated effective at any time for reasons that Employer may determine. Employee acknowledges and understands that Employee's employment with Employer is "AT WILL," and Employer has no formal severance package. Accordingly, Employer shall not be obligated to provide any severance benefit, and Employer shall only be obligated to pay compensation that has already accrued.

c. If Employee is terminated, Employer shall pay Employee any leave or other compensation that Employee has accrued as of Employee's termination date.

C. Overtime, Holidays, Vacation[v]

1. Scheduling of Vacation

Employee vacation, for full-time and part-time employees, shall be taken at such times as are mutually agreed to by Employee and Employer, to assure that the scheduling requirements of the Employer, with particular consideration to tax season work volume, are met. By way of example and not limitation, vacation time shall not be scheduled from January 5 through and including April 15. It is expressly understood that Employee may not be able to take vacation time at a preferred time and that the scheduling requests of other employees may conflict with the schedule requested by Employee. In such a circumstance, the Employer will allot the preferred time for the taking of vacation (for example, Christmas week) on a nondiscriminatory basis as among all employees.

D. Firm Privacy Policy and Related Matters[vi]

1. Client Confidential Information

Employer has strict policies regarding the privacy of client personal information. Accountant employees are bound by professional standards of confidentiality promulgated by applicable accounting licensing bodies. Nonaccountant employees are expected to adhere to similar standards.

All confidential client personal and business information received from our clients shall be held in strict confidence and shall never be released or communicated in any manner to any person or entity other than: to firm employees, to persons expressly authorized by the client, as required under applicable law, as permitted under applicable professional standards, to third parties performing services for Employer, or to address actual or threatened litigation, ethics, disciplinary or related claims or proceedings.

Employee agrees that all information relating to the client that is obtained and discussed in connection with the Employer's representation of the client shall be deemed "confidential."

Employee agrees that all information relating to the client continues to remain confidential after the Employer's representation of the client has ceased.

Disclosure of any information regarding any client except as required by law and except with the client's consent, in a manner other than as permitted herein, shall constitute a breach of this confidentiality provision.

2. Employer Confidential Information[vii]

Employee acknowledges that he has been informed that it is the policy of the Employer to maintain as secret and confidential all Employer confidential information, including but not limited to the financial condition of the Employer, the systems used by the Employer. Employee acknowledges that Employee has been provided with information about the Employer, and that employment will bring Employee into contact with confidential affairs of the Employer. Thus, Employee acknowledges that by reason of Employee's employment by the Employer, Employee will acquire Confidential Information.

E. Right to Work Product[viii]

1. Work Product of Employer

Any and all work product of any nature of Employee, including by way of example and not limitation, articles, speeches, software, work papers, memorandum, and other work product ("Work Product") which the Employee has conceived and/or made during the Employee's employment by the Employer and which have or may have any applicability to any aspect of the business of Employer, shall be the sole and exclusive property of the Employer, and by the execution hereof, Employee hereby irrevocably assigns, transfers, and conveys to the Employer all of Employee's right, title, and interest in and to all Work Product which may be developed during the employment by the Employer.

2. Ownership of Assets and Confidential Information

Employee acknowledges that the confidential information and all books and records of the Employer and the books and records used in operating the business are solely the property of the Employer and shall remain with the Employer on termination of Employee, except as requested by a client in accordance with applicable Rules.

3. Employee Properly Licensed[ix]

Employee represents, covenants and warrants that if Employee is a Certified Public Accountant, Employee is properly licensed and in good standing as a Certified Public Accountant in STATE-NAME. Employee shall at all times perform services hereunder in conformity with the rules and regulations of the American Institute of Certified Public Accountants and the STATE-NAME State Society of CPAs, applicable rules of court, and all ethical standards of the accounting profession, and all federal, state and municipal laws, regulations and ordinances which govern the practice of accounting.

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[i] An employee manual is critical to any practice with employees; even a small practice should have one. Further, because of the complexity and rapid changes that occur in employment law and the significant differences in the states' laws, the following are merely excerpts of some illustrative provisions you might modify and discuss with the labor attorney who is preparing your employee manual. A complete sample employee manual is available in the AICPA treatise *Management of an Accounting Practice Handbook*, Volume 3, Paragraph 313.

[ii] If the employee signs a letter agreement or more formal contract, the language of the employee manual should clarify that the provisions of that employment agreement control.

[iii] If an employee is offered a profit sharing participation, bonus arrangement, or the possibility of equity, you want to be explicit about what has and has not been offered. The provision below makes certain that no partnership status has been created, but the language "do not intend" may be contrary to what the arrangement is with a staff accountant you hope to grow into a partner.

[iv] In almost all cases, the arrangement you desire for your practice is to characterize all employees as "at will," implying that you can terminate the employee at any time. The provisions of many firm employee manuals are modified to reflect arrangements with, for instance, a staff accountant who is expected to become a partner or purchase the practice in the event of a principal's death. If you are terminating an employee at will, many advisers recommend that you first give the employee written notice of the issues and document the employee's failure to correct those issues. Care should be taken and a labor attorney should be consulted before proceeding in that manner, as the notices and other documentation that are so commonly used may also be viewed as conflicting with the employment at will arrangement. The correct answer will depend on the circumstances involved with the particular employee, and professional guidance should be obtained.

[v] Be cautious about inserting standard provisions in a firm manual as to vacation and overtime. Be certain it is properly tailored to reflect your practice's tax season policy.

[vi] The confidentiality of client data is vital for any accounting firm and should be expressly addressed in the employee manual and confirmed in any written employment contract or letter agreement.

[vii] Employees should be required to keep your office policies and procedures confidential as well. If your practice has proprietary software, procedures, or other matters that should be protected, they should be expressly mentioned as well.

[viii] You must assure that work product, including articles, speeches, or specific projects, such as the development of software, checklists, or forms, belong to your or your practice, despite the contributions of your employees.

[ix] If you are retaining an employee as a certified public accountant, you should obtain assurance that the employee is, in fact, properly licensed, and will remain properly licensed. Similarly, if you have an employee who is a certified appraiser or financial planner, you will to confirm the applicable credentials.

Appendix 3-6: Sample Comprehensive Employment Agreement for Your Practice to Bring in a Junior Accountant to Your Solo Practice with the Possibility of Future Partnership

AGREEMENT between STAFF-ACCOUNTANT, an individual who resides at ADDRESS (the "Accountant"), and PRACTICE-NAME, P.C., a STATE-NAME professional corporation, doing business at FIRM-ADDRESS (the "Corporation"). The Accountant and the Corporation are referred to as the "Parties".

RECITALS

WHEREAS, the Corporation operates a trade or business of a Certified Public Accountant practice specializing in SPECIALTY-NAME, and related business matters (the "Practice").

WHEREAS, the Corporation wishes to retain the Accountant if the Accountant meets certain prerequisites to employment (the "Requirements"), and the Accountant wishes to be retained in such capacity and to perform certain services for the Corporation, and to promote the interests of the Practice.

WHEREAS, If each of the Parties is satisfied with the relationship during the term hereof, they will enter into negotiations to admit Accountant as a principal of the Corporation following the term hereof. However, no obligation is implied by the Corporation to take such action.

WHEREAS, the Corporation requires certain restrictions be placed on the Accountant in order to protect the Corporation's interests in the Practice, and as an express condition to the Employment of the Accountant, and Accountant is agreeable to such restrictions in order to accept the Employment and the Compensation set forth below.

NOW THEREFORE, based on the mutual covenants and premises herein below contained, and for Ten Dollars ($10.00) and other good and valuable consideration receipt of which is hereby acknowledged, the parties hereto agree as follows:

A. <u>Incorporation of Recitals</u>

The Recital clauses above are herby incorporated into and made a part of this Agreement.

B. Binding Commitment

Accountant agrees to commence employment on the START-DATE, except in the event of death or permanent disability. Employer agrees not to hire another person to work in lieu of Accountant and to permit Accountant to commence work on such date unless there is Cause not to, or unless Accountant has not met the Requirements. Each Party recognizes and understands that the other Party is making commitments and plans based on the intention that the employment hereunder begin on the above date, and in the event either party violates this provision, in addition to any other remedies, the aggrieved Party shall be permitted Twenty Thousand Dollars ($20,000.00) in damages for the inconvenience and difficulties caused by the other Party's violation of this provision.

C. Requirements for Employment

1. In order for the Corporation to retain Accountant as an employee of the Corporation, as provided in the following paragraph, Accountant must first meet the Requirements:

a. Obtaining all appropriate and/or necessary licenses to the practice accountancy as a Certified Public Accountant.

b. Membership in the good standing in the American Institute of Certified Public Accountants, and STATE-NAME Society of CPAs [list other organizations] (collectively, the "Memberships").

c. No felony conviction and not having previously been found guilty of a crime of moral turpitude.

2. If Accountant begins employment with the Corporation and has not met any of the Requirements, the fact that the Corporation has permitted the start of employment shall not constitute a waiver of any of the Requirements, and if Accountant does not thereafter meet the Requirements, Corporation may terminate Accountant at anytime and without any obligation hereunder, other than for wages for the period for which Accountant provided services to the Corporation.

D. Employment

1. At Will Employment

Corporation hereby retains Accountant as an AT WILL employee, and Accountant hereby accepts such employment, for the term and under the conditions and

requirements specified herein, as an employee of the Corporation, for the compensation provided below.

2. Status

Accountant acknowledges that Accountant is to be characterized as an employee for federal and State income tax and all other purposes and that taxes shall be withheld by Corporation from Accountants Compensation as required by law.

3. Duties

a. Accountant shall perform such duties and responsibilities as may reasonably be assigned from time to time by the Board of Directors of the Corporation ("Duties"). These shall include, but not be limited to seeing clients, performing audits, compilations and reviews as the particular client assignments require, tax review and supervisions of staff preparing income tax returns, relating consulting and advisory services, endeavoring to develop new sources of clients, working actively to expand the Corporation's practice area geographically and the Corporation's client base, assisting with administrative responsibilities.

b. The Corporation shall consider any factors which it deems appropriate in evaluating Accountants performance of the Duties. These factors may include, but shall not be limited to:[i]

(1) Accountant's acceptance by clients and the Practice's office staff.

(2) Accountant's efforts and commitment of time, especially during tax season and other tax deadline periods.

(3) Accountant's productivity and efficiency in handling client matters. This may be based on comparison of time charged to budgets on particular jobs, as well as other criteria deemed appropriate by the Corporation.

(4) Accountant's willingness and effectiveness in promoting the Practice.

(5) Accountant's acceptance of Practice burdens and responsibilities, including but not limited to on call time, administrative matters, etc.

(6) Accountant's demonstration of entrepreneurial interest in the Practice. This shall include public speaking, presentations, and committee involvement in accounting and industry trade organizations, client development, and other factors.

(7) Accountant's demonstration of the Accountant's ability to work together with good rapport with the other accountants, staff, and administrative personnel, employed by the Corporation.

(8) The length of time required for Accountant to become a Certified Financial Planner [list other credentials or prerequisites].

4. Professional Standards

Accountant shall provide those services he is qualified by law to provide and customarily provides and that are consistent with prevailing standards of the professional practice of Certified Public Accountancy. Accountant shall at all times conduct himself in accordance with the ethical standards of the Certified Public Accounting profession, and shall abide by all standards, procedures and protocols as may be established from time to time by the Corporation. Accountant shall not discriminate against clients on the basis of age, race, color, creed, religion, sex, sexual preference, national origin, health status, or income level.

5. Time Accountant Shall Devote To Duties; Vacation; Tax Season; etc.

a. The Accountant shall devote all of Accountant's business time, attention, and energies to the Practice and performance of the Duties, and shall use Accountant's best efforts to advance the interests of the Corporation. Accountant is not permitted to be employed or retained in any capacity by any other person during the term hereof. Any income earned by Accountant from any accounting related endeavor, including but not limited to the rendering of professional services, publications, speeches, trademarks, lecturing, teaching, writing, and other positions, consultations, etc. shall belong to the Corporation. In the event that Accountant receives any direct compensation for such services or matters, Accountant shall immediately remit such monies to, and account full for same, to the Corporation.

b. Accountant shall be permitted Four (4) weeks of paid vacation for each complete calendar year (pro-rated for partial calendar years). However, none of such time shall be taken from February 1 through and including April 15 of any year.

c. No vacation days shall be deemed earned until Accountant has completed Six (6) months of employment with the Corporation.

d. All vacation days must be scheduled in advance and at times not reserved by YOUR-

NAME for his vacation days, and with consideration to the schedule of work for the Practice. Any absences, including training and educational seminars, but excluding approved sick days, shall count as use of these vacation days.

e. Vacation days not used shall lapse at the end of the calendar year in which earned and no compensation shall be provided for such unused vacation days.

6. Restrictions On Accountant's Actions

Accountant shall have no authority to take any action to act as general agent for any other party or for the Corporation, or to commit to any contract for the Corporation, except as expressly approved by the President of the Corporation.

E. Compensation of Accountant

The compensation under this provision is referred to generally as "Compensation":

1. Base Compensation

During the term of this Agreement, as compensation for the services performed by Accountant, Accountant shall be entitled to receive an annual salary as follows:

a. During first Twelve months following the start of employment, for any full calendar month worked, Accountant shall be paid _____ Thousand Dollars ($___,000.00) per month.

b. During second Twelve month period following the start of employment, for any full calendar month worked, Accountant shall be paid _____ Thousand Dollars ($___,000.00) per month.

c. During third Twelve month period following the start of employment, for any full calendar month worked, Accountant shall be paid _____ Thousand Dollars ($___,000.00) per month.

d. During fourth Twelve month period following the start of employment, for any full calendar month worked, Accountant shall be paid _____ Thousand Dollars ($___,000.00) per month.

Such amounts shall be paid in accordance with Corporation's regular payroll practices. For any partial period of service, this payment shall be prorated to reflect the number of days worked during that period (the "Base Compensation").

If profits are insufficient to make the payment of Base Compensation to both principal

and YOUR-NAME as employees of the Corporation, any shortfall shall be made up in subsequent years from the excess of profits in those subsequent years over the Base Salaries due and payable in such years.

2. Incentive Compensation[ii]

a. In addition to the base compensation, the Accountant shall be entitled to receive incentive compensation as follows:

(1) If collections from services performed by Accountant (such figure determined in the absolute discretion of the Corporation) exceed THRESHOLD-AMOUNT Thousand Dollars ($_____,000.00) during any calendar year, Accountant shall receive a bonus of Fifteen Percent (15%) of such excess.

(2) If collections from services performed by Accountant (such figure determined in the absolute discretion of the Corporation) exceed COLLECTION-AMOUNT Thousand Dollars ($_____,000.00) during any calendar year, Accountant shall receive a bonus of Twenty Percent (20%) of such excess.

b. If Accountant is terminated for any reason other than cause during a year, the Accountant shall receive Incentive Compensation based on prorating the above based on the number of complete or partial calendar months during such year that Accountant worked before such termination. If Accountant is terminated for cause, Accountant shall not be entitled to any Incentive Compensation for the year terminated.

c. The Incentive Compensation shall be paid to Accountant as soon as practicable after the close of the calendar year.

3. Benefits; Expenses

a. General Benefits. Accountant shall be covered by the standard health, pension plans, and similar benefit plans provided by Corporation to its employees. These presently include payment of health insurance for each employee and such employee's family, retirement plans (subject to the eligibility requirements of those plans), and such other benefits as the Board of Directors of the Corporation may from time to time decide.

b. Dues. The Corporation shall pay Accountant's dues for the following professional societies: LIST-ORGANIZATIONS when approved in advance by Corporation.

c. Automobile Allowance. Accountant shall be granted reasonable automobile allowance of REIMBURSEMENT-AMOUNT Hundred Dollars ($___00.00) per month.

d. Malpractice Insurance. Corporation, at Corporation's sole cost and expense, shall provide Accountant with malpractice coverage and accountant shall cooperate with same. Attached hereto is a complete and accurate list of all malpractice coverage to which Accountant has been subject for the preceding Six years and all claims made, or notifications given, under such policies.

If Accountant is terminated for other than Cause, the Corporation shall pay for One-Half, and the Accountant shall pay for One-Half, of the cost of "tail" malpractice insurance coverage if such coverage is available.[iii] If Accountant is terminated for Cause, Accountant shall pay the entire cost of "tail" malpractice insurance coverage.

e. Expenses Reimbursable to Accountant. Such expenses are permissible deductions to the Employer in accordance with the rules of Code Section 167 and 274(d), and the regulations thereunder. This shall include reasonable travel, entertainment, and other necessary expenses, including automobile mileage at the maximum rate allowed by the Code, Employer related travel, including coach (not Business) class flights, attendance at lectures, seminars, and forums, courses and meetings (subject to the restrictions in the preceding provision) incurred by Accountant in the proper performance of the Duties. The determination as to whether any expense is reasonable shall be made in the sole discretion of the Corporation based on the facts and circumstances of each expense. Where any type of expense is subject to a specific provision or limitation elsewhere in this Agreement, such other specific provision or limitation shall govern.

Reimbursable expenses shall include all continuing Certified Public Accountant education expenses not to exceed $___,000 per year, including: accounting journals, Certified Public Accountant licenses, professional travel and expenses, for which Accountant accounts to Employer.

f. Moving Costs.[iv]

Corporation shall reimburse Accountant for reasonably documented moving expenses incurred by Accountant and Accountant's family in relocating to the STATE-NAME area, for moving expenses for personal and household items, not to exceed Five Thousand Dollars $5,000.00. As part of such overall $5,000 limitation (and not as an increase of such maximum payable hereunder) Employer shall reimburse Accountant up to a maximum of Five Hundred Dollars ($500.00) for the cost of travel, room and board, for the Accountant and his spouse to travel to the area where Employer's office is located

for the purpose of locating housing. By way of clarification, if Employer reimburses Accountant for such maximum $500 travel amount, then the maximum other expenses to be reimbursed hereunder shall be limited to $4,500. All such expense reimbursements must meet the requirements for expense reimbursements set forth above.

F. Equity in the Corporation

1. Accountant, during the Term of this Agreement shall not have any equity interest in the Corporation. It is the express agreement between the parties that the Term of this Agreement is a trial period wherein the Corporation and the Accountant shall evaluate their interests in continuing the relationship following the Term.

2. Prior to December 31, YEAR the Accountant and the Corporation, if and only if each is satisfied with the relationship of the Parties during the Term of this Agreement, may enter into negotiations for the Accountant's purchase, over a number of years and at a price to be determined, of an equal equity interest in the Corporation. This provision shall not create any legally binding obligation on the Corporation.

3. Such continuing relationship, if agreed to by the Corporation, in its absolute discretion, could eventually lead to the Accountant owning a share in the Corporation with the other employees, owners, or shareholders, and the Accountant's becoming an officer and Director of the Corporation.

G. Disability or Death of Accountant

1. Definition of Disability

The Accountant shall be deemed substantially disabled if any of the following occur:

a. The Accountant and the Corporation agree that the Accountant is substantially disabled.

b. For a period of Ninety (90) consecutive days, the Accountant is unable, as a result of any physical, mental, or emotional illness, ailment or accident to effectively discharge, in the sole opinion of the Corporation, Accountant's duties hereunder.

c. The Accountant is disabled as such term is defined in any disability insurance policy which the Corporation has on the Accountant or which the Accountant owns and which the Corporation and Accountant designate as governing for the purposes of determining disability under this provision.

2. Consequences of Accountant Death or Disability

a. In the event of Accountant's Disability after working for the Corporation for Twelve (12) complete calendar months, the Corporation shall pay Accountant for the first Forty Five (45) days of paid sickness or Disability Accountant's regular Base Compensation under this Agreement. In the event of the Accountant's death, the Corporation shall cease paying Base Compensation as of the date of Accountant's death.

b. If Accountant shall be substantially disabled, the Corporation may, immediately upon dispatch of written Notice to Accountant:

(1) Terminate Accountant's employment and Corporation's obligation to pay Accountant compensation hereunder (other than the compensation provided in the preceding paragraph) and the provisions "Consequences of Termination" shall govern.

(2) Suspend the Corporation's obligation to pay Accountant for the period from the date of such Notice until the date on which, in the Corporation's sole judgment, Accountant ceases to be substantially disabled.

c. Employment shall terminate immediately upon death of the Accountant and the provisions "Consequences of Termination" shall govern.

d. The suspension or termination of Compensation in the event of Disability or Death of the Accountant shall not affect Accountant's right to Base Pay and Incentive Compensation earned prior to the effective date of such suspension or termination.

H. Term of Retainer

1. Effective Date

This Employment Agreement shall not become effective until signed by the President of the Corporation following its signature by Accountant.

2. Term

The term for which Accountant shall be retained hereunder shall commence on the date noted above, and shall terminate upon the earlier of:

a. The cessation of the Practice of the Corporation.

b. Accountant's death.

c. Accountant's Disability (as determined in the Corporation's reasonable discretion).

d. Termination for Cause, as defined below.

e. If Accountant terminates Employment prior to Six (6) complete months of service, Accountant shall reimburse Corporation for the following portion of any Moving Expenses reimbursed to Accountant as provided hereinabove: [1 - (Number of complete months worked/6)].

f. Voluntary termination by Accountant after Sixty (60) days advance Notice.

g. December 31, YEAR.

3. Cause

In addition to any item allowed by law as "cause," Accountant may be terminated for:

a. Accountant's willful failure to comply with any material terms of this Agreement after Notice directing Accountant to so comply.

b. Accountant's willful failure, after Notice, to perform the Duties or to comply with the policies, standards, and regulations of the Corporation, reasonably established by Corporation from time to time.

c. Accountant willfully engages in gross misconduct injurious to the Corporation, or Accountant engages in gross misconduct which is materially injurious to the Corporation.

d. The determination that the Accountant, based on objective professional criteria, has performed the Duties in a materially substandard manner, or a manner which is materially inconsistent with the Accountant's experience, training, and background.

e. Accountant's failure for any reason to remain a member in good standing as a CPA properly licensed in the State of STATE-NAME.

f. Accountant for any reason becoming uninsurable for standard premium professional liability insurance.

g. Accountant, as a result of professional misconduct, is expelled, suspended, or otherwise disciplined by the final action of the AICPA or the STATE-NAME Society of CPAs, or any professional organization, or for any reason or in any manner fails to maintain privileges at said organizations.

h. Accountant resigns from any professional organization under threat of disciplinary action for professional misconduct.

i. Accountant is convicted of a felony or greater criminal offense and there is no further

right of appeal from such conviction.

j. Accountant intentionally commits any material fraudulent act against Corporation in the course of his employment.

4. Consequences of Termination

a. Final Compensation Payments

If Accountant shall be terminated by Corporation, Accountant shall be entitled to any amounts due and owing as compensation under this Agreement to the extent earned, on a pro-rata basis, plus reimbursement for business expenses up to and including the day of termination, to the extent such expenses would otherwise be reimbursable to the Accountant under this Agreement. Any amount due by the Accountant to the Corporation may be offset by amounts due by Accountant to Corporation as provided in this Agreement.

b. Client Files

In the event of the termination of Accountant, it is hereby agreed that the client files and records belong to and shall be retained by the Corporation.[v]

Upon written authorization of a client, a copy of the chart and the related records will be made and sent to the Accountant or client, as directed. The original files shall, however, remain in the possession of the Corporation. Such Accountant shall be charged what would be charged to an unrelated person for the cost of supplying copies of these records. In the event any client records and files are transferred to the Accountant following Accountant's termination hereunder, Accountant shall pay to the Corporation Twenty Five Percent (25%) of all collections on said accounts for the Thirty Six (36) months following the termination hereunder.

c. Consequences of Termination

Upon termination Accountant shall reimburse Corporation for any expenses paid to or for Accountant by Corporation for the period of time remaining unused following such termination. This shall include, by way of example, the unused portion of malpractice premiums, professional society dues, etc. The Corporation may offset any such amounts due to Corporation against any final Base Compensation or Incentive Compensation payments due Accountant if any.

I. Confidential Information

1. Definition of Confidential Information

Accountant acknowledges that he has been informed that it is the policy of the Corporation to maintain as secret and confidential all information relating to the following ("Confidential Information"): The financial condition and operations of the Corporation; The systems, services, software pricing methods, proprietary marketing and proprietary sales techniques, technical processes, information about costs, profits, key personnel, introductions to contacts of the Practice including but not limited to referring relationships, business and professional relationships, and other sources, heretofore or hereafter acquired, developed and used by the Corporation; clients correspondence, personnel, tax, permanent and other files and records, and other information concerning the Practice of Corporation; information about the Corporation's clients, employees, and business arrangements and practices; introductions to and relationships with referring financial planners [other referral sources] and other person who are important to the Corporation's Practice. The Accountant further acknowledges that he and other bookkeepers and accountants employed by the Corporation rely upon the continued confidentiality such information and the goodwill inherent in such relationships for their financial security.

Accountant acknowledges that all Confidential Information is of great value to Corporation, and essential to Corporation's preservation of the Practice and the goodwill of Corporation.

The Accountant recognizes the duties and services to be performed by Accountant, as an employee of the Corporation, are special, unusual, extraordinary and unique, and intellectual in nature.

2. Accountant Shall Not Disclose Confidential Information

Accountant confirms that protection of the Corporation's goodwill is reasonably necessary and that Accountant agrees that Accountant shall not, directly or indirectly, except where authorized by the Board of Directors of the Corporation for the benefit of the Corporation, at any time, divulge to any persons, firms, corporations, governmental entities or agencies or other entities, other than the Corporation ("Third Parties"), or use or cause or authorize any Third Parties to use, any such Confidential Information, or any other information which he knows or should know is regarded as confidential and

valuable by the Corporation (whether or not any of the foregoing information is actually novel or unique) except as otherwise required by law.

J. Covenant Not to Compete

1. Accountant understands and acknowledges that Accountant will be providing accounting, tax, and consulting services during Accountant's employment with the Corporation and that Accountant's termination for any reason and in any manner (including but not limited to termination without any cause), followed by Accountant's practicing public accounting in the same area as the Corporation would enable Accountant to take advantage of the goodwill, reputation, name, contacts, and marketing efforts of the Corporation in that area, to the financial detriment of the Corporation and its other employees.

2. Therefore, Accountant acknowledges that the business of Corporation extends throughout the area within a Twenty Five (25) mile radius of any current or future office of the Corporation, including the current office located at OFFICE-ADDRESS and within Twenty Five (25) miles of any such office existing at the time of Accountant's termination ("Area").[vi]

The scope of this Area is to reflect the rural nature of the practices and hence the larger geographic area they service.

3. The restrictions contained in this provision shall not be interpreted as to prevent Accountant from providing services in-house for a client of the Corporation.

4. In order to induce Corporation to enter into this Agreement, and in recognition and for the Compensation, Accountant agrees that, during the term of this Agreement, any extensions thereof, and for a period of Two (2) years thereafter, Accountant shall not, directly or indirectly, in any capacity:[vii]

a. Engage or otherwise solicit any former or existing client (or member of any client's household) of Corporation.

b. Engage or otherwise solicit any of the employees of Corporation in any business engaged in the same activities as the Practice described above, or similar competing endeavor.

c. Work in a similar capacity for a public accounting practice whose services compete with the services of Corporation in the Area.

d. Induce or attempt to influence any employee or client of the Corporation to terminate his or her relationship with the Corporation.

e. Induce or attempt to influence any financial planner or other professional with a referring relationship with the Corporation to terminate that relationship.

f. Solicit any client service contractual arrangement of the Corporation.

5. Because the violation of this Covenant Not to Compete will cause irreparable harm to the Corporation, its Practice and its other employees, the Accountant agrees that in the event of the violation of any of this provision, or in any manner, Accountant shall immediately pay over to the Corporation (and the Corporation may deduct and withhold from any amounts due Accountant hereunder) One-Half (1/2) of all compensation earned by or paid to Accountant during the term hereof (inclusive of by way of example, and not limitation, wages reported on Form W-2, pension contributions, expense reimbursements for seminars), plus AMOUNT Thousand Dollars ($___,000.00), plus reimburse the Corporation for any and all moving expenses paid by the Corporation on behalf of the Accountant, and any expenses, including but not limited to reasonable attorney fees and court costs, incurred by Employer in enforcing this provision.

K. Consequences of Violation of Accountant Restrictions

1. Injunction

Accountant acknowledges that it may be difficult to measure the damages resulting from any breach of the provisions governing confidential information and noncompetition and that even if damages would be measurable, a temporary and permanent injunction or other equitable remedy would be an effective and appropriate remedy. Accountant further acknowledges that the restrictions herein are reasonable, are reasonably necessary for the protection of the business and goodwill of the Corporation and, by virtue of the circumstances of the Corporation's business, a violation by the Accountant or any such covenant may cause irreparable damage to the Corporation. Therefore, the Accountant hereby agrees that any breach or threatened breach by him of any of these provisions of this Employment Agreement entitle the Corporation, in addition to any other legal remedies available to it, to apply to any court of competent jurisdiction for a temporary and permanent injunction or any other appropriate decree of specific performance (without any bond or security being required) in order to enjoin such breach or threatened breach.

2. Severability of Certain Provisions

The Parties understand and intend that each provision and restriction agreed to by the Accountant in the provisions governing Accountant Restrictions shall be construed as separate and divisible from every other provision and restriction, and that the unenforceability of any part or all of one such provision or restriction shall not limit the enforceability, in whole or in part as the circumstances warrant, of the remainder of such specific provision, or of any other provision herein. If the Accountant Restrictions shall for any reason be held by a court of competent jurisdiction to be excessively broad as to duration, geographic scope, activity, subject, or other criteria, such Accountant Restriction shall be construed so as to be enforceable as thereafter limited or reduced by such court, and the Parties specifically agree that such court shall have the power to reduce the duration, area, or other characteristic so that such provision shall be enforceable.

L. Representations and Warranties

Each Party represents, covenants and warrants that:

1. Authority

Each Party represents and warrants to the other that neither the execution and delivery of this Agreement, nor consummation of the transactions provided for in this Agreement, shall result in the breach of, or constitute a default under, any agreement by which such Party is bound, or violate any court order or decree. This Agreement is valid and binding upon, and enforceable against, each Party in accordance with its terms. No Party is under any constraint prohibiting such Party from entering into, being bound by, or carrying out the terms of this Agreement. Any actions necessary to be completed to permit and authorize each Party to enter into this Agreement have heretofore been taken and completed.

2. Independent Advice of Counsel[viii]

Accountant has been advised to seek the advice of counsel prior to executing this Agreement. Accountant, by executing this Agreement, acknowledges that Accountant has been advised to seek independent counsel and that the execution of this Agreement can affect Accountant's legal rights, that reasonable time to consult with independent counsel has been afforded, and that Accountant has consulted with independent

counsel, or has of Accountant's own volition decided not to do so.

3. Accountant Properly Licensed; Performance In Accordance With Professional Standards

Accountant is properly licensed, and is in good standing, as a Certified Public Accountant [insert any other professional designations to be required], in the state of STATE-NAME.

M. Definitions

1. "Code"

The Internal Revenue Code of 1986, or any successor statute, as amended, and the applicable Treasury Regulations.

2. "Notice".

"Notice" shall mean any notice or other communication hereunder shall be in writing and shall be deemed given if delivered personally or mailed, by either registered mail or certified mail return receipt requested, or via a national overnight courier, postage and shipping prepaid, to the parties at the addresses listed herein (or at such other address for a party as shall be specified by notice given pursuant hereto).

A copy of any notice to Corporation shall also be sent to:

NAME

ADDRESS

N. Limitation on Certain Provisions

Notwithstanding anything to the contrary in this Agreement, or in the Shareholders' Agreement, the provisions of Sections G and H shall only apply to Accountant in the event of Accountant's voluntary termination or firing for cause.

O. Miscellaneous

1. Unexecuted Agreement Constitutes Proposal for Discussion Only.

The provision of this Agreement prior to signing by an officer of the Corporation is merely a proposal for discussion and shall not create any binding obligation on the Corporation until a copy of this Agreement signed by Accountant is thereafter executed by the Corporation.

2. Headings, Paragraph Numbers, Gender, Etc.

The headings and paragraph numbers in this Agreement have been inserted for convenience only and shall not be interpreted to affect the interpretation of any provision. The use of male, female, singular, or plural, shall be interpreted as the usage requires.

3. Interpretation; Conflict of Documents

In the event of any conflict between this Agreement and any agreement contemplated herein, or any schedule or exhibit attached, the provisions of this Agreement shall control.

4. Counterparts

This Agreement may be executed in one or more counterparts each of which shall be deemed to constitute an original and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

5. State Law

This Agreement shall be governed under the laws of the State of STATE-NAME. Each Party agrees to personal jurisdiction in the State or federal courts in STATE-NAME.

6. Waiver

The failure of Accountant or Corporation to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation.

IN WITNESS WHEREOF, the undersigned parties have duly executed and delivered this Agreement as of the date first above written:

Corporation:

By_____

YOUR-NAME, President

Accountant:

_____

ACCOUNTANT-NAME

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[i] The factors listed below are critical for several reasons: They clarify the details and criteria for evaluation of the accountant/employee's success. If equity is to be offered or the offer not provided, these criteria will be important to evaluating the basis for your practice's actions.

[ii] If any type of incentive compensation is offered, particularly if based on practice income, a comprehensive agreement becomes even more important. If an employee/accountant is to share in profits but not to receive equity, it is important to expressly clarify the arrangements to avoid an unintended implication of equity.

[iii] Tail coverage may or may not be available, and if available, may or may not be cost effective or desired. If you have an older accountant who will retire upon leaving your practice, having a tail or some other arrangements to address coverage following retirement should be considered.

[iv] Moving expenses may be an issue if you hire an employee who is moving to your area in order to accept the job.

[v] Consideration must be given to how client files for clients originated by the staff accountant should be handled and whether practice files should be transferred and in what manner and at what cost.

[vi] If the area used is broad, expressly state and explain why.

[vii] Consider whether to make an exception for a staff accountant who accepts a position with a client.

[viii] Frequently, an employee accountant will not be willing to incur the cost of hiring an attorney. In such cases, the employee should acknowledge in writing that he or she has been advised to retain an attorney and has been afforded the opportunity to do so. If you want to ensure that noncompete, nondisclosure, or other important clauses can withstand the challenge of adequate representation, consider offering to cover some cost of the legal fees incurred by the employee.

Appendix 3-7: Sample Simple Noncompete Agreement[i]

A. Employment Relationship[ii]

The Practice has hired Employee, as a senior staff accountant, to provide tax, accounting, and related services to the Practice's clients, on at will basis, with a salary of $__,000 per year, and a bonus to be determined in the Practice's discretion based on business generated, client satisfaction, and hours billed.

B. Restrictions on Employee Competition, and Related Provisions

1. Noncompetition Covenants

Definition. The "Noncompetition Covenants" shall include Employee covenants relating to Employee's postemployment activities concerning:

a. Time and location ("Restrictions on Practice").

b. Nonsolicitation ("Nonsolicitation").

c. Confidentiality ("Confidential Information").

d. Return of corporate property ("Return of Entity Property").

Collectively, these are referred to as the "Restrictions."

2. Expressly Negotiated[iii]

Employee acknowledges that these Restrictions provisions were expressly negotiated and bargained for in exchange for the compensation and other provisions herein including, but not limited to, the elimination of any right of the Practice to terminate Employee without cause. Employee understands and agrees to these Restrictions.

3. General Statement Regarding Intent

Employee and the Practice recognize that, due to the nature of Employee's employment with the Practice, Employee will have access to confidential business information, proprietary information, and trade secrets relating to the business and operations of the Practice ("Confidential Information"). Employee acknowledges that such information is invaluable to the business of the Practice, and YOUR-NAME's professional goodwill, and that disclosure of Confidential Information to, or use for the benefit of, any person or entity other than the Practice or YOUR-NAME, would cause irreparable damage to the

Practice. Employee further acknowledges that Employee's relationships with the clients, other staff accountants, employees, representatives and agents of the Practice render Employee's professional services special, unique, and extraordinary. In recognition that the good will and relationships described herein are extremely valuable to the Practice, and that the loss of, or damage to, these relationships would destroy or substantially diminish the value of the Practice, Employee agrees to the Noncompetition Covenants and Restrictions.

4. Restrictions on Practice

During the term of this Agreement (including extensions) and for the Two (2) year period following termination of this Agreement ("Noncompete Period"), and regardless of the reason for termination of this Agreement, Employee agrees that Employee shall not engage in the practice of accounting, tax and business consulting, or financial planning [describe areas of practice to restrict] and other related services in AREA-RESTRICTED ("Restricted Area").[iv] The Parties understand and acknowledge the broad scope of this Restricted Area, but believe and acknowledge that the reputation and good will of the Practice and YOUR-NAME extend to these areas and that the specialized nature of the Practice makes this scope necessary and reasonable to the protection of YOUR-NAME's professional goodwill, and the Practice.

5. Nonsolicitation

During the Noncompete Period, Employee agrees that Employee shall not engage in any of the following activities, either directly or indirectly (individually, or through or on behalf of another entity as owner, partner, agent, employee, consultant, or in any other capacity):

a. Seek, solicit, or engage in any attempt to establish for Employee or for any other person or entity, a personal or business relationship with any person who is or was a client of the Practice during the period beginning Two (2) years prior to the termination and continuing through the Noncompete Period.

b. Engage in any activity to interfere with, disrupt, or damage the Practice during the Noncompete Period.

c. Hire or engage any employee of the Practice, or solicit, encourage, or engage in any activity to induce any employee of the Entity or any of its affiliate(s) to terminate an employee's relationship with the Practice, or to become employed by, or to enter into a

business relationship with any other accountant or accounting or financial planning practice. For purposes of this subparagraph, the term *employee* includes any individual who is an employee of, or consultant to, the Practice during the Twelve (12) month period prior to the termination of this Agreement.

6. Confidential Information.

a. Employee acknowledges that Employee has been provided with information about the Practice, and that the Employment during the Term hereof, including any renewals or extensions, will continue to bring Employee into close contact with confidential affairs of the Practice. Thus, Employee acknowledges that by reason of Employee's employment by the Practice, Employee will acquire Confidential Information. Employee acknowledges that all Confidential Information is of great value to Practice, and essential to Practice's preservation of the business and the goodwill of Practice. The Employee recognizes the duties and services to be performed by Employee, as an employee of the Practice, are special, unusual, extraordinary and unique, and intellectual in nature.

b. During the term of this Agreement and at all times thereafter, except as authorized by the Practice Employee shall not, whether directly or indirectly, use, disclose, copy, furnish, or make accessible to anyone, any Confidential Information as defined below. Employee agrees to use his best efforts to prevent any unauthorized disclosure or use of Confidential Information.

c. For purposes of this Employment Agreement, "Confidential Information" means information which is not disclosed to the public, including without limitation information relating to: the management and operation of the Practice, financial reporting data of YOUR-NAME and the Practice, client files and records (unless authorized in writing by the client), Practice proprietary software, information relating to the Practice's business and marketing plans, financial and budget information; computer software developed or enhanced by the Practice; information received from third parties under confidential conditions; the identity of, and any information concerning, the clients or potential clients of the Practice; terms of employment and compensation paid to officers or employees of the Practice; the names and any information concerning persons who refer or may refer clients to the Practice; and any other business or financial information concerning the Practice or its operations.

d. The restrictions of this paragraph shall apply regardless of whether Confidential Information is in written, graphic, computer, recorded, photographic or any machine readable form, and regardless of whether it is orally conveyed to Employee, copied, duplicated, reproducted, or memorized by Employee.

e. Employee agrees to notify immediately the Practice in the event Employee receives any formal or informal demand or request that Employee disclose any Confidential Information.

7. Exceptions to Nondisclosure of Confidential Information

Notwithstanding the foregoing, the restrictions contained in this provision shall not apply to any Confidential Information or portion thereof which:

a. At the time of disclosure by the Employee is generally and readily available to the public other than by an act or omission on the part of Employee; or

b. At the time of disclosure by Employee has been acquired from or made available to Employee by a third party having the lawful right to disclose such information.

c. Employee is required to disclose pursuant to any state or federal law, rule, or regulation or by an applicable judgment, order, or decree of any court or government body or agency, or committee of the American Institute of Certified Public Accountants, having jurisdiction over such matter. However, at least Twenty (20) days prior written notice of such required disclosure before such disclosure is made to enable the Practice to seek an appropriate protective order to take such other actions as it deems necessary or appropriate.

8. Right to Work Product

Any and all work product of any nature including software enhancements, articles or speeches, or other work product (collectively, the "Work Product"), whether or not patentable or copyrightable, which the Employee has conceived or made during the Employee's employment by the Practice, whether or not during working hours, and which have or may have any applicability to any aspect of the business of Practice, shall be the sole and exclusive property of the Practice, and by the execution hereof, Employee hereby irrevocably assigns, transfers, and conveys to the Practice all of Employee's right, title, and interest in and to all Work Product which may be developed during the employment by the Practice. When required to do so by the Practice,

Employee shall execute any and all documents necessary to desirable to convey title in any copyright or patent applications covering any of such Work Product.

9. Return of Practice Property

Employee acknowledges and agrees that all originals and copies of Confidential Data, including materials, records, documents, and computer data generated or received by Employee during the terms of this Agreement are the sole property of the Practice. Upon termination of this Agreement for any reason, or upon request of the Practice at any time, Employee shall promptly deliver all copies of such materials to the Practice. During the term of this Agreement, and at all times thereafter, Employee shall not remove or cause to be removed from the premises of the Practice, except in an authorized computer laptop or medium provided by and owned by the Practice, any record, file, memorandum, document, equipment, or any like item relating to the business of the Practice, and only then in furtherance of Employee's duties as an employee of the Practice. Since clients served by Employee during the term of this Agreement are clients of the Practice, all client record, permanent files, correspondence files, Quick book data files [insert appropriate software and other descriptions], client information, and personal or regular files concerning clients of the Practice shall belong to, and remain the property of, the Practice. Upon termination of this Agreement for any reason, Employee shall not be entitled to keep, use, or reserve any of the items enumerated above with respect to any client.

10. Extension of Noncompete Period[v]

Should Employee be in violation of any of the provisions of the Noncompetition Covenants or Restrictions generally, then the Noncompete Period shall be extended for a period of time equal to One Hundred Fifty Percent (150%) of the length of time during which said violation or violations occurred. If Practice seeks relief from said violation in a court, then the running of the Noncompete Period shall be suspended (is "tolled") during the pendency of any proceeding, including all appeals by Employee. This suspension ("tolling") shall cease upon the entry of a final judgment in the matter.

11. Modification[vi]

a. If a court should hold that any provision of the Noncompetition Covenants is unreasonable, then to the extent permitted by law, the court may prescribe a modification to such terms that is reasonable so as to render said covenants and

Restrictions in compliance with the law, and the parties hereto accept such determination or determinations subject to their right of appeal.

b. If any regulatory body should determine that any provision of the Noncompetition Covenants or Restrictions violate a client's rights or the ethical standards applicable to a Certified Public Accountant, then to the extent permitted by law, the Practice shall provide a modification to such terms that is reasonable so as to render said covenants and Restrictions in compliance with the applicable regulations or ethics, and the Parties hereto accept such determination or determinations.

12. Reasonableness

a. Employee acknowledges that he freely enters into these covenants, and expressly agrees that such duration, limitations, and description of the limited conduct set forth herein are reasonable and necessary for the protection of the legitimate business interests of the Practice.

b. Employee represents and warrants that his background, training, and experience are such that the restrictions contained in this section shall not result in an inability on his part to pursue a livelihood, and that other alternatives or representations of employment or business endeavors are reasonably available to him. The Noncompetition Covenants are hereby deemed to be independent of any other agreement or arrangements, oral or written between the Employee and the Practice, and the existence of any claim or cause of action by Employee against the Practice or YOUR-NAME, whether predicated on this Agreement or otherwise, shall not constitute a defense to enforcement of these Covenants.

13. Remedies

a. Injunctive Relief. Employee acknowledges and agrees that any violation of any of the Noncompetition Covenants would cause substantial damage to the Practice and YOUR-NAME. Accordingly, Employee acknowledges and agrees that in the event Employee violates any of the Noncompetition Covenants, the Practice shall be entitled to immediate injunctive relief in addition to subsequent monetary damages.

b. Termination of Payments. If Employee violates any of the Noncompetition Covenants or Restrictions hereunder at any during which he is otherwise entitled to receive payments under any agreement or arrangement with the Practice, then Employee's entitlement to said payments shall immediately terminate. Employee shall be entitled to

retain all payments received prior to said violation, but shall have no claim or right to any further payments.

c. However, should Employee cease and desist violating any of the Noncompetition Covenants or Restrictions, including a termination of violation under Court order, then Employee shall be entitled to recommence receiving any such payments. However, payments not received due to, and during the period of Employee's violation of any Noncompetition Covenant shall not accrue and in no case shall Employee receive payments, or interest, for any said period.

14. Exception to Noncompetition Covenants[vii]

Should Employee be terminated by the Practice without cause, then the Noncompetition Covenants shall not apply and Employee shall be free to compete during the Noncompete Period in the Restricted Area. Employee agrees that in no event shall Employee disclose Confidential Information regardless of the reason for the termination of this Agreement.

_____

EMPLOYEE-NAME

YOUR-NAME, CPA, PC

By: _____

[i] A nondisclosure or confidentiality provision is essential in some employment arrangements in order to protect your practice's economic interests. Dilemmas include the need to balance your practice's need for protection against the employee's right to use his or her skills to earn a livelihood—assuming that a prospective or current staff accountant is willing to sign such an agreement. For a confidentiality agreement to be effective in court it must be reasonable, including only items which are, in fact, confidential. The provisions should reflect the specific nature of your practice. General or boiler-plate provisions (for example, right out of a form book or not tailored with specific examples and provisions reflective of your actual practice) are unlikely to be effective. Issues of breadth versus specificity affect a covenant not to compete and a confidentiality agreement. Anything not essential to your practice's business interests or information which can be obtained in the public domain, through no fault of the employee, should be excluded. The employee, however, should be required to leave all physical embodiments of the confidential data with the employer on termination.

[ii] Any noncompete agreement should include an acknowledgement of the employment arrangement to corroborate that the employee is receiving value for agreeing to the noncompete. Consider the comments and examples in Chapter 2 above as to how to limit the scope of the covenant to the minimum you need to provide key protections. The illustrative provisions following in this appendix demonstrate how several different types of coordinated postemployment restrictions may be necessary to protect your practice.

[iii] The following paragraphs provide your staff accountant with tremendous security in that you waive your right to terminate the employee unless there is "cause." The hurdle to demonstrate cause can be significant, and you are unlikely to want to engage in the legal wrangling needed to determine whether a particular event constituted cause.

[iv] Tailor the protected area to be the minimum that is reasonable and necessary in terms of the legitimate needs of the practice and the area’s geography.

[v] To provide better protection for your practice, consider having the restrictions extended or expanded in the event of a violation by the former staff accountant.

[vi] Many restrictive covenants include a provision similar to that below, stating that if the provision is too broad to enforce, the court should enforce as much as is appropriate (that is, cut back the provision to the maximum permissible). These provisions may or may not prove effective to accomplish your goals. The safest approach is to carefully review with a local attorney (the rules

differ by state) the current status of your state's laws on restrictive covenants and take all reasonable steps to justify and document the necessity for the restrictions and the reasonableness of them.

[vii] The following provision, which eliminates the restrictions allowing you to terminate the employee without "cause," sounds fair and reasonable. As noted above, however, the definition of "cause" can be very difficult and too high a standard. Therefore, carefully define what constitutes "cause" and review this issue with the practice's attorney before offering such a provision to your staff accountant.

Appendix 3-8: Sample Simple Nondisclosure Agreement[i]

This Confidentiality Agreement, MONTH DAY, YEAR, between YOUR-NAME, CPAs, LLC, a STATE-NAME Professional Corporation (the "Practice"), and EMPLOYEE-NAME, an individual who resides at EMPLOYEE-ADDRESS (the "Employee"), (collectively, the "Parties").

WHEREAS, the Firm and the Employee wish to enter into this Confidentiality Agreement to protect the confidential client and other information and data integral to the success of the Practice, and in recognition of the Employee's continued employment and compensation by the Practice.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and for good and valuable consideration receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Confidential information shall include, as to the Practice, all Practice financial data, client lists, proprietary software, employee records, and so forth. As to a client of the Practice ("Client") confidential data shall include all work papers, correspondence and permanent files, information contained in such files, and all other information obtained from or with respect to the representation of any Client. Information that is public knowledge through no fault of the Employee, or which the Practice or Client respectively permits disclosure, shall not be considered confidential information.

2. Except as may be required by law, pursuant to a court order, subpoena, or other judicial proceeding, and except when the Practice, and the Client if applicable, affirmatively consents to the disclosure, Employee agrees not to disclose, either directly or indirectly, in writing, orally, or via any electronic means, in any manner whatsoever, any confidential information provided by the Practice, or by any Client or acquired while advising, representing, or participating in the Practice's representation of any Client.

3. The Parties agree that all confidential information relating to the Practice, or to any Client, that is obtained or discussed in connection with Employee's employment with the Practice and the Practice's representation of any Client, shall be deemed confidential.

4. Employee agrees that all confidential information relating to the Practice or to any Client continues to remain confidential after the Employee's termination from the Practice, and following the Practice's representation of any Client has ceased.

5. Disclosure of any confidential information of the Practice, or regarding any Client, except as required by law and except with the Client's consent, in a manner other than as permitted herein, shall constitute a breach of this Confidentiality Agreement.

6. In any action to adjudicate or enforce the terms of this Confidentiality Agreement, the Practice may also seek and obtain the specific performance against the Employee for any violation of this Confidentiality Agreement. The Employee agrees that they do not have any adequate remedy at law to provide complete relief to enforce this Confidentiality Agreement.

YOUR-NAME, CPA, LLC

By: _____ _____

YOUR-NAME EMPLOYEE-NAME

[i] In some instances, you will want current employees to sign a nondisclosure agreement. Although such an agreement is best incorporated into a comprehensive employment agreement, the practical reality is that it won't happen in many cases. Thus, in order to protect your confidential client and other data, and make certain your employees understand the importance of maintaining confidentiality, the following agreement can be modified and used as a point of discussion with staff and your attorney to create a document for your practice. Also, provisions governing confidentiality should be incorporated into your practice employee manual.

Appendix 3-9: Sample Alternative Simple Non-Disclosure Agreement

[Your Practice Letterhead]

DATE

Dear EMPLOYEE-NAME:[i]

As a result of your **at will** employment with YOUR-NAME, CPA, PC ("Practice") you will have access to confidential information which you agree not to disclose.

This letter is to inform you that it is the policy of this Practice to protect and to maintain as secret and confidential, all proprietary and other essential Practice and client information in order to reasonably protect the Practice's goodwill and confidential client data ("Data").[ii] Data includes by way of example: The financial condition of the Practice; Proprietary data bases, clients lists, client reports, tax returns, correspondence and permanent files and memoranda; Office systems; Keys, combinations, access codes and the like; Vendor and consultant lists and background materials; Pricing and billing methods; Proprietary marketing and sales techniques; Information concerning key personnel; Prospective client data; and any other confidential information concerning the Practice's business and clients, regardless of format or medium of storage. Items shall be included within the definition of Data whether prepared by Employee, or coming into Employee's possession, during Employee's employment or other relationship with the Practice.[iii]

In consideration of Employee's employment **at will** you agree not to use or disclose, either directly or indirectly, in any manner whatsoever, without the prior written consent of the YOUR-NAME, any of the Data.

By signing this letter you irrevocably assign, transfer, and convey to the Practice all of your right, title, and interest in and to all work product which may be developed during your employment and agree to execute any documents reasonably requested to confirm this.[iv]

The restrictions on disclosing Data shall not apply to any Data which: (1) At the time of your disclosure is generally and readily available to the public other than by an act or

omission on Employee's part; (2) Was acquired from or made available to Employee by any third party having the lawful right to disclose such Data; (3) Data which Employee is required to disclose pursuant to any state or federal law, rule, or regulation or by an applicable judgment, order, or decree of any court or government body or agency having jurisdiction over such matter. However, Twenty (20) days prior written notice of such required disclosure must be given to the Practice before such disclosure is made.[v]

By signing this letter you acknowledge that: (1) All Data is solely the property of the Practice; (2) Any Data prepared or developed by you was solely as a work for hire; (3) Upon your termination for any reason you shall promptly deliver to TNR all Data; (4) Your improper disclosure of any Data could cause material and adverse economic harm to the Practice; (5) This letter affects important legal rights of Employee, and Employee has been afforded ample time, and been advised, to have Employee's own attorney review this; (6) In the event of any threatened or actual disclosure Employee agrees to the Practice's right to seek injunctive and other equitable relief (which may be specifically enforced by any court having jurisdiction) in addition to any economic or monetary award and consequential damages; (7) Employee's services are unique and any Data or knowledge which you acquire while employed by the Practice are unique.

Sincerely,

YOUR-PRACTICE NAME

By: _____

Your Name, President

ACCEPTED AND AGREED:

_____ Date:_____

EMPLOYEE-NAME

[i] If you have no other agreement with the particular employee, you may wish to add the phrase “at will” to clarify that no agreement, oral or otherwise, as to term of employment has been made. For persons who are independent contractors, you should substitute the term *contractor* for the term *employee* to properly describe the relationship.

[ii] Are there any specific items or additional details which can be added to the definition of "data?" Any items which are inappropriate and can thus be deleted?

[iii] Is there any other mechanism for approval?

[iv] If an employee owns any of the data or has his or her own clients, these should be carved out of the confidentiality provisions. If you are not concerned about retaining ownership of any work product (for example, articles or software), this clause may be deleted.

[v] It is fair to include this paragraph to assure the staff accountant or other employee that you are not restricting them in an unreasonable manner concerning data that is really not confidential. You may not wish to, unless specifically requested, in order to keep the letter agreement as short as possible.

Appendix 3-10: Sample "Senior Provisions" Favoring Founding Accountant as Exhibit to Employment Agreement Providing for Possible Future Equity[i]

A. Disability or Death of the Principal Shareholder

1. Definition of Disability of Principal Shareholder

The Principal Shareholder shall be deemed substantially and permanently disabled ("Preliminary Disability") if either of the following conditions is met:

a. For any period aggregating Six (6) months during any Twenty Four (24) month period, the Principal Shareholder is unable, as a result of any serious physical, mental, or emotional illness, ailment, or accident, to effectively discharge his services to the Corporation. By way of example and not limitation, where Principal Shareholder is unable to work at least Ten (10) hours per week, on average, for such period (exclusive of vacation) he shall be considered to have failed to discharge his duties. For the purposes of the application of this latter average hour test, the average hours shall be calculated by summing all hours worked during any Six (6) month period and dividing by the number of work weeks during such period. If the average is less than the aforementioned number of hours than the Principal Shareholder shall be deemed subject to a Preliminary Disability beginning with the first week following the failure to meet such average hourly requirement over a Six month period. For purposes of the above test, the term *work* means to reasonably discharge the responsibilities as a Certified Public Accountant and shareholder of the Corporation, meeting clients, providing client and administrative services, or generating revenues and opening new client files.

b. In the event of such a Preliminary Disability, the Corporation may give the Principal Shareholder Notice that he is deemed disabled.

2. Return to Work Following Preliminary Disability[ii]

Where the Principal Shareholder is terminated solely as a result of a Preliminary Disability as defined above, he may return to work at any time within Two (2) years from the date of the determination of Preliminary Disability. However, if at any time during such three year period, and following such return to work, the Principal Shareholder is absent for more than Sixty (60) days during any calendar year (exclusive of vacation days and religious holidays allowed during such Two (2) year period), for any reason

whatsoever, then the Principal Shareholder shall be deemed permanently disabled and may not return to work for the Corporation at any time ("Final Disability")." In the event that Two (2) doctors properly licensed to practice in the State (and at least one of whom is board certified in the specialty relating to the illness, disability, or ailment suffered by Senior Professional) certify in writing that there is no reasonable likelihood of Principal Shareholder resuming his normal daily functions in the Corporation on a basis of more than a 20 hour work week in the period following the Preliminary Disability, then the Junior Partner Shareholder may give Notice to the Principal Shareholder, or is guardian, custodian, or committee, that the Principal Shareholder is subject to a Final Disability. Either the Principal Shareholder (or his guardian, conservator, or committee), or the Junior Partner Shareholder may give Notice, inclusive of the above Doctors determinations, to the other of them. If such Notice is given the Party receiving such Notice has Fifteen (15) days to give a return Notice, inclusive of Two (2) doctor determinations of a contrary view to the Party sending the initial Notice ("Responding Notice"). If such a Responding Notice is not dispatched by such period, the Principal Shareholder shall be deemed subject to a Final Disability. If a Responding Notice is dispatched, then the Parties agree to submit the single issue of whether the Principal Shareholder is subject of a Final Disability to binding arbitration in COUNTY-NAME County, in accordance with the rules of the American Arbitration Association, and applying, where applicable, rules of law of the State in such proceeding.

3. Compensation of the Principal Shareholder When Under a Preliminary Disability

a. Salary payments for the Principal Shareholder under a Preliminary Disability shall be reduced to Twenty Five Percent (25%) of the base compensation provided for in this Agreement on the first day of the first full month following the determination of Preliminary Disability ("Disability Base Salary"). Any payments made to Principal Shareholder on account of disability insurance paid for by the Corporation and held in the Corporation's name shall be credited towards the above Salary payment.

b. However, for any hours worked by the Principal Shareholder under a Preliminary Disability, he shall be paid, to the extent that such salary exceeds the payments in the preceding paragraph, a salary and other compensation on a prorated basis (with calculations being based on a Thirty Five (35) hour standard week, and any partial hour being counted as a full hour of work). Benefits are not prorated or excluded except as otherwise provided in this Agreement.

c. Medical benefits, Key-Man insurance and other insurance benefits shall remain in force during a Preliminary Disability if feasible.

4. Compensation of Principal Shareholder Following a Final Disability

a. Salary payments for the Principal Shareholder under a Final Disability shall terminate on the first day of the Fourth (4th) full month following the determination of such Final Disability.

b. Benefits, other than Medical related benefits and insurance benefits (including any Key-Man insurance which shall remain in force if feasible), shall similarly terminate.

c. Medical related benefits and insurance benefits shall remain in force where it is feasible for the spouse of the Principal Shareholder. If the spouse of the Principal Shareholder must be employed by the Corporation to facilitate such payments then the Corporation shall employ such spouse on a part-time basis for reasonable compensation for the services rendered, plus provision of such benefits.

5. Consequences of Final Disability or Death of the Principal Shareholder[iii]

In the event of the death or Final Disability (as defined above), of the Principal Shareholder, the Junior Partner Shareholder agrees to purchase from the disabled Principal Shareholder, or from the Estate of the Principal Shareholder, all of the issued and outstanding shares in the Corporation then held by the Principal Shareholder or the Estate of the Principal Shareholder for the sum of DOLLARS Hundred Thousand Dollars ($___00,000), unless a different figure is set forth in a Certificate of Stated Value (Exhibit C) executed by all of the Parties at a date not more than Twelve (12) months prior to the date of Final Disability or death of the Principal Shareholder (the "Purchase Price").

Any payments made:

a. Directly by the Corporation (not under disability insurance paid for by the Corporation).

b. Within a One (1) year period prior to the determination of Final Disability

c. Paid to Principal Shareholder during any Preliminary Disability as Disability Base Salary

shall be credited against the Purchase Price.

It is explicitly agreed and acknowledged that this figure above, or in any Certificate of Stated Value executed hereafter, is solely for the purpose of determining a buyout of the

Principal Shareholder as negotiated herein between the Junior Partner Shareholder and the Principal Shareholder. Such figure shall have no implication to, and shall not be used by, any third party, or by the Junior Partner Shareholder in any claim or action against the Principal Shareholder.

6. Purchase of Principal Shareholder's Shares in Event of Final Disability or Death

a. Required Purchase.[iv]

In the event of the death or Final Disability of the Principal Shareholder, the Corporation shall be obligated to purchase the entire interest of the Principal Shareholder in the Corporation. If the Corporation does not exercise such right then the Junior Partner Shareholder shall be personally obligated to purchase the entire interests of the Principal Shareholder in the Corporation.

b. Date of Purchase

The Junior Partner Shareholder shall purchase the stock of the Principal Shareholder following his demise or Final Disability at the earlier of the following:

(i) Sixty (60) days following the Final Disability of the Principal Shareholder.

(ii) 120 days after the qualification of a Shareholder's personal representative.

(iii) At the election of such personal representative, within Sixty 60 days after his qualification.

(iv) Ten (10) days prior to the dates set forth in Section 1361(c)(2) in order to avoid a disqualification of the Corporation's election of S corporation status. Then such personal representative shall sell to the Corporation, and the Corporation shall purchase from such personal representative, the unsold Shares at a price equal to the value determined under this Agreement as of the end of the calendar month in which death occurs. If the Corporation does not exercise this right, then the Junior Partner Shareholder may so exercise this right.

(v) Notwithstanding anything in this provision to the contrary, any required purchase hereunder shall not be completed later than as required under any applicable statute, including but not limited to SITE-STATUTE.[v]

c. Required Purchase of Shares

The Corporation shall purchase, and the Executor of the Estate of the deceased Principal Shareholder (or the Principal Shareholder or the Designee of the Principal Shareholder where the Principal Shareholder is subject of a Final Disability) shall sell the Principal Shareholder's interests in the Corporation to the Corporation pursuant to the terms contained herein. If the Corporation does not exercise such right within Ten (10) days of the date set under this Agreement, then the Junior Partner Shareholder shall purchase, and the Executor of the Estate of the deceased Principal Shareholder (or the Principal Shareholder or the Designee of the Principal Shareholder where the Principal Shareholder is subject of a Final Disability) shall sell the Principal Shareholder's interests in the Corporation to the Corporation pursuant to the terms contained herein.

d. Closing

The sale shall occur at the office of the attorney for the Corporation (or if same is not certain or agreeable at the office of the personal attorney for the estate of the Principal Shareholder) at 11:00 a.m. on the first Tuesday following the date determined under the provisions set forth above to execute any documents reasonably necessary to the closing of such sale and purchase.

e. Terms of Purchase[vi]

The terms of the purchase shall be payment in full of any insurance proceeds received by the Junior Partner Shareholder on the life of the Principal Shareholder, as soon as practical after receipt. The balance, if any, shall be paid in quarterly installments on the Thirtieth (30th) day of each calendar quarter based on Twenty Percent (20%) of the gross revenues received, on a cash basis (without adjustment or reduction for any purpose) during the prior quarter, until the entire Purchase Price is payable in full. Interest shall be payable at the Rate.

f. Personal Guarantee of Purchasing Partner

Junior Partner Shareholder who is buying the interests of the Principal Shareholder under this provision, and the Corporation, shall execute a personal guarantee to the disabled Principal Shareholder, or to the Estate of the deceased Principal Shareholder, guaranteeing the purchase price to be paid under this provision.[vii]

g. Documents Held In Escrow

All documents relating to such transfers, notes, supporting payments, stock certificates, and executed blank stock powers shall be held in escrow by the attorney for the Principal Shareholder or the estate of the Principal Shareholder, or absent same, by the attorney for the Corporation, pending final payment of the amounts provided for herein.

B. Carving Out Key Assets for Senior Professionals[viii]

1. During the term of the License Agreement: The trade name "PRACTICE-NAME" shall remain the sole name under which the Corporation shall conduct the Practice. The telephone numbers listed [NUMBERS] shall remain the primary telephone numbers for each office of the Practice for which they are presently used, and any successor office. The logo depicted in the attached exhibit shall continue to be used as the sole logo on any letterhead, advertisement, for the Practice.

2. The trade-name, telephone numbers, and logo are licensed from Senior Professional to the practice for a fee of DOLLARS Thousand Dollars ($____,000.00) payable annually (the "Fee") in accordance with the License Agreement attached. They may be assigned by him to a limited partnership, limited liability company, or trust controlled by members of his family during the term of the License Agreement.[ix]

3. Notwithstanding anything herein to the contrary, the Corporation shall not make any change to the provisions of the Lease Agreements (attached as Exhibits) and the License Agreement (attached as an exhibit), nor shall the Corporation fail to exercise any renewal option granted to it by Lessor or Licensor under both Lease Agreements and the License without the written consent of YOUR-NAME (or in the event of his death or disability, his heirs, successors, or assigns), which consent may be withheld for any reason. Any renewal of any term therein, or option provided therein, must be exercised by the Corporation unless the consent of YOUR-NAME (or in the event of his death or disability, his heirs, successors, or assigns) is obtained.

[i] If, as a sole practitioner, you bring a staff accountant into your practice with the possibility of future equity, you should consider an update to the shareholders (or operating) agreement for your professional corporation (LLC) to include provisions that provide additional benefits to yourself as the senior practice member. These can be disclosed to the accountant/employee who is your prospective junior partner. The following are provisions for consideration.

[ii] Perhaps, in the event of a disability, you, as the senior accountant in the practice, should have a portion of your salary guaranteed, at least in the same amount as the salary which a new junior partner is then earning (reduced by any disability insurance paid for by the firm and received by you). A separate but related issue concerns how much time may elapse before a purchase of your interests or a sale of the practice occurs. If you've built the firm, it is reasonable to set a lengthier period, during which you, as the senior principal, may return.

[iii] A succession plan in the event of your disability or death creates a major incentive to promote a staff accountant to junior partner. The terms of a sale of the practice to the junior partner may be an important incentive to enticing the staff accountant to join or stay with your practice. A common mechanism for setting the value is to include a figure in the buy-out agreement and provide for a certificate of stated value in which all parties agree on a value. Issues, similar to to those of your practice clients who use such an approach, are the failure to update the certificate or the inability to reach an agreement to update it if a real buy-out potential looms.

[iv] From a tax perspective, it is preferable to give the corporation the first right to repurchase. If the shareholders have the first right to repurchase but decline to so, the corporation will be relieving them of an obligation to purchase, which creates a dividend to the shareholders.

[v] Many state statutes include an express restriction on how long an estate of a deceased professional in a professional corporation can hold stock. If the time period is exceeded, the state statute may mandate purchase at a price that is far less than current fair value. Some states mandate a book value purchase. To avoid this issue, the buy-out agreement should assure that the stock in your professional corporation is repurchased prior to the statute being triggered.

[vi] Some type of cap on the maximum payments due should be included to avoid a hardship on the junior partner buying out your interests in your practice. Basing a buyout as a percentage of gross is clean. Issues, questions, or need for accounting or auditing of postdeath practice numbers will be limited or nonexistent.

[vii] A key protection, for you, if you become disabled or your heirs if they are deceased, is a personal guarantee for whatever payments the purchasing junior partner owes. If only the corporation guarantees the purchase price, the buying junior partner can walk away without liability.

[viii] Another category of protections you can consider as the senior, founding practice member relates to the handling of existing firm assets such as, for example, real estate, and trade name. Many of the planning issues for these ancillary practice assets were discussed in Chapter 1. Here, the objective is to inform the potential future partner that these arrangements exist and are part of the "deal" up front and to secure these arrangements in the practice documents. The sample provision below could be included in a shareholder's agreement for your one-member S or C corporation practice that could be given to a senior staff accountant you are grooming for partnership or hiring with the possibility of future partnership, and perhaps with the intent that he eventually take over your practice as your succession plan and retirement (exit) strategy. As the senior professional, you may carve out these assets for special benefit to yourself in recognition of the additional risks and investments you've incurred in building the value of those assets. In other instances, the revenue stream from assets you own outside of the practice and lease or license to the practice, could be part of your retirement income strategy. For example, if you lease the building that houses the practice to the corporation for $4,000 per month, and license certain intangibles for $1,000 per month, you can be assured of $5,000 of cash flow postretirement from the practice.

[ix] The following provision is a key to your protection and security with these arrangements. It mandates that these relationships and arrangements be maintained.

Appendix 3-11: Sample General Release and Indemnification Between Nonequity Employee and Practice[i]

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN. KNOW THAT on this ___th day of MONTH, YEAR:

A. Parties

1. STAFF-ACCOUNTANT, an individual, with her principal place of residence at ADDRESS, CITY, STATE-NAME as the "Releasor" both individually and as Executrix of the estate of CLIENT-NAME, in consideration of the premises herein below, One Dollar ($1.00) and other good and valuable consideration received from:

YOUR-NAME, CPA, P.C.

a STATE-NA ME professional corporation with a principal place of business at ADDRESS, CITY-NAME, STATE-NAME ZIP, as one of the persons included as Releasee hereunder, receipt of which is hereby acknowledged, releases and discharges each of the following, jointly and severally and each and any other capacity:[ii]

2. YOUR-NAME, CPA, Individually, who resides at ADDRESS, CITY-NAME, STATE-NAME ZIP.

3. YOUR-NAME, CPA, P.C. a STATE-NAME professional corporation with a principal place of business at ADDRESS, CITY-NAME, STATE-NAME ZIP and a mailing address of ADDRESS, CITY-NAME, STATE-NAME ZIP.

(Collectively each of the above persons and entities, including each of their shareholders, officers, directors, members, managers, and in their individual capacity, are referred to as the "Releasee"), her and its heirs, executors, administrators, successors, transferees, and assigns.

B. Payment Due by Estate: Cessation of Work and Responsibility

The Estate shall pay all fees due YOUR-NAME, CPA, P.C. for work rendered prior to the date hereof at regular hourly rates less a Thirty Percent (30%) courtesy discount, plus all actual out of pocket costs incurred through the date hereof. Upon such payment YOUR-NAME, CPA, P.C. shall be released from any and all liabilities and responsibilities for said Estate and shall turn over as quickly as practical all original documents received from said estate, including but not limited to all draft income and estate tax returns and

related work papers. STAFF-ACCOUNTANT, in her capacity as Executrix, shall retain new counsel to handle such estate and expressly acknowledges that she has been informed of all applicable tax and other filing deadlines and shall assume full responsibility for same. No Severance shall be paid under this Release until the payments required hereunder shall be made in full.

C. Severance

a. In consideration of this Release and in settlement of any and all claims the Releasor had, has, or may have against the Releasee (individually, jointly, severally, or in any other manner), including but not limited to any claim for wages, bonus, vacation time, and any other claims of any nature whatsoever, the Releasor shall be entitled to, and YOUR-NAME, CPA, P.C. shall pay the Releasor, as severance and in full satisfaction and discharge of any and all claims, upon the execution hereof:

(i) Releasee's salary for the period MONTH YEAR to MONTH YEAR.

(ii) The gross amount of DOLLAR Thousand Dollars ($___,000.00) without reduction for any withholding taxes and other governmental-required payroll deductions, in a single, lump sum.

(iii) Cellular telephone bill for the period through the date of execution of this Release not to exceed DOLLARS Dollars ($____.00).

(iv) Medical insurance through and including the period of MONTH YEAR without any requirement for reimbursement.

b. The Releasor understands and agrees that the payments and credits pursuant to this provision shall be deemed as severance.

c. In consideration of the promises and undertaking of the Releasor under this Release the Releasee acknowledges and agrees that:

(i) She is receiving consideration which is in addition to anything of value to which she otherwise would have been entitled.

(ii) She shall not receive any other payment from the Releasor other than that set forth in this Release.

D. Health Insurance Coverage

Releasor elects not to continue to participate in the continuation of her group health insurance coverage under the plan sponsored by YOUR-NAME, CPA, P.C., pursuant to and in accordance with the lesser requirements of applicable state law or applicable federal law, including but not limited to: Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) and the applicable plan documents, to the extent that HIPAA, COBRA, plan documents, and any other similar law, regulation, or requirement may apply.

E. Release

Responsible for Any Taxes. Releasor shall be responsible for any and all taxes on any payment, credit, or other Severance hereunder. The Releasor agrees to defend, indemnify, and hold harmless the Releasee from any and all claims and liability resulting from a failure by the Releasee to withhold any applicable taxes from said payments and credits and a failure by the Releasor to pay any and all taxes for which the Releasor is responsible for relating to said payments and credits.

F. Release Generally

Releasor hereby releases Releasee from any and all actions, causes of action, suits, debts, dues, sums of money, covenants, contracts, controversies, agreements, promises, damages, judgments, extents, executions, claims, and demands whatsoever, in law or equity, which against each of the Releasees hereinabove named, the Releasor, the Releasor's heirs, executors, administrators, successors, transferees, and assigns, including all beneficiaries (current, contingent, remote) of the Estate, ever had, now have or hereafter can, shall, or may have, for, upon, or by reason of any matter, cause or thing whatsoever, including but not limited to the employment of STAFF-ACCOUNTANT by Releasee, and any of YOUR-NAME, CPA, P.C.'s performance for STAFF-ACCOUNTANT as Executrix of the Estate and any and all transactions and matters relating to either of these matters, from the beginning of the world to the day of the date of this Release.

G. Additional Employment Related Releases

Releasee unconditionally releases and forever discharges YOUR-NAME, CPA, P.C. as Employer, including but not limited to YOUR-NAME in any capacity, and each Releasee hereunder, from any and all causes of action, suits, damages, claims, judgments,

interest, attorneys' fees, liquidated damages, costs, and expenses whatsoever relating to, or in connection with, the employment by YOUR-NAME, CPA, P.C., including any services rendered to the other Releasees, or the cessation thereof, either directly or indirectly, whether known or unknown, for, upon, or by reason of any matter, cause, or thing whatsoever, including, but not limited to: any breach of contract claims (whether written or oral, express or implied); estoppel claims; tort claims; claims of discrimination or harassment; claims for compensatory or punitive damages, or both; public policy claims; defamation claims; claims of retaliation; claims of wrongful discharge or termination; claims for breach of promise; claims of negligence; claims of impairment of economic opportunity or loss of business opportunity; claims of fraud or misrepresentation; claims for workers' compensation benefits; claims of promissory estoppels; claims of unfair labor practices.

This release shall include the release of any claims under any applicable statute including but not limited to: the Age Discrimination in Employment Act of 1967 (ADEA), as amended by the Older Workers Benefit Protection Act (OWBPA); claims under Title VII of the Civil Rights Act of 1964, as amended (TITLE VII); claims under the Employee Retirement Income Security Act of 1974, as amended (ERISA) (excluding claims for vested benefits); claims under the Americans With Disabilities Act (ADA); claims under the STATE-NAME Conscientious Employee Protection Act (CEPA); claims under the STATE-NAME Law Against Discrimination (LAD); claims under the Family and Medical Leave Act "FMLA); claims under the STATE-NAME Family Leave Act (FLA); claims under the Fair Labor Standards Act (FLSA); claims under STATE-NAME Wage and Hour Payment Laws; claims under the National Labor Relations Act (NLRA); claims for benefits including, but not limited to, life insurance, accidental death and disability insurance, sick leave or other employer provided plan or program; claims for distributions of income or profit; claims for reimbursement; claims for wages, vacation or other leave time, retirement, pension or profit sharing, or both, plan contributions (excluding claims for vested benefits); claims for group health insurance coverage (excluding claims for COBRA continuation coverage); claims relating to the Employee's application for employment or termination.

This release shall also include any claims which the Employee may have arising under or in connection with any and all local, state, or federal ordinances, statutes, rules, regulations, executive orders, or common law, from the beginning of the world up to and

including the date of the Employee's execution of this Agreement (collectively, "Claims").

H. Hold Harmless

Releasor hereby agrees to hold Releasee harmless and indemnify Releasee against any costs or claims, including reasonable attorney fees arising out of these matters.

I. Release is Not an Admission

It is expressly understood and agreed between the Releasor and the Releasee that the acceptance of and agreement with the terms of this Release are not, and shall not constitute or be construed as, an admission on the part of either party, or as evidencing or indicating an admission, of any liability of the other party in any way or manner whatsoever.

J. Representations and Acknowledgements of Releasor

a. Releasor fully understands the terms of this Release and that she enters into it voluntarily without any coercion on the part of any person or entity.

b. Releasor was advised in writing to consult an attorney before signing this Agreement and has been given an opportunity to do so.

c. Releasor was advised that she has Twenty One (21) calendar days within which to consider this Release before signing it and, in the event that she signs this Release during this time period, said signing constitutes a knowing and voluntary waiver of this time period.

d. Releasor has Seven (7) calendar days after executing this Release within which to revoke this Release. If the Seventh (7th) day is a weekend or national holiday, the Releasor has until the next business days to revoke. If the Releasor elects to revoke this Release, the Releasor agrees to notify YOUR-NAME, CPA, P.C., in writing sent via Federal Express of her revocation. Any determination of whether the Employee's revocation was timely sent shall be determined by the date of actual receipt by YOUR-NAME, CPA, P.C.

K. No Claims Filed[iii]

a. Releasor represents that neither she nor anyone on her behalf, or behalf of the Estate, has filed any suits, claims, or the like regarding her employment with YOUR-NAME, CPA, P.C., the provisions of legal services by YOUR-NAME, CPA, P.C. to Releasor, to STAFF-ACCOUNTANT, to or for work provided to Employee's family for tax

preparation services of any nature, and her termination as an employee of YOUR-NAME, CPA, P.C. STAFF-ACCOUNTANT agrees that she will not, nor will she authorize anyone on her behalf to file any claim on behalf of herself, or her family or any other person mentioned herein or claiming through them.

b. Releasor further represents that if any agency or court assumes jurisdiction of any such matter, the Releasor shall take all steps necessary to request that the agency or court dismiss or withdraw from the matter, as the case may be, and will take all other action necessary to bring about the dismissal of such matter.

L. Nondisclosure and Confidentiality

a. The Releasor and the Releasee each hereby promises and agrees that he, she, or it, as the case may be, shall keep and maintain this Release and its terms and conditions in the strictest confidence and will not discuss the same with or disclose the same to any person, except that the Employee and the Releasee may discuss the same with their respective attorneys, tax, or financial advisors, or lenders for the purpose of confidential legal or financial counseling, or as otherwise required by law, or for purposes of the enforcement of this Release.[iv]

This provision expressly includes a prohibition on STAFF-ACCOUNTANT from discussing any aspects of her termination with the office staff of YOUR-NAME, CPA, P.C. STAFF-ACCOUNTANT expressly acknowledges and agrees to this provision.

b. Notwithstanding the foregoing, the Releasee may discuss this Release with its appropriate company officers, directors, and personnel.

c. Notwithstanding anything set forth in this Release to the contrary, STAFF-ACCOUNTANT agrees that if she (or anyone to whom she makes a disclosure pursuant to this provision) breaches the terms of this Release, YOUR-NAME, CPA, P.C.'s obligations under this Release, to the extent still unsatisfied, shall immediately cease and all monies paid to or on behalf of STAFF-ACCOUNTANT under the terms of this Release, except for Fifty Dollars ($50.00), shall be returned in full by STAFF-ACCOUNTANT to YOUR-NAME, CPA, P.C. within Seventy Two (72) hours of a written demand therefor from YOUR-NAME, CPA, P.C. ("Refund"), to the extent permitted by law and to the extent that such repayment does not result in the invalidation of this Release.

d. In the event of a Refund, Twenty Dollars ($20.00) shall be deemed to be the portion of

the payments made pursuant to this Release to any claim under the ADEA and Thirty Dollars ($30.00) of such amount shall be deemed to be the portion of payments made pursuant to this Release apportioned to any claim, other than under the ADEA, otherwise released by this Release. The Releasee, in addition to any other rights it may have at law or in equity, shall have the right to seek enforcement of this Release in an action at law or in equity and the Releasee shall have the right to recover its legal fees, costs, and expenses in such action to enforce this Release, to the extent permitted by law and to the extent that such recovery does not result in the invalidation of this Release.

M. Construction; Miscellaneous

a. Whenever the text hereof requires, the use of singular number shall include the appropriate plural number as the text of the within instrument may require.

b. This Release and Assignment may not be changed orally.

c. This Release shall be governed by the laws of the State of STATE-NAME and the parties agree to personal jurisdiction in such state.

d. Releasor hereby agrees and covenants to execute any additional documents on behalf of herself, or the Estate, for purposes of affecting this Release as shall be requested by Releasor at any time, or from time to time.

IN WITNESS WHEREOF, the Releasor has hereunto set Releasor's hand and seal:

WITNESS: RELEASOR:

_____ ___ _____

STAFF-ACCOUNTANT, individually

State of STATE-NAME)

:ss

County of COUNTY-NAME)

On this MONTH ___, YEAR before me personally came STAFF-ACCOUNTANT, an individual, to me known, and who I am satisfied based on presentation of a drivers license known to me, to be the individual described in and who executed the foregoing instrument, and such person, in both such capacities, duly acknowledged to me that she understood the meaning of the instrument and that such she executed the same.

_____

Notary Public, State of STATE-NAME

My commission expires on: _____ ___, 200___

[i] If an employee is terminated, a written release should be obtained from the employee as part of the termination process. The following is a sample release for an employee that does not have any claims on practice equity. This illustrative release assumes you were handling an accounting and related work for the estate of a family member of the terminated employee.

[ii] For most small accounting practices, there is always a risk that certain matters or documents may have been in your personal name rather than the practice entity name. Therefore, you should always obtain a release for not only the practice entity, but for yourself individually.

[iii] If your practice provided any professional services to the terminated employee or the employee's family, endeavor to get a release for any claims pertaining to such work as well.

[iv] Consider having your labor attorney tailor the release to address any specific issues that pertain to your practice.

Appendix 3-12: Sample Termination of Staff Accountant from Your Practice[i]

A. Letter Agreement Between YOUR-NAME, CPA, LLC and JUNIOR-ACCOUNTANT

1. Both parties will execute mutual reciprocal general releases.

2. YOUR-NAME will honor his promise to issue a check to JUNIOR-NAME for a NUMBER weeks paid vacation accrued but unused, and for one month's salary from BEGINNING-DATE through END-DATE.

3. Both YOUR-NAME and JUNIOR-ACCOUNTANT shall perform their professional ethical obligation of informing all clients that YOUR-NAME and JUNIOR-ACCOUNTANT are no longer practicing together and that all clients of the practice have the right to choose which Certified Public Accountant they wish to have treat them. YOUR-NAME will provide JUNIOR-ACCOUNTANT with a complete list of the names of all of the clients of the practice, their addresses and telephone numbers. Upon JUNIOR-ACCOUNTANT being selected by a client, YOUR-NAME will send JUNIOR-ACCOUNTANT, upon JUNIOR-ACCOUNTANT's written request, copies of the client's permanent and tax returns and related file, for each of said clients. YOUR-NAME, upon receipt of a written request form from the client, will forward to JUNIOR-ACCOUNTANT a photocopy of the entire client file. JUNIOR-ACCOUNTANT similarly will respond to any requests by YOUR-NAME.[ii]

4. YOUR-NAME shall not charge JUNIOR-ACCOUNTANT for, not terminate, any organization dues, publications, or software.

YOUR-NAME, CPA, LLC

By:_____

YOUR-NAME, Managing Member

_____(L.S)

YOUR-NAME

ACCEPTED AND AGREED:

Terminated Employee:

By: _____

JUNIOR-ACCOUNTANT

B. Separation Agreement and General Release on Termination of a Staff Accountant

THIS SEPARATION AGREEMENT AND GENERAL RELEASE (from now on called this "Agreement") is made and entered into this ____ day of MONTH, YEAR, effective as of the __th day of MONTH YEAR, by and between JUNOIR-ACCOUNTANT, an individual residing at JUNIOR'S-ADDRESS ("Employee") and YOUR-NAME, CPAs, LLC a limited liability company organized and existing under and by virtue of the laws of the State of STATE-NAME, and having its principal offices and place of business at OFFICE-ADDRESS ("Company"). For purposes of this Agreement, the term *Employer* shall include Company and all of its divisions, parents, subsidiaries, affiliates, or related entities, its and their past, present, and future officers, directors, trustees, members, shareholders, partners, insurers, attorneys, legal representatives, employees, and agents and all of its and their respective heirs, executors, administrators, successors, and assigns including but not limited to YOUR-NAME ("YOUR-NAME").

W I T N E S S E T H:

WHEREAS, the Employee is an employee of the Employer pursuant to the provisions, terms and conditions of that certain Employment Agreement between the Employee and YOUR-NAME, and assigned by YOUR-NAME to and assumed by the Company, dated DATE ("Employment Agreement") and his employment relationship with the Employer is about to end as of the effective date hereof.

WHEREAS, the Employee wishes to obtain from the Employer certain severance benefits in connection with the end of his employment relationship to which the Employee would not otherwise be entitled, and, to induce the Employer to provide such benefits to him, the Employee wishes to give a general release to the Employer, and, on that basis and for that reason, the Employer is willing to provide such severance benefits to him.

WHEREAS, the parties wish to reduce to a written instrument their entire mutual understanding and agreement with respect to the severance benefits provided by the Employer and the general release given by the Employee.

NOW, THEREFORE, in consideration of the above, the promises and releases given below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party to the other, the parties promise and agree as follows:

1. No Admission of Liability

It is expressly understood and agreed between the Employer and the Employee that the

acceptance of and agreement with the terms of this Agreement are not, and shall not constitute or be construed as, an admission on the part of either party, or as evidencing or indicating an admission, of any liability of the other party in any way or manner whatsoever.

2. Severance Benefits

a. In consideration of this Agreement and in settlement of all claims the Employee had, has, or may have against the Employer, the Company acknowledges and agrees that the Employee shall be entitled to paid time off for accrued but unused vacation time during the period BEGINNING-DATE through END-DATE and, the Company shall pay the Employee, as severance, his salary for the period BEGINNING-DATE through END-DATE, in the gross amount of DOLLARS ($____.00), less all applicable withholding taxes and other governmentally-required payroll deductions, in a single, lump sum. Said severance payment shall be made on the next regularly scheduled payroll day of the Company that occurs at least Ten (10) calendar days after receipt by the Company of the original of this Agreement executed by the Employee, as well as any other documentation required by this Agreement. This severance payment shall be made payable to JUNIOR-ACCOUNTANT and shall be mailed to JUNIOR-ACCOUNTANT at the following address JUNIOR-ADDRESS.

b. In further consideration of this Agreement, and provided the Employee elects to participate in the continuation of his group health insurance coverage under the plan sponsored by the Company, pursuant to and in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) and/or the applicable plan documents, to the extent that HIPAA, COBRA, plan documents and/or any other similar law, regulation or requirement may apply, the Company shall pay any applicable monthly premium on behalf of the Employee for coverage for the period START-DATE through ENDING-DATE, provided said election by the Employee is at the Company's standard level of benefits offered by the Company to the Employee as of START-DATE and further provided that there is no revocation of this Agreement.

The Employee agrees to defend, indemnify, and hold harmless the Employer from any and all claims and/or liability resulting from a failure by the Employer to withhold any applicable taxes from said payments and credits and/or a failure by the Employee to pay any and all taxes for which the Employee is responsible for relating to said payments and credits.[iii]

c. In further consideration of this Agreement, the Employer hereby waives the restrictive covenants of the Employee set forth in the Employment Agreement and agrees that the

Employee shall be relieved of any obligations and restrictions thereunder as fully as if the same had never been a part of the Employment Agreement.

d. The Employee further understands and agrees that, for purposes of this Agreement, any reference to monies paid to or on behalf of the Employee shall be deemed to be the entire gross amount of the payments required by the terms and set forth in this paragraph of this Agreement.

3. General Release by YOUR-NAME and the Employer

In consideration of the promises and undertakings of JUNIOR-ACCOUNTANT under this Agreement, the Employer and YOUR-NAME acknowledge and agree that it unconditionally releases and forever discharges JUNIOR-ACCOUNTANT from any and all causes of action, suits, damages, claims, judgments, interest, attorneys' fees, liquidated damages, costs, and expenses whatsoever relating to, or in connection with, YOUR-NAME and the Employer's employment of JUNIOR-ACCOUNTANT or cessation thereof, either directly or indirectly, whether known or unknown, for, upon, or by reason of any matter, cause, or thing whatsoever, including, but not limited to any breach of contract claims (whether written or oral, express or implied); estoppel claims; tort claims; claims for compensatory and/or punitive damages; public policy claims; defamation claims; claims for breach of promise; claims of negligence; claims of impairment of economic opportunity or loss of business opportunity; claims of fraud or misrepresentation; claims of promissory estoppel; as well as any claims which the Employer may have arising under or in connection with any and all local, state, or federal ordinances, statutes, rules, regulations, executive orders or common law, from the beginning of the world up to and including the date of YOUR-NAME's and the Employer's execution of this Agreement. The only exclusion from this release provision is a claim that some term of this Agreement has been materially violated.

4. General Release by the Employee

In consideration of the promises and undertaking of the Company under this Agreement, the Employee acknowledges and agrees that:

a. he is receiving consideration which is in addition to anything of value to which he otherwise would have been entitled; and

b. he shall not receive any other payment from the Employer other than that set forth in this Agreement; and

c. he unconditionally releases and forever discharges the Employer from any and all causes of

action, suits, damages, claims, judgments, interest, attorneys' fees, liquidated damages, costs and expenses whatsoever relating to, or in connection with, the Employment Agreement or the Employee's employment by the Employer or the cessation thereof, either directly or indirectly, whether known or unknown, for, upon, or by reason of any matter, cause, or thing whatsoever, including, but not limited to any breach of contract claims (whether written or oral, express or implied); estoppel claims; tort claims; claims of discrimination; claims for compensatory and/or punitive damages; public policy claims; defamation claims; claims of retaliation; claims of wrongful discharge or termination; claims for breach of promise; claims of negligence; claims of impairment of economic opportunity or loss of business opportunity; claims of fraud or misrepresentation; claims for workers' compensation benefits; claims of promissory estoppel; claims of unfair labor practices; claims under the Age Discrimination in Employment Act of 1967 (ADEA), as amended by the Older Workers Benefit Protection Act (OWBPA); claims under Title VII of the Civil Rights Act of 1964, as amended (TITLE VII); claims under the Employee Retirement Income Security Act of 1974, as amended (ERISA) (excluding claims for vested benefits); claims under the Americans With Disabilities Act (ADA); claims under the New Jersey Conscientious Employee Protection Act (CEPA); claims under the STATE-NAME Law Against Discrimination (LAD); claims under the Family and Certified Public Accountant Leave Act (FMLA); claims under the STATE-NAME Family Leave Act (FLA); claims under the Fair Labor Standards Act (FLSA); claims under STATE-NAME Wage and Hour Payment Laws; claims under the National Labor Relations Act (NLRA); claims for benefits including, but not limited to, life insurance, accidental death & disability insurance, sick leave, or other employer provided plan or program; claims for distributions of income or profit; claims for reimbursement; claims for wages; claims for vacation or other leave time; claims relating to retirement, pension and/or profit sharing plans (excluding claims for vested benefits); claims for group health insurance coverage (excluding claims for COBRA continuation coverage); claims relating to the Employee's application for hire, employment, or termination thereof, as well as any claims which the Employee may have arising under or in connection with any and all local, state, or federal ordinances, statutes, rules, regulations, executive orders or common law, from the beginning of the world up to and including the date of the Employee's execution of this Agreement (from now on called a "CLAIM"). The only exclusion from this release provision is a claim that some term of this Agreement has been materially violated.

d. Employee fully understands the terms of this Agreement and that he enters into it voluntarily without any coercion on the part of any person or entity; and

e. he was advised in writing to consult an attorney before signing this Agreement and has been given an opportunity to do so; and

f. he was advised that he has twenty-one (21) calendar days within which to consider this Agreement before signing it and, in the event that he signs this Agreement during this time period, said signing constitutes a knowing and voluntary waiver of this time period; and

g. he has seven (7) calendar days after executing this Agreement within which to revoke this Agreement. If the seventh day is a weekend or national holiday, the Employee has until the next business day to revoke. If the Employee elects to revoke this Agreement, the Employee agrees to notify the Company in writing sent via Federal Express of his revocation. Any determination of whether the Employee's revocation was timely sent shall be determined by the date of actual receipt by the Company.

5. No Claims Filed

JUNIOR-ACCOUNTANT, YOUR-NAME and the Employer each hereby represents that neither of them nor it or anyone on their or its behalf has filed or submitted any suits, claims, complaints or notices or the like with courts, Certified Public Accountant societies or similar entities regarding JUNIOR-ACCOUNTANT's employment relationship with YOUR-NAME and the Employer, the ending of the employment relationship, the conduct of each other and/or the professional competency of each other; and each of the Employer, YOUR-NAME and JUNIOR-ACCOUNTANT hereby agrees that they will not, nor will they authorize anyone on their respective behalves to do so. JUNIOR-ACCOUNTANT, YOUR-NAME and the Employer each hereby further represents that if any agency or court assumes jurisdiction of any such matter, they will take all steps respectively necessary to request that the agency or court dismiss or withdraw from the matter, as the case may be, and will take all other action necessary to bring about the dismissal of such matter. The parties further covenant not to disparage, verbally or in writing, each other's competency and performance as a Certified Public Accountant during the employment relationship to clients, other professional staff, other office personnel and any other Certified Public Accountant organizations.

6. Nondisclosure and Confidentiality

The Employee and the Employer each hereby promises and agrees that he or it, as the case may be, will keep and maintain this Agreement and its terms and conditions in the strictest confidence and will not discuss the same with or disclose the same to any person, except that the Employee and the Employer may discuss the same with their respective attorneys, tax, or

financial advisors, or lenders for the purpose of confidential legal or financial counseling, or as otherwise required by law, or for purposes of the enforcement of this Agreement. Notwithstanding the foregoing, the Employer may discuss this Agreement with its appropriate company officers, directors, and managers and the Employee may discuss the same with his spouse.

Notwithstanding anything set forth in this Agreement to the contrary, the Employee agrees that if he (or anyone to whom he makes a disclosure pursuant to this paragraph of this Agreement) breaches the terms of this Agreement, the Company's obligations under this Agreement, to the extent still unsatisfied, shall immediately cease and all monies paid to or on behalf of the Employee under the terms of this Agreement, less Three Hundred Dollars ($300.00), shall be returned in full by the Employee to the Company within seventy-two (72) hours of a written demand therefor from the Company to the extent permitted by law and to the extent that such repayment does not result in the invalidation of this Agreement; at such time One Hundred Dollars ($100.00) shall be deemed to be the portion of the payments made pursuant to this Agreement to any claim under the ADEA and Two Hundred Dollars ($200.00) of such amount shall be deemed to be the portion of payments made pursuant to this Agreement apportioned to any claim, other than under the ADEA, otherwise released by this Agreement. The Employer, in addition to any other rights it may have at law or in equity, shall have the right to seek enforcement of this Agreement in an action at law or in equity and the Employer shall have the right to recover its legal fees, costs, and expenses in such action to enforce this Agreement, to the extent permitted by law and to the extent that such recovery does not result in the invalidation of this Agreement.

7. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of STATE-NAME, without regard to principles of conflict of laws.

8. Parties

This Agreement will bind and benefit the parties and their respective heirs, personal representatives, successors, and assigns.

9. Entire Agreement

This writing contains the entire agreement of the parties with respect to its subject matter, and no agreements, promises, covenants, releases, representations, warranties, or indemnities have been made, given, or relied upon by either of the parties, other than those that are

expressly set forth in this writing. This Agreement supersedes and voids all previous agreements, policies and practices between the Employee and the Employer, whether written or oral. This Agreement sets forth the entire understanding of the parties as to the subject matter contained herein and may be modified solely by a writing executed by the Company and the Employee.

10. Captions

All paragraph headings used in this Agreement are for convenience of reference purposes only and will be given no significance in the interpretation of its provisions, terms, or conditions.

11. Multiple Counterparts

This Agreement may be signed and delivered in two or more counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same instrument.

12. Severability

Should any one or more of the provisions of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the validity of the remaining parts, terms, or provisions shall not be affected thereby and the illegal, invalid, or unenforceable provision or provisions will be deemed deleted from this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed and delivered this Agreement on the date first written above.

YOUR-NAME, CPA, LLC

By:_____

YOUR-NAME, Managing Member

_____

YOUR-NAME

ACCEPTED AND AGREED:

Terminated Employee:

By: _____

JUNIOR-ACCOUNTANT

[i] The following is illustrative of a more comprehensive termination agreement for use in terminating a staff accountant with whom you entered a more formal relationship that anticipated a possible future partnership that did not come to fruition. This "letter agreement" can serve as the covering document to the remaining documents constituting the termination agreements.

[ii] There are numerous ways to allocate clients. If the practice is yours, and the junior accountant had signed a noncompete and documents appropriately acknowledging that all clients remain with the practice, then the clients may remain those of your practice, and the termination documents could reflect that. In some instances, if the staff accountant has generated particular clients, those clients might be allocated to the departing accountant.

[iii] Any covenant not to compete provided in the initial employment documents could be reconfirmed if it is to be continued or modified as agreed. In the provision below, the covenant is waived, which is not necessarily the arrangement you may negotiate. A different approach is to allocate clients to the practice and the departing associate by name in an attached schedule.

Appendix 4-1: Sample Comprehensive Operating Agreement for You and a Colleague Forming a Two Person Accounting Practice With You as Primary and Managing Partner[i]

The following agreement reflects a professional practice LLC which you form with a new partner with whom you join resources in a new practice. You are the senior partner with the predominant portion of the client base, and hence, a control position. This agreement does not contain several of the more one-sided provisions contained in the preceding Appendix 4-C as in that agreement you held virtually all equity and control. Because you are joining with a new partner, you include in the Agreement some due diligence on the new partner's practice.

Operating Agreement

FIRM-NAME, LLC

THIS OPERATING AGREEMENT is made and entered into as of MONTH DAY, YEAR ("Contract Date") between and among FIRM-NAME, LLC, a STATE-NAME limited liability company, doing business at FIRM-ADDRESS (hereinafter the "LLC" or the "New Practice") and YOUR-NAME, who resides at YOUR-ADDRESS ("YOUR-NAME") and PROFESSIONAL-2NAME, Esq., who resides at PROFESSIONAL2-ADDRESS ("PROFESSIONAL-2NAME") (YOUR-NAME and PROFESSIONAL-2NAME are individually, a "Member" and collectively, the "Members"). The New Practice and the Members are referred to individually as "Party" and collectively as "Parties."

W I T N E S S E T H:

a. WHEREAS, the Members are both certified public accountants admitted to practice, and duly licensed, in the State of STATE-NAME, and are members in good standing of the STATE-NAME State Society of Certified Public Accountants and the American Institute of Certified Public Accountants (the "Organizations").

b. WHEREAS, YOUR-NAME has practiced public accounting for 25 years and has an accounting practice emphasizing bookkeeping, compilations, tax compliance, and tax planning with gross revenues of AMOUNT.

c. WHEREAS, PROFESSIONAL-2NAME has practiced public accounting for NUMBER-YEARS as a manager for XYZ CPAs, concentrating on tax preparation and planning and with gross revenues of AMOUNT.

d. YOUR-NAME and PROFESSIONAL-2NAME wish to combine their efforts and form the “New Practice” for their mutual benefit.

e. WHEREAS, the Members desire to enter into this operating agreement ("Operating Agreement" or "Agreement") for the purposes of governing the New Practice, to and for the purpose of operating an accounting firm. The Members have formed the New Practice in order to practice certified public accounting and all activities incident and necessary thereto, including but not limited to, maintaining offices, owning property, managing and operating the New Practice, collecting revenues which come to the New Practice by way of fees or investments (the "Business").

f. WHEREAS, the Parties intend that the Business shall be conducted in strict conformity with the rules, Regulations (herein below defined), and ethical standards governing the practice of certified public accounting.

g. WHEREAS, the New Practice shall operate in a building at ADDRESS, owned by YOUR-NAME or parties related to YOUR-NAME (the "Building"), or both, and shall pay rent for same pursuant to a lease (the "Lease").[ii]

h. WHEREAS, the Parties wish that every provision of this Agreement be interpreted to be in accordance with all applicable ethics rules and opinions affecting the practice of Certified Public Accounting in the State of STATE-NAME, including but not limited to all applicable Rules of Professional Conduct and any other restrictions or requirements of the STATE-NAME State Society of Certified Public Accountants or any

other governing body (collectively, the "Regulations"). The Parties agree that any delays, changes, or modifications to this Agreement necessary to comply with the Regulations shall be made.

i. WHEREAS, the Members shall appoint YOUR-NAME as the sole Manager to manage the New Practice.[iii]

j. WHEREAS, the Members intend to operate the Business and provide for the restriction on the transfers of ownership interests in the New Practice ("Interests").

NOW, THEREFORE, in consideration of the mutual premises below, and other good and valuable consideration receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

A. Incorporation of Recitals

The Recital clauses above are hereby incorporated into this agreement by reference and made a part hereof.

B. Organization

1. Organizational Fees

The LLC shall pay all expenses incurred in the organization of the LLC. Where a Member has incurred ordinary and necessary expenses incident to the organization of the LLC, the LLC, once formed, shall reimburse same upon submission of reasonable corroboration.

2. Formation[iv]

a. The New Practice has been organized as a STATE-NAME Limited Liability Company to engage in the New Practice under and pursuant to the STATE-NAME Limited Liability Practice Act (the "Act") by the filing of Certificate of Formation [called Articles of

Organization in some states] ("Articles") with the Department of State of STATE-NAME as required by the Act.

b. As part of the organization of the New Practice, YOUR-NAME and PROFESSIONAL-2NAME shall transfer to the New Practice the assets listed in Exhibit 2 and 3 respectively, attached to this Agreement.[v] Notwithstanding anything herein to the contrary, in the event that YOUR-NAME shall cease to be a member of the New Practice for any reason, the assets set forth in Exhibit 2 shall be returned to YOUR-NAME and not to PROFESSIONAL-2NAME, without any cost or expense to YOUR-NAME for such assets. As used herein, the term *Assets* shall refer to all of the assets initially contributed to the New Practice by the parties and all assets thereafter acquired by the New Practice.

c. Neither the New Practice nor PROFESSIONAL-2NAME shall have any rights or interests in the Building rented by the New Practice.

3. Name

The name of the New Practice shall be "FIRM-NAME, LLC." In the event any Member retires or ceases to be a member by reason of death or disability, such Member's name may continue to be used in the New Practice name with no additional compensation or payments to such Member. The New Practice, however, shall be under no obligation to continue to use any name it chooses not to so use. If any Member permanently withdraws from the New Practice his name may be deleted from the New Practice name in the discretion of the remaining Member or Members.

4. Purpose

The purposes of the New Practice shall solely be to operate an accounting firm and perform matters incident and related thereto.

5. Duration

The New Practice shall continue in existence perpetually or until the New Practice shall be sooner dissolved and its affairs wound up in accordance with the Act or this Operating Agreement.

6. Registered Office and Resident Agent

The Registered Office and Resident Agent of the New Practice shall be YOUR-NAME, FIRM-ADDRESS.

7. Intention for New Practice

The Members have formed the New Practice as a Limited Liability Company under and pursuant to the Act. The Members specifically intend and agree that the New Practice shall not be, for legal purposes, a partnership (including, a limited partnership) or any other venture, but shall be a Limited Liability Company under and pursuant to the Act. This intention shall not affect the classification of the New Practice as a partnership for income tax purposes.

8. Share Certificates May Be Issued[vi]

A Member's interest in the New Practice may be evidenced by a certificate of limited liability company interest issued by the New Practice ("Share Certificate"). In the event of any conflict between the interests indicated by any such Share Certificate and the Membership Interests indicated in the executed Operating Agreement, as Amended (including any Exhibits hereto as amended) the Operating Agreement, as Amended (including any Exhibits hereto as amended) shall control.

C. Operations of LLC

1. References to Titles[vii]

Each of YOUR-NAME and PROFESSIONAL-2NAME shall be Members and may, in such capacity, be referred to as “Members” or "Partners."

2. LLC Property[viii]

Title or interest to all LLC property shall be acquired and held for the LLC purposes set forth in this Agreement in the LLC's name only. The Building in which the New Practice shall operate, however, is not property of the LLC and shall not be owned by the LLC.

3. Banking

a. Bank Accounts[ix]

The Manager may from time to time open bank accounts in the name of the LLC.

Only Members shall have the authority to deposit and withdraw funds from any LLC bank account or sign checks or other instruments on behalf of the LLC.

b. Separate Bank Accounts

All funds of the LLC shall be maintained in a bank account or accounts, and no funds of the LLC shall be commingled with funds or accounts of any Member or Manager or person related to any Member or Manager.

c. No Borrowing

No Member shall have the right to borrow money on behalf of any other party or the LLC or to use the credit of any other party or the LLC for any purpose, except as specifically set forth in this Agreement.

d. Large Disbursements Require Additional Signatures[x]

All drafts or checks issued by the LLC which are not routine in nature or which exceed Ten Thousand Dollars ($10,000.00) shall be signed by any both Members of the LLC.

4. Qualification

All Members shall remain in good standing with or properly authorized by the Organizations ("Duly Qualified").[xi]

If a Member is no longer Duly Qualified and is precluded from again becoming Duly Qualified as a result of a nonappealable holding, then such Member's interest shall be sold as if such Member were deceased; however, the amount required to be paid to such Member for his interest shall only be equal to Sixty Percent (60%) of the amounts which would otherwise have been paid in the event of death of such Member.

5. Expenses Generally[xii]

a. The LLC shall pay or reimburse reasonable out-of-pocket expenses incurred by any Manager or Member in his capacity as a Manager or Member, respectively. Reimbursement shall only be made where the expense is a reasonable, necessary, and ordinary expense of the LLC, incurred in the furtherance of the LLC's Business and which is substantiated in accordance with the rules and regulations promulgated under "Code" (hereinafter defined) Section 162 and 274.[xiii]

b. The Parties acknowledge that the New Practice will have to purchase additional computer equipment to accommodate PROFESSIONAL-2NAME and that the cost shall be considered an expense of the New Practice.

6. Staffing[xiv]

a. The New Practice shall retain and pay for reasonable staff to assist each Member in performing professional services.

b. The Parties acknowledge that PROFESSIONAL-2NAME presently has, and for the foreseeable future shall have, NUMBER-STAFF full time secretaries consisting of DESCRIBE.

c. The Parties acknowledge that YOUR-NAME presently has, and for the foreseeable future shall have, NUMBER-STAFF full time secretaries consisting of DESCRIBE.

7. Insurance[xv]

a. The New Practice shall obtain and maintain hazard, casualty and fire, and related insurance coverage with an aggregate liability for claims of not less than One Million Dollars ($1,000,000). Said insurance shall cover all employees of the New Practice and all Assets, including the lease of the Building in accordance with the Lease. Insurance

coverage shall meet any Department of Labor of the State of STATE-NAME or other governmental requirements.

b. Malpractice insurance shall be obtained and maintained for the New Practice with amounts of not less than NUMBER Million ($____,000,000) per incident and NUMBER Million ($___,000,000) in aggregate, with a deductible of not more than AMOUNT Thousand Dollars ($____,000).

8. Payments to Related Parties

a. Related Party Payments Generally[xvi]

Document and agree in detail as to permissible related party transactions, as they can often become a significant source of contention later if not addressed.

The LLC may deal and contract with affiliated or related persons to provide services or materials for the LLC, provided that such services or products are specifically described and accounted for, and the fees to be paid therefor, and the terms and conditions thereof, are not less favorable to the LLC than those which could be reasonably obtained by the LLC from equally qualified but unaffiliated third parties.

b. Office Building Lease

(1) The Building in which the New Practice operates shall be leased from YOUR-NAME or a party related to YOUR-NAME pursuant to a Lease substantially in the form attached hereto as an Exhibit.

(2) The Parties acknowledge that the leasehold improvements set forth in an Exhibit are owned by YOUR-NAME (or an entity or persons related to YOUR-NAME) and not by the New Practice.

(3) The rent pursuant to the Lease shall be set at the fair market value rent. In the event of any argument over fair market value rent, an appraisal mechanism shall be

used as follows. YOUR-NAME shall select an appraiser at YOUR-NAME's expense and PROFESSIONAL-2NAME, if he shall not agree with YOUR-NAME's appraiser, shall select an appraiser at PROFESSIONAL-2NAME's expense. If the two appraisers do not agree, they would jointly select a third appraiser whose determination would control. The costs of this Third (3rd) appraiser shall be borne equally by YOUR-NAME and PROFESSIONAL-2NAME.

c. Retention of Key Employees[xvii]

KEY-EMPLOYEE-NAME shall be employed as office manager of the New Practice pursuant to an Employment Agreement substantially in the form attached to an Exhibit, which shall provide, among other things, for such person to work DESCRIBE-FUNCTIONS and shall receive compensation of THOUSAND Dollars ($_____.00) per month in compensation and additional benefits of DESCRIBE-BENEFITS.

9. Accounts Receivable[xviii]

a. YOUR-NAME's existing accounts receivable and work in process are listed in an Exhibit. Amounts collected by the New Practice on said accounts shall belong solely to YOUR-NAME.

b. PROFESSIONAL-2NAME's existing accounts receivable and work in process shall be completed and collected prior to the effective date of this Agreement and shall not be transferred to the New Practice.

c. The division of fees allocated otherwise as between PROFESSIONAL-2NAME and YOUR-NAME shall be based on a reasonable approximation of the services performed prior to the Contract Date by YOUR-NAME and services anticipated to be performed

from the Contract Date forward by PROFESSIONAL-2NAME and with reasonable consideration of the relative responsibility assumed by each.

D. Books, Records, and Accounting

1. Books and Records

The New Practice shall maintain complete and accurate books and records of the New Practice's business and affairs as required by the Act and such books and records shall be kept at the New Practice's Registered Office.

a. Fiscal Year; Accounting

The New Practice's fiscal year shall be the calendar year. The particular accounting methods and principles to be followed by the New Practice shall be selected by the Members.

2. Member's Capital Accounts

Separate Capital Accounts for each Member shall be maintained by the New Practice. Each Member's Capital Account shall reflect the Member's capital contributions and increases thereto as a result of the Member's share of any net income or gain of the New Practice. Each Member's Capital Account shall also reflect decreases for distributions made to the Member and the Member's share of any losses and deductions of the New Practice.

a. Definition of Capital Account

A separate capital account shall be maintained for each Member or Assignee in accordance with the provisions below ("Capital Account").

b. Increases in Capital Account

Each Member's Capital Account shall be increased by:

(i) The amount of money contributed by the Member to the New Practice.

(ii) The fair market value of property contributed by the Member to the New Practice (net of liabilities secured by such contributed property that the New Practice is considered to assume or take subject to under Code Section 752). If any property, other than cash, is contributed to or distributed by the New Practice, the adjustments to Capital Accounts required by Treasury Regulations under Code Section 704 shall be made.

(iii) The Member's share of the increase in the tax basis of New Practice property, if any, arising out of the recapture of any tax credit.

(iv) Allocations to the Member of Profit.

(v) Allocations to the Member of income or gain as provided under this Agreement or otherwise by Regulations under Code Section 704.

c. Decreases in Capital Account

Each Member's Capital Account shall be decreased by:

(i) The amount of money distributed to the Member by the New Practice.

(ii) The fair market value of property distributed to the Member by the New Practice (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752).

(iii) Allocations to the Member of Losses.

(iv) Allocations to the Member of deductions, expenses, Nonrecourse Deductions, and Net Losses allocated to it pursuant to this Agreement, and the Member's share of New Practice expenditures which are neither deductible nor properly chargeable to Capital Accounts under Code Section 705(a)(2)(B) or are treated as such expenditures under the Treasury Regulations under Code Section 704.

d. Capital Account of Transferee

In the event of a permitted sale or exchange of an Interest in the New Practice, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent that it relates to the transferred Interest in accordance with the Treasury Regulations under Code Section 704.

e. Capital Accounts Shall Comply with Code Section 704

The manner in which Capital Accounts are to be maintained pursuant to this Agreement is intended to comply with the requirements of Code Section 704 and the Regulations thereunder. It is the specific intent of the Members that all such further or different adjustments as may be required pursuant to Code Section 704, and any Regulations thereunder be made, so as to cause the allocations prescribed hereunder to be respected for tax purposes. Therefore, if in the opinion of the Manager the manner in which Capital Accounts are to be maintained pursuant to this Agreement should be modified to comply with Code Section 704 and the Regulations thereunder, then notwithstanding anything to the contrary contained in this Agreement or any other agreement between the Parties the method in which Capital Accounts are maintained shall be so modified. However, any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members. Each Member hereby appoints the Manager the Tax Matters Member and agent for the purpose of making any amendment to this Agreement solely for purposes of complying with this provision.

E. Capital Contributions

1. Initial Commitments and Contributions

By the execution of this Operating Agreement, the Members hereby agree to make the capital contributions set forth in the attached Exhibits. The interests of the respective Members in the total capital of the New Practice (their respective "Sharing Ratios," as adjusted from time to time to reflect changes in the Capital Accounts of the Members and the total capital in the New Practice) are:

YOUR-NAME 90%

PROFESSIONAL-2NAME 10%

No interest shall accrue on any capital contribution and no Member shall have any right to withdraw or to be repaid any capital contribution except as provided in this Operating Agreement.

2. Additional Contributions[xix]

In addition to the initial capital contributions, the Manager may determine from time to time that additional capital contributions are needed to enable the New Practice to conduct its business and affairs. Upon making such a determination, notice thereof shall be given to all Members in writing at least Ten (10) business days prior to the date on which such additional contributions are due. Such notice shall describe, in reasonable detail, the purposes and uses of such additional capital, the amounts of additional capital required by such member (the "commitment"), and the date by which payment of the additional capital is required. Each Member shall be obligated to make such additional capital contribution to the extent of their commitment. Any Member who has fulfilled that Member's commitment shall have the right, but not the obligation, to make the additional capital contributions needed to make up commitments not made by other Members according to that Member's Sharing Ratio.

3. Failure to Contribute[xx]

If any Member fails to make a capital contribution when required, the remaining Member may elect to contribute the amount of such required capital [If more than one other partner, add the phrase, "themselves according to their respective Sharing Ratios"]. In such an event, the remaining Member shall be entitled to treat such amounts as an extension of credit to such defaulting Member, payable upon demand, with interest accruing thereon at the federal mid-term rate provided for under Code Section 1274(d), plus Three percent (3%) until paid, all of which shall be secured by such defaulting Member's Interest in the New Practice, each Member who may hereafter default, hereby granting to each other Member who may hereafter grant such an extension of credit, a security interest in such defaulting Member's Interest in the New Practice.

F. Allocations and Distributions

1. Allocations[xxi]

Except as may be required by the Code as amended or this Operating Agreement, net profits, net losses, and other items of income, gain, loss, deduction, and credit of the New Practice, after reduction for "Draws" (as defined and set forth in Exhibit A, as amended) shall be allocated among the Members based on the relative Gross Revenues generated by each Member. To determine Gross Revenues attributable to each Member, the following rules shall apply:

a. Gross Revenues shall be the Gross Revenues actually received on a cash basis by the New Practice as reported on the New Practices Form 1065, Partnership Income Tax Return for the year in question.

b. Revenues generated by Clients listed in an Exhibit as being YOUR-NAME's shall be presumed to be YOUR-NAME's unless otherwise agreed to in writing by YOUR-NAME.[xxii]

Revenues generated by Clients listed in an Exhibit as being PROFESSIONAL-2NAME shall be presumed to be PROFESSIONAL-2NAME's unless otherwise agreed to in writing by PROFESSIONAL-2NAME.

c. On each new client file, the file shall indicate: "YOUR-NAME client," "PROFESSIONAL-2NAME client," or "New Practice Client" for New Practice clients, the revenues of which shall be deemed generated 50% by each Member (regardless of the fact of the 90%, 10% Membership interests).[xxiii] YOUR-NAME client matters shall be allocated to YOUR-NAME, PROFESSIONAL-2NAME clients shall be allocated to PROFESSIONAL-2NAME, and Firm clients shall be allocated equally [another alternative: "shall be allocated in the ratio of other Gross Revenues"].

d. However if PROFESSIONAL-2NAME provides Seventy Five Percent (75%) or more of the services on a YOUR-NAME client, then the Gross Revenues on such client shall be divided Fifty Percent (50%) based on origination and Fifty (50%) based on relative services performed by each Member.[xxiv]

2. Distributions[xxv]

a. The Managing Partner may authorize or make distributions to the Members from time to time. It is the intent of the Members that periodic draws be paid at least twice monthly and a bonus paid following year end or when determined appropriate by the Managing Partner. Amounts to be withdrawn by each Member shall be established by the Managing Partner unless the Members unanimously agree otherwise.

b. Unless and until the Manager determines otherwise, the amount to be paid periodically as a Draw to a Member shall be limited to the following amount: [One/Twenty-Fourth (1/24)] x [Eighty Percent (80%)] x [Earnings of that Member during the preceding year].[xxvi] Where a Member was not receiving a regular draw for the full Twelve (12) months of the preceding fiscal year, the Member's "Earnings" shall be calculated by analyzing the earnings received from a predecessor firm, unless a specific monthly drawing amount is agreed to by the Members and the New Practice and attached hereto as part of an Exhibit.

c. Distributions [in excess of the draws provided for above] may be made only after the Manager determines in the Manager's reasonable judgment that the New Practice has sufficient cash on hand which exceeds the current and the anticipated needs of the New Practice to fulfill its business purposes (including needs for operating expenses, debt service, acquisitions, reserves, and mandatory distributions, if any).[xxvii] All distributions shall be made to the Members in accordance with their Sharing Ratios. Distributions shall be only in cash. No distribution shall be declared or made if, after giving it effect, the New Practice would not be able to pay its debts as they become due in the usual course of business, or the New Practice's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the New Practice were to be dissolved at the time of the distribution to satisfy the preferential rights of another Member upon dissolution that are superior to the rights of the Member receiving the distribution.

d. Capital contribution of the Members shall not be subject to withdrawal except by unanimous written agreement of the Managers or as specifically provided in this Agreement to the contrary.

e. No Member shall be entitled to receive interest on such Capital Account.

3. Basis for Distributions[xxviii]

The Draw reflected in an Exhibit for PROFESSIONAL-2NAME is based on $AMOUNT ($_____,000) collectible billings from PROFESSIONAL-2NAME's work efforts in each calendar month. If his work efforts do not generate at least $AMOUNT ($_____,000) of collectible billings per calendar month the Draw amount shall be reduced as reasonably agreed to by the Members.

G. No Disposition of Membership Interests

No Member shall be entitled to assign, convey, sell, encumber, or in any way alienate all or any part of its Membership Interest in the New Practice and as a Member except:[xxix]

1. With the prior written consent of the Manager.
2. On the death or disability of such Member in which event the New Practice shall repurchase such Membership Interest.

Transfers in violation of this provision shall not be effective.

H. Management of Business[xxx]

1. The New Practice shall be managed by the Manager.
2. The Manager shall manage the affairs and business of the Practice with full consideration to the Manager's fiduciary obligation to the New Practice.
3. The Manager shall not receive extra compensation for serving as Manager.
4. The duties of the Manager shall be those duties reasonably necessary to conduct the Business of the New Practice.

I. General Powers of the Manager

1. Except as otherwise provided in this Operating Agreement, all ordinary and usual decisions concerning the business and affairs of the New Practice shall be made by the Manager. The Manager has the power, on behalf of the New Practice, to do all things necessary or convenient to carry out the business and affairs of the New Practice, including, the power to: (a) purchase, lease, or otherwise acquire any real or personal property; (b) sell, convey, mortgage, grant a security interest in, pledge, lease, exchange, or otherwise dispose or encumber any real or personal property; (c) open one or more depository accounts and make deposits into and checks and withdrawals against such accounts; (d) borrow money, incur liabilities, and other obligations; (e) enter into any and all agreements and execute any and all contracts, documents, and instruments relating to the Business; (f) engage consultants and agents, define their respective duties, and establish their compensation or remuneration; (g) obtain insurance covering the Business and affairs of the New Practice and its property, including malpractice insurance; (h) commence, prosecute, or defend any proceeding in the New Practice's name; and (I) participate with others in partnerships, joint ventures, and other associations and strategic alliances only where same are directly in pursuit of the Business, as defined above.
2. The Managers shall have the power to make all management and other decisions other than those decisions specifically reserved to the Members under this Agreement.
3. The Manager shall provide periodic written reports to the Members of the matters addressed, actions considered, and actions taken.

J. Unanimous Membership Approval for Certain Acts[xxxi]

Notwithstanding the foregoing and any other provision contained in this Operating Agreement to the contrary, no act shall be taken, sum expended, decision made, obligation incurred, or power exercised by the Manager (or any Member) on behalf of the New Practice except by the unanimous consent of all Members with respect to:

1. Any significant and material purchase, receipt, lease, exchange, or other acquisition of any real or personal property.
2. The sale of all or substantially all of the assets and property of the New Practice.
3. Any mortgage, grant of security interest, pledge, or encumbrance upon all or substantially all of the assets and property of the New Practice.
4. Any merger.
5. Any amendment or restatement of the Articles of Organization [Certificate of Formation] or of this Operating Agreement.
6. Any matter which could result in a material change in the amount or character of the New Practice's capital.
7. Any significant change in the character of the business and affairs of the New Practice.
8. The commission of any act which would make it impossible for the New Practice to carry on its ordinary business and affairs.
9. Any act that would contravene any provision of the Articles of this Operating Agreement or the Act.

K. Standard of Care; Liability

The Manager shall discharge his or her duties as a manager in compliance with all Regulations, in good faith, with the care an ordinarily prudent person in a like position would

exercise under similar circumstances and in a manner he or she reasonably believes to be in the best interests of the New Practice.

A Manager shall not be liable for any monetary damages to the New Practice for any breach of such duties except for receipt of a financial benefit to which the Manager is not entitled; voting for or assenting to a distribution to Members in violation of this Operating Agreement or the Act or a knowing violation of the law.

L. Exculpation of Liability: Indemnification

Unless otherwise provided by law or expressly assumed, a person who is a Member or Manager, or both, shall not be liable for the debts or liabilities (excluding malpractice when such person was responsible or as otherwise required by the Regulations) of the New Practice.

M. Disability[xxxii]

Disability provisions are often treated as a stepchild to the death buy-out provisions, since few professionals take the time to work out the details, and far fewer are willing to address the cost of disability buy-out insurance, for example. Consider the following only as a starting point. Should a senior professional be afforded longer time periods within which to return from disability? Should partial and total disability be treated differently? What if there is more than one professional disabled or that dies requiring simultaneous buyout?

1. A Member shall be considered disabled where, due to a mental or physical incapacity disability, he is unable to render substantially full-time services to the New Practice and to discharge his duties as a Member for a period aggregating at least Ninety (90) Days in any consecutive Twelve (12) calendar month period, and the day next following such

given day is hereinafter referred to as the "Disability Date." In determining the Disability Date, holidays, vacation days, and days the New Practice is closed shall not count. [xxxiii]

2. The draw of a disabled Member shall not be reduced during said Ninety (90) Day period.[xxxiv]

3. A Disabled Member shall have no right to vote or receive a Draw after the Disability Date. A Disabled Member's distributive share of New Practice profits and losses earned prior to the Disability Date shall be paid in full in accordance with the regular customs of the New Practice. During the first six (6) month period following the Disability Date, the Disabled Member shall be entitled to receive Fifty Percent (50%) of the amount of profits and losses he would have been entitled to receive prior to the Disability Date. Thereafter, no distributions shall be made to the Disabled Member. If the Disabled Member does not resume practice on a basis of at least Seventy Five Percent (75%) of his or her pre-Disability time commitment by the Eighteen (18th) Month anniversary of the Disability Date, such Member shall be deemed terminated from the New Practice and shall be entitled to receive the payments provided for a Deceased Member, below.

N. Deceased Member[xxxv]

1. The Members agree that the Stated Value of the entire New Practice, inclusive of goodwill at the execution date of this Agreement is the value set forth in "Exhibit ____: Certificate of Stated Value", attached.

2. On or before November 15 [or some other specified date] of each year hereafter, [or in the event of any significant transaction which could reasonably increase or decrease the value of the New Practice value by more than 25%] the Members shall agree on an updated Stated Value of the New Practice, which updated Stated Value shall be set forth

in either a Certificate of stated value or the minutes of the New Practice executed by the Members.[xxxvi]

3. In the event that the Members have failed to have updated the Stated Value for a period of Eighteen (18) months prior to the date of the death of a Member or the "buyout" date hereinafter defined in the case of a disabled Member, then such last Stated Value, and the Stated Value buyout, shall be void and each Party (or, for example, such Party's successors, assigns, heirs, and committee, collectively "Representative") shall designate an appraiser. If the Two (2) appraisers cannot agree on a value, the Two (2) appraisers shall designate a Third (3rd) appraiser whose decision as to value shall control. Such appraisals shall consider the health and status of the surviving or nondisabled Member.

4. The following provisions shall govern the purchase of a deceased or disabled Member's Interests under this Stated Value method:

a. The Closing for the sale and transfer of Shares of the deceased or disabled Member's Interest pursuant to this Stated Value buy out shall take place at the office of the New Practice, within Ninety (90) Days of the event triggering the buy-out.

b. At the Closing the Membership Interests of the deceased or disabled Member shall be surrendered and transferred to the New Practice, or if the New Practice does not so purchase such Membership Interests, then the other Member shall purchase such Membership Interests.[xxxvii]

c. The New Practice or the purchasing Members shall deliver to such disabled or deceased Member or such Member's Representative, a certified or bank check to the order of the Member or the estate of the deceased Member if applicable, in an amount equal to the lesser of: (i) Twenty Five Percent (25%) of the Stated Value Purchase Price of the Membership Interests being purchased; (ii) or Twenty Thousand Dollars ($20,000). The New Practice or Member purchasing the deceased or disabled Members Interests shall pay the balance of the Stated Value Purchase Price in equal quarterly

installments over a Five (5) year period. Such five (5) year period shall commence on the first business day of the first full calendar Quarter beginning after the date on which the Closing takes place and payments shall be made at the end of each calendar quarter. No such installment shall be less than Two Thousand Dollars ($2,000).

d. The New Practice or the purchasing Member, as the case may be, shall execute and deliver notes evidencing such obligations for the Membership Interests being purchased.

e. Installments shall be payable with interest on the unpaid balance at the Federal Mid-term rate in effect at the date of such Closing, as determined under Code Section 1274(d) and the announcements and regulations thereunder (the "Rate").

f. The New Practice or the purchasing Member, as the case may be, shall have the right to prepay the balance of the Stated Value Purchase Price at any time in whole or in part without premium, but together with interest on the amount prepaid to the date of each prepayment (each prepayment to be applied to unpaid installments in the inverse order of their maturities).

g. The unpaid balance of the Stated Value Purchase Price shall be subject to acceleration on notice to the New Practice or purchasing Members by the transferor Member or such transferor Member's representative: (i) For default, other than by reason of the death or disability of all remaining Members, in any payment of principal or interest continuing beyond Notice and a grace period of Thirty (30) days (not more than Two (2) grace periods during the period of any such deferred payment); or (ii) In the event the New Practice is adjudicated bankrupt or insolvent.

h. In the event that either life insurance or disability buy-out insurance is purchased specifically to fund such buyout, then the down payment paid at the Stated Value Closing above shall not be less than the proceeds available from such policies.

i. In the event of the permanent disability or death of the remaining Member, if no additional Members have been admitted to the New Practice prior to such permanent disability or death, the payments due the first Member to die or be subject to a purchase based on Disability, shall cease. The New Practice shall be wound up and sold or liquidated with the net proceeds from the Assets as set forth in Exhibit A to be paid to PROFESSIONAL-1NAME or his Representative, and the excess net proceeds after such payment to be divided equally between the Members or their respective Representatives.

O. Disability or Death of a Member Calculated Buyout[xxxviii]

If no valid Certificate of Stated Value exists or if any existing Certificate of Stated Value is more than Eighteen Months (18) old [or some other time period] at the date of an event triggering the need for a valuation, then the following provisions shall apply to govern the purchase of a disabled or deceased Member's Interest:

1. Upon the disability or death of a Member, an accounting shall be made of the disabled or deceased Member's interest on a cash basis method of accounting and on an accrual method of accounting. These accountings shall be made as at the end of the month within which the disability (that is, the Disability Date) or death occurs.
2. The cash method of accounting shall equal the capital account of the Member as reflected on the New Practice's federal income tax return Form 1040 for the fiscal year end preceding the disability or death (so long as such return was prepared using the cash basis method of accounting), adjusted in the remaining Member's reasonable discretion for income and expenses incurred through the end of the month in which disability or death occurred.

3. The accrual method calculated interest of a disabled or deceased Member shall be determined with the following adjustments:

a. The excess of the fair market value of any stocks, bonds, other investment securities, or real estate (fee interest only, not to include leasehold interests) which may be owned by the New Practice at the time, over the net book value of such assets, shall be added to the accrual method valuation of that Member's interest.

b. The accrual basis calculation shall include a pro-rata share of the New Practice's of work-in-process and accounts receivable. Work-in-process shall be valued at the standard billing rates in effect at the time the services were performed, subject to a valuation reserve, of Twenty Percent (20%).[xxxix]

c. The Member, or his estate or successors, shall share pro-rata in any amounts collected against the valuation reserve during the One (1) year following the date upon which such reserve was established.

d. The amount paid in consideration of accrual basis capital shall only be the amount by which the accrual basis capital exceeds the Member's cash basis capital.

e. Death benefits shall be calculated as follows: [xl]

(i) All Members shall receive as their death benefit an amount equal to Sixty Percent (60%) the average of that Member's earnings for his Three (3) most recent complete calendar years, including years such person was employed by, or served as a Member with, the New Practice. Where a Member has worked for less then Five (5) years, the calculation shall be based on the aggregate earnings of that Member for the period such person was employed by, or served as a Member with, the New Practice, multiplied by Sixty percent (60%).

(ii) The following limitations shall be imposed on the amounts payable to all deceased or terminated Members during each fiscal year:[xli] The

aggregate payments made in any fiscal year to the Members shall not exceed Twenty Percent (20%) of gross income of the New Practice in excess of such amount.

(iii) New Practice gross income, for purposes of calculating the limitation on payments made to terminated Members, is the gross income as reported on the New Practice's Partnership Federal Income Tax return for such year.

f. The disabled Member, or the estate or successors of a deceased Member, shall be entitled to receive such Member's interest as follows:

(i) Cash basis capital. Within Sixty (60) days. Cash basis capital shall be the Member's capital account as calculated on the most recently completed federal income tax return, updated as provided above.

(ii) Accrual basis capital. Any insurance proceeds on policies owned by the New Practice and payable to a deceased or disable Member (or, for example, his or her assigns or committee) shall be paid as soon as practicable and applied to reduce the amount otherwise payable on account of accrual basis capital. Such insurance shall be applied to reduce the amount due a deceased or disabled Member's estate or successor, but not below zero. The remaining amount due shall be paid in Eighteen (18) equal monthly installments beginning on the first day of the Seventh (7th) month following the month in which disability or death occurs.

P. Other Activities of Members

No Member may engage in other active business ventures of any nature with the exception of the following, unless the Members unanimously agree in writing:

1. YOUR-NAME may serve as DESCRIBE-PERMITTED-ACTIVITIES.

2. PROFESSIONAL-2NAME may serve as DESCRIBE-PERMITTED-ACTIVITIES.

Any fees earned for such activities or any expenses incurred shall be solely receivable or payable by the Member involved. Any fees earned for any other professional activity shall be payable to the New Practice and not to an individual Member.

Q. Representations and Warranties of YOUR-NAME [and the Practice][xlii]

YOUR-NAME and the Old-Practice hereby represent and warrants to PROFESSIONAL-2NAME that:

1. Power and Authority

YOUR-NAME possesses all requisite power and authority to own and operate the Practice as it is anticipated to be conducted. YOUR-NAME has [and the Old-Practice has] all requisite power and authority to execute and deliver this Agreement and to consummate the transactions hereby contemplated.

2. Binding Agreement

This Agreement and the Exhibits constitutes valid and binding obligations of YOUR-NAME [and the Old-Practice], enforceable against [each of] YOUR-NAME [and the Old-Practice], in accordance with their terms.

3. No Default

The execution and delivery of this Agreement and the consummation of the transactions contemplated in this Agreement do not constitute, and with the passage of time will not

constitute, a default under any agreement to which [either] YOUR-NAME [or the Old-Practice] are a party or bound.

4. Suits, Claims, Judgments, etc.

Except as otherwise set forth in Exhibit ___:

a. There are no liens, mortgages, leases, or other claims against any of the Assets of [the Old-Practice], or against YOUR-NAME's membership interest in the Old-Practice].

b. There are no pending or threatened suits or proceedings, at law or in equity, or before or by any governmental agency or arbitrator against or affecting either YOUR-NAME, [the Old-Practice], or any of the Assets being contributed by him and which are listed in Exhibit ___.

c. There are no ethics complaints, malpractice complaints, or similar complaints or filings against YOUR-NAME [or against the Old-Practice].

d. There are no unsatisfied or outstanding judgments, orders, decrees, or stipulations affecting YOUR-NAME or to which YOUR-NAME is or may become a party, which would constitute or result in a breach of any representation, warranty, or agreement set forth in this Agreement or interfere with YOUR-NAME's [or the Old-Practice's] ability to perform under this Agreement.

5. Statements Herein Complete and Accurate, etc.

No statements, representations, warranties, or covenants have been made by YOUR-NAME [or the Old-Practice] in this Agreement or in the Exhibits attached hereto which are untrue statements of any material fact or misstatements of any fact which would make the statements contained herein or therein misleading.

6. No Further Approvals Necessary

No other individual, entity, or business own or have any interest in or claim against the Assets or any interest or right which would require that such other individual, entity, or business be made a party to this Agreement in order to fully effectuate the transactions contemplated herein.

7. Financial Matters

YOUR-NAME's gross income from the rendering of accounting services in the Old-Practice has averaged approximately NUMBER Thousand Dollars ($____,000) per year for the past NUMBER (___) of years.

8. Good Title

YOUR-NAME has and will give the New Practice to be formed, good and marketable title to the Assets of the Old-Practice free and clear of all liens, claims, or encumbrances, except as specifically listed in Exhibit ___.

9. Books and Records

The accounting books and records of the Old-Practice are complete and correct in all respects and have been maintained in accordance with good business practice.

10. Insurance Coverage

YOUR-NAME and the Old-Practice have maintained continuously for the past Five (5) years malpractice insurance coverage in amounts of not less than NUMBER Million

($_____,000) per incident and NUMBER Million ($____,000) in aggregate, with a deductible of not more than NUMBER Thousand Dollars ($_____,000).

R. Representations and Warranties of PROFESSIONAL-2NAME[xliii]

PROFESSIONAL-2NAME represents and warrants to YOUR-NAME that:

1. Power and Authority

PROFESSIONAL-2NAME possesses all requisite power and authority to:

a. Own and operate the accounting practice heretofore operated by PROFESSIONAL-2NAME, under the name of "NAME", as a sole proprietorship ("Merged Practice") from its inception in START-DATE through the date of this Agreement.

b. Own and operate the Merged Practice being that is being formed pursuant to this agreement and as the parties hereto anticipate that the Practice will be conducted.

c. To have executed any contracts or agreements, all set forth in Exhibit ___, relating to the ownership and operation of the Merged Practice and to assign and transfer such contracts or agreements to the New Practice.

d. To execute and deliver this Agreement and to consummate the transactions hereby contemplated.

2. Binding Agreement

This Agreement and the Exhibits constitutes valid and binding obligations of PROFESSIONAL-2NAME and the Merged-Practice, enforceable against PROFESSIONAL-2NAME and the Merged-Practice in accordance with their terms.

3. No Default

The execution and delivery of this Agreement and the consummation of the transactions contemplated in this Agreement do not constitute, and with the passage of time will not constitute, a default under any agreement to which PROFESSIONAL-2NAME or the Merged Practice is a party or bound, including by way of example and not limitation, any written, oral, or other agreement or arrangement with DESCRIBE.

4. Suits, Claims, and Judgments, etc.

Except as otherwise set forth in Exhibit E:

a. There are no liens, mortgages, leases, or other claims against any of the Assets being contributed by PROFESSIONAL-2NAME and the Merged Practice and which are listed in Exhibit ___.

b. There are no pending or threatened suits or proceedings, at law or in equity, or before any governmental agency or arbitrator against or affecting PROFESSIONAL-2NAME, the Merged-Practice or any of the Assets being contributed by him as set forth in Exhibit ___.

c. There are no ethics complaints, malpractice complaints, or similar complaints or filings against PROFESSIONAL-2NAME or the Merged-Practice.

d. There are no unsatisfied or outstanding judgments, orders, decrees, or stipulations affecting PROFESSIONAL-2NAME or the Merged-Practice or to which either is or may become a party which would constitute or result in a breach of any representation, warranty, or agreement set forth in this Agreement or interfere with PROFESSIONAL-2NAME's or the Merged-Practice's ability to perform under this Agreement.

e. No suit, action, investigation, inquiry, or other proceeding by any governmental authority or other person or legal or administrative proceeding has been instituted or threatened

which questions the validity or legality of, and no injunction, restraining order, or other order of a court of competent jurisdiction is in effect which restrains, prohibits, or invalidates the transactions contemplated hereby.

5. Financial Matters

PROFESSIONAL-2NAME has earned approximately NUMBER Thousand Dollars ($____,000) per year and generated approximately NUMBER Thousand Dollars ($____,000) of billable revenues per year for each of the preceding Five (5) years while practicing as a sole practitioner [Describe other practice arrangement].

6. Conflicts

PROFESSIONAL-2NAME has reviewed all client matters listed in Exhibit ___ and has determined that no conflict of interest arises with respect to either existing or prior clients or client matters of PROFESSIONAL-2NAME or of his prior firms, including but not limited to the Merged-Practice.

7. No Untrue Statements

No statements, representations, warranties, or covenants have been made by PROFESSIONAL-2NAME or the Merged-Practice in this Agreement or in the Exhibits attached hereto which are untrue statements of any material fact, or misstatements of any material fact, which would make the statements contained herein or therein misleading.

8. Valid and Binding Agreement

This Agreement and each and every Exhibit constitute, and each instrument to be executed and delivered by PROFESSIONAL-2NAME and the Merged-Practice in accordance

with this Agreement, constitute a valid and legally binding obligation of both and are enforceable against both in accordance with their respective terms.

9. Insurance Coverage

PROFESSIONAL-2NAME and the Merged Practice have been covered continuously for the past Five (5) years under malpractice insurance coverage in the amounts and with the carriers set forth in Exhibit ___.

S. Dissolution and Winding Up

1. Dissolution

The New Practice shall dissolve, and its affairs shall be wound up on the first to occur of the following events:

a. At any time specified in the Articles or this Operating Agreement.

b. Upon the happening of any event specified in the Certificate of Formation or this Operating Agreement.

c. By the unanimous consent of all of the Members.

d. Upon the death, withdrawal, expulsion, bankruptcy, or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member in the Practice unless within Ninety (90) days after the disassociation of membership, a majority of the remaining Members consent to continue the business of the Practice and to the admission of one or more Members as necessary.

2. Winding Up

Upon dissolution, the New Practice shall cease carrying on its business and affairs and shall commence the winding up of the Practice's business and affairs and complete the winding up as soon as practicable. Upon the winding up of the New Practice, the assets of the New

Practice shall be distributed first to creditors to the extent permitted by law, in satisfaction of New Practice debts, liabilities, and obligations and then to Members and former Members first in satisfaction of liabilities for distributions and then, in accordance with their Sharing Ratios. Such proceeds shall be paid to such Members within One Hundred Twenty (120) days after the date of winding up.

T. Miscellaneous Provisions

1. Terms

Nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the person or persons, firm, or corporation may in the context require. The term *Code* shall refer to the Internal Revenue Code of 1986, as amended.

2. Article Headings

The Article headings and numbers contained in this Operating Agreement have been inserted only as a matter of convenience and for reference and in no way shall be construed to define, limit, or describe the scope or intent of any provision of this Operating Agreement.

3. Independent Advice of Counsel

Each Party has been advised to seek the advice of independent legal, accounting, pension, and tax counsel prior to executing this Agreement. By executing this Agreement, each Party acknowledges that such Party has been advised to seek independent counsel and that the execution of this Agreement can affect such Party's legal rights, that reasonable time to consult with independent counsel has been afforded, and that each Party has consulted with independent counsel, or has of such Party's own volition decided not to do so. The Parties acknowledge that LAWYER-NAME has represented only YOUR-NAME, and has not

represented PROFESSIONAL-2NAME who has been advised to retain counsel and has been afforded reasonable opportunity to do so.

4. Counterparts

This Operating Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which will constitute one and the same. The parties expressly agree that photocopies, facsimiles, PDF files, or other electronic versions of this document shall be as valid as an original.

5. Entire Agreement

This Operating Agreement constitutes the entire agreement among the parties hereto and contains all of the agreements among said parties with respect to the subject matter hereof. This Operating Agreement supersedes any and all other agreements, either oral or written, between said parties with respect to the subject matter hereof.

6. Severability

The invalidity or unenforceability of any particular provision of this Operating Agreement shall not affect the other provisions hereof, and this Operating Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

7. Amendment

This Operating Agreement may be amended or revoked at any time by a written agreement executed by all of the parties to this Operating Agreement, except where a lesser percentage of Membership Interests is permitted elsewhere in this Operating Agreement. No

change or modification to this Operating Agreement shall be valid unless in writing and signed by all of the parties to this Operating Agreement.

8. Notices

Any notice permitted or required under this Operating Agreement shall be conveyed to the party at the address reflected in this Operating Agreement and will be deemed to have been given, when deposited in the United States mail, postage paid, or when delivered in person, or by a national overnight courier or by facsimile transmission (the receipt of which is confirmed).

9. Binding Effect

Subject to the provisions of this Operating Agreement relating to transferability, this Operating Agreement will be binding upon and shall inure to the benefit of the parties and their respective distributees, heirs, successors, and assigns.

10. Governing Law

This Operating Agreement is being executed and delivered in the State of STATE-NAME and shall be governed by, construed, and enforced in accordance with the laws of the State of STATE-NAME. The parties hereto agree to personal jurisdiction in STATE-NAME.

11. Further Assurances

The parties shall, subsequent to the Closing, execute and deliver such further instruments, documents, and agreements, and take such further action, in each case without cost to the other party, as may be reasonably requested or may be necessary or desirable to evidence and perfect the completion of the transactions contemplated herein.

12. No Waiver

The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence subsequently to that term or any other term of this Agreement. Any waiver must be in writing.

IN WITNESS WHEREOF, the parties hereto make and execute this Operating Agreement on the dates set below their names, to be effective on the date first above written.

WITNESSETH:

Dated: MONTH DAY, YEAR Practice Seal:

FIRM-NAME, LLC

By: _____

YOUR-NAME, Manager

_____

YOUR-NAME, individually and on behalf of

Old-Practice

_____

PROFESSIONAL-2NAME, individually and on behalf of

Merged-Practice

U. Exhibit 1: Certificate of Stated Value

The Members hereby agree and designate, as the Stated Value of the Practice, inclusive of goodwill, but exclusive of the Assets set forth in Exhibit ___, as of the date of this consent, the following figure: $_____.

Such figure shall be multiplied by a disabled or deceased Member's Interest as set forth in the Operating Agreement to determine the price to be paid to purchase a deceased or disabled Member's Interest.

Accepted and Agreed:

Dated: MONTH DAY, YEAR

FIRM-NAME, LLC

By: _____

YOUR-NAME, Manager

_____

YOUR-NAME

_____

PROFESSIONAL-2NAME

[Other exhibits noted in this Agreement omitted.]

[i] Any covenant not to compete provided in the initial employment documents could be reconfirmed if it is to be continued or modified as agreed. In the provision below, the covenant is waived, which is not necessarily the arrangement you may negotiate. A different approach is to allocate clients to the practice and the departing associate by name in an attached schedule.

[ii] If you own the building or leasehold in which the new practice will operate and rent from you (as a tenant or subtenant, respectively), the arrangements should be addressed in the practice agreement to avoid, for example, an issue of self dealing at a later date.

[iii] The New Practice LLC could be managed by you and your partner as members. If you are the principal partner, as is assumed in this sample agreement, you could be named manager and thus secure operational control over the new practice. There is likely little benefit to naming all members as managers. If you and your partner are equals, you should likely both simply be members.

[iv] Determine with your attorney whether you should form a professional LLC or regular LLC if your state law permits both.

[v] Since you and your partner are forming a new practice, you will each contribute certain assets to the practice. These assets should be detailed in exhibits attached to the agreement, and any significant issues or concerns should be addressed in the representations in the agreement. The sample given herein reflects that certain assets should be returned to you if the new practice dissolves. The attorney for the practice should complete the necessary legal documents to transfer these assets (for example, bill of sale for personal property, assignment of contract for contract rights, or assignment of leaseholds.).

[vi]Determine whether you wish to issue certificates. If not, then delete. If so, be certain to follow through with all requisite formalities.

[vii] Consider appropriate titles. How will clients respond to a person called "Manager" or "Member?" What do applicable law and ethics opinions permit?

[viii] The following paragraph continues to address an assumed fact in this sample agreement, namely that you own a building which you are leasing to the practice. Any assets that are your personal assets and are leased or licensed to the practice should be addressed.

[ix] The sample provision assumes that you as senior partner and manager have some preferential powers.

[x] Larger and nonroutine transactions should require some special or greater level of approval. If you wish, and you have the negotiating clout, you could demand that any such item be subject to your approval. If your partner has any significant clout, he or she would likely also want approval over large matters. The $10,000 figure is arbitrary. You should consider payments to members (partners) as all requiring two signatures.

[xi] Consider the implications to the practice of loss of qualification. The sample provision presumes that if you or your partner are disqualified from practicing accounting, your buyout should be reduced. This may or may not be what you believe appropriate.

[xii] Many of the operational provisions may be viewed as unnecessary to address so formally in an agreement. The purpose of these provisions (even if not ultimately included in any final agreement) is to focus you and your future partner on operational details that are easily overlooked but that can result in friction at a later date.

[xiii] If significant expenses are anticipated, you may wish to address them in the agreement. For example, the new junior partner, while required to cede a number of control issues to you, may reasonably wish assurance that, for example, equipment and staff which he or she may need will be provided as promised.

[xiv] Consider any staffing and personnel issues. This is especially important if each professional concentrates in a different area or practices in a different manner. As noted above, with respect to equipment, if a colleague is joining a practice that you predominantly control, they may reasonably wish to have assurance that they will have the secretarial and administrative support that they need. Agreeing on such issues in advance can avoid disagreements at a later date.

[xv] You and your new partner may have different ideas as to the levels of insurance coverage that are appropriate. This potential difference in practice style, if not addressed, could create friction at a later date. What minimum insurance amounts does each professional want? The purpose of assuring that all professionals agree on the insurance coverage is to avoid claims or problems later if the coverage is inadequate or if one wishes to lower coverage to increase profits.

[xvi] Consider an independent mechanism to trigger any related party price payment. If a related party transaction is to be significant, such as the rental by the practice of your building, an independent method of setting rent can minimize any risks to your new junior partner and preserve fairness.

[xvii] The following provision addresses an employment package for a key person to which the professionals agree. For example, if you believe that the office manager is a key person in your practice, you may want your new partner to agree in advance to her continued employment, compensation, and other terms.

[xviii] When you and one other professional join and form a firm (LLC), consider accounts receivable and other assets. Should each of you collect your own accounts receivable incurred prior to the start of the new practice or contribute them to the practice? If contributed, what about the costs of collection and how should the proceeds be divided?

[xix] The possible need for future capital should be addressed. In the context of this sample agreement, in which it is assumed that you as the senior and controlling partner have retained many control functions, the following provision provides you alone, as manager, the right to make a capital call. In many cases, anything but unanimous consent of all partners will not be an agreeable basis for a capital call. In conjunction with this, consider how the provisions governing the ability to secure bank financing are addressed. Should the consent of both partners be required? Should the provision governing bank loans have the same decision making process as a capital call requirement?

[xx] What should be the consequences if the junior partner is unwilling to make a capital call? You could loan the money and receive a preferential interest rate. You could contribute and reduce his capital interest in the firm (a rather Draconian measure if the junior partner has no say in the capital call) or impose some other consequence. If you insist on controlling capital calls, and the consequence to the junior partner is significant, some limits on the total amount that can be called and some reasonable time periods for making the contribution may be appropriate to include to minimize the unfairness of the impact on your junior partner.

[xxi] Perhaps the most important provision to address in any small firm agreement is how profits of the practice will be allocated. There are a myriad of methods that can be used. A simple approach illustrated below is an allocation based on the business you and your junior partner each contribute. Bear in mind that a cost-sharing arrangement is one in which an allocation is based purely on revenue generated. Issues of identifying who generated the revenue assume tremendous importance. If you are the senior partner, with the majority of the clients, what happens if a client starts a new business or refers another client? New relationships that are solely your generated business leave little opportunity for your junior partner's growth. If the allocation is based on an allocation of services rendered rather than the originating source of the business, then the junior partner could benefit substantially with limited economic return to you for the clients generated. Some combination of profit allocation based on business generated and services performed can be used. These provisions should be coordinated with a draw.

[xxii] Consider and modify the agreement concerning origination or other business arrangements between you and your partner. If profits are to be allocated based on client origination, it can be advisable to list clients that have been originated by each professional at the outset of the relationship to avoid any uncertainty later.

[xxiii] Modify to reflect business arrangements between and among professionals. A point system or simple fixed percentage ownership interests can also be used.

[xxiv] If one partner provides substantially all of the services for a particular client originated by the other partner, perhaps, at some level, the allocation for credit should change.

[xxv] The following provides for periodic distributions with a significant postyear end adjustment, when figures for origination, for example, become known. A more frequent adjustment period could be used. Periodic draws are provided. Your junior partner may insist on some minimum guaranteed draw. The provision below provides that you, as managing partner, shall have control over these issues.

[xxvi] Address cash flow for distributions. The following establishes a percentage of prior earnings as a base for a periodic draw. The base is set low enough so that, hopefully, the ability to pay it, even in a slow month, should be sustainable. Should it be in your sole discretion as Manager? Parameters based on prior years? What?

[xxvii] This agreement must be modified to address distributions above the draws. Distributions could be made in equal amounts based on estimated revenues generated or actual revenues from, perhaps, the prior quarter or Sharing Ratios. Alternatively, if draws are not mandated as above (then delete the bracketed language), then distributions can be made periodically based on some other standard, such as those indicated in this comment.

[xxviii] If you agree to some minimum distribution amount for your junior partner, you may want a safety valve in case the new partner's production is below some minimum hurdle. This is more
of a concern if you are creating a practice with a new partner rather than a staff accountant whom you are promoting.

[xxix] If there are more than two members, consider whether some percentage of members, as well as you as manager, should have to consent to the assignment.

[xxx] The following provisions need to be carefully tailored to reflect the intent and understandings of you and your new junior partner. These provisions must also be modified to reflect whether you are the manager or if the practice will be run more equally by members. In a larger practice (see Chapter 5), a management committee may make these decisions.

[xxxi] Should all members be permitted to vote? What key issues require protection? Even if a new junior partner is willing to cede significant management powers to you, there will be several fundamental decisions in which he or she may insist on having some input or even veto power. The following is a listing that can be negotiated and modified as appropriate for your arrangements and agreements with your new junior partner.

[xxxii] Disability provisions are often treated as a stepchild to the death buy-out provisions, since few professionals take the time to work out the details, and far fewer are willing to address the cost of disability buy-out insurance, for example. Consider the following only as a starting point. Should a senior professional be afforded longer time periods within which to return from disability? Should partial and total disability be treated differently? What if more than one professional is disabled or dies, which would require simultaneous buyout?

[xxxiii] The salary continuation is often coordinated with the waiting period on individual professionals' personal disability policies. Consider whether payments should be based on the draw, if one is provided for above. In a small practice, this could be a significant financial drain, so perhaps only a percentage of actual draws would be paid.

[xxxiv] Consider what restrictions should apply after disability. Should different provisions be provided for you as manager than for your junior partner? If profits attributable to either partner's services will continue for some period following disability (for example, collection of accounts receivable or completion and billing of work in process), some continuation may be warranted. This needs to be coordinated with any continued draw or salary above.

[xxxv] A common method to set a death buyout is to set a value in advance to avoid the complications of a formula or the cost and potential arbitrariness of a valuation. Calendar a procedure to periodically update any stated value and have the accountant for the practice review any appropriate adjustments to make if the certificate is not updated for a specified time period.

[xxxvi] For many, a formula rather than an appraisal approach may be simpler and less confrontational. Relying on appraisals for a small practice is costly and nettlesome especially for issues like goodwill. If a formula is used, should it be in lieu of a stated value or only if the stated value is older than some specified time period? If the death buyout is funded with insurance, should the insurance be the full payment for the practice interest regardless of any valuation?

[xxxvii] Terms must be reasonable to finance without destroying the practice. Again, as noted above, consider the impact of multiple payouts.

[xxxviii] A certificate of stated value is a common way to set a buy-out price for a practice interest that avoids the need for formula, the complexities of a valuation, or a negotiation of price. The practical problem for you, just as for most of your clients that have similar buy-out structures, is that, too often, the stated value certificates setting the value are not updated with sufficient frequency to make them useable. The

provision provides for a formula if the certificate of stated value is not updated sufficiently. A more complex formula approach could be used. The following is merely an illustration of some concepts that could be considered and modified in developing a formula for you practice. The percentages used need to be revised to fit the economics of your practice.

[xxxix] If a valuation reserve is used, consider whether adjustments should be made if actual realization exceeds or falls short of the estimates made based on the reserve. The following provision provides for some adjustment. The downside is the continued involvement, accounting, and potential for issues. The 20 percent figure is an estimate which may or may not be reasonable for your practice.

[xl] The following provision provides a measure of goodwill. The 60 percent figure should be adjusted to reflect an appropriate percentage for your practice. The three-year period is intended to smooth unusual years, but many different approaches can be used to accomplish this result. Further, if the junior partner is just becoming a partner, a substitute figure could be used for the prepartnership years, perhaps the junior partner's earnings or some variant thereof. Carefully evaluate the postdeath practice's ability to pay what this amount might be.

[xli] The following provision seeks to put a "cap" or ceiling on the maximum amount that can be paid to a former partner under a buyout so that it does not unduly burden the practice or surviving partners. The concept should be addressed and whether or not the 20-percent figure, or a gross income measure, is used.

[xlii] Representations and warranties must be extensively tailored to reflect the specific situation of your new practice. If you and a colleague who have not previously practiced together are joining as partners, more extensive representations and due diligence are advisable than if your future partner has been employed by your new practice for years before the promotion to partner. For more extensive representations and warranties and due diligence, see Chapters 5 and 6. The bracketed language would be used if you already owned and operated the practice LLC (referred to as "Old-Practice"), and the new partner was buying into your existing entity and contributing his or her old practice, "Merged Practice."

[xliii] The following representations and warranties of your new partner have been made more significant than those listed above for you. If negotiation permits (or your new partner is simply willing to accept) a lower level of representation and due diligence for you, then what he or she provides other than this approach would be viable. If your new partner feels that the level of representations should be relatively equal, then either the less stringent provision above or the more stringent provisions below could be used.

Appendix 4-2: Sample Partnership Agreement for Two Practitioners Joining as Equal Partners in a General Partnership[i]

PARTNERSHIP AGREEMENT

PARTNER-ONE AND PARTNER-TWO

THIS AGREEMENT, entered into this ___th day of MONTH, YEAR by and between PARTNER-ONE ("PARTNER-ONE") who resides at ADDRESS; and PARTNER-TWO ("PARTNER-TWO") who resides at ADDRESS; (collectively PARTNER-ONE and PARTNER-TWO are called the "Partners," or individually, the "Partner"); and FIRM-NAME, a STATE-NAME general partnership, with its principal place of business at ADDRESS (the "Partnership").

R E C I T A L S

1. WHEREAS, the Partners are both Certified Public Accountants, licensed to practice in the State of STATE-NAME and are members in good standing of the STATE-NAME State Society of CPAs and the American Association of Certified Public Accountants ("Organizations").

2. WHEREAS, the Partnership of FIRM-NAME began in YEAR without a written partnership agreement. The Partners, through this agreement, set forth the rights of the Partners and the terms under which the Partnership will henceforth conduct its business and confirm the relationship and terms that have governed their oral agreement since inception.[ii]

3. WHEREAS, the Partners have formed the Partnership in order to practice public accounting and all activities incident and necessary thereto, including but not limited to, operating a tax, accounting, and consulting practice, maintaining offices, owning property (but not the building in which the Partnership operates, which is

governed by a separate arrangement between the parties), managing and operating any property which comes to the partnership by way of fees or investments (the "Business").

4. WHEREAS, the Business shall be conducted in strict conformity with the rules, regulations, and ethical standards governing the practice of public accounting as prescribed by the State of STATE-NAME licensing body and the rules, regulations, and guidelines of the Organizations. Each Partner shall maintain his or her certified public accounting license [and LIST-OTHER-CREDENTIALS] and privilege to practice accounting in the State of STATE-NAME ("Duly Qualified").

5. WHEREAS, the Partners wish to provide for the management of the Partnership.

6. WHEREAS, the Partners wish to provide for the succession of the Partnership, including the admission of new Partners and the disability, retirement, and termination of Partners.

NOW THEREFORE, the Parties hereto, in consideration of the mutual premises and covenants herein contained, agree as follows:

T E R M S

A. Name of the Partnership

1. Change in Partnership Name Generally

Notwithstanding anything herein to the contrary, the name of the Partnership shall continue as FIRM-NAME until it is changed by unanimous agreement of all Partners.

2. Use of the Name "PARTNER-ONE and PARTNER-TWO"

The name of the Partnership shall be FIRM-NAME. Should either Partner terminate his involvement with the Partnership for reason of death or disability only, the

remaining partner may, in his sole discretion, continue to use the name "FIRM-NAME" as a part of the name of the Partnership or any successor partnership or entity. However, where a partner terminates for any other reason, including but not limited to establishing a competing accounting or related or similar practice, the Partnership shall cease and neither Partner shall have any right to use the name of the other Partner in any manner without the written consent of such other Partner, which may be withheld for any reason.

B. Formation of Partnership; Offices; Term

1. Formation

The Partners agree that they have heretofore formed the Partnership and operated such Partnership since its inception under and pursuant to oral agreements, which have been embodied in this Agreement.

2. Office

The Partnership's office shall be located at ADDRESS and such other addresses and places of business which the Partnership shall establish.

3. Term

The Partnership shall continue, subject to the terms and conditions set forth in this Agreement, until December 31, YEAR, and from fiscal year to fiscal year thereafter unless modified or terminated by the vote of either of the Partners. Such termination shall not release any Partner from any obligation hereunder arising prior thereto.

C. Capital Contributions

1. Initial Capital Contributions

The initial capital contribution by each Partner were: PARTNER-ONE - $ AMOUNT; and PARTNER-TWO - $ AMOUNT, set forth in Exhibit ___ attached hereto.

2. Capital Accounts

a. Individual capital accounts shall be maintained for each Partner. Capital accounts shall be maintained in a manner that conforms with Internal Revenue Code of 1986 Section 704 and the Treasury Regulations thereunder.

b. Capital contributions of the Partners shall not be subject to withdrawal, except by unanimous written agreement of the Partners or as specifically provided in this Agreement.

c. No Partner shall be entitled to receive interest on such Partner's capital account.

(i) Partnership Capital:

The capital of the Partnership shall be maintained at a sufficient level to adequately provide necessary working capital and facilities for the reasonable operation of the Business and to comply with the requirements of any regulatory body ("Minimum Capital"). The Minimum Capital shall not be less than Ten Thousand Dollars ($10,000.00) per partner ("Base Capital"). The Base Capital may only be increased or decreased by a unanimous vote of the Partners.[iii]

(ii) Additional Contributions:[iv]

The Partners shall make such additional Capital Contributions as they unanimously agree from time to time are necessary for the successful operation of the Partnership. Such additional Capital Contributions shall be made in proportion to each Partner's Partnership interest.

(iii) Mandatory Loans By Partners

(1) In lieu of requiring additional capital or a Capital Call to meet the working capital needs of the Partnership, the Partners may, in their unanimous discretion, determine that it is preferable to have the Partners make mandatory loans to the Partnership to meet temporary working capital needs.

(2) The Partnership shall pay interest to the Partners on their mandatory loans to the Partnership. The interest rate paid on such loans shall be set at the federal short term rate as determined under Internal Revenue Code Section 1274(d) for the month in which any such loan was made (the "Rate").

(3) Where any Partner fails to make the required additional capital contribution or mandatory loan, interest shall be charged to such Partner and paid by such Partner on the unpaid contribution or mandatory loan on the first day of each month after the required date for such contribution or advance. Interest shall be charged at the Rate plus Two (2) percent.[v]

3. Profits and Losses

a. Generally

Net profits shall be calculated on a federal income tax basis and shall equal net profits on the Partnership's federal income tax return prior to any deductions for compensation to Partners. All profits and losses shall be shared equally by the Partners.

b. Partner Draw[vi]

Each Partner shall be entitled to receive a monthly draw determined unanimously by the Partners. Such amount shall be allocated one-half to PARTNER-ONE and one-half to PARTNER-TWO. Where the Partners cannot agree on the amount of any draw, the amount shall be set at the lesser of: the excess of net cash flow for the calendar year to the date of such draw, reduced by any accounts payable, debts, and other expenses estimated to be due or payable within Thirty (30) days from the date of the payment of such draw, or historical practice.

4. Participation in Profits and Losses

Partners, after the receipt of their annual draws, shall share in profits or losses in the following proportions: one-half to PARTNER-ONE and one-half to PARTNER-TWO.

G. Withdrawals by Partners

1. Draws shall be charged against each Partner's capital account.
2. Profits and losses, calculated on a federal income tax basis, shall be credited or debited to each Partner's capital account as soon as practicable after the close of each fiscal year of the Partnership. Profits shall first be credited in proportion to the amount of draw paid to each partner during the year. The difference between such total draws and actual profit or loss for the year shall be credited or charged, as the case may be, against each Partner's capital account in proportion to each Partner's equal interest in the Partnership.
3. If a Partner's capital account shall have been reduced below the Minimum Capital required to be maintained by that Partner, an immediate Notice of demand shall be made by the remaining partner to restore such capital account

to the Minimum Capital required to be maintained by such Partner, and such Partner shall promptly comply with such demand. If such Partner fails to comply no drawings shall be paid to such Partner until the deficit in Minimum Capital is repaid from such draws.

H. Meetings

1. Annual Meeting

A formal meeting of Partners shall be held at least annually on MONTH 1 of each year (or the first workday thereafter if such date is a weekend or secular or religious holiday), unless the Partners unanimously agree in writing to another date.

2. Special Meetings

Any Partner may, at any time, call a special meeting of the Partners, after not less than Ten (10) days Notice ("Special Meeting"). In a situation which reasonably requires urgent or immediate action, any Partner may provide Notice for a special meeting with only so much advance Notice as the Partner giving notice reasonably deems necessary. Such Notice must state that the meeting called is to be a special meeting of the Partnership.

3. Requirements for Notice of Meeting

Any Notice of a forthcoming meeting of the Partners shall specify the proposed issues to be addressed at such meeting. The matters which may be addressed at any meeting called with less than Ten (10) days Notice shall be limited to the issues specified in the Notice.

I. Management[vii]

The following actions ("Major Decisions") shall not be taken except with the prior written consent of all Partners. This provision may not be changed except by an affirmative vote or written consent of all of the Partners.

1. No Partner shall not obligate the Partnership to any obligation or expenditure in excess of Ten Thousand Dollars ($10,000) which is not in the ordinary course of business and a regular and routine expenditure.
2. The Partnership shall not purchase any real property or leasehold interest.
3. The Partnership shall not engage in any business substantially unrelated to the practice of public accounting.
4. Incurring any debt other than trade accounts payable or other debts incurred in the ordinary course of the business or to guarantee any debt or other obligation, where the amount involved exceeds Twenty Thousand Dollars ($20,000).
5. Sale, lease, license, or other transfer of any material asset, where the lease or license is for more than a One (1) year period.
6. Entering into any transaction in the name of the Partnership not permitted by this Agreement and not reasonably within the scope of the business of the Partnership as defined herein.
7. Determination of the maximum and minimum working capital requirements of the Partnership, where the amounts involved differ significantly from those historically maintained by the Partnership.
8. The adjustment, settlement, or the compromise of any material claim, obligation, debt, demand, suit, or judgment against the Partnership.

The Partnership shall not employ or retain any party related to any Partner without the unanimous consent of all Partners as to such employment or retainer, the compensation involved, and the services to be rendered or the products to be sold.[viii]

J. Partners Voting

1. Partners' Voting Generally

a. Every Partner shall have an equal vote at any meeting which is equal to such Partner's interest in the Partnership as of the date that the meeting at which such vote shall occur takes place.

b. Any Partner may vote on any matter, except as specifically prohibited by this Agreement.

c. Unless a different percentage is specified elsewhere in this Agreement, unanimous consent of the Partners is required to be binding upon the Partnership and all Partners. Any proxy, however, must be submitted at the beginning of any such meeting to be valid.

2. Amendment of Partnership Agreement

This Agreement may only be amended by the following procedure:

a. Any Partner may give written Notice to the other Partner of a requested amendment to this Agreement.

b. The Partners shall vote on such proposed amendment at the next Partners' meeting or by a unanimous written consent.

c. A unanimous vote of the Partners is required to approve such Amendment.

K. Changes in Partners

1. No Classes of Partners

All partners are of the same class and have identical rights except as specifically provided otherwise in this Agreement.

2. Addition of Partners

A new Partner may only be added by unanimous consent of all of the Partners and upon execution of a counterpart to this Agreement.

L. Disability

1. Definitions and Provisions Concerning Disability[ix]

a. A Partner shall be determined to be disabled effective on the first day of the third full month following the month in which such Partner is deemed disabled according to the provisions contained in this Section ("Disability Date"). Until the date of such disability, such Partner shall continue to share in regular draws.[x]

b. A Partner shall be deemed to be disabled where such Partner has been qualified as disabled in accordance with the provisions of the disability policies referenced herein [POLICY-REFERENCES].[xi]

c. Where no such disability policy is valid or where for any other reason the mechanism of determining disability under such policy is inconclusive, then a Partner shall be deemed to be disabled where Two (2) physicians provide written opinions to the Partnership that such Partner is disabled

as a result of any mental or physical injury, ailment, or other condition such that the Partner is unable to perform his or her duties as a Partner on a basis of at least One-Half (1/2) the regular work week such Partner had worked prior to the disability, and that such condition is likely to persist past the Disability Date.

2. Consequences of Disability

a. If a Partner is Disabled, such Partner draw shall continue without reduction during the period prior to the Disability Date.

b. A Partner is deemed to be only partially disabled where such Partner is unable to perform services on a full-time and regular basis for the Partnership in accordance with historical efforts, but can perform services for not less than Fifteen (15) hours per week, determined on average in any calendar quarter ("Partial Disability").

c. In such event, such Partner's draw shall be determined by multiplying the draw such Partner would otherwise be entitled to by the following formula:

$$\frac{\text{Hours actually billed to clients during a pay period}}{\text{45 Hours x No. weeks in pay period}}$$

d. Where a Partner is partially disabled for more than Twelve (12) calendar months, the remaining Partner may elect to terminate such Partner until he is able to work not less than Thirty (30) hours per week, determined in the same manner as in the preceding paragraph ("Minimum Work"). When a Partner under Partial Disability is so terminated, such Partner may return to work when able to meet such requirement.

e. When the Partner who is under a Partial Disability fails to return to perform at least the Minimum Work within Twenty Four months, such Partner shall be deemed Permanently Disabled and shall be terminated, and his interest in the Partnership shall be repurchased by the remaining Partner for the Stated Value determined below.

f. For purposes of applying the above provisions, any period of disability or Partial Disability during any Sixty (60) month period shall be aggregated.

g. The interest of a Permanently Disabled Partner shall be purchased for the Stated Value, as set forth in Exhibit ___, as amended from time to time.[xii] The Stated Value shall be paid by the Partnership or remaining partner in monthly payments equal to Twenty Percent (20%) of the gross revenues of the Partnership as reported on the Partnership's federal income tax return for each year until such Permanently Disabled partner shall receive payments which aggregate the Stated Value. No interest shall be paid on such amount. Gross revenues for any partial year period shall be calculated by a proration of the amounts earned on the applicable tax return on a daily basis. Gross revenues shall be reduced by any refunds, adjustments, and allowances offered to clients. This payment shall begin on the first day of the first calendar quarter following the effective date of such Permanent Disability. Payments shall continue for the number of calendar quarters necessary until the entire Stated Value is repaid without interest. However, if the remaining Partner dies or becomes Permanently Disabled, such payments shall cease.

M. Death of a Partner

1. A deceased partner's estate shall sell the Partnership or the remaining Partner shall purchase such deceased Partner's interest in the Partnership, or both, for

the amount of insurance each Partner maintains on the life of the other in accordance with Exhibit ___, attached. Such payment shall be made as soon as possible following the death of the Partner and the receipt of the accounting required in the provision below.

2. All payments, other than the return of cash basis capital (not the excess of accrual basis capital over cash basis capital), are intended to be taxable to the recipients as compensation for past services under Code Section 736(a)(1) and deductible by the remaining partners. Capital shall be the amount reflected on the Partner's Form 1065, Schedule K-1, as adjusted to reflect the adjustments and calculations required under this Agreement.

N. Accounting Calculation on Disability Termination, Retirement, or Death of a Partner

As of the effective date of Total Disability, retirement, or death (the "Event"), the Partnership shall have prepared an interim closing of its books and shall thereafter distribute the deceased, disabled, or retired Partner's distributive share of Partnership profits and losses for the period through the effective date of the Event calculated consistently with prior practices of the Partnership in making such calculations. Where such payment is made within Sixty (60) days of the Event, no interest shall be paid. Where such payment is made more than Sixty (60) days following the Event, interest shall be paid at the Rate plus Two (2) percent through and including the date of payment.

O. Bankruptcy or Insolvency of a Partner

In the event of bankruptcy or insolvency of a Partner, the other Partners shall have the right, by a vote as provided in this Agreement, to deem such bankruptcy or insolvency as

a withdrawal of that Partner. Such determination shall be made upon a vote of the Partners and, upon Notice to such Partner, an accounting shall proceed as provided above. The interest of a Partner terminated under this provision shall be handled as provided in this Agreement.

P. Termination of a Partner for Cause

1. Definition of Cause

A Partner shall be terminated for cause when:

a. Suspension or termination of such Partner's Certified Public Accountant's license by the State of STATE-NAME.

b. Professional misconduct or violation of the Code of Professional Ethics, if such misconduct intentionally is continued after Notice has been given by the Partnership.

c. Insolvency, bankruptcy, or assignment of assets for the benefit of creditors, if such acts injure the professional reputation of the Partnership.

d. Conviction for a felony or greater crime. Notwithstanding anything herein to the contrary, should any Partner not remain Duly Qualified, such Partner shall automatically be terminated.

2. Effects of Expulsion for Cause

Upon a determination that a Partner be expelled for cause, he shall thereby be so expelled and shall have no right or interest thereafter in the Partnership or any of its assets, Partnership Clients, files, records, or affairs. A Partner terminated for cause shall not have any further professional duties to the Partnership or any of its clients and shall

not serve any client thereafter. Such terminated Partner shall immediately remove himself and his personal effects from the Partnership offices. Upon any such termination, the terminated Partner shall not accept engagement for Services from any Partnership Clients (defined for this provision only to include any persons who have been clients of the Partnership during the Six (6) month period following the termination for cause). This restriction, however, does not preclude employment by a client. From the effective date of the termination for cause, the terminated partner shall not participate in the income or losses of the Partnership or any distribution or drawings from the net income.

3. Payments to Terminated Partner in Full Payment of His Interests in the Partnership

The Terminated Partner shall be paid the following:

a. Capital account.

b. Amounts due as a result of the Accounting.

c. One-Half of the Stated Value paid as provided above.

4. Debts of the Terminated Partner

No other indebtedness or liability of the terminated Partner to the Partnership shall be discharged (undischarged liabilities shall include, but not be limited to, the terminated Partner's responsibility for any acts of malpractice, negligence, or willful misconduct prior to the effective date of the termination for cause).

Q. Duties Of Partners

1. Devotion Primarily to Professional Services

Each partner shall devote his or her best efforts to professionally serving the Partnership and the Partnership's Clients. Subject to any exceptions consented to by all of the Partners, each Partner shall devote substantially all of his or her normal business time to such services.

2. Charging for Professional Services

a. Each Partner shall charge reasonably for all professional services rendered, following the policies of the Partnership as to fees charged. However, each Partner may serve professionally without charge any member of his own family or any relative. With the consent of all of the Partners, any Partner may serve without charge or at less than regular charge, any civic, educational, religious, or charitable organization or project.

b. No salaries, commissions, fees, or gratuities of any substantial significance shall be accepted, directly or indirectly, by any Partner personally from any client or prospective client of the Partnership, unless the express consent of all of the Partners has been received in advance. The fair value of any such items received with such consent shall be treated for accounting purposes as compensation to the Partnership and shall be charged against such Partner as an advance on the next amount due from his drawing account. A unanimous vote of all of the Partners may agree, however, to any exception to any provision of this section.

3. Professional Obligations

a. At Partnership expense, each Partner shall maintain memberships in good standing in the STATE-NAME State Society of CPAs and the American Institute of Certified Public Accountants [LIST-OTHER].

b. At Partnership expense, each Partner shall maintain fully effective his license and privilege to practice in the state of STATE-NAME and in any other state in which he or she is licensed or in which the Partnership conducts business.

c. Each Partner shall, at all times, comply with all of the provisions of the Code of Professional Ethics as adopted by the STATE-NAME licensing body, and by the statues, rules, and regulations of the STATE-NAME Society of CPAs and similarly in any state where such Partner is licensed.

d. Each Partner, at the Partnership's expense, shall earn not less than the minimum number of continuing professional education credits required to maintain such Partner in good standing with any organization or licensing agency to which such Partner, or the Partnership, is subject. The Partners shall require that all professional staff meet similar requirements.

R. Finances and Records

1. Disbursements

Any Partner may commit the Partnership to the purchase or repair of properties, equipment, furniture, fixtures, and supplies in amounts aggregating no more than Two Thousand Dollars ($2,000) without approval of any other Partner.

2. Books of Account

The Partnership shall maintain proper and complete books of account in accordance with the method used for income tax purposes, open to inspection at any time by any of the Partners or by the designated representative of any of the Partners. However, the Partnership shall endeavor to maintain lists of accounts receivable and accounts payable.

3. Files and Working Papers

Each Partner agrees that appropriate files are to be maintained for the purposes of retention of copies of income tax returns, financial statements, and other reports and documents prepared and issued by the Partnership, together with underlying work papers (collectively the "Papers"). The title to and ownership of the Papers shall be vested solely in the Partnership. However, a retired partner or the executor, administrator, or personal representatives of a deceased partner shall have the right to inspect the Papers for the period such person was a Partner or was owed monies by the Partnership. A withdrawing Partner may retain copies of the work papers of a client which he continues to serve.

S. Arbitration[xiii]

In the event of a controversy or claim arising under or out of this Agreement which cannot be settled by the Partners or their legal representatives, it shall be settled by arbitration in accordance with the rules of the American Arbitration Association, in the

County of Bergen, STATE-NAME, and judgment upon the award may be entered in any court having jurisdiction.

T. Indemnification

Any Partner guilty of gross negligence or intentional misconduct which results in any liability to the Partnership, which is not covered by malpractice or other insurance maintained by the Partnership, shall indemnify and hold the Partnership and the other Partner harmless for any costs incurred by the Partnership or such other Partners on account of such Partner's gross negligence or willful misconduct.

U. General Provisions

1. Burden and Benefit

The covenants and agreements contained in this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties hereto.

2. Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the State of STATE-NAME (the "State"). The parties hereto, by executing this Agreement, consent to personal jurisdiction in any court of competent subject matter jurisdiction within the State.

3. Pronouns and Plurals

All pronouns used herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the Person or Persons may require in the

context, and the singular form of nouns, pronouns, and verbs shall include the plural, and vice versa, whichever the context may require.

4. Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto. The parties expressly agree that photocopies, facsimiles, PDF files or other electronic versions of this document shall be as valid as an original.

5. Severability of Provisions

Each provision of this Agreement shall be considered severable and if for any reason any provision which is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any then existing law, such invalidity shall not impair the operation of or affect those provision of this Agreement that are valid.

6. Entire Agreement

This Agreement, together with the Exhibits attached and to be attached, sets forth all (and are intended by all parties to be an integration of all) of the promises, agreements, and understandings among the parties hereto with respect to the Partnership and the Business.

7. Construction

In the event of any conflict between a provision of this Agreement and any Exhibit attached hereto, the provision of this Agreement shall control.

8. Captions

Section captions and Article captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision.

9. Effect of Amendment

No amendment to this Agreement shall affect the payments made to any Partner whose withdrawal, death, disability, or termination was effective prior to the date of such Amendment, unless such former Partner shall consent to such change in writing.

V. Notice

Any notice required or permitted to be given under this Agreement or any Exhibit shall be deemed duly given if sent by facsimile, certified mail return receipt requested, Express Mail by the U. S. Postal Service, Federal Express or another recognized overnight courier, or by hand delivery, postage and expenses prepaid, addressed to the Partner at the address set forth above, unless notice of a change of address is provided in accordance with the terms of this Section. A copy of any notice sent by any Partner must be sent to the Partnership, at the Partnership's principal place of business, as set forth above. Notices shall be effective as follows: if sent by hand delivery or facsimile on the day sent. However, if dispatch is after 3:00 p.m., such notice shall be effective on the next business day. Notice by overnight courier shall be effective on the next business day following dispatch. Notice by mail shall be effective on the Third (3rd) business day following dispatch.

IN WITNESS WHEREOF, the parties have set their hands on the date first above written.

_____ _____

PARTNER-ONE PARTNER-TWO

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[i] Arguably, this general partnership agreement is inadvisable because, in perhaps every circumstance, a two- (or more) partner practice should be organized to provide some measure of protection for you from your partner's malpractice. The reality, however, is that if you both work on almost every client matter, there may not be significant insulation from liability on most files. Also, this agreement is more simplistic than necessary to address a wide range of issues. However, from a practical perspective, many practitioners will not wish to address more detail than that contained in a simple agreement such as that following.

[ii] Too often, small practices never sign a formal partnership agreement. One of the purposes of this agreement is to memorialize the arrangements between the two partners and confirm that these arrangements have been in place pursuant to an oral understanding since the partnership formed.

[iii] Setting a minimum capital is commonly done to avoid disputes later about retention of funds in the firm. The $10,000 is arbitrary; any appropriate figure could be substituted.

[iv] Only two partners voting is meaningless, so most of the following provision has been eliminated, since you either agree or not. If you have any additional details concerning loans, advances, or additional capital which could provide a greater deal of specificity, please advise.

[v] If you effectively contribute the capital via loan or other arrangement when your partner would not, some type of provision should address the inequality. This provision is intended to provide an interest payment to you on the excess advance at a rate that is reasonable for you, and costly but not outlandish for your noncontributing partner. In some instances, it may be advisable to give

such a provision real teeth by giving the right to buy out the noncontributing partner at some point.

[vi] Review the draw provisions in light of for example, regular practice and cash flow needs.

[vii] Since there are only two partners, most issues must be addressed by unanimous consent. This obviates many of the typical management and control provisions and mechanisms contained in a partnership agreement. Therefore, it is especially important to outline specific actions which should not be taken without unanimous consent.

[viii] Insert details acknowledging and agreeing to any presently existing related party transactions.

[ix] Coordinate the cessation of draws with the end of the waiting period on your personal disability insurance policies.

[x] Use the definitions of your disability policies. To avoid confusion, either attach copies or refer to the actual policies in the body of this agreement.

[xi] Be sure your practice accountant addresses any issues that pertain to the release of private health information to facilitate the procedure of demonstrating disability.

[xii] The buyout in this provision is assumed to be at 20 percent of gross figure. A different percentage or a different base may be more reasonable depending on the nature and profitability of your practice. The last sentence of this sample provision provides that if the surviving partner also dies or is disabled, the payments to the initial partner to die or become disabled cease. This can prevent a hardship on the estate, heirs, or guardian of the surviving partner. However, if you die, and your surviving partner then dies, and his or her estate is able to sell the practice, the final clause below would prevent your estate from sharing in those sale proceeds, which is unfair.

[xiii] Do you really want arbitration? Can you name an impartial person to resolve minor disputes?

Appendix 4-3: Sample Shareholders' Agreement for Two Person Accounting Practice—Managing Partner and Two Staff Accountants Promoted to Junior Partner[i]

SHAREHOLDER AGREEMENT

SENIOR-CPA, P.C.

THIS AGREEMENT, entered into this first day of MONTH YEAR between and among:

a. SENIOR-CPA, who resides at SENIOR-ADDRESS (the "Principal Shareholder");

b. JUNIOR-1-SHAREHOLDER, who resides at JUNIOR-1-ADDRESS ("JUNIOR-1-SHAREHOLDER");

c. JUNIOR-2-SHAREHOLDER, who resides at JUNIOR-2-ADDRESS ("JUNIOR-2-SHAREHOLDER");

Collectively JUNIOR-1-SHAREHOLDER and JUNIOR-2-SHAREHOLDER are referred to as the "Minority Shareholders." Collectively the Principal Shareholder and the Minority Shareholders are referred to as the "Shareholders" and individually, the "Shareholder;" and

a. SENIOR-CPA, P.C., a STATE professional corporation, with its principal place of business at STREET, CITY, STATE ZIP (the "Corporation").

Collectively, the Corporation and the Shareholders are referred to as the "Parties" and individually as "Party."

R E C I T A L S

1. WHEREAS, the Shareholders are all certified public accountants practicing in, and duly licensed in, the State of STATE-NAME.

2. WHEREAS, prior to the execution of this Agreement, the Principal Shareholder is sole owner of all equity in the Corporation consisting of Two Thousand (2,000) shares of stock.

3. WHEREAS, The Corporation is engaged in the general practice of accounting, including tax return compliance, tax planning and consulting, divorce planning and valuation services, [DESCRIBE PRACTICE] in the State of STATE-NAME (the "Business").

4. WHEREAS, The Principal Shareholder desires to have the Minority Shareholders, who are employed by the Corporation as at-will employees become Shareholders in order to facilitate and foster the increased business generation of the Minority Shareholders and to motivate and reward the Minority Shareholders for becoming more active in management aspects of the Business, and the Minority Shareholders are desirous of same.

5. WHEREAS, the Business shall be conducted in strict conformity with, the rules, regulations, and ethical standards governing the practice of accounting in the State of STATE-NAME and any other applicable licensing body. All Shareholders shall remain in good standing with or properly authorized by such licensing and regulatory bodies or departments, and shall remain members in good standing of the STATE-NAME State Society of CPAs and the American Institute of CPAs ("Duly Qualified").

6. WHEREAS, the Principal Shareholder shall following execution of this Agreement own Nine Thousand Nine Hundred Ninety Eight (9,998) Shares, which shall constitute all but Two (2) Shares of the issued and outstanding stock of the Corporation, with the Minority Shareholders to own One voting (1) Share each.

7. WHEREAS, the Principal Shareholder wishes to provide herein the terms of the arrangements between the Minority Shareholders with the Corporation and the Principal Shareholder, and to generally promote the interests of the Business.

NOW THEREFORE, the Parties hereto, in consideration of the mutual promises and covenants herein contained, agree as follows:

T E R M S

A. Incorporation of Recitals

The Recital clauses above are hereby incorporated into and made a part of this Agreement.

B. Conduct of Business

1. Name of the Corporation[ii]

a. The Business shall only be conducted under the name of "FIRM-NAME, P.C." (the "Name"). The Name of the Corporation shall remain the property of the Principal Shareholder and shall continue until it is changed by the Principal Shareholder.[iii]

b. In the event of the disability (either the Preliminary Disability or Final Disability, as defined below) of the Principal Shareholder, the Name of the Corporation shall continue unchanged unless the Principal Shareholder or the Designee of the Principal Shareholder, votes the Principal Shareholder's Shares to change the Name.[iv]

c. In the event of the demise of the Principal Shareholder, the Name of the Corporation shall continue unchanged unless the Principal Shareholder's executor votes the Principal Shareholder's Shares to change the Name. Upon the completion of the payment of AMOUNT Percent (___%) of the death buy-out purchase price for all of the Principal Shareholder's Shares under the provision

"Purchase of Principal Shareholder's Shares in Event of Final Disability or Death," the Corporation may continue to use the Name or any variation thereof it may choose.

2. Announcements[v]

Professional announcements shall be placed in the STATE-NAME CPA Journal and the PAPER-NAME Newspaper and any other publication reasonably requested by either Minority Shareholder to announce that the Minority Shareholders have joined the Corporation as "Shareholders." Announcements shall also be mailed to all of the Corporation's clients to announce that the Minority Shareholders have joined the Corporation as Shareholders. All of such activities shall be at the sole expense of the Corporation.

3. Support[vi]

The Corporation shall make available to each of the Minority Shareholders a private office, reasonable secretarial assistance, including DESCRIBE-ARRANGEMENTS, administrative assistance, and such other facilities and services as are customary and consistent with the position of being a "partner" in the Corporation and reasonably necessary for the proper performance of the duties of the Minority Shareholders. This support shall be provided at the expense of the Corporation.

4. Implement Major Decisions[vii]

The Shareholders shall, at the expense of and on behalf of the Corporation, implement or cause to be implemented all Major Decisions approved the Principal Shareholder. The Shareholders, Directors, and officers shall conduct, or cause to be

conducted, the ordinary and usual business and affairs of the Corporation in accordance with, and as limited by, this Agreement and the Shareholders shall, to the extent necessary, cooperate with same.

5. Limitation on Authority

Except as otherwise expressly and specifically provided in this Agreement, no party shall have any authority to act for or assume any obligations or responsibility on behalf of any other Shareholder or the Corporation. Nothing herein shall be construed to authorize any Party to act as general agent for any other party or for the Corporation, or to permit any Party to bid for or to undertake any contract for the other Party, except as expressly provided for herein and in furtherance of the Business of the Corporation.

6. Credit

No Party shall have the right to borrow money on behalf of any other party or to use the credit of any other party for any purpose.

7. Banking[viii]

All funds of the Corporation shall be maintained in a bank account or accounts, and no funds of the Corporation shall be commingled with funds or accounts of any Shareholder or person related to any Shareholder. The Principal Shareholder shall have the authority to deposit and withdraw funds from any Corporation bank account or sign checks or other instruments on behalf of the Corporation. If the Principal Shareholder is unable, due to unforeseen circumstances, to sign a check or other instrument on behalf of the Corporation, and undue hardship would occur as a result of the Principal Shareholder's inability to sign for whatever reason, each of the Minority Shareholders may individually sign checks in the Principal Shareholder's absence. JUNIOR-

1SHAREHOLDER and JUNIOR-2SHAREHOLDER have been given limited authority to sign checks of the corporation and acknowledge that such authority may be terminated at any time in the sole discretion of the Principal Shareholder or the Board of Directors.

8. Loans[ix]

The Principal Shareholder may choose to loan funds to the Corporation when needed for reasonable business purposes and when the Principal Shareholder believes such a loan would be more economical or practice in the circumstances. Any loans made by the Principal Shareholder to the Corporation may be made in order to meet the reasonable working capital needs of the Corporation. Such loans shall bear interest at the interest rate as determined under Internal Revenue Code of 1986 (the "Code") Section 1274(d), plus Two Percent (2%), applying the federal mid-term rate, as of the date nearest following the date of the transaction on which interest is to be charged (the "Interest Rate"). Such loan shall be evidenced by a written note and shall have a maturity of not more than Three (3) years.

b. No Shareholder shall be obligated to advance any loans to the Corporation or to guarantee any funds borrowed by the Corporation.

9. Shareholder Loans from the Corporation

The Corporation shall not advance any funds to any Shareholder, officer, or employee, unless there is unanimous consent of all Shareholders for such loan.

10. Expenses[x]

a. The Corporation shall provide to each of the Shareholders reimbursement of professional subscriptions, dues to professional organizations, gasoline expenses, parking, tolls, fees for seminars, bar functions, and meals and entertainment expenses incurred in furtherance of the Corporation's Business and accounted for by them to the Corporation in accordance with applicable provisions of the Internal Revenue Code of 1986 Section 274, as amended and the Treasury Regulations thereunder (the "Code"). In the case of dues, seminars, and bar functions, prior approval of the Principal Shareholder must first be obtained. Reimbursement shall only be made where the expense is a reasonable, necessary, and ordinary expenses of the Corporation, incurred in the furtherance of the Corporation's Business and which is substantiated in accordance with the rules and regulations established from time to time by the Corporation.

b. In addition to the preceding paragraph, the Corporation shall provide the Principal Shareholder, in furtherance of the Corporation's Business, with one or more cellular telephones and an automobile selected, from time to time, by the Principal Shareholder. The Corporation shall reimburse the Principal Shareholder for all necessary and ordinary expenses, including but not limited to, professional subscriptions and dues to professional organizations, automobile expenses (for example,including fuel, oil, tires, repairs, maintenance, insurance, parking fees, tolls, and licenses), seminars and bar functions, and any other necessary and ordinary business expenses of the Corporation.[xi]

c. Reimbursement by the Corporation of the Principal Shareholder's and the Minority Shareholders' ordinary, necessary, and reasonable substantiated business expenses shall be consistent with prior years' practices and amounts.

d. The Corporation may deal and contract with affiliated or related persons to provide services or products for the Corporation, provided that such services or products are specifically described and accounted for and the fees to be paid therefor and the terms and conditions thereof are not less favorable to the Corporation than those which could be reasonably obtained by the Corporation from equally qualified, but unaffiliated, third parties. The Parties hereby agree that the Corporation shall pay an annual license fee to the Principal for the annual license of certain office telephone numbers used by the Corporation as listed on Exhibit __ ("Telephone Numbers") which shall remain the property of the Principal Shareholder. The Parties further agree to the payment of a monthly rental, inclusive of taxes, insurance, maintenance, and any other customary expenses for the office located at OFFICE-ADDRESS.[xii]

e. Should a Minority Shareholder, who serves as an employee of the Corporation, also serve as an officer of the Corporation, then no provision in this Agreement shall be applied to permit any duplicate payment for the same expense. Nor shall any provision in this Agreement be interpreted to expand the scope of any compensation or expense reimbursement provision of any employment or other arrangement.

C. Shares

1. Authorized Shares

The aggregate number of shares which the Corporation shall have authority to issue shall be one class of capital stock consisting of 10,000 shares of common stock without par value ("the Common Stock" or "Shares").

2. Current Share Ownership

a. The Shareholders acknowledge that prior to the execution of this Agreement, they each owned the number of shares of common stock specified below:[xiii]

Shareholder	Shares
SENIOR-CPA	2,000
JUNIOR-2-SHAREHOLDER	0
JUNIOR-1-SHAREHOLDER	0

b. The Principal Shareholder shall cause the Corporation to be recapitalized to have 10,000 Shares of no-par value capital stock. Thereafter the Principal Shareholder shall contribute his 100 original Shares for 9,998 postrecapitalization Shares. Thereafter, the Shareholders acknowledge that, upon execution of this Agreement, the Minority Shareholders shall each contribute One Hundred Fifty Dollars ($150) to the capital of the Corporation in exchange of One (1) Share so that following execution of this Agreement, the Shareholders shall own the following shares:

Shareholder	Shares
SENIOR-CPA	9,998
JUNIOR-2-SHAREHOLDER	1

3. Voting Rights of Shareholders

The shares issued to the Principal Shareholder shall be voting shares. The shares issued to the Minority Shareholders shall be voting shares. Notwithstanding anything in this Agreement to the contrary, any vote or decision of the Shareholders shall only be made based on a vote of the number of Shares issued and outstanding, and no vote shall, under any circumstances, be made on a Shareholder basis (that is, one vote for each Shareholder), it being the specific intent of the parties that all votes be based on the number of Shares owned by each Shareholder entitled to vote.

4. Restrictions on Change in Rights of Shares[xiv]

No change shall be made in the characteristics, rights to vote, dividend payments, or other attributes of any class of stock unless such change is consented to the Principal Shareholder.

5. Shareholders' Meetings

A shareholders’ meeting shall be held on the Second Tuesday of the month of September of each year at such time and location as the Board of Directors shall reasonably give Notice of. If such date is a holiday, then the date shall be deferred to the next Tuesday following which is not a holiday.

6. Share Transfers[xv]

a. Except as herein provided, no Minority Shareholder shall sell, assign, create a security interest in or lien upon, give, place in trust, or otherwise dispose of all or any portion of his shares in the Corporation now owned or hereafter acquired.

b. No sale of shares by any Minority Shareholder to any other Minority Shareholder or to any person not a party to this Agreement is permitted unless the Principal Shareholder agrees to such sale in a writing executed by all of the Parties to this Agreement. Principal shall have the right to decide whether to purchase the shares that any Minority Shareholder desires to sell or to have the Corporation redeem all of the stock owned by the Minority Shareholder.

c. Each certificate representing the shares of the Minority Shareholders shall bear the following legend which shall be noted conspicuously thereon:

"THIS CERTIFICATE IS SUBJECT TO TRANSFER RESTRICTIONS AND MAY ONLY BE TRANSFERRED IN ACCORDANCE WITH THE TERMS OF A SHAREHOLDERS' AGREEMENT DATED MONTH DAY, YEAR, A COPY OF WHICH IS IN THE CORPORATION'S OFFICE."

D. Employment

1. Employment Terms[xvi]

a. The Corporation hereby retains each of the Minority Shareholders as an at will employee, and each of the Minority Shareholders hereby accepts such employment under the conditions and requirements specified herein, as each as

an employee of the Corporation with such duties and responsibilities as may reasonably be assigned pursuant to this Agreement, and from time to time, in the sole discretion of the Board of Directors of the Corporation. The Shareholders' remuneration shall be that specified below.

b. In consideration for the remuneration specified in this Agreement, the Minority Shareholders agree:[xvii]

(i) To Work approximately 1,800 billable hours per year.

(ii) To Adhere to all applicable codes of conduct and professional ethics.

(iii) To Perform services in a professional and dignified manner.

(iv) To Keep an accurate record, if required by the Corporation, of all billable time spent on clients' matters and affairs. Such records shall be submitted to the Corporation as the Corporation requires together with any special billing instructions that apply to any matters.

(v) That all client billings shall be made by the Corporation, and the Corporation shall have the exclusive authority to fix the fees to be charged to all clients.

(vi) That all fees, compensation, and other moneys or things of value received or realized as a result of services provided by the Minority Shareholders shall be strictly accounted for upon demand and turned over to the Corporation upon receipt thereof. This includes all legal income generated by each Minority Shareholder.

(vii) To maintain and prepare reports and documents and underlying work papers, permanent files, tax, and other files, and other documentation reasonably appropriate to support the actions taken with respect to any file and to track and meet any deadlines and due dates (collectively the "Papers"). The title to and ownership of the Papers shall be vested solely in the Corporation.

(viii) To adhere to rules of conduct and requirements contained from time to time in any personnel manual which applies to all employees or Shareholders generally.

(ix) That their performance shall be evaluated in the sole discretion of the Principal Shareholder, and shall be based on any factors which the Principal Shareholder deems relevant, including, but not limited to the following:

(1) Fees generated and collected.

(2) Professionalism.

(3) Clients and files originated.

(4) Assistance in administration of the Corporation when requested or necessary, or both.

(5) Accounts receivable generated and collected.

(6) Efforts and success in controlling Corporation overhead and costs.

2. Compensation

a. Effective START-MONTH 1, YEAR through December 31, YEAR, the Minority Shareholders shall each receive an annual base salary of NUMBER Thousand Dollars ($____,000), payable semi-monthly on the fifteenth and last day of each month (for the prior semi-monthly period).

b. In addition, each Minority Shareholder shall receive for the YEAR calendar year, a year-end bonus equal to NUMBER Percent (____%) of the Net Revenues (defined below) derived from client matters such Minority Shareholder originated and on which fees were actually received by the Corporation during the period September 1, YEAR through December 31, YEAR ("Bonus Base"). This amount shall be paid within NUMBER months after the close of the taxable year unless [xviii] the Corporation provides for earlier payment thereof. The Bonus Base shall be determined as follows:

(i) Gross Receipts generated by a particular Minority Shareholder shall be determined by the billing records for a client properly noted as having a particular originating Minority

Shareholder. Minority Shareholders shall only receive such credit where the file was originated from their own private contacts and relationships, and not from contacts and relationships of the Corporation. If unanimous agreement cannot be reached as to which Minority Shareholder originated the file, the file origination may be allocated based on the relative contributions of each Shareholder to the origination of the particular file if the Parties can so agree. If agreement cannot be reached, the decision of the Principal Shareholder shall be binding.

(ii) Gross Receipts actually collected and received on a cash basis by the Corporation reduced by all direct costs associated with the handling of such client matter. Examples of such costs shall include Federal Express, TAX-SERVICE fees, and other charges, photocopying, facsimile charges, and other out-of-pocket costs, but excluding allocations of general office overhead expenses. The result of Gross Receipts so reduced shall be "Net Revenues."

The Principal Shareholder shall receive a minimum annual base salary, payable semi-monthly on the fifteenth and last day of each month (for the prior semi-monthly period), of One NUMBER Thousand Dollars ($____,000).

(iii) Timing of Payments to Shareholders.

Minority Shareholder Bonus distributions of each of the Minority Shareholders shall be payable after taking into account the Corporation's financial position and cash flow for the period involved, for the year in questions, and any pending obligations of the Corporation.[xix]

3. Full-Time Devotion Primarily to Professional Services

Each Minority Shareholder shall devote his best efforts to professionally serving the Corporation and the Corporation's Clients and shall devote substantially all of his normal business time and attention to such services. The Minority Shareholders shall not engage in the practice of law except as an employee of the Corporation without the prior written consent of the Corporation.

4. Duties[xx]

The Board of Directors shall consist of the Principal Shareholder who shall have Three votes and each Minority Shareholders who shall have one vote. The Board of Directors shall have exclusive authority and power to determine the administrative and legal matters to be assigned to the Minority Shareholders, including the specific duties and standards of performance.

5. Professional Obligations

a. At the Corporation's expense, each Shareholder shall maintain memberships in good standing in the American Institute of Certified Public Accountants and the STATE-NAME State Society of CPAs.

b. At the Corporation's expense, each Shareholder shall maintain fully effective his license and privilege to practice accounting in the State of STATE-NAME, and in any other state in which he is currently licensed [and add OTHER-LICENSES].

c. Each Shareholder shall, at all times, comply with all of the provisions of the Code of Professional Ethics applicable to certified public accountants practicing in the State of STATE-NAME.

6. Health and Other Insurance

a. The Corporation presently maintains health insurance for the payment of certain hospital and medical expenses incurred by its employees. The Corporation shall pay the cost for the Minority Shareholders, and the Principal Shareholder of such medical insurance in accordance with the Corporation's policy which may change at the Board of Directors' discretion. The Board of Directors reserves the right to change carriers, plans, eligibility criteria, employee reimbursement coverage, and other aspects of such plans.

b. All matters of eligibility for coverage or benefits under any health insurance provided by the Corporation shall be determined, in addition to rules established from time to time by the Board of Directors in accordance with the provision of the insurance policies. The Corporation shall not be liable to the Minority Shareholders, their heirs, family, executors, or beneficiaries for any payment payable or claimed to be payable under any plan of insurance.[xxi]

c. The Shareholders may determine from time to time whether the Corporation shall purchase and pay for any disability insurance.

7. Vacation

a. Each Minority Shareholder is entitled to Three (3) weeks of paid vacation each calendar year. Each Minority Shareholder shall give the Corporation reasonable advanced Notice of his intended vacation periods and shall give reasonable consideration to the needs of the Corporation in planning such vacation periods. The Minority Shareholders shall not take vacations which overlap without the consent of the Principal Shareholder.

b. The Principal Shareholder is entitled to Five (5) weeks of paid vacation each calendar year.

c. Religious holidays, where an employee's religious observance makes employment impermissible, as well as days designated by the Corporation as Corporation holidays, shall not count in the determination of the above. Such religious observances shall not be inconsistent with past practices.

d. No vacation days may be taken during the period from February 1 to April 15 of any year (or if April 15 falls on a weekend, the date on which personal income tax returns are due for such year).

8. Participation in the Corporation's 401(k) Plan

The Corporation has a defined contribution plan ("401(k) Plan") that is administered by BANK-NAME Bank and Trust through Automatic Data Processing payroll deductions. Participation in the plan is open to the Shareholders but not required. The Parties acknowledge that the Board of Directors has the authority to change or terminate such plan or to impose a similar or replacement plan.

E. Restrictions; Limitations; Confidential Information

1. Clients

a. Each Shareholder agrees and acknowledges that all clients are to be considered clients of the Corporation and that in dealing with any client, the Shareholder does so as an agent of the Corporation.

There are a myriad of ways to address the situation of a client leaving your practice with a junior associate who is terminated or resigns for any reason. The following is but one example.

b. Any records relating to such clients is the property of the Corporation and shall only be removed from the Corporation with the permission of the Corporation which shall be granted based upon client approval or as otherwise required by applicable ethics rules. In the event that any client of the Corporation becomes a client of any Minority Shareholder following the termination of his employment by the Corporation for any reason, the Corporation shall be compensated for all out-of-pocket expenses incurred in the transfer of such client file, together with AMOUNT Percent (___%) of any accounting fees collected by the terminated Minority Shareholder during the remainder of the calendar year in which termination occurred, and during the NUMBER (___) calendar years following termination. In the event that litigation has commenced between the Corporation and the terminated Minority Shareholder prior to or after such Shareholder's termination, the Corporation shall be immediately compensated for all out-of-pocket expenses incurred prior to the transfer in the administration of that case, in the transfer of the client file, together with AMOUNT Percent (_____%) of any accounting fees collected by such Minority Shareholder. In this provision, the term "Minority Shareholders" shall include any successor, assign, employer, partner, or entity in which such Minority Shareholder works as an accountant.

c. In the event that any portion of this provision cannot be applied as a result of then applicable laws or accounting ethics, then the above provisions shall be applied to the extent and in the degree permissible.

2. Nondisclosure Provisions Applicable to Minority Shareholders[xxii]

The Minority Shareholders agree that (a) all business, financial, firm, and related records, practice forms, checklists, practice financial statements, and tax returns, contact files, mailing lists, telephone records, and other information concerning the business of Corporation regardless of medium or format (collectively the "Data"), are confidential and shall at all times remain the property of Corporation, (b) during the course of the Minority Shareholders' employment or owning Shares hereunder and thereafter, the Minority Shareholders shall not use or divulge any of the Data or any other confidential information concerning Corporation to any person unless said Minority Shareholder first obtains written permission from the Principal Shareholder to do so. If employment or Share ownership of any Minority Shareholder terminates, the Data and all copies of all records and other documents embodying the Data, in any format or medium, shall be left with Corporation as part of its property.

3. Remedy For Breach of Nondisclosure Provisions

The Minority Shareholders acknowledge that the remedy at law for breach by either of them of the provision concerning nondisclosure will be inadequate and, therefore, in the event of any threatened or actual breach of any such provision, in addition to any other remedies that it may have at law or in equity, Corporation shall be entitled to injunctive or other equitable relief.

F. Control and Management

1. Board of Directors[xxiii]

a. The Board of Directors shall consist of the Principal Shareholder or his designee (the "Designee of the Principal") and the Minority Shareholders.

b. In the event of the Preliminary Disability (and Final Disability or Death subject to the limitations, below) of the Principal Shareholder, the first of the following persons who is able and willing to serve or in the event that applicable statute requires greater than One (1) director, shall be the Designee of the Principal:

(1) DESIGNEE1-NAME, DESIGNEE-ADDRESS.

(2) DESIGNEE2-NAME, DESIGNEE-ADDRESS.

The above persons shall be referred to as the Temporary Directors. If an event occurs which triggers the appointment of a Temporary Director, the Minority Shareholders shall assume additional Officer positions, as defined below, and shall, so long as employed by the Corporation, assume responsibility of daily business affairs of the Corporation.

c. In the event of the disability of the Principal Shareholder or any legal requirement to appoint additional Directors, the Designee of the Principal Shareholder (and if required more than one of such persons) shall serve as a Temporary Director.

d. The above provisions governing Temporary Directors shall only apply in the event of death or Final Disability of the Principal Shareholder until such time as 50% of the purchase price of Principal's Shares are paid for as provided herein below. Thereafter, the Minority Shareholders shall serve on the Board of Directors.[xxiv]

2. Officers

The Board of Directors shall elect the following officers of the Corporation:[xxv]

1. President - SENIOR-CPA
2. Vice President - SENIOR-CPA
3. Secretary - SENIOR-CPA

4. Assistant Secretary - JUNIOR-1
5. Treasurer - SENIOR-CPA
6. Assistant Treasurer - JUNIOR-2

In the event of the disability of the Principal Shareholder, when the Principal Shareholder is unable to conduct the daily affairs of the Corporation for more than a Thirty (30) day period, the Designee of the Principal Shareholder, as defined above, shall be elected automatically and immediately to serve on the Board of Directors.[xxvi] The Board of Directors, in such instance, shall designate to serve as officers of the Corporation during the period of the Principal Shareholder's continued Disability, so long as such persons have not theretofore violated the provisions of this Agreement, and so long as such persons continue to remain in the full-time employ of the Corporation:

Vice President and Secretary - JUNIOR-1

Vice President and Treasurer - JUNIOR-2

In the event of the termination of the employment or Share ownership of any Minority Shareholder, for any reason whatsoever, such termination shall immediately result in the resignation of such minority Shareholder as an officer of the Corporation, and the Minority Shareholders designate the Corporation as Agent to effect same as provided under the provision below "Appointment of Corporation as Attorney In Fact To Facilitate Termination of Shareholder."

3. Replacement of Principal Shareholder

In addition to the above designations, in the event of the Preliminary Disability or Final Disability of the Principal Shareholder, the person designated by the Principal Shareholder shall assume the officer and Director position and responsibilities of the

Principal Shareholder during such period. These provisions governing shall only apply in the event of death or Final Disability of the Principal Shareholder until such time as 50% of the purchase price of Principal's Shares is paid for as provided herein below. Thereafter, the Minority Shareholders shall serve on the Board of Directors as provided above, and the Board of Directors shall elect officers.

4. Compensation of Officers

No person serving as officer or director shall by virtue of same be entitled to any additional compensation beyond the compensation otherwise provided for under this Agreement.[xxvii]

G. Major Decisions

Major decisions, enumerated below, shall require the approval of the Principal Shareholder, which approval may be provided or withheld in the absolute discretion of the Principal Shareholder and may be undertaken solely at the determination of the Principal Shareholder, or in the event of the disability of the Principal Shareholder, the Designee of the Principal Shareholder ("Major Decisions").[xxviii] The Major Decisions shall include:

1. Acquisition or creation of a business other than the Business.
2. Incurring any debt other than trade accounts payable, other debts incurred in the ordinary course of the business, or to guarantee any debt or other obligation. Any borrowing secured by Corporate assets in excess of Fifty Thousand Dollars ($50,000).
3. Issuance of additional Shares, changes in the capitalization of the Corporation, change in the tax status of the Corporation to other than an S corporation.
4. Sale, lease, license, or other transfer of any material asset.
5. Any nonrenewal or change in the license of the Telephone Numbers.

6. Any nonrenewal or change in the lease of the CITY, STATE office.

7. Entering into any transaction in the name of the Corporation not permitted by this Agreement and not reasonably within the scope of the Business as defined herein.

8. Determination of the maximum and minimum working capital requirements of the Corporation where the amounts involved differ significantly from those historically maintained by the Corporation.

9. The adjustment, settlement, or the compromise of any material claim, obligation, debt, demand, suit, or judgment against the Corporation, the officers, or directors of the Corporation with respect to their relationship to the Corporation.

H. Disability or Death of the Principal Shareholder[xxix]

1. Definition of Disability of Principal Shareholder

The Principal Shareholder shall be deemed substantially and permanently disabled ("Preliminary Disability") if either of the following conditions is met:

a. For any period aggregating Six (6) months during any Twenty Four (24) month period, the Principal Shareholder is unable, as a result of any serious physical, mental, or emotional illness, ailment, or accident, to effectively discharge his services to the Corporation. By way of example and not limitation, where Principal Shareholder is unable to work at least Ten (10) hours per week on average, for such period (exclusive of vacation), he shall be considered to have failed to discharge his duties. For the purposes of the application of this latter average hour test, the average hours shall be calculated by summing all hours worked during any Six (6) month period and dividing by the number of work weeks during such period. If the average is less than the aforementioned number

of hours, then the Principal Shareholder shall be deemed subject to a Preliminary Disability beginning with the first week following the failure to meet such average hourly requirement over a Six month period. For purposes of the above test, the term *work* means to reasonably discharge the responsibilities as a certified public accountant and shareholder of the Corporation, meeting clients, providing administrative services, and or generating revenues and opening new client files.

b. In the event of such a Preliminary Disability, the Corporation may give the Principal Shareholder Notice that Principal Shareholder is deemed disabled.

2. Return to Work Following Preliminary Disability[xxx]

Where the Principal Shareholder is terminated solely as a result of a Preliminary Disability as defined above, he may return to work at any time within Three (3) years from the date of the determination of Preliminary Disability. However, if at any time during such three year period, and following such return to work, the Principal Shareholder is absent for more than Sixty (60) days during any calendar year (exclusive of vacation days and religious holidays allowed during such Three (3) year period), for any reason whatsoever, then the Principal Shareholder shall be deemed permanently disabled and may not return to work for the Corporation at any time ("Final Disability"). In the event that Two (2) doctors properly licensed to practice in the State of STATE (and at least one of whom is board certified in the specialty relating to the illness, disability, or ailment suffered by SENIOR-CPA) certify in writing that there is no reasonable likelihood of SENIOR-CPA resuming his normal daily functions in the Corporation on a basis of more than a 20-hour work week in the period for Preliminary Disability, then the Minority Shareholders may give Notice to the Principal Shareholder or is guardian, custodian, or committee that the Principal Shareholder is subject to a Final Disability. Either the Principal Shareholder (or his guardian, conservator, or

committee) or the Minority Shareholders may give Notice, inclusive of the above Doctors determinations to the other of them. If such Notice is given, the Party receiving such Notice has Fifteen (15) days to give a return Notice, inclusive of Two (2) doctor determinations of a contrary view to the Party sending the initial Notice ("Responding Notice"). If such a Responding Notice is not dispatched by such period, the Principal Shareholder shall be deemed subject to a Final Disability. If a Responding Notice is dispatched, then the Parties agree to submit the single issue of whether the Principal Shareholder is subject of a Final Disability to binding arbitration in COUNTY-NAME County, in accordance with the rules of the American Arbitration Association and applying, where applicable, rules of law of the State of STATE-NAME in such proceeding.

3. Compensation of the Principal Shareholder When Under a Preliminary Disability

a. Salary payments for the Principal Shareholder under a Preliminary Disability shall be reduced to NUMBER Percent (____%) of the base compensation provided for in this Agreement on the first day of the first full month following the determination of Preliminary Disability ("Disability Base Salary"). Any payments made to Principal Shareholder on account of disability insurance paid for by the Corporation and held in the Corporation's name shall be credited towards the above Salary payment.

b. However, for any hours worked by the Principal Shareholder under a Preliminary Disability, Principal Shareholder shall be paid to the extent that such salary exceeds the payments in the preceding paragraph, a salary and other compensation on a prorated basis (with calculations being based on a Thirty Five (35) hour standard week, and any partial hour being counted as a full hour of

work). Benefits are not prorated or excluded except as otherwise provided in this Agreement.

c. Medical related benefits, Key-Man insurance and other insurance benefits shall remain in force during a Preliminary Disability if feasible.

4. Compensation of Principal Shareholder Following a Final Disability

a. Salary payments for the Principal Shareholder under a Final Disability shall terminate on the first day of the Third (3rd) full month following the determination of such Final Disability.

b. Benefits, other than medical-related benefits and insurance benefits (including any Key-Man insurance which shall remain in force if feasible), shall similarly terminate.

c. Medical related benefits and insurance benefits shall remain in force where it is feasible for the spouse of the Principal Shareholder. If the spouse of the Principal Shareholder must be employed by the Corporation to facilitate such payments, then the Corporation shall employ such spouse on a part-time basis for reasonable compensation for the services rendered, plus provision of such benefits.

5. Consequences of Final Disability or Death of the Principal Shareholder[xxxi]

In the event of the death or Final Disability (as defined above), of the Principal Shareholder, the Minority Shareholders agree to purchase from the disabled Principal Shareholder or from the Estate of the Principal Shareholder all of the issued and outstanding shares in the Corporation then held by the Principal Shareholder or the Estate of the Principal Shareholder for the sum of AMOUNT Thousand Dollars

($_____,000), unless a different figure is set forth in a Certificate of Stated Value (Exhibit ___) executed by all of the Parties at a date not more than Twelve (12) months prior to the date of Final Disability or death of the Principal Shareholder (the "Purchase Price").

Any payments made:

a. Directly by the Corporation (not under disability insurance paid for by the Corporation).

b. Within a One (1) year period prior to the determination of Final Disability.

c. Paid to Principal Shareholder during any Preliminary Disability as Disability Base Salary shall be credited against the Purchase Price.

It is explicitly agreed and acknowledged that this figure above or in any Certificate of Stated Value executed hereafter is solely for the purpose of determining a buyout of the Principal Shareholder, as negotiated herein between the Minority Shareholders and the Principal Shareholder. Such figure shall have no implication to, and shall not be used by, any third party or by the Minority Shareholders in any claim or action against the Principal Shareholder.[xxxii]

6. Purchase of Principal Shareholder's Shares in Event of Final Disability or Death

a. Required Purchase[xxxiii]

In the event of the death or Final Disability of the Principal Shareholder, the Corporation shall have the right to purchase the entire interests of the Principal Shareholder in the Corporation. If the Corporation does not exercise such right, then each Minority Shareholder shall be jointly and severally personally obligated

to purchase the entire interests of the Principal Shareholder in the Corporation. The purchase shall be in accordance with the provisions of this provision.

b. Date of Purchase

The Minority Shareholder or Minority Shareholders shall purchase the stock of the Principal Shareholder following his demise or Final Disability at the earlier of the following:

(i) Sixty (60) days following the Final Disability of the Principal Shareholder.

(ii) 120 days after the qualification of a Shareholder's personal representative.

(iii) At the election of such personal representative, within Sixty 60 days after his qualification.

(iv) Ten (10) days prior to the dates set forth in Section 1361(c)(2) in order to avoid a disqualification of the Corporations election of S corporation status. Then such personal representative shall sell to the Corporation, and the Corporation shall purchase from such personal representative the unsold Shares at a price equal to the value determined under this Agreement as of the end of the calendar month in which death occurs. If the Corporation does not exercise this right, then the Minority Shareholders may so exercise this right.

(v) Notwithstanding anything in this provision to the contrary, any required purchase hereunder shall not be completed later than as required under any applicable statute.[xxxiv]

c. Required Purchase of Shares

The Corporation shall purchase and the Executor of the Estate of the deceased Principal Shareholder (or the Principal Shareholder or the Designee of the Principal Shareholder, where the Principal Shareholder is subject of a Final Disability) shall sell the Principal Shareholder's interests in the Corporation to the Corporation pursuant to the terms contained herein. If the Corporation does not

exercise such right within Ten (10) days of the date set under this Agreement, then the Minority Shareholders (or if only One (1) Minority Shareholder is then a Shareholder in the Corporation, then such sole Minority Shareholder) shall purchase and the Executor of the Estate of the deceased Principal Shareholder (or the Principal Shareholder or the Designee of the Principal Shareholder, where the Principal Shareholder is subject of a Final Disability) shall sell the Principal Shareholder's interests in the Corporation to the Corporation pursuant to the terms contained herein.

d. Closing

The sale shall occur at the office of the attorney for the Corporation (or if same is not certain or agreeable at the office of the personal attorney for the estate of the Principal Shareholder) at 11:00 a.m. on the first Tuesday following the date determined under the provisions set forth above to execute any documents reasonably necessary to the closing of such sale and purchase.

e. Terms of Purchase[xxxv]

The terms of the purchase shall be payment in full of any insurance proceeds received by the Minority Shareholders on the life of the Principal Shareholder, as soon as practical after receipt. The balance, if any, shall be paid in quarterly installments on the Thirtieth (30th) day of each calendar quarter based on Twenty Percent (20%) of the gross revenues received, on a cash basis (without adjustment or reduction for any purpose) during the prior quarter, until the entire Purchase Price is payable in full. Interest shall be payable at the Rate.

f. Personal Guarantee from Purchasing Shareholders

Each Minority Shareholder who is buying the interests of the Principal Shareholder under this provision, and the Corporation, shall execute a personal guarantee to the disabled Principal Shareholder or to the Estate of the deceased

Principal Shareholder, guaranteeing the purchase price to be paid under this provision.[xxxvi]

g. Documents Held in Escrow

All documents relating to such transfers, notes, supporting payments, stock certificates, and executed blank stock powers shall be held in escrow by the attorney for the Principal Shareholder or the estate of the Principal Shareholder, or absent same, by the attorney for the Corporation, pending final payment of the amounts provided for herein.

7. Life Insurance

The Minority Shareholders each agree to purchase not less than AMOUNT Hundred Thousand Dollars ($____,000) of life insurance on the life of the Principal Shareholder. The Minority Shareholders shall be the owners and beneficiaries of the life insurance policy purchased on the life of the Principal Shareholder and shall reserve and apply any proceeds on such policies first towards meeting their obligations hereunder to repurchase Shares.

I. Disability or Death of a Minority Shareholder

1. Definition of Disability of Minority Shareholder.

A Minority Shareholder shall be considered disabled ("Disabled" or under a "Disability") the earlier of the date:[xxxvii]

a. When such Minority Shareholder's personal physician so advises the Corporation.

b. Where, due to a mental or physical condition, incapacity, or disability, a Minority Shareholder is unable, as a result of any physical, mental, or emotional illness, ailment, or accident to effectively render full time services to the Corporation and to discharge a Shareholder's duties hereunder, for a period of Ninety (90) days during any One Hundred Twenty (120) day period ("Disability Period").

c. The Disability Date shall be set at the date upon which the Disability Period is reached or the date the Minority Shareholder or his personal physician so advises the Corporation that he is disabled (the "Disability Date").

2. Consequences of Disability or Death of a Minority Shareholder.

a. In the event of the death or Disability, as defined in the paragraphs above of a Minority Shareholder, the Disabled Minority Shareholder or the Estate of the deceased Minority Shareholder shall be paid any base and bonus compensation amounts (determined in accordance with this Agreement) through the end of the month of the death or disability pro-rated in accordance with the discretion of the Corporation's accountant. The Corporation may elect to prorate annual or quarterly earnings or to close the books of the Corporation as of such date. A payment for reimbursement for any business expenses as specified in this Agreement shall also be made. These payments shall be in full satisfaction of the rights of the disabled Minority Shareholder or the Estate of the deceased Minority Shareholder as an employee of the Corporation.

b. In exchange for and in full payment of any rights or interests of such Minority Shareholder in the Shares of the Corporation, the Corporation shall pay such Minority Shareholder AMOUNT Dollars ($_____). The Corporation is hereby authorized to transfer any such Shares, terminate any position of such Minority Shareholder as an officer of the Corporation as provided in the provision

"Appointment of Corporation as Attorney In Fact To Facilitate Termination of Shareholder".

c. The Corporation reserves the right to pay the above compensation in equal monthly installments over a Three (3) month period if a lump sum payment would adversely affect the Corporation's liquidity.

J. Term

1. Extension

This Agreement shall be effective as of MONTH 1, YEAR, although executed the date herein below indicated and shall remain in effect until December 31, ENDING-YEAR unless earlier modified, extended, or terminated by written agreement by all of the Principal Shareholder and the Minority Shareholder who is to be subject of such modification, extension, or termination.

2. Consequences of No Extension

If this Agreement is not extended with respect to any Minority Shareholder then this Agreement and any rights of such Minority Shareholder shall terminate effective midnight December 31, ENDING-YEAR, and such Minority Shareholder's interests in the Corporation shall immediately terminate. Further, each Minority Shareholder hereby designates the Corporation and any then serving member of the Board of Directors as his agent, with full authority and power to transfer such Minority Shareholder's Share of stock back to the Corporation for AMOUNT Dollars ($_____) and to execute on behalf of such Minority Shareholder, an immediate resignation of such Minority Shareholder from any position then held by such Minority Shareholder as an officer and Director (if any) as

provided in the provision below "Appointment of Corporation as Attorney In Fact To Facilitate Termination of Shareholder."

3. Termination for Death or Disability

With respect to either of the Minority Shareholders, this Agreement shall terminate at an earlier date in the event of the Disability or Final Disability or cause as provided for in this Agreement.

4. Termination for Cause or No Cause

Notwithstanding anything herein to the contrary, and regardless of any term or provision of this Agreement and any arrangement hereunder, the relationship of each Minority Shareholder and the Corporation shall solely be an employment at will. Upon the termination of employment, any Minority Shareholder shall automatically transfer his Shares of the Corporation for AMOUNT Dollars ($_____) and resign any position as an officer or director as provided for in the provision below "Appointment of Corporation as Attorney In Fact To Facilitate Termination of Shareholder."

5. Automatic Termination

This Agreement shall automatically terminate upon the occurrence of any of the following events, at which time all Minority Shareholders shall be notified of said termination in writing by the Secretary of the Corporation:

a. By unanimous written agreement of the Shareholder parties to this Agreement.

b. Dissolution of the Corporation.

K. Termination of Minority Shareholder

1. Definition of Cause[xxxviii]

A Minority Shareholder shall be terminated for cause when the following determination has occurred:

a. Suspension or other major (as determined in the sole discretion of the Principal Shareholder) disciplinary action by the State of STATE-NAME Society of CPAs, the American Institute of Certified Public Accountants, the STATE-NAME CPA licensing authorities, or any other applicable membership, licensing, or regulatory or similar body.

b. Professional misconduct or violation of the Code of Professional Ethics, if such misconduct continues after Notice has been given by the Board of Directors.

c. Action that injures the professional standing of the Corporation, if such action continues after Notice has been given by the Board of Directors.

b. Insolvency, bankruptcy, or assignment of assets for the benefit of creditors.

e. Conviction of a felony or greater crime.

f. Failure to remain Duly Qualified.

g. Violates of a material term of this Agreement to provide services to this Corporation without a conflict of interest with other employment.

h. Failure or refusal to comply with the policies, standards, and regulations of the Corporation reasonably established from time to time and for which such Shareholder has received Notice.

i. Fraud, dishonesty, or other misconduct in the performance of legal services on behalf of the Corporation.

j. Failure to faithfully or diligently perform the provisions of this Agreement or the usual and customary duties of his employment.

2. Effects of Termination for Cause[xxxix]

a. Upon a determination that a Minority Shareholder be expelled for cause, the Minority Shareholder shall thereby be so expelled and shall have no right or interest thereafter in the Corporation or any of its assets, clients, files, records, or affairs, except as required otherwise by accounting ethical rules and regulations. A Minority Shareholder terminated for cause shall not have any further professional duties to the Corporation or any of its clients and shall not, to the extent permitted by the applicable laws and professional rulings, service any clients of the Corporation thereafter. Such terminated Minority Shareholder shall immediately remove himself and his personal effects from the Corporation's offices, but shall not remove any Corporate assets, mailing lists, files, or other materials.

b. The Minority Shareholder terminated for cause shall not be entitled to any amounts other than those due and owing as base salary under the Agreement to the extent earned through the date of termination. The provisions of "Termination for Cause or No Cause" above, shall apply.

L. Appointment of Corporation as Attorney in Fact to Facilitate Termination of Shareholder[xl]

In order to accomplish the objectives of the provision "Disability or Death of the Minority Shareholders," "Terms of Association, Term," and any other provision under this Agreement authorizing the Corporation to repurchase the Shares of either or both Minority Shareholders, each of the Minority Shareholders hereby grants to, and directs his agent and executor to, and is deemed to have executed in favor of, the Corporation

an irrevocable proxy and durable power of attorney (which each such Shareholder hereby agrees to be coupled with an interest) to sign and file any documents to effectuate this provision, including but not limited to the transfer of such Minority Shareholder's Shares to the Corporation. Each Minority Shareholder hereby designates and appoints each member of the Board of Directors (including if applicable the Designee of the Principal Shareholder) as his agent to effectuate this provision.

M. Indemnification

Any Minority Shareholder guilty of gross negligence or intentional misconduct which results in any liability or cost to the Corporation, which is not covered by malpractice or other insurance maintained by the Corporation, shall indemnify and hold the Corporation and the other Shareholders harmless for any costs incurred by the Corporation or such other Shareholders on account of such Minority Shareholder's gross negligence or willful misconduct.

N. Tax Matters

1. S Election

The Shareholders acknowledge that the Corporation is presently taxed as an S corporation and shall continue to maintain such election until the accountant for the Corporation determines that such election is no longer recommended. During the period such an election is effective, no shareholder shall make any transfer which could jeopardize the Corporation's S election. Each Minority Shareholder hereby agrees to indemnify the Principal Shareholder in the event of any violation of these provisions by such Minority Shareholder. Each Shareholder shall execute any documents and perform any other acts necessary to elect and retain such S corporation status, if and when the

accountant determines that such an election is advantageous. In such event, each Shareholder agrees to consult with his own tax adviser to verify that the provisions of his last will and testament will not result in the transfer of Corporation's stock to an unauthorized person for a prohibited period of time.

2. Disqualifying Payment Saving Provision

In the event that such an election is made, than should any payment to any Shareholder violate the provisions of Proposed Treasury Regulation Section 1.1361-1(l) so that such payment would, but for the application of this Section, create an unallowed second class of stock, than any such payment shall be characterized as a loan to such Shareholder at the Rate, and shall be repaid in Fifteen (15) equal monthly installments, due on the first day of each month, and beginning on the first day of the first month following such recharacterization.

3. Distributions to Avoid Phantom Income[xli]

The Board of Directors shall distribute, to the extent possible, sufficient cash to meet the potential tax liability a typical shareholder may face as a result of the Corporation having elected to be taxed as an S corporation. Such distributions shall be made, to the extent possible, within Sixty (60) days of the Corporation's fiscal year end.

O. Miscellaneous Provisions

1. Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the State of STATE-NAME (the "State"). The parties hereto, by executing this

Agreement, consent to personal jurisdiction in any court of competent subject matter jurisdiction within the State.

2. Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto.

3. Severability of Provisions

Each provision of this Agreement shall be considered severable, and if for any reason, any provision which is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any then existing law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

4. No Exclusivity

The employment of the Minority Shareholders by the Corporation shall be at the discretion of the Corporation. The Principal Shareholder and the Corporation retain the right to enter into additional shareholder agreements with other persons, consulting arrangements, or to arrange remuneration for any person in any capacity, as well as the merger, consolidation, or acquisition of the Corporation with one or more other firms without restriction or limitation of any kind.

5. Notices

Any notice to be given under this Agreement may be deemed sufficient if made in writing to the Party and sent by mail to the address provided in the beginning of this Agreement or to such other address provided by the Shareholder as his new address. In all cases, a copy of the notice shall be given by the same method to the Corporation and to the following persons:

In the case of SENIOR-CPA, a copy to:

SENIOR'S LAWYER, Esq.

123 Street

City, State Zip

In the case of JUNIOR-1-SHAREHOLDER or JUNIOR-2-SHAREHOLDER, a copy to:

JUNIOR-1'S LAWYER, Esq.

ABC Street

City, State Zip

("Notice").

6. Further Assurances

a. The parties hereto further agree for themselves, and on behalf of the Corporation, to take whatever other action shall be necessary to effectuate the purposes and intent of this Agreement, including but not limited to the execution and delivery of any instruments or documents as may be reasonably required.

b. Each individual Shareholder agrees to take any actions necessary to conform his respective will, any trusts, or other relevant instruments to assure that the intent

of this provision of this Agreement shall be implemented. In the event of any conflict between this Section and the Sections above concerning Share Transfer, the provisions of this Section shall control.

7. Captions, etc.

The captions, Section designations, and numbers are inserted for convenience only and shall not affect the interpretation of any provision. The use of any particular gender or neuter, or the use of singular or plural, shall be interpreted as appropriate to the specific provision involved.

8. Entire Agreement

This Agreement sets forth all (and are intended by all Parties to be an integration of all) of the promises, agreements, and understandings among the Parties hereto with respect to the Corporation and the Business. There are no promises, agreements, representations, or warranties, understandings, oral or written, expressed or implied, among the Shareholders other than as set forth herein. No employment manual or similar document presently existing shall have any bearing on the interpretation or applicability of any provision in this Agreement. No employment manual or similar document hereafter existing shall in any manner modify this Agreement unless such is in writing signed by all Parties hereto.

IN WITNESS WHEREOF, the parties have set their hands on the date first above written.

SENIOR-CPA, P.A.

By: _____ Date:

SENIOR-CPA, President

_____ Date:

SENIOR-CPA

_____ Date:

JUNIOR-1-SHAREHOLDER

_____ Date:

JUNIOR-2-SHAREHOLDER

P. Certificate of Stated Value

Date: _____, 200___

VALUE OF ENTIRE CORPORATION: $ _____.00. [Based on prior year's gross receipts but never less than $-MINIMUM]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year above written as evidence of their agreement that the above figure shall, in accordance with the provisions of the Shareholders Agreement of FIRM-NAME, P.C., constitute the Certificate of Stated Value of the Corporation for the purposes of establishing the value of the shares of the Principal Shareholder:

_____

SENIOR-CPA

_____

JUNIOR-1SHAREHOLDER

_____

JUNIOR-2SHAREHOLDER

FIRM-NAME, PC

By_____

SENIOR-CPA, President

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[i] The sample agreement illustrates the type of documentation that you might use in the following situations: You are the dominant professional in the practice, generating almost all of the clients and serving as primary reviewer of final work product so that the practitioners being admitted as

partners are, for the foreseeable future, truly "junior" partners to you. The result is that you will probably be able to negotiate some substantial preferences and control provisions in the practice documentation. Your practice is organized as a corporation. Many practices are organized in corporate form. The ancillary documents (for example, bylaws and minutes) are not illustrated here but must obviously be completed and tailored in a manner that reflects the intent of the shareholders' agreement. For example, you would not wish to have a specific power reserved to you only to undermine it by signing the preprinted bylaws that come with your corporate kit. The sample document includes provisions for an S corporation practice, provisions that can be deleted. To differentiate this sample document from later sample documents in these appendices, this agreement illustrates a situation in which two junior partners are brought into your practice. The addition of more than one junior partner requires that the shareholders' agreement address the interrelationship of the multiple junior partners, not just the relationship of you and the junior partner(s). For example, if one junior partner is terminated, what is the impact, if any, on the other junior partner? Finally, this type of arrangement differs from the partnership agreement discussed in Chapter 5 in that, in this agreement, you do not address the formalities of a larger partnership agreement. The agreements in Chapter 5 address the interrelationship of multiple partners in a more comprehensive manner than in this agreement.

[ii] Assume you joined another practitioner, operated the practice under both your names, but the other practitioner has now retired. If you now promote two staff accountants to junior partner status but plan to continue to operate the firm under the same name, you may want to protect your rights to and ownership of the name in case there is ever a dispute or a split between you and your new junior partners.

[iii] Consider your relationship as the senior accountant to the practice and the fact that JUNIOR-1 and JUNIOR-2 might be paying a modest amount or even nothing for their minority shares in the firm. It may be reasonable, and an important protection for you, to preserve your right to control the name.

[iv] If your interests as the principal shareholder are bought out, and as soon as a significant portion of the purchase price is paid, your heirs should not be as concerned about a change in practice name.

[v] New partners, especially junior partners with little control or input, will appreciate the assurance that you will market and promote them and announce to the "world" that they are partners. Often stating it in the agreement, even though unnecessary, is reassuring to them.

[vi] Again, although not necessary, if you have junior partners with little control over corporate decision making, assuring them of adequate support can be an important "peace of mind" for them, especially if they will be given more support or administrative staff than previously.

[vii] A common technique to address management and control decisions is to provide in the agreement that certain classes of decisions shall be subject to certain requirements for approval. For example, as the primary shareholder, you may want complete control over certain specific decisions such as bringing in a new partner or selling or merging the practice. Even if you have a generic provision stating you are the President and Chairman of the Board or have certain other control rights, specific decisions of that magnitude should be expressly reserved for your sole decision in your discretion. Although your junior partners may wish to add a phrase such as "reasonable" discretion as to your decision making, if the issues are of critical importance to you, you should resist any modifiers on your "absolute discretion" and state this in the agreement to avoid any issues. Certain decisions may, in all fairness, be reserved for the unanimous consent of all shareholders, including a minority or junior partner. For example, perhaps a junior shareholder should be able to weigh in on the settlement of a lawsuit that could adversely and significantly affect him or her, or the process of approving a new partner. The key is that decision parameters, whatever they are, should be clear and specific and should be memorialized in the agreement. In some instances, even in relatively simple agreements, different tiers of decisions may be warranted. For example, certain decisions may be solely within your absolute discretion. Other

decisions may be subject to your decision, or to a reasonableness standard. Still other decisions may require a majority vote (but in the instant agreement, if it is majority based on one vote per shareholder, the two minority shareholders can outvote you). Finally, some decisions may require a unanimous agreement of all shareholders (but bear in mind that one of the two junior partners would be thus be given veto power over each such decision).

[viii] To what extent should a junior partner be given check-signing authority? If none is given, your absence may create administrative difficulties. The new junior partner may not have had check-signing authority as a staff accountant while working for your practice previously. Nevertheless, given that you are making him a partner, you should reconsider his signing privileges as a demonstration of your the trust. The sample provision below establishes a middle ground, giving limited authority in certain circumstances.

[ix] When you were a sole practitioner, you may have lent money without concern to the practice, obviously through using the formalities of, for example, a signed note or payment of interest. However, once you have partners, even junior partners, such related party transactions should be approached with greater care. It is preferable to anticipate related party transactions by authorizing them in the shareholders' agreement and providing that they be executed in a manner that is reasonable and at arm's-length, in order to minimize the likelihood of any issues.

[x] Expenses are often a thorny issue. Address in the shareholders' agreement either the details of what is or is not to be covered by the corporation or at least provide as framework for the determination of expenses. Bear in mind that the expense to you of having new, first-time junior partners will affect their profit shares.

[xi] If you, as the Principal Shareholder, are to be entitled to greater reimbursements under less restrictive requirements than those of the junior partners (minority shareholders), the shareholders' agreement should state this so that all parties have a mutual understanding concerning these expenses.

[xii] The license and lease should be signed prior to the execution of the shareholders' agreement with the minority shareholders and should be acknowledged or even attached as exhibits.

[xiii] The relevance of the number of shares may, in part, depend on whether the shares of the minority shareholders are voting or nonvoting and whether voting is in proportion to share ownership or one vote per shareholder.

[xiv] You might believe that your new junior partners should own at least one share each so that they are more than a contract partner in name only, and most importantly, have the pride and interest of a real partner. Still, bear in mind that similar results can be achieved without issuing such shares. If the share ownership is inconsequential, as in this sample agreement, is it worth the cost and complexity?

[xv] You, as the senior partner, may insist on the unrestricted right to do anything you want with the shares. See the preceding endnote. Obviously, as soon as you and your minority shareholders agree that JUNIOR-1 and JUNIOR-2 will purchase additional shares of stock at fair value, these provisions (and many others in this agreement) will have to be revisited and changed. However, the relationship and investments, for example, are not at that point upon the signing of an agreement similar to this.

[xvi] Do you believe that you should be subject to the same requirements and restrictions of employment as JUNIOR-1 and JUNIOR-2, since you may be the only person with a substantial capital investment in the firm and the only person who, for example, funds firm cash shortages? Perhaps you should not be subject to any restrictions other than those of state law. Should the new junior partners be treated as at will employees (that is, they can be terminated at any time)? Contract partners, rather than equity partners, are often but not always treated as employees at will. Despite every hope that JUNIOR-1 and JUNIOR-2 will become full equal partners in the future, the arrangement structured in this agreement is, in fact, a transition and trial period no

different than that for a contract partner; perhaps your practice should not be restricted from terminating them if their conduct or performance is unacceptable.

[xvii] Consider incorporating certain minimum performance requirements in the shareholders' agreement, not only to avoid future misunderstandings, but also to clarify the requirements to provide a basis for termination in the event of problems.

[xviii] If a performance bonus is to be paid, when should it be paid? Within one month (or longer)? After the close of the taxable year? Perhaps as soon as practical following the close of each calendar quarter? Carefully avoid the situation in which you are funding firm cash flow needs while JUNIOR-1 and JUNIOR-2 are paid on a timely basis.

[xix] Should part, all, or none of the regular or base salary of the minority shareholders be in any manner contingent on firm cash flows? What if the firm does not have the cash flow to pay the minority shareholders' base salary? How far should you, as senior partner, have to go to fund their salaries with personal funds (for example, home equity lines) in such an instance? What do you suggest to address this potential problem? Do JUNIOR-1 and JUNIOR-2 wish to provide any flexibility with their base in the event of an emergency or unavoidable change in circumstances?

[xx] Who should comprise the Board of Directors? If junior partners are to be included, how should voting be handled? In some states, director voting can be weighted, allowing you to outvote the junior partners, while still involving them in all practice matters by giving them a position on the board. If you wish to opt for weighted voting, verify with your attorney that state law permits it, and, if so, under what procedures. If you are disabled, what happens with the board? Should this differ if you are partially disabled and may return to work versus a permanent disability?

[xxi] References to disability insurance should be clarified or, as illustrated below, left open if a decision cannot be reached. If coverage is to be provided by the corporation, policies should be applied for before any commitments are made.

[xxii] How far can you (that is, the practice) go in refusing to release client information despite client authorization of such release? The following provision could address business records, not client files; the latter are addressed in the prior provisions.

[xxiii] Whether or not the minority shareholders should be added to the board will depend on a myriad of factors. However, be certain to coordinate with the above provisions about voting issues. Since control is so important, if you are temporarily disabled, arrangements are needed to protect your interests, unless or until you are permanently disabled and your interests are bought out.

[xxiv] This agreement could give the minority shareholders the right to serve on the board after 50% of the purchase price due to the disabled or deceased Principal Shareholder is paid (or as illustrated above, by making the minority shareholders board members with limited weighted voting from inception). The concept illustrated below is to have your designated persons control the board until significant payments are made towards the purchase of your shares to help protect the payments.

[xxv] The junior partners (minority shareholders) could be given "assistant" officer positions as a matter of administrative convenience. In some instances, an officer title may be necessary to meet the junior partner's expectations and provide backup in your absence.

[xxvi] If you are temporarily disabled, you may wish to have a person of your choice serve on the board to protect your interests until you return or until you are deemed permanently disabled, and your interests are bought out. The junior partners (minority shareholders) could be given greater officer positions and operational responsibilities during your disability.

[xxvii] The designated officer/director may require compensation or may be a colleague willing to help for some period by overseeing operations, pending either your return from a preliminary disability or payment of 50 percent of the purchase price in the event of your death or permanent

disability. It might be advisable, in any event, to provide compensation out of your share of any earnings.

[xxviii] Consider your objectives for the transaction. Is it to involve the minority shareholders in the business and operation of the firm to groom them to be full partners in the future if everything works out? If so, it may be appropriate to both inform them and perhaps allow them to make certain key decisions. The approach illustrated below carves out specific key decisions over which you, the primary shareholder, retain control.

[xxix] Consider your years with the practice and the client base that will continue to generate revenue for a long period after your disability. Because of this, in the event of a disability, it may be reasonable that you have the right to an income stream during a period of disability (if for no other reason than because of the work in process and accounts receivable at that time) and an opportunity for a reasonably extended period to return to work if you are able to do so (even if practically, during much of this period, you cannot be paid). Thus, a concept of preliminary and final or permanent disability is necessary for you as senior partner. At some point, it will become unreasonable to restrict the practice, and you will have to be terminated and your interests purchased (final or permanent disability).

[xxx] If the deal provides guaranteed salaries (base or otherwise) for the junior partners, then perhaps, in the event of your disability, as senior partner, a portion of your salary should be guaranteed in the same amount as the salary that the junior partners are then earning (reduced by any disability insurance paid for by the firm and received by you). Consult with the practice attorney about whether the letters required call for adding a waiver concerning physicians' disclosures of personal health information.

[xxxi] Why would you reduce the figure agreed upon for the buyout by 50 percent without an explanation? Further, why are you seeking to punish SENIOR-CPA for becoming disabled? Perhaps, instead, you would prefer that SENIOR-CPA merely sell the practice?

[xxxii] In many instances in which there is more than one junior partner in a small firm, and they have to purchase shares, each minority shareholder should purchase shares pro-rata to the shares they own. However, it may be preferable to peg the number of shares each minority shareholder bids for to the entire shares bid for. This would not only assure equal purchase if desired by both, but would address the situation in which one of the minority shareholders did not wish to purchase a full equal share.

[xxxiii] From a tax perspective, it is preferable to give the corporation the right to repurchase first. If the shareholders have the right to repurchase first, but instead determine that the corporation should consummate the purchase, the corporation's purchase could be deemed a dividend to the shareholders on the basis that the corporation is relieving them of their obligation to purchase.

[xxxiv] Many states have statutes requiring that if shares of stock in a professional corporation are not repurchased within a specified time period from the date of death of a professional shareholder, then the corporation must repurchase the shares at book value or some other figure that may not be desirable.

[xxxv] Payments could be equal to base salary or some percentage of base. If so, what about perquisites, including pension and other benefits? However, basing a buy-out price on a percentage of gross revenues is clean and often one of the simpler ways to determine and police a calculation with the least amount of friction. Limited, if any issues, questions, or need for accounting or auditing occur with a gross price.

[xxxvi] A personal guarantee is important to support your or your heirs' ability to collect.

[xxxvii] Be certain that the practice attorney addresses the need for the junior partners to waive any restrictions on their physicians disclosing personal health information so that you will be able to obtain the needed letters.

[xxxviii] Should a "cause" termination provision be included? How do you define "cause?" If a junior partner can be fired for cause, then perhaps you should be subject to some type of cause provision as well.

[xxxix] Should severance payments be provided to junior partners? Should they be reduced or eliminated if a junior partner is terminated for cause as opposed to some other basis for termination?

[xl] An “attorney in fact” arrangement can permit you to sign corporate documentation on behalf of junior partners, thus facilitating ease of administration and eliminating the need to procure their signatures. The junior partners may object on the basis of wanting to know in advance if their names are to be signed to a document.

[xli] A provision to avoid phantom income is commonly used in agreements for closely held corporations but may have little relevance in the context of an accounting practice, where it is most likely that most cash flow will be distributed. In either case, consideration should be given to whether a provision requiring distributions of cash flow (or at least in specified circumstances) should be included.

Appendix 4-4: Sample Annotated LLC Operating Agreement for a Nonequity Contract "Partner"[i]

OPERATING AGREEMENT

FOR

FIRM-NAME LLC

A STATE-NAME Single Member Professional Limited Liability Company

THIS OPERATING AGREEMENT is made and entered into as of MONTH DAY, YEAR by and among:

a. FIRM-NAME LLC, a STATE-NAME Limited Liability Company (the "Company");

b. The Two (2) persons executing this Operating Agreement as members:

(i) YOUR-NAME, a STATE-NAME Certified Public Accountant, who resides at ADDRESS, as the sole equity member of the Company ("Equity Member").

(ii) JUNIOR-NAME, a STATE-NAME Certified Public Accountant, who resides at ADDRESS, as the sole non-equity member of the Company ("Junior Member").

Collectively, the Equity Member and the Junior Member are referred to as the "Members," and individually, "Member."

The Parties hereto, for good and valuable consideration receipt and adequacy of which is hereby acknowledged, hereby state as follows:

W I T N E S S E T H:

Whereas, the Members desire to enter into this operating agreement ("Operating Agreement" or "Agreement") for the purposes of governing the Company, to and for the purpose of operating a certified public accounting firm with a concentration in DESCRIBE-PRACTICE ("Business").

Whereas, the Equity Member had operated the Business heretofore as a limited liability company treated as a disregarded entity for income tax purposes, and intends through this Operating Agreement to continue operating the Business as a disregarded entity for income tax purposes with the Junior Member becoming a non-equity Member.

Whereas, the Members intend to operate the Business and provide for operation of the Company.

NOW, THEREFORE, in consideration of the mutual premises below, and other good and valuable consideration receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

A. Organization

1. Formation

The Company has previously been organized as a STATE-NAME Limited Liability Company under and pursuant to the STATE-NAME Limited Liability Company Act (the "Act") by the filing of Articles of Organization ("Articles") with the Department of State of STATE-NAME as required by the Act, and the Members intend to continue operating the Business.

2. Name

The name of the Company shall remain the "YOUR-NAME, LLC." The Company may also conduct its business under one or more assumed names.

3. Duration

The Company shall continue in existence perpetually, or until the Company shall be sooner dissolved and its affairs wound up in accordance with the Act or this Operating Agreement.

4. Registered Office and Resident Agent

The Registered Office and Resident Agent of the Company shall be YOUR-NAME at PRACTICE-ADDRESS. The Registered Office and/or Resident Agent may be changed from time to time. Any such change shall be made in accordance with the Act.

5. Tax Status for Company

The Company shall be taxed as a disregarded entity for tax purposes.

B. Books, Records, and Accounting

1. Books and Records

The Company shall maintain complete and accurate books and records of the Company's business and affairs as required by the Act, and such books and records shall be kept at the Company's Registered Office and shall in all respects be independent of the books, records, and transactions of the sole Member.

2. Fiscal Year; Accounting

The Company's fiscal year shall be the calendar year.

3. Member's Capital Accounts

A Capital Account for the sole each Member shall be maintained by the Company. The Member's Capital Account shall reflect the Member's capital contributions and increases for any net income or gain of the Company. The Member's Capital Account shall also reflect decreases for distributions made to the Member and the Member's share of any losses and deductions of the Company.

C. Compensation[ii]

Junior Member shall receive compensation, including base compensation and bonus compensation, if any, determined in the discretion of the Equity Member. Junior Member shall remain an AT WILL employee of the practice.

D. Capital Contributions

By the execution of this Operating Agreement, the Members acknowledge that the Equity Member has heretofore contributed Capital Contributions for the Equity capital interests of the Company. Future Capital Contributions may be made in the sole discretion of the Equity Member. The Junior Member has not and shall not contribute capital to the Company and shall own no equity in the Company.

E. Allocations and Distributions

Except as may be required by the Code as amended net profits, net losses, and other items of income, gain, loss, deduction, and credit of the Company shall be reported by the Equity Member on the Equity Member's income tax return. The Equity Member may make distributions from time to time after the Equity Member determines that the Company has sufficient funds available. Distributions to the Junior Member shall be treated solely as compensation subject to withholding.

F. General Powers of Sole Member[iii]

The Equity Member has authority to:

1. Conduct the ordinary and usual decisions concerning the business and affairs of the Company.
2. To do all things necessary or convenient to carry out the business and affairs of the Company.
3. Purchase, lease, or otherwise acquire any real, personal, tangible, or intangible property.
4. Sell, convey, mortgage, grant a security interest in, pledge, lease, license, exchange, or otherwise dispose of or encumber any real, personal, tangible, or intangible property.

5. Open one or more depository accounts and make deposits into and checks and withdrawals against such accounts and to designate and authorize any additional signatory on such accounts.
6. Borrow money, incur liabilities and other obligations, and establish lines of credit, mortgages, and other credit and financing facilities relating to the Business.
7. Obtain insurance covering the Business and affairs of the Company and its property.
8. Commence prosecute or defend any proceeding in the Company's name or relating to the Business.
9. Enter into any arrangements or agreements and execute any contracts, documents, and instruments relating to the Business.
10. Engage consultants and agents, define their respective duties, and establish their compensation or remuneration. This right shall include the right to designate a person to operate the Company and conduct the Business in the event of the illness, disability, or demise of the Equity Member. If such person is appointed, such person shall be referred to as the "Manager" and shall have any rights, powers, and obligations granted or created herein to the sole Member except as the sole Member shall otherwise restrict or limit in a document appointing said Manager.
11. As an express limitation on the nature of the Business and the powers granted the Manager herein, the Company is intended to operate a Certified Public Accounting practice only and no activities inconsistent with such limited purposes shall be undertaken.

G. Standard of Care; Liability

The members shall discharge the Member's duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner such member reasonably believes to be in the best interests of the Company. The Members shall not be liable for any monetary damages to the Company, or in any other manner, for any breach of such duties except:

1. If the Members receives a financial benefit to which the sole Member is not entitled.
2. Takes an action, or refuses to act, in violation of this Operating Agreement or the Act or which is a knowing violation of the law.
3. Acts in a manner which is grossly negligent of which constitutes willful misconduct.

H. Exculpation of Liability: Indemnification

Unless otherwise provided by law or expressly assumed, the Members shall not be liable for the acts, debts, or liabilities of the Company.

I. Other Activities

The Members may engage in other business ventures of every nature, excluding however the ownership, operation, or participation in any accounting, bookkeeping, consulting, or tax business or any other business similar to that operated by the Company. The Company shall not have any right or interest in any such other independent ventures or to the income and profits derived therefrom.

J. Death, Disability, Dissolution

1. Death of Sole Member[iv]

Upon the death of the sole Member, if the Member has not theretofore appointed a Manager who is then willing to act, then the personal representative of the estate of the sole Member may act as Manager hereunder or appoint a person to so serve until the Member's Interests and Capital Account of the deceased sole Member have been sold or transferred.

2. Disability of Sole Member

Upon the disability of the sole Member, if the Member has not theretofore appointed a Manager who is then willing to act, then Junior Member shall act as Manager hereunder until the

Equity Member's Interests and Capital Account of the disabled Equity Member have been transferred or sold.

3. Dissolution

The Company shall dissolve and its affairs shall be wound up on the first to occur of:

a. At a time or upon the occurrence of an event, specified in the Articles of Organization [Certificate of Formation] or this Operating Agreement.

b. By the written consent of the Equity Member. However, no third party dealing with the LLC shall be adversely affected by such action unless it receives notice or should have reasonably been aware of such action.

K. Miscellaneous Provisions

1. Terms

Nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the person or persons, firm, company, or corporation may in the context require. The term *Code* shall refer to the Internal Revenue Code of 1986, as amended.

2. Article Headings

The Article headings and numbers contained in this Operating Agreement have been inserted only as a matter of convenience and for reference, and in no way shall be construed to define, limit, or describe the scope or intent of any provision of this Operating Agreement.

3. Entire Agreement

This Operating Agreement constitutes the entire agreement among the sole Member and the Company and contains all of the agreements among said parties with respect to the subject matter hereof. This Operating Agreement supersedes any and all other agreements, either oral or written, between said parties with respect to the subject matter hereof.

4. Severability

The invalidity or unenforceability of any particular provision of this Operating Agreement shall not affect the other provisions hereof, and this Operating Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

5. Amendment

This Operating Agreement may be amended or revoked at any time including but not limited to a termination of Junior Member's status as a member by a written document executed by the sole Member.

6. Binding Effect

Subject to the provisions of this Operating Agreement relating to transferability, this Operating Agreement will be binding upon and shall inure to the benefit of the parties and their respective distributees, heirs, successors, and assigns.

7. Governing Law

This Operating Agreement is being executed and delivered in the State of STATE-NAME and shall be governed by, construed, and enforced in accordance with the laws of the State of STATE-NAME.

IN WITNESS WHEREOF, the parties hereto make and execute this Operating Agreement on the dates set below their names, to be effective on the date first above written.

IN WITNESS WHEREOF, the sole Member has hereunto set such Member's hand and seal as of the day and year first above written.

Dated: DAY MONTH, YEAR COMPANY SEAL:

FIRM-NAME

By:_____ _____

MANAGER NAME, Manager MONTH DAY, YEAR

_____

MEMBER-1NAME

_____

[i] In some instances, the staff accountant does not warrant or demand equity in your practice, but for a variety of reasons, you need to make him or her a "partner." One approach to doing this, if the laws in your state permit, is to make the staff accountant a nonequity member in your practice's LLC. In terms of control, you could be named manager. If you want your junior partner to share in management, you could simply both be members in a member-managed LLC (with you controlling all equity). If a nonequity member is permitted under your state's LLC statute, this approach would permit you to continue the same disregarded entity status with two members. If your state's laws do not permit a nonequity member, then you could give (sell) your new junior partner a 1 percent (or lower) membership interest, but the entity would then be taxed as a partnership for income tax purposes. This agreement could be modified to reflect that option.

[ii] The following provisions provide no protection to the junior partner. If necessary, a base compensation, bonus formula, and other commitments could be added. However, if you wish to

retain the unfettered right to terminate your junior partner, the agreement should be clear what the relationship is, such as an employee at will, in spite of the nonequity partnership position.

[iii] Consider modifications to restrict or expand the powers based on the relationship and responsibilities, if any, of your junior partner. Consider the provision to authorize an additional signatory on an account, such as the junior partner. Consider addressing the event of your illness, disability, or death of the equity member.

[iv] See the planning ideas for succession of a practice of a sole member in Chapter 2. Consider whether or not your junior partner should serve in that capacity.

Appendix 4-5: Sample Annotated State Professional Services LLC Statute

ARTICLE XII—PROFESSIONAL SERVICE LIMITED LIABILITY COMPANIES[i]

Some states have limited the right of licensed professionals to use LLCs and have provided optional entities to use the PLLC, or professional limited liability company. A PLLC is an LLC for a particular profession, all of whose members must be licensed in that profession. The activities of a PLLC may be limited by statute to conducting the particular professional activity. This illustrative annotated statute, although modeled after New York, does not reflect the current statute of any state intentionally, as it is merely preserved as a guide to assist you in reading your state's statute before retaining counsel. This annotated statute should help you pursue your state PLLC law, if any, prior to your consulting with a corporate attorney to complete your practice's LLC documentation. Another entity which you might consider is the LLP, or limited liability partnership. This is similar to a general partnership in that each member is generally liable for contractual claims, but not liable for malpractice actions of other members. LLP and PLLC laws can differ in significant ways from state to state. LLPs, but not LLCs are partnerships under state law.

§ 1201. Definitions[ii]

As used in this article, unless the context otherwise requires, the term:

(a) *Licensing authority* means the regents of the university of the state of New York or the state education department, as the case may be, in the case of all professions licensed under Title 8 of the education law and the appropriate appellate division of the supreme court in the case of the profession of law.

(b) *Profession* includes any practice as an attorney and counselor-at-law or as a licensed physician and those professions designated in Title 8 of the education law [this includes certified public accountants].

(c) *Professional* means an individual duly authorized to practice a profession, a professional service corporation, a professional service limited liability company, a foreign professional service

limited liability company, a registered limited liability partnership, a foreign limited liability partnership, a foreign professional service corporation, or a professional partnership.

(d) *Professional service* means any type of service to the public that may be lawfully rendered by a member of a profession within the purview of his or her profession.

(e) *Professional service corporation* means (i) a corporation organized under Article 15 of the business corporation law and (ii) any other corporation organized under the business corporation law or under any other predecessor statute, which is authorized by or holds a license, certificate, registration, or permit issued by the licensing authority pursuant to the education law to render professional services within this state.

(f) *Professional service limited liability company* means a limited liability company organized under this article.

(g) *Foreign professional service corporation* has the meaning given to it in Subdivision (d) of Section 1525 of the business corporation law.[iii]

(h) *Foreign professional service limited liability company* 1301 of this chapter.

(i) *Professional partnership* means (1) a partnership without limited partners, each of whose partners is a professional authorized by law to render a professional service within this state, (2) a partnership without limited partners, each of whose partners is a professional, at least one of whom is authorized by law to render a professional service within this state or, (3) a partnership without limited partners authorized by or holding a license, certificate, registration, or permit issued by the licensing authority pursuant to the education law to render a professional service within this state.

§ 1202. Limited liability companies organized under other provisions of law

The provisions of this article shall not apply to limited liability companies heretofore or hereafter, duly formed under any other provision of law.

§ 1203. Formation

(a)Notwithstanding the education law or any other provision of law, one or more professionals, each of whom is authorized by law to render a professional service within the state, or one or more professionals, at least one of whom is authorized by law to render a professional service within the state, may form or cause to be formed a professional service limited liability company for pecuniary profit under this article for the purpose of rendering the professional service or services as such professionals are authorized to practice. With respect to a professional service limited liability company formed to provide medical services, as such services are defined in Article 131 of the education law, each member of such limited liability company must be licensed pursuant to Article 131 of the education law to practice medicine in this state. With respect to a professional service limited liability company formed to provide dental services, as such services are defined in Article 133 of the education law, each member of such limited liability company must be licensed pursuant to Article 133 of the education law to practice dentistry in this state. With respect to a professional service limited liability company formed to provide veterinary services as such services are defined in Article 135 of the education law, each member of such limited liability company shall be licensed pursuant to Article 135 of the education law to practice veterinary medicine. With respect to a professional service limited liability company formed to provide professional engineering, land surveying, architectural or landscape architectural services, or both, as such services are defined in Article 145, Article 147, and Article 148 of the education law, each member of such limited liability company must be licensed pursuant to Article 145, Article 147, and/or Article 148 of the education law to practice one or more of such professions in this state. In addition to engaging in such profession or professions, a professional service limited liability company may engage in any other business or activities as to which a limited liability company may be formed under Section 201 of this chapter. Notwithstanding any other provision of this section, a professional service limited liability company (i) authorized to practice law may only engage in another profession or business or activities or (ii) which is engaged in a profession or other business or activities other than law may only engage in the

practice of law, to the extent not prohibited by any other law of this state or any rule adopted by the appropriate appellate division of the supreme court or the court of appeals.[iv]

(b) The articles of organization of a professional service limited liability company shall meet the requirements of this chapter and (i) shall state the profession or professions to be practiced by such limited liability company and (aa) the names and residence addresses of all individuals who are to be the original members and the original managers, if any, of such limited liability company, and (bb) the names and residence addresses or, if none, the business address of all shareholders, directors, officers, members, managers, and partners of all professional service corporations, foreign professional service corporations, professional service limited liability companies, foreign professional service limited liability companies, registered limited liability partnerships, foreign limited liability partnerships, and professional partnerships who are to be the original members or managers, if any, who are individuals of such limited liability company, (ii) shall have attached thereto a certificate or certificates issued by the licensing authority or by the comparable authority of another state certifying that each of the proposed members and managers, if any, who are individuals is authorized by law to practice a profession that such limited liability company is being formed to practice and, if applicable, that one or more of such individuals are authorized to practice within the state each profession that such limited liability company will be authorized to practice, and (iii) if such proposed member or manager, if any, is a professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership, (aa) such certificate or certificates issued by the licensing authority or by the comparable authority of another state shall certify either (1) that each proposed member or manager is authorized by law to practice a profession that such limited liability company is being formed to practice and, if applicable, that each shareholder, member or partner of such proposed member or manager is authorized by law to render a professional service within the state or (2) that one or more of such proposed members and one or more of such proposed managers, are authorized to practice

within the state each profession that such limited liability company will be authorized to practice and that one or more of the shareholders, members, or partners of such proposed members or managers are authorized to practice within the state each profession that such limited liability company will be authorized to practice within the state and (B) there shall be attached to the articles of organization of the professional service limited liability company a certificate by an authorized officer of the jurisdiction of its formation that the professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, or foreign limited liability partnership is validly existing and, in the case of a foreign professional service corporation, foreign professional service limited liability company, or foreign limited liability partnership, a certificate from the secretary of state that such foreign professional service corporation, foreign professional service limited liability company, or foreign limited liability partnership is authorized to do business under Article 15-A of the business corporation law, under Article 13 of this chapter, or under Article 8-B of the partnership law, as the case may be.[v]

(c)(1) A certified copy of the articles of organization and of each amendment thereto and restatement thereof shall be filed by the professional service limited liability company with the licensing authority within thirty days after the filing of such certificate or amendment with the department of state.

(2) Within one hundred twenty days after the filing of the articles of organization, a copy of the same or a notice containing the substance thereof shall be published once in each week for six successive weeks, in two newspapers of the COUNTY in which the office of the professional service limited liability company is located, to be designated by the COUNTY clerk, one of which newspapers shall be a newspaper published in the city or town in which the office is intended to be located, if a newspaper be published therein; or, if no newspaper is published therein, in the newspaper nearest thereto, and proof of such publication by the affidavit of the printer or publisher of each of such newspapers must be filed with the department of state.[vi] The notice shall include: (i) the name of the professional service limited liability company; (ii) the date of filing of the articles of organization with the secretary of state; (iii) the COUNTY within this state

in which the office of the professional service limited liability company is to be located; (iv) a statement that the secretary of state has been designated as agent of the professional service limited liability company upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon him or her; (v) if the professional service limited liability company is to have a registered agent, his or her name and address within this state, and a statement that the registered agent is to be the agent of the professional service limited liability company upon whom process against it may be served; (vi) if the professional service limited liability company is to have a specific date of dissolution in addition to the events of dissolution set forth in section seven hundred one of this chapter, the latest date upon which the professional service limited liability company is to dissolve; and (vii) the character or purpose of the business of such professional service limited liability company. Failure to cause such notice to be published or to file such proof within one hundred twenty days of the filing of the articles shall prohibit the professional service limited liability company from maintaining any action or special proceeding in this state unless and until such professional service limited liability company causes such notice to be published and files such proof of publication. The failure of a professional service limited liability company to cause such notice to be published or to file proof of publication shall not impair the validity of any contract or act of the professional service limited liability company or the right of any other party to the contract to maintain any action or special proceeding thereon, and shall not prevent the professional service limited liability company from defending any action or special proceeding in this state.[vii]

(d) A professional service limited liability company, other than a professional service limited liability company authorized to practice law, shall be under the supervision of the regents of the university of the state of New York and be subject to disciplinary proceedings and penalties, and its articles of organization shall be subject to suspension, revocation, or annulment for cause, in the same manner and to the same extent as is provided with respect to individuals and their licenses, certificates, and registrations in title eight of the education law relating to the applicable

profession. Notwithstanding the provisions of this subdivision, a professional service limited liability company authorized to practice medicine shall be subject to the pre-hearing procedures and hearing procedures as are provided with respect to individual physicians and their licenses in Title II-A of Article 2 of the public health law.

(e) A professional service limited liability company authorized to practice law shall be subject to the regulation and control of, and its articles of organization shall be subject to suspension, revocation, or annulment for cause by, the appellate division of the supreme court and the court of appeals in the same manner and to the same extent provided in the judiciary law with respect to individual attorneys and counselors-at-law. Such limited liability company need not qualify for any certification under Section 464 of the judiciary law, take an oath of office under Section 466 of the judiciary law, or register under Section 467 of the judiciary law.

(f) The order of suspension, revocation, or annulment of the articles of organization of a professional service limited liability company pursuant to subdivisions (d) and (e) of this section shall be effective upon the filing of such order with the department of state.

§ 1204. Rendering of professional service

(a) No professional service limited liability company may render a professional service except through individuals authorized by law to render such professional service, as individuals, provided, that nothing in this chapter shall authorize a professional service limited liability company to render a professional service in this state except through individuals authorized by law to render such professional service as individuals in this state.

(b) Each final plan and report made or issued by a professional service limited liability company practicing professional engineering, architecture, landscape architecture, or land surveying shall

bear the name and seal of one or more professional engineers, architects, landscape architects, or land surveyors, respectively, who are in responsible charge of such plan or report.

(c) Each report, diagnosis, prognosis, and prescription made or issued by a professional service limited liability company practicing medicine, dentistry, podiatry, optometry, ophthalmic dispensing, veterinary medicine, pharmacy, nursing, psychology, physical therapy, or chiropractic therapy shall bear the signature of one or more physicians, dentists, podiatrists, optometrists, ophthalmic dispensers, veterinarians, pharmacists, nurses, licensed psychologists, physical therapists, or chiropractors, respectively, who are in responsible charge of such report, diagnosis, prognosis, or prescription.

(d) Each record, transcript, report, and hearing report prepared by a professional service limited liability company practicing certified shorthand reporting shall bear the signature of one or more certified shorthand reporters who are in responsible charge of such record, transcript, report, or hearing report.

(e) Each professional service limited liability company practicing public accounting or certified (public accounting shall maintain records indicating the identity of each public accountant or certified public accountant, respectively, who was responsible for each report or statement that is issued, prepared, or examined by such limited liability company.[viii]

(f) Each opinion prepared by a professional service limited liability company practicing law shall bear the signature of one or more attorneys and counselors-at-law who are in responsible charge of such opinion.

(g) In addition to the requirements pursuant to subdivisions (b) through (f) of this section, each document prepared by a professional service limited liability company that under the rules, regulations, laws, or customs of the applicable profession is required to bear the signature of an individual in responsible charge of such document, shall be signed by one or more such individuals.

§ 1205. Professional relationships and liabilities[ix]

(a) Each member, manager, employee, or agent of a professional service limited liability company shall be personally and fully liable and accountable for any negligent or wrongful act or misconduct committed by him or her or by any person under his or her direct supervision and control while rendering professional services on behalf of such limited liability company.

(b) Each shareholder, director, officer, employee, member, manager, partner, and agent of a professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership that is a member, manager, employee, or agent of a professional service limited liability company shall be personally and fully liable and accountable for any negligent or wrongful act or misconduct committed by him or her or by any person under his or her direct supervision and control while rendering professional services in his or her capacity as a member, manager, employee, or agent of such professional service limited liability company.

(c) The relationship of a professional to a professional service limited liability company with which such professional is associated, whether as member, manager, employee, or agent, shall not modify or diminish the jurisdiction over such professional of the licensing authority, and in the case of an attorney and counselor-at-law or a professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership engaged in the practice of law, the courts of this state.

§ 1206. Purposes of formation

No professional service limited liability company shall engage in any profession or professions other than those set forth in its articles of organization. A professional service limited liability company may only engage in a profession or professions as to which one or more of its members is authorized by law to render professional services in this state. In addition to engaging in such profession or professions, a professional service limited liability company may carry on, or conduct or transact any other business or other activities as to which a limited liability company may be formed under Section 200 one of this chapter. Notwithstanding any other provision of this section, and subject to the next succeeding sentence of this section, a professional service limited liability company (i) authorized to practice law may only engage in another profession or other business or activities or (ii) which is engaged in a profession or other business or activities other than law may only engage in the practice of law, to the extent not prohibited by any other law of this state or any rule adopted by the appropriate appellate division of the supreme court or the court of appeals. Any professional service limited liability company may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investments.

§ 1207. Membership of professional service limited liability companies

(a) A member of a professional service limited liability company shall be only:

(1) A professional, other than a foreign professional service corporation, foreign professional service limited liability company, or foreign limited liability partnership, authorized by law to practice in this state a profession that such limited liability company is authorized to practice and who is or has been engaged in the practice of such profession in such limited liability company or a predecessor entity, or who will engage in the practice of such profession in such limited liability company within thirty days of the date such professional becomes a member;

(2) A professional, other than a foreign professional service corporation, foreign professional service limited liability company, or foreign limited liability partnership, authorized by law to practice in any foreign jurisdiction a profession that such limited liability company is authorized to practice and who is or has been engaged in the practice of such profession in such limited liability company or a predecessor entity, or who will engage in the practice of such profession in such limited liability company within thirty days of the date such professional becomes a member; or

(3) A foreign professional service corporation, foreign professional service limited liability company, or foreign limited liability partnership authorized by law to practice in this state or in any foreign jurisdiction a profession that such limited liability company is authorized to practice and who is or has been engaged in the practice of such profession in such limited liability company or a predecessor entity, or who will engage in the practice of such profession in such limited liability company within thirty days of the date such professional becomes a member.

(b) [Omitted]

(c) No member of a professional service limited liability company shall enter into a voting trust agreement, proxy, or any other type of agreement vesting in another person, other than another member of such limited liability company or professional who would be eligible to become a member of such limited liability company, the authority to exercise voting power of any or all of the membership interests of such limited liability company. All membership interests or proxies granted or agreements made in violation of this section shall be void.

[§ 1208. Reserved.]

§ 1209. Disqualification of members, managers, and employees[x]

If any member, manager, or employee of a professional service limited liability company who has been rendering professional service to the public becomes *legally disqualified to practice* his, her, or its profession within this state, he, she, or it shall sever all employment with and financial interests (other than interests as a creditor or vested rights under a bona fide retirement program) in such limited liability company forthwith or as otherwise provided in Section 1210 of this article. All provisions of law regulating the rendering of professional services by a person elected or appointed to a public office shall be applicable to a member, manager, or employee of such limited liability company in the same manner and to the same extent as if fully set forth herein. Such legal disqualification to practice such profession within this state shall be deemed to constitute an irrevocable offer by the disqualified member to sell his, her, or its membership interest to the professional service limited liability company, pursuant to the provisions of Section 1210 of this article or of the articles of organization or operating agreement, whichever is applicable. Compliance with the terms of such offer shall be specifically enforceable in the courts of this state. A professional service limited liability company's failure to enforce compliance with this provision shall constitute a ground for its dissolution.

§ 1210. Death, disqualification, or dissolution of members[xi]

(a) A professional service limited liability company shall purchase or redeem the membership interest of a member in case of such member's death or disqualification pursuant to the provisions of Section 1209 of this article or in the case of a member that is a professional service

corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership, dissolution or disqualification of such professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership (in the case of registered limited liability partnership, foreign limited liability partnership and professional partnership, other than a dissolution followed by a reconstitution where at least a majority of the total interests in the current profits of a successor partnership are held by partners of the predecessor partnership that was a registered limited liability partnership, foreign limited liability partnership or professional partnership who were partners of such predecessor partnership immediately prior to the dissolution of such predecessor partnership) or the death, dissolution, or disqualification of all of its shareholders, members, or partners, within six months after the appointment of the executor or administrator or other legal representative of the estate of such deceased member, or within six months after such disqualification or dissolution, **at the book value of such membership interest as of the end of the month immediately preceding the death, disqualification, or dissolution of the member as determined from the records of such limited liability company in accordance with its regular method of accounting**. The operating agreement of such limited liability company may modify this section by providing for a shorter period of purchase or redemption, or an alternate method of determining the price to be paid for the membership interest, or both. If such limited liability company shall fail to purchase or redeem such membership interest within the required period, a successful plaintiff in an action to recover the purchase price of such membership interest shall also be awarded reasonable attorneys' fees and costs. Nothing herein contained shall prevent such limited liability company from paying pension benefits or other deferred compensation to or on behalf of a former or deceased member, manager, or employee thereof, or where such member, manager, or employee is a professional service corporation, foreign professional service corporation, professional service limited liability company, foreign

professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership, on behalf of a former or deceased shareholder, officer, director, member, manager, partner, or employee of such professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership, as otherwise permitted by law. The provisions of this section shall not be deemed to require the purchase of the membership interest of a disqualified member where the period of disqualification is for less than six months, and the member again becomes eligible to practice his or her profession within six months from the date of disqualification (or, in the case of a disqualified member that is a professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership, where the period of disqualification of such professional service corporation, foreign professional corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership or all shareholders, members, or partners of such professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership is for less than six months and such professional service corporation, foreign professional service corporation, professional service limited liability company, foreign professional service limited liability company, registered limited liability partnership, foreign limited liability partnership or professional partnership or each such shareholder, member, or partner becomes eligible to practice his or her profession within six months from the date of disqualification).

(b) Notwithstanding the provisions of subdivision (a) of this section, the professional service limited liability company shall not be required to purchase or redeem the membership interest of a

deceased or disqualified or dissolved member if such membership interest, within the time limit prescribed by subdivision (a) of this section, is sold or transferred to another professional pursuant to the provisions of section twelve hundred eleven of this article.

§ 1211. Transfer of a membership interest

(a) No member of a professional service limited liability company may sell or assign his, her, or its membership interest in such limited liability company except to another professional eligible to become a member of such limited liability company or except in trust to another professional who would be eligible to become a member if such professional were employed by such limited liability company.

(b)Nothing contained in subdivision (a) of this section shall be construed to prohibit the assignment of a membership interest by operation of law or by court decree. An assignee of a membership interest by operation of law or court decree shall have the rights of an assignee of a membership interest set forth in Section 603 of this chapter. Such assignee shall automatically become a member of the professional service limited liability company if such assignee would be eligible to be a member of such limited liability company and, a majority in interest of the members shall fail to redeem the membership interest so transferred, pursuant to Section 1210 of this article, within sixty days of receiving written notice of such transfer.

(c)(c) Any sale or transfer, except by operation of law or court decree or except for a professional service limited liability company having only one member, may be made only after the same shall have been approved by the vote or written consent of such proportion, not less than a **majority in interest of the members**, exclusive of the interest of the member proposing to sell or transfer such membership interest, as may be provided in the operating agreement of such professional service limited liability company.[xii] The voting interest held by the member proposing to sell or transfer his, her, or its membership interest may not be voted or counted for any purpose, unless all the members consent that such interests be voted or counted. The professional service

limited liability company may provide, in lieu of or in addition to the foregoing provisions, for the alienation of membership interests and may require the redemption or purchase of such membership interests by such limited liability company at prices and in a manner specifically set forth therein. The existence of the restrictions on the sale or transfer of a membership interest, as contained in this article and, if applicable, in the operating agreement, shall be noted conspicuously on the face or back of every certificate representing a membership interest issued by a professional service limited liability company. Any sale or transfer in violation of such restrictions shall be void.

§ 1212. Limited liability company name[xiii]

(a) Notwithstanding any other provision of law, the name of a professional service limited liability company may contain any word that, at the time of formation, could be used in the name of a partnership or professional service corporation practicing a profession that such limited liability company is authorized to practice and may not contain any word that could not be used by such a partnership or professional service corporation; provided, however, the name of a professional service limited liability company may not contain the name of a deceased person unless:[xiv]

(1) such person's name was part of the name of such limited liability company at the time of such person's death; or

(2) such person's name was part of the name of an existing partnership or professional service corporation and at least two thirds of such partnership's partners or corporation's shareholders, as the case may be, become members of such limited liability company.

(b) A professional service limited liability company name shall end with the words "Professional Limited Liability Company" or "Limited Liability Company" or the abbreviation "P.L.L.C.", "PLLC", "L.L.C.," or "LLC". The provisions of subdivision (a) of Section 204 of this chapter shall not apply to a professional service limited liability company.

§ 1213. Limited liability company act applicable

This chapter, except Article eight and Article thirteen, shall be applicable to a professional service limited liability company except to the extent that the provisions thereof conflict with this article. A professional service limited liability company may consolidate or merge with another limited liability company formed under this article, a foreign professional service limited liability company authorized to do business under Article thirteen of this chapter or other business entity, only if all of the professions practiced by such limited liability company, foreign limited liability company or other business entity could be practiced by a single limited liability company organized under this article.

[§ 1214. Reserved.]

§ 1215. Regulation of professions

This article shall not repeal, modify, or restrict any provision of the education law or the judiciary law or any rules or regulations adopted thereunder regulating the professions referred to in the education law or the judiciary law except to the extent in conflict herewith.

§ 1216. Mergers and consolidations

Notwithstanding any inconsistent provision of this article, a professional service limited liability company, pursuant to the provisions of article ten of this chapter, may be merged or consolidated with another limited liability company formed pursuant to the provisions of this chapter, a foreign professional service limited liability company authorized to do business under article thirteen of this chapter or other business entity formed or recognized under the laws of this state or any other state, provided that the limited liability company or other business entity that survives or that

is formed pursuant thereto is a professional service limited liability company, a foreign professional service limited liability company authorized to do business under article thirteen of this chapter or other business entity practicing the same profession or professions in this state or the state of its formation. The restrictions on the issuance, transfer, or sale of membership interests of a professional service limited liability company other than the requirements of the first two sentences of subdivision (c) of Section 1211 of this chapter, shall be suspended for a period not exceeding thirty days with respect to any issuance, transfer, or sale of membership interests made pursuant to such merger or consolidation, provided that (a) no person or business entity who would not be eligible to be a member in the absence of this section shall vote or receive any distribution from such limited liability company; (b) after such merger or consolidation, any professional service limited liability company that survives or that is created thereby shall be subject to all the provisions of this article; and (c) membership interests thereafter may be held only by persons or business entities who are eligible to be a member of such professional service limited liability company. Nothing herein contained shall be construed as permitting the practice of a profession in this state by a limited liability company that is not formed pursuant to the provisions of this article or authorized to do business in the state pursuant to the provisions of article thirteen of this chapter.

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[i] See the planning ideas for succession of a practice of a sole member in Chapter 2. Consider whether or not your junior partner should serve in that capacity.

[ii] The following provisions discuss the use of LLCs by licensed professionals such as certified public accountants.

[iii] This definition raises a significant issue for many accounting practices with operations in more than one state. If you conduct business in more than one state, consider the potential disparities under different state statutes by reviewing your compliance with both states' laws, and determine whether formal authorization to do business is required in the second state. Cautiously consider whether both states' statutes permit the same type of entity to be used with the same type of

result. For example, as discussed in this chapter, some state LLP statutes provide only limited protection for malpractice claims; others provide broader protection.

[iv] In the operating agreement, include mandatory adherence to the rules and regulations of all applicable regulatory bodies, membership in applicable organizations, participation in required continuing education programs, and penalties for noncompliance.

[v] Few states have a publication requirement. If filing requirements are in place, however, comply, regardless of expense, in order to avoid malpractice and the invalidation of your PLLC.

[vi] A copy of the certificate has to be filed with the state licensing authority. Be alert to the specific requirements in your state and calendar any required revenues or follow-up filings.

[vii] The following provisions discuss the requirement for professional service LLCs to comply with applicable licensing rules. The operating agreement for any professional service LLC should have detailed representations, warranties, and standards tailored to the accounting profession as well as any other specific professional licenses or disciplines reflected in your practice.

[viii] The following provision applies to accountants.

[ix] The following provision makes clear that the use of a PLLC by a professional may insulate the professional members of the LLC from contract and other claims, but not from malpractice claims. Note that the malpractice liability is only for malpractice committed by the particular professional or a "person under his or her direct supervision and control."

[x] The phrase "legally disqualified to practice" is not sufficient protection for the practice or the other professionals who remain. The operating agreement should provide for a separation or suspension, if not termination, before legal disqualification occurs.

[xi] In this provision, the language in boldface, which is the statutory default, is generally an inadequate measure of value, especially for a cash basis entity. What about goodwill? What if the only "books" are the LLC's tax return prepared on a cash basis?

[xii] Few professionals would agree to the admission of a new member to a professional practice based on majority vote. The operating agreement should modify this provision.

[xiii] The following provisions should be considered in determining the name for your practice and in preparing the provisions of the operating agreement that pertain to the practice's name.

[xiv] Consider the following in the operating agreement: "In the event any member retires or ceases to be a member by reason of death or disability, such member's name may continue to be used in the practice name with no additional compensation or payments to such member. The practice, however, shall be under no obligation to continue to use any name it chooses not to so use. If any member permanently withdraws from the practice, his name may be deleted from the practice name in the discretion of the remaining member or members."

Appendix 4-6: Sample General Partnership Agreement Admitting New Junior Partner on a Purchase Basis with Ancillary Documentation[i]

THIS AGREEMENT, entered into this ___ day of MONTH YEAR, and effective January 1, YEAR, between and among:

a. MAIN-PARTNER, who resides at ADDRESS ("MAIN-PARTNER"); and

b. NEW-PARTNER, who resides at ADDRESS ("NEW-PARTNER").

MAIN-PARTNER and NEW-PARTNER are referred to as the "Partners," or individually, the "Partner");

c. RETIRING-PARTNER, who resides at ADDRESS STATE-NAME ("RETIRING-PARTNER"); and

d. PRACTICE-NAME & Co., CPAs, a STATE-NAME general Partnership, with its principal place of business at ADDRESS (the "Partnership").

R E C I T A L S

1. WHEREAS, the Partners and RETIRING-PARTNER are all Certified Public Accountants duly licensed in the State of STATE-NAME, and are members in good standing of the STATE-NAME State Society of Certified Public Accountants and the American Institute of Certified Public Accountants ("Organizations").

2. WHEREAS, the Partners have continued the Partnership in order to practice certified public accounting and all activities incident and necessary thereto, including but not limited to, maintaining offices, owning property, managing and operating of any property which comes to the Partnership by way of fees or investments, generally conducting a business of Certified Public Accountants, including but not limited to tax preparation, bookkeeping, accounting, auditing, consulting, and rendering of financial statements [tailor to reflect the specific nature of your practice].

3. WHEREAS, the business shall be conducted in strict conformity with the rules, regulations, and ethical standards governing the practice of public accounting as prescribed by the STATE-NAME State Society of Certified Public Accountants, the American Institute of Certified Public Accountants, and the State Board of Accountancy of STATE-NAME and any

other applicable licensing or regulatory body (the "Business"). All Partners and RETIRING-PARTNER, so long as he is active in or employed by the Partnership, shall remain in good standing with or properly authorized by such entities, and in good standing with the Organizations ("Duly Qualified").

4. WHEREAS, the Partners wish to provide for the admission of NEW-PARTNER as Partner, the withdrawal of RETIRING-PARTNER, and the succession and continued operation of the Partnership, including the possible future admission of new Partners.

NOW THEREFORE, the Parties hereto, in consideration of the mutual premises and covenants herein contained agree as follows:

T E R M S

A. Name of The Partnership[ii]

1. Change in Partnership Name Generally

a. The Business shall only be conducted under the name of "PRACTICE-NAME & Co., CPAs" (the "Name"). The Name of the Partnership shall remain the property of MAIN-PARTNER and shall continue until it is changed by MAIN-PARTNER, notwithstanding the fact of RETIRING-PARTNER's retirement and eventual cessation of practice with the Partnership.

b. In the event of the disability (either the Preliminary Disability or Final Disability, as defined below) of MAIN-PARTNER, the Name of the Partnership shall continue unchanged unless MAIN-PARTNER, or the Designee of MAIN-PARTNER, consents in writing to change the Name.

c. In the event of the demise of MAIN-PARTNER, the Name of the Partnership shall continue unchanged. Upon the completion of Fifty percent (50%) of the payments of the purchase price for the MAIN-PARTNER interests in the Partnership under the provision "Purchase of MAIN-PARTNER's Interests in Event of Final Disability or Death" the Partnership may continue to use the Name, or some variation thereof, or change the name, in its discretion. In the default of such payment, the executor of MAIN-PARTNER's estate may demand the removal of MAIN-PARTNER's name, in addition to any other remedies permitted herein or by applicable law.

2. Use of the Name "RETIRING-PARTNER"

The name of the Partnership shall be PRACTICE-NAME & Co., CPA's. Although RETIRING-PARTNER shall terminate his involvement with the Partnership effective January 1, 1996, the remaining Partners may, in their sole discretion, continue to use the name "RETIRING-PARTNER" as part of the name of the Partnership, or any successor Partnership. Such continued use of the "RETIRING-PARTNER" name following his termination shall be at the sole risk of the Partnership and not RETIRING-PARTNER, and the Partnership hereby agrees to indemnify and hold harmless RETIRING-PARTNER for the use of his name for events occurring after the date of his termination and unrelated to matters, services, and activities performed prior to such termination. It is the express intent of this provision that since RETIRING-PARTNER is permitting the continued use of his name by the Partnership, and if he has no other involvement with the Firm, that he should not be responsible in the event of any claim relating to the use of his name.

3. Use of Other Partners' Names in the Partnership Name

If any Partner, other than MAIN-PARTNER, permanently withdraws from the Partnership, such Partner's name may be deleted from the Partnership name in the discretion of the remaining Partners or may continue to be used in the discretion of the remaining partners if such withdrawal is due to death or disability. However, if the withdrawal is for any other reason, the consent of the withdrawing partner must be obtained for the continued use of the name. However, in all events, the Partnership shall have not less than 90-days to continue use of any withdrawing partner's name on signage, letterhead, Web site, and other matters as a transition period.

4. Limitation on Use

The Partnership Name may not be used by any person, group, or entity except the Partnership as defined herein.

5. Announcements

Announcements shall be placed in the STATE-NAME Society of CPA's Newsletter and/or any other publication reasonably requested by NEW-PARTNER to announce that NEW-PARTNER has joined the Partnership. Announcements shall also be mailed to the Partnership's clients to announce that NEW-PARTNER has joined the Partnership as a Partner. All of such activities shall be at the sole expense of the Partnership.

B. Formation of Partnership; Term

1. Formation

The Partners agree that the Partnership has heretofore been formed as a general partnership under STATE-NAME law, and that the Partnership has been operated under a predecessor Partnership agreement "Partnership Agreement For PRACTICE-NAME & Co.", dated OLD-AGREEMENT-DATE, which agreement is hereby terminated and agreed to be void effective on the execution of this new Agreement.

2. Term

The Partnership commenced operations heretofore and shall continue, subject to the terms and conditions set forth in this Agreement, until December 31, END-YEAR, and from calendar year to calendar year thereafter unless modified or terminated by MAIN-PARTNER, as required by law, or as provided hereunder. Such termination shall not release any Partner from any obligation hereunder arising prior thereto.

C. Buy-in by Newly Admitted Partner

1. Buy-Ins in General

The Partners and the Partnership hereby agree that the buy-in for newly admitted Partners shall be based on the following formula determined at December 31 of the calendar year preceding the year of the Buy-In:[iii]

a. Cash basis capital plus Ninety (90) percent of accounts receivable plus Eighty (80) percent of work in process; plus

b. Goodwill and any intangible assets:

(i) An applicable percentage to be determined, multiplied by

(ii) Annual gross billings shall be those billings for the calendar year preceding the year of admittance to the Partnership. Annual Gross Billings for the calendar year are determined as follows: Total gross billings, including any progress billings, plus or minus any current year billing adjustments but not including any write-offs of uncollectible accounts receivable. Such amounts will be determined from the billing records of the Partnership.

c. Multiplied by the percentage interest being purchased.

2. Alienation of Partnership Interest[iv]

Except as herein provided, no Partner, except MAIN-PARTNER, shall sell, assign, create a security interest in or lien upon, give, place in trust or otherwise dispose of all or any portion of his interest in the Partnership now owned or hereafter acquired. If MAIN-PARTNER, shall sell, assign, give, place in trust, or otherwise dispose of all or any portion of his interest in the Partnership now owned or hereafter acquired, MAIN-PARTNER shall provide Thirty (30) days advance written notice ("Notice") to the other Partners of any such intended sale, assignment, security interest, lien, transfer into trust, or other

disposition. The other Partners, after receiving such Notice, shall be granted the option of selling, assigning, or otherwise disposing of all or any portion of such other Partner's interest in the Partnership now owned or hereafter acquired, to the same person as MAIN-PARTNER or such other person as may be designated by MAIN-PARTNER. For these purposes, the term *person* shall include an individual, trust, estate, corporation, general or limited partnership, limited liability corporation, limited liability partnership, or such other entity.

3. Sale of Partnership Interest[v]

No sale of Partnership interest by any Partner, other than MAIN-PARTNER, to any other Partner or to any person not a party to this Agreement is permitted unless MAIN-PARTNER agrees to such sale in a writing executed by him. MAIN-PARTNER shall have the right to decide whether to purchase the Partnership interest that any Partner desires to sell or to have the Partnership purchase all of the interests owned by such Partner.

D. Capital Contributions

1. Capital Accounts

a. Individual capital accounts shall be maintained for each Partner.

b. Capital contribution of the Partners shall not be subject to withdrawal, except as specifically provided in this Agreement to the contrary.

c. No Partner shall be entitled to receive interest on his or her capital account.

2. Additional Capital Contributions

The capital of the Partnership shall be maintained at a sufficient level to adequately provide necessary working capital and facilities for the reasonable operation of the Business, to comply with the requirements of any regulatory body, or as determined in the reasonable discretion of the Managing Partner after Notice to the Partners ("Minimum Capital").

3. Mandatory Loans by Partners[vi]

a. In lieu of requiring a Capital Contribution to meet the working capital needs of the Partnership, the Partners may determine by a vote of Two Thirds of the Partnership Interests that it is preferable to have the Partners make mandatory loans to the Partnership to meet temporary working capital needs.

b. The Partners may authorize the Partnership to pay interest to the Partners on their mandatory loans to the Partnership. The interest rate paid on such loans shall be the Federal Mid-Term interest rate in effect for the month in which such loan was advanced, as determined under Section 1274 (d) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Code") ("hereinafter referred to as the "Rate").

4. Mechanics of Making Additional Capital Contribution or Mandatory Loan.

The Partnership may give each Partner Thirty (30) days advance Notice that an additional capital contribution or mandatory loan is required in order to achieve Minimum Capital ("Capital Contribution"). Each Partner shall make an additional capital contribution or mandatory loan to the Partnership as required in such Notice. The amount of additional capital to be contributed, or mandatory loan to be advanced, by each Partner shall be determined by multiplying the aggregate additional capital, or mandatory loan required to be contributed or advanced to achieve Minimum Capital by the percentage ownership interest attributable to such Partner. Where any Partner fails to make the required additional capital contribution or mandatory loan, within Ninety (90) days of the date of such Notice, interest shall be charged to such Partner and paid by such Partner on the unpaid contribution or mandatory loan on the first day of each month after the required date for such contribution or advance. Interest shall be charged at the Rate plus Three percent (3%).

E. Withdrawals by Partners

1. Maintenance of Drawing Account[vii]

A drawing account shall be maintained for each Partner. Profits and losses, calculated on a cash basis, less any reserves established in the reasonable discretion of the Managing Partner, shall be credited or debited to each drawing account as soon as practicable after the close of each calendar year of the Partnership. The drawing account shall at all times reflect the amount which can be withdrawn by each Partner.

2. Drawing Account Reduced to Zero; Capital Account Below Minimum Required

If there is a zero balance in a Partner's drawing account, net losses shall be debited to that Partner's capital account. If that Partner's capital account shall have been reduced below the Minimum Capital required to be maintained by that Partner, future profits otherwise allocable to that Partner shall not be credited to his drawing account until that Partner makes additional capital contributions or such profit allocations are sufficient to restore his capital account to the Minimum Capital required to be maintained by him or her. Thereafter future profits allocable to that Partner shall be credited to his or her drawing account.

3. Limitations on Amount to Be Withdrawn[viii]

Amounts to be withdrawn by each Partner shall be established by a majority vote of the Partnership Interests. A Partner may draw any excess in his capital account over the Minimum Capital

such Partner is required to maintain, upon Thirty (30) days Notice to the Partnership, or at the discretion of the Managing Partner.

F. Profits and Losses

1. Generally

a. Net profits shall be calculated on a tax basis and shall equal net profits on the Partnership's federal income tax return, prior to any deductions for compensation to Partners, but after any guaranteed payments to each Partner.

b. Accrual basis profits shall be calculated in accordance with Generally Accepted Accounting Principles (GAAP).

2. Participation in Profits and Losses[ix]

Partners shall share in profits and losses in the proportions following proportions, unless such proportions are amended by written agreement of the parties: MAIN-PARTNER, 95%; NEW-PARTNER, 5%; RETIRING-PARTNER, 0%.

G. Partner Conduct

1. Full-Time Devotion Primarily to Professional Services

Each Partner shall devote his or her best efforts to professionally serving the Partnership and the Partnership's clients and shall devote substantially all of his or her normal business time and attention to such services. The Partners shall not engage in the practice of accounting or financial consulting except as an employee of the Partnership without the prior written consent of the Managing Partner.

2. Duties

The Partnership shall have exclusive authority and power to determine the administrative, tax, consulting, accounting, and other client matters are to be assigned to the Partners and other staff, including the specific duties and standards of performance for such work. It is also specifically agreed that every Partner shall share in the administrative burdens of the Partnership and practice.

3. Nature of Partner's Services

a. In consideration for the remuneration specified in this Agreement, the Partners agree to:

(i) Devote substantially all of their working time to the Partnership's Business.

(ii) Adhere to all applicable codes of conduct and professional ethics [if there are specific requirements or other licensing bodies, such as financial planning, valuation, etc. these should be listed].

(iii) Perform services in a professional, business-like, and dignified manner.

(iv) Keep an accurate record, in the form required by the Partnership, of all billable time spent on clients' matters and affairs; time spent on professional education, administrative matters, client development, and other nonbillable time. Such records shall be submitted to the Partnership as the Partnership requires together with any special billing instructions that apply to any matters.

(v) All client billings shall be made by the Partnership, and the Partnership shall have the exclusive authority to fix the fees to be charged to all clients.

(vi) All fees, compensation, and other moneys or things of value received or realized as a result of services provided by the Partnership and each Partner shall be strictly accounted for and turned over to the Partnership upon receipt thereof. This includes all accounting income generated by each Partner. For purposes of this provision, the term *services* shall include professional accounting and related services, honorariums for speaking and writing, and trustee, executor, and fiduciary fees. However, the fact that the trustee, executor, and fiduciary fees must

be accounted for and turned over to the Partnership shall not affect the fact that such fees shall be subject to special allocations as negotiated by the Partners. Attached to this Agreement as Exhibit ___ is a current listing of each Partner's Trust and other fiduciary appointments as of the date of this Agreement.

(vii) To maintain and prepare reports and documents and underlying work papers, files, and other documentation reasonably appropriate to support the actions taken with respect to any file and client matter, and to track and meet any tax or other deadlines and due dates (collectively the "Papers"). The title to and ownership of the Papers shall be vested solely in the Partnership.

(viii) To adhere to rules of conduct and requirements contained from time to time in any personnel manual which applies to all employees or Partners generally.

b. The Partners agree that their performance shall be evaluated in the sole discretion of the Managing Partner and shall be based on any appropriate factors, including, but not limited to the following:

(i) Client matters completed.

(ii) Fees generated and collected.

(iii) Professionalism.

(iv) Clients and files originated.

(v) Assistance in administration of the Partnership when requested and/or necessary.

(vi) Accounts receivable generated and collected.

(vii) Efforts and success in controlling Partnership overhead and costs.

(viii) Billable and nonbillable hours.

4. Charging for Professional Services[x]

a. Each Partner shall reasonably charge for all professional services rendered by him, generally following the policies of the Partnership as to fees charged. However, each Partner may service without charge, or at less than regular charges, any member of his own family or any relative. With the consent of the Managing Partner, any Partner may service without charge, or at less than regular charge, any civic, educational, religious, or charitable organization or project. All

such services shall be fully accounted for in the Partnership's billing system in the same manner as all regular billings.

b. No gifts, property, or fees of any amount or anything of value shall be accepted, directly or indirectly, by any Partner personally from any client or prospective client of the Partnership, unless such property or fees shall be disclosed in full to the Partnership. The fair value of any such items received with such consent shall be treated for accounting purposes as compensation to the Partnership and shall be charged against such Partner as an advance on the next amount due from his drawing account. The Managing Partner may agree, however, to reasonable exceptions to this provision where the basis and rationale for such exception is communicated to all Partners.

c. Fees for a Partner serving as a fiduciary shall be paid to the Partnership. The Partners shall meet annually to review these fees and negotiate any special allocation of such fees. Such negotiations shall consider, among other factors, the Partner's personal relationship with the estate, trust, or other entity naming that Partner as fiduciary, the actual Partnership resources devoted to or used by the Partner in fulfilling his or her fiduciary obligations and the liability the Partnership may face for such services.

d. Any fees for honorariums, speaking, and publications shall be paid to the Partnership.

5. Professional Obligations

a. In accordance with the Partnership's policy, each Partner shall maintain memberships in good standing in the American Institute of Certified Public Accountants and the STATE-NAME State Society of Certified Public Accountants and any other professional organization determined by the Partnership [list other specific societies or organizations].

b. In accordance with the Partnership's policy, each Partner shall maintain his license and privilege to practice in the state of STATE-NAME, and in any other state in which he is licensed or the Partnership conducts business.

c. Each Partner shall at all times comply with all of the provisions of the American Institute of Certified Public Accountants Code of Professional Ethics applicable to accountants practicing in

the State of STATE-NAME, and by the statutes, rules, and regulations of the state societies and the boards of public accountancy in any state where such Partner is licensed.

6. Implement Major Decisions

The Partners shall, at the expense of and on behalf of the Partnership, implement or cause to be implemented all Major Decisions approved by the Managing Partner. The Partners shall conduct or cause to be conducted the ordinary and usual business and affairs of the Partnership in accordance with, and as limited by this Agreement, and the Partners shall, to the extent necessary, cooperate with same.

7. Limitation on Authority

Except as otherwise expressly and specifically provided in this Agreement, no Partner shall have any authority to act for or assume any obligations or responsibility on behalf of any other Partner or the Partnership. Nothing herein shall be construed to authorize any Partner or the Partnership (except as expressly provided herein) to act as general agent for any other Partner or for the Partnership or to permit any Partner to bid for or to undertake any contract for the other Partner, except as expressly provided for herein and in furtherance of the Business of the Partnership.

H. Operations

1. Credit

No Partner shall have the right to borrow money on behalf of any other Partner or the Partnership or to use the credit of any other Partner or the Partnership for any purpose, except as authorized by the Managing Partner and except as authorized for official Partnership business.

2. Banking

All funds of the Partnership shall be maintained in a bank account or accounts, and no funds of the Partnership shall be commingled with funds or accounts of any Partner or person related to any

Partner. MAIN-PARTNER and NEW-PARTNER shall only have authority to sign on Partnership bank accounts.

RETIRING-PARTNER shall execute any documents necessary to remove his name from any Partnership bank or other accounts. This requirement shall survive the execution of this Agreement without time limit.

3. Related Party Transactions

Related party transactions (such as, for example, the leasing of space in a building you own) are often the most contentious of issues. If you are bringing in a partner, you should address known or potential related party transactions in the agreement. Sample documents in other appendices in this chapter address these issues in more detail. This sample agreement is based on the assumption that there are no significant related party transactions.

The Partnership may deal and contract with affiliated or related persons to provide services or materials or products for the Partnership, provided that such services or products are specifically described and accounted for, and the fees to be paid therefor and the terms and conditions thereof are not less favorable to the Partnership than those which could be reasonably obtained by the Partnership from equally qualified but unaffiliated third parties.

4. Compensation

a. Compensation of Partners

Each Partner shall receive a monthly or more frequent draw as agreed to by the Partners.

In addition, each Partner shall receive for each calendar year a profit (loss) allocation equal to such Partner's percentage interest in the Partnership, as reported on the Partnership's Form 1065 (or such successor Form) as taxable income, after deducting any guaranteed payments to Partners. Such amount shall be paid as soon as practical after year end, giving consideration to Partnership cash flow. The final determination of the timing of such payment shall be made by the Managing Partner.

Each Partner shall receive a profit (loss) allocation in accordance with their Partnership interest, subject to any agreed special allocations of fiduciary fees.

b. Guarantee for NEW-PARTNER[xi]

MAIN-PARTNER and NEW-PARTNER hereby agree that for the GUARANTEE-PERIOD NEW-PARTNER shall receive an annual guaranteed payment of DOLLARS Thousand Dollars ($_____,000), payable in semi-monthly installments on the fifteenth and last day of each month (for the prior semi-monthly period).

c. Health and Other Insurance

(i) The Partnership presently maintains health insurance for the payment of certain hospital, medical, and dental expenses incurred by its employees. The Partnership shall pay the cost for the Partners of such medical and dental insurance in accordance with the Partnership's policy which may change from time to time. The Partnership reserves the right to change carriers, plans, eligibility criteria, employee reimbursement coverage, requirements for employee and Partner contribution towards such plan, and other aspects of such plans.

(ii) All matters of eligibility for coverage or benefits under any health insurance provided by the Partnership shall be determined, in addition to rules established from time to time by the Partnership, in accordance with the provision of the insurance policies. The Partnership shall not be liable to the Partners, their heirs, family, executors, or beneficiaries for any payment payable or claimed to be payable under any plan of insurance or for any change or termination of such plan.

(iii) The Partners may determine from time to time whether the Partnership shall purchase and pay for any disability insurance.

5. Vacation[xii]

Each Partner is entitled to paid vacation each calendar year in accordance with Partnership policy. Each Partner shall give the Partnership reasonable advance Notice of his intended vacation periods and shall give reasonable consideration to the needs of the Partnership in planning such vacation periods. The Partners shall not take vacations which overlap without the consent of MAIN-PARTNER. No

Partner may take vacation between February 1 and April 15 of any year except such limited time as absolutely necessary for family related matters.

I. Restrictions; Limitations; Covenant Not To Compete/Confidential Information[xiii]

1. Clients

a. Each Partner agrees and acknowledges that all clients are to be considered clients of the Partnership and that in dealing with any client the Partner does so as an agent of the Partnership. Any records relating to such clients is the property of the Partnership and shall only be removed from the Partnership with the permission of the Partnership which shall be granted based upon client approval or as otherwise required by applicable ethics rules. In the event that any client of the Partnership becomes a client of any Partner following the termination of his employment by the Partnership for any reason, the Partnership shall be immediately compensated for all out-of-pocket expenses incurred in the transfer of such client account. In addition, such former Partner shall pay the Partnership PERCENT (____%) [example 25%] of any fees collected by the terminated Partner or paid in settlement on said client account, for the Thirty Six (36) [or some other time period] months following the effective date of such Partner's termination ("Payout").

b. The terminated Partner shall separately account to the Partnership for any fees collected by the terminated Partner or paid in settlement on said client account, for the Thirty Six (36) months following the effective date of such terminated Partner's Payout. The Managing Partner shall separately account for any out-of-pocket expenses incurred in the transfer of any such client account.

c. In the event that the terminated Partner does not comply with this provision, the terminated Partner shall compensate the Partnership for all out-of-pocket expenses incurred in the transfer of such client account, pay over One Half (½) of any fees collected by the terminated Partner or paid in settlement on said client accounts, and compensate the Partnership for all out-of-pocket expenses incurred in collecting the above amounts owed by the terminated Partner to the Partnership, including legal fees and collection costs. It is expressly agreed by each Partner that

this provision is deemed to be reasonable compensation for the Partnership for the anticipated costs likely to be incurred, that it shall not be deemed a penalty, and no Partner shall contest the application of this provision.

d. In the event that any portion of this provision cannot be applied as a result of then applicable accounting ethics then the above provisions shall be applied to the extent, and to the degree permissible. It is expressly directed that any provision violating such accounting ethics be re-interpreted in the manner with the least changes but sufficient change that such provision will no longer violate such ethics, and in a manner that as closely as feasible achieves the goals and objectives of this provision.

2. Covenant Not to Compete

Notwithstanding anything herein to the contrary, where any provision of this Agreement shall require that any Partner shall sell or otherwise dispose of his Partnership interest, then the following provisions shall apply to such Partner and that Partner's spouse. These provisions shall not apply if a Partner is terminated without cause.

Ask your practice attorney how long a time period can be used. Longer may be feasible under your state's laws, but again, weigh the possible protection of a longer time period versus a greater likelihood of enforceability. Also, review with your counsel the relationship of scope of coverage and length of time. It might be that under your state's laws, a longer period of time will be enforceable if the geographic area and other factors are less broad. If this is a two-stage buy-in, buyout, a longer and stricter covenant may apply to you following the complete butout of your interest.

Any Partner subject to this covenant not to compete, shall not, for a period of Two (2) years from the date of the applicable triggering event, compete directly or indirectly, in any capacity, engage or otherwise solicit any of the customers of the Partnership, or conduct during such period any business engaged in the same activities as the Business described herein, or similar competing endeavor, nor work in a similar

capacity for any accounting or consulting business whose products or services, or both, compete with the Business, other than one of the Twenty (20) largest public accounting firms deemed as of the termination, resignation, or other date or event giving rise to this provision. Each Partner acknowledges that the Business naturally extends throughout of COUNTY-NAME COUNTY, STATE-NAME. The Partners are aware of the broad scope, in terms of geography and time, of this subsection and with full knowledge of this consideration, each specifically agrees to the terms of this subsection.

3. Confidential Information[xiv]

Each Partner agrees that (a) all research records, technical data, records of transactions, suppliers, clients, all business, financial, Partnership, and related records, financial statements, tax returns, Rolodex files, mailing lists, telephone records, and other information concerning the Business of the Partnership (collectively the "Data"), are confidential and shall at all times remain the property of the Partnership, (b) during the term of this Agreement and for a Two (2) year period thereafter, no Partner shall use or divulge any of the Data or any other confidential information concerning the Partnership or the Business to any person unless he first obtains written permission from the Managing Partner to do so. If any Partner ceases to be a Partner, the Data and all copies of all records and other documents embodying the Data shall be left with the Partnership as part of its property. However, such permission may not be withheld where applicable law or ethics rules would require release thereof.

4. Equitable Relief

Each Partner acknowledges that the remedy at law for breach by him of the Sections concerning nondisclosure and ownership of assets and Data and noncompetition will be inadequate and, therefore, in the event of any threatened or actual breach of any such Section, in addition to any other remedies that it may have at law or in equity, the Partnership shall be entitled to injunctive or other equitable relief.

5. Damages

Each Partner acknowledges that in the event of breach by him of the Sections concerning nondisclosure and ownership of assets and Data, in addition to any other remedies that the Partnership may have at law or in equity, such Partner shall pay the Partnership One Third (1/3) [or whatever percentage you believe appropriate] of the gross revenues received from the Partnership's clients serviced by such Partner over the Three (3) year period [or some other time period] subsequent to such Partner's departure, as provided under "Payout" defined above. It is expressly agreed by each Partner that this provision is deemed to be reasonable compensation for the Partnership for the anticipated costs likely to be incurred and that it shall not be deemed a penalty.

J. Meetings

1. Quarterly Meeting[xv]

A meeting of Partners shall be held at least quarterly, after reasonable Notice by the Managing Partner ("Quarterly Meeting"). Such Notice must state that the meeting called is to be the Partnership's quarterly meeting. A meeting may be held within or outside the State of STATE-NAME in the reasonable discretion of the Managing Partner. However, in lieu of a formal Quarterly Meeting, the Partners may sign a unanimous consent of Partners to any action which could have taken place at such a meeting.

2. Special Meetings

Any Partner may, at any time, call a special meeting of the Partners after not less than Ten (10) days Notice ("Special Meeting"). Such Notice shall be signed. In a situation which reasonably requires urgent or immediate action, any Partner may provide Notice for a special meeting with only so much advance Notice as such Partner reasonably deems necessary. Such Notice must state that the meeting called is to be a special meeting of the Partnership.

3. Requirements for Notice of Meeting

Any Notice of a forthcoming meeting of the Partners shall be in writing and shall specify the proposed issues to be addressed at such meeting. The matters to be addressed at any meeting called with less than Ten (10) days Notice shall be limited to the issues specified in the Notice.

K. Governance

1. Managing Partner[xvi]

The Managing Partner, from the effective date of this Agreement, shall be MAIN-PARTNER. On the Managing Partner's death, disability, or resignation, a successor Managing Partner shall be elected by a majority of the interests of the Partners. However, if MAIN-PARTNER shall be disabled and thereafter return to the Partnership to work, he shall resume his responsibilities as Managing Partner.

2. Partners' Voting Generally

a. Notwithstanding anything herein to the contrary, every Partner shall have a vote at any meeting equal to such Partner's percentage interest in the Partnership, and no vote or decision shall be made based on a vote by the Partners in any other weight or method, including but not limited to one vote for each Partner, since it is the express intent of the Parties that such an arrangement not exist.

b. Unless a greater percentage is specified elsewhere in this Agreement, a majority of the Partnership interests present at any meeting (whether in person or through proxy) shall constitute a quorum and may decide on any issue, so long as at least Fifty percent (50%) of the voting interests are represented at such meeting. Such determination shall be binding upon the Partnership and all Partners. Any proxy, however, must be submitted at the beginning of any such meeting to be valid.

L. Changes in Partners

Any Partner may, at a Quarterly Meeting, recommend the admission of an additional Partner, propose compensation for such proposed new Partner (the "Proposed Partner"), guarantees, and other terms of such admission:

(1) Notice shall be given for a Quarterly Meeting at which a vote on the admission of the Proposed Partner shall be taken. Such Notice shall include the name, work experience, client base, compensation, and other arrangements concerning the Proposed Partner.

(2) If the Proposed Partner is approved, by Seventy Five Percent (75%) of the Partnership Interests, then all of the Partners, and the Proposed New Partner, shall execute an amendment to this Agreement, or a revised version of this Agreement (which shall be identical to the latest amended version of this Agreement, with the name of the Proposed Partner added, but no other change).

M. Disability or Death of MAIN-PARTNER

1. Definition of Disability of MAIN-PARTNER[xvii]

MAIN-PARTNER shall be deemed disabled ("Preliminary Disability") if either of the following conditions is met:

a. For any period aggregating Six (6) months during any Twenty Four (24) month period, MAIN-PARTNER is unable, as a result of any serious physical, mental, or emotional illness, ailment, or accident, to effectively discharge his services to the Partnership. By way of example, where MAIN-PARTNER is unable to work at least Twenty (20) hours per week, on average, for such period (exclusive of vacation) he shall be considered to have failed to discharge his duties.

b. In the event of such a Preliminary Disability, the Partnership may give MAIN-PARTNER written notice that he is deemed disabled.

2. Return to Work Following Preliminary Disability[xviii]

Where MAIN-PARTNER is terminated solely as a result of a Preliminary Disability as defined above, he may return to work at any time within Three (3) years from the date of the determination of Preliminary Disability. However, if at any time during such three year period and following such return to work, MAIN-PARTNER is absent for more than Sixty (60) days during any calendar year (exclusive of vacation days allowed during such Three (3) year period), for any reason whatsoever, then MAIN-PARTNER shall be deemed permanently disabled and may not return to work for the Partnership at any time ("Final Disability").

3. Draw by MAIN-PARTNER When Under a Preliminary Disability

a. Draw for MAIN-PARTNER under a Preliminary Disability shall be reduced to Seventy Five Percent (75%) of the current draw provided for in this Agreement reduced by any disability insurance, if any, paid for by the Partnership, on the first day of the first full month following the determination of Preliminary Disability. For the second and third months of disability it shall be reduced to Fifty Percent (50%).

b. Medical related benefits, Key-Man insurance, and other insurance benefits shall remain in force during a Preliminary Disability if feasible.

4. Draw by MAIN-PARTNER Following a Final Disability

a. The current draw for MAIN-PARTNER under a Final Disability shall terminate on the first day of the Fourth (4th) full month following the determination of such Final Disability.

b. Benefits, other than medical related benefits and insurance benefits (including any Key-Man insurance which shall remain in force if feasible), shall similarly terminate.

5. Consequences of Final Disability or Death of MAIN-PARTNER

In the event of the Death or Final Disability (as defined above) of MAIN-PARTNER, the Partners agree to purchase from the Disabled MAIN-PARTNER or from the Estate of MAIN-PARTNER, all of MAIN-PARTNER's interest in the Partnership then held by MAIN-PARTNER or the Estate of MAIN-PARTNER for an amount equal to the sum of the following amounts (the "Purchase Price"):[xix]

a. Stated Value for Goodwill.

b. If the stated value of the Goodwill is more than 12 months old, such value shall equal One Hundred and Twenty Five Percent (125%) of the average gross billings, as reduced by fiduciary fees which would terminate upon the death of or Permanent disability of the Partner being bought out for the two calendar years preceding the year in which the event triggering this provision occurs.

c. Capital account balance on a cash basis.

d. Ninety Percent (90%) of the accounts receivable as of the end of the calendar year preceding the event triggering the repurchase.

e. Eighty Percent (80%) of the work in process as of the end of the calendar year preceding the event triggering the repurchase.

The above sum shall then be multiplied by the Partner's interest in the Partnership.

It is explicitly agreed and acknowledged that this figure above stated is solely for the purpose of determining a buyout of MAIN-PARTNER as negotiated herein between the Partners and MAIN-PARTNER. Such figure shall have no implication to, and shall not be used by, any third party or by the Partners in any claim or action against any Partner, including but not limited to a divorce action by the spouse of any Partner. The signature of a counterpart of this Agreement by a spouse of any Partner below indicates there acknowledgment, understanding, and acceptance of this paragraph.

6. Purchase of MAIN-PARTNER's Interest in Event of Final Disability or Death

a. Required Purchase[xx]

In the event of the Death or Final Disability of MAIN-PARTNER, the Partnership shall be obligated to purchase the entire interest of MAIN-PARTNER in the Partnership. If the Partnership does not exercise such right then each Partner, in proportion to such partner's interests, shall be personally obligated to purchase such proportionate interest of MAIN-PARTNER's in the Partnership. The purchase shall be in accordance with the provisions of this provision.

b. Date of Purchase

The Partner or Partners shall purchase the Partnership interest of MAIN-PARTNER following his demise or Final Disability at the earlier of the following:

(i) Sixty (60) days following the Final Disability of MAIN-PARTNER.

(ii) 120 days after the qualification of MAIN-PARTNER's personal representative.

(iii) At the election of such personal representative, within Sixty 60 days after his qualification.

c. Required Purchase of Partnership Interest

The Partnership shall purchase, and the Executor of the Estate of the deceased MAIN-PARTNER (or the MAIN-PARTNER or the Designee, agent, committee, or guardian of MAIN-PARTNER, where MAIN-PARTNER is subject of a Final Disability) shall sell MAIN-PARTNER's interests in the Partnership to the Partnership pursuant to the terms contained of this Agreement. If the Partnership does not exercise such right within Ten (10) days of the date set under this Agreement, then the Partners (or if only One (1) Partner is then a Partner in the Partnership, then such sole Partner) shall purchase, and the Executor of the Estate of the deceased MAIN-PARTNER (or MAIN-PARTNER or the Designee of MAIN-PARTNER, where MAIN-PARTNER is subject of a Final Disability) shall sell MAIN-PARTNER's interests in the Partnership to the Partnership pursuant to the terms contained herein.

d. Closing

The sale shall occur at the office of the attorney for the Partnership (or if same is not certain or agreeable, at the office of the personal attorney for the estate of MAIN-PARTNER) at 11:00 a.m. on the first Tuesday following the date determined under the provisions set forth above to execute any documents reasonably necessary to the closing of such sale and purchase.

e. Terms of Purchase[xxi]

The terms of the purchase shall be payment in full of any insurance proceeds received by the Partners or the Partnership on the life of MAIN-PARTNER, as soon as practical after receipt. This provision is not intended to include insurance proceeds from policies owned individually by a Partner on his own life. The balance, if any, shall be paid in quarterly installments on the Thirtieth (30th) day of the month following each calendar quarter based on Twenty Percent (20%) of the gross revenues received, on a cash basis (without adjustment or reduction for any purpose, including but not limited to client disbursements or expenses on any particular account) during the prior quarter, until the entire Purchase Price is payable in full. No interest shall be payable on such Purchase Price. In no event shall the time for payment of the Purchase Price exceed Five (5) years nor shall annual payments of the Purchase Price be less than an amount equal to Twenty (20) percent of the Purchase Price.

f. Personal Guarantee. Each Partner who is buying the interests of MAIN-PARTNER under this provision, and the Partnership, shall execute a personal guarantee to the Disabled MAIN-PARTNER, or to the Estate of the deceased MAIN-PARTNER, guaranteeing the purchase price to be paid under this provision.[xxii]

g. Documents Held in Escrow. All documents relating to such transfers, notes, and supporting payments shall be held in escrow by the attorney for the estate of MAIN-PARTNER, or absent same, by the attorney for the Partnership, pending final payment of the amounts provided for herein.

N. Disability or Death of a Partner Other Than MAIN-PARTNER

1. Definition of Disability of Partner Other Than MAIN-PARTNER[xxiii]

A Partner shall be considered disabled ("Disabled" or under a "Disability") the earlier of the date:

a. When his personal physician so advises the Partnership. Each Partner hereby agrees and acknowledges that the other Partners and the Partnership shall be granted access to personal health information, and that such Partner's physicians and other medical care providers are authorized and directed to disclose sufficient personal health information to facilitate the determination of disability under this Agreement.

b. Where, due to a mental or physical condition, incapacity, or disability, a Partner is unable, as a result of any physical, mental, or emotional illness, ailment, or accident to effectively render full-time services to the Partnership and to discharge a Partner's duties hereunder, for Ninety (90) days in any One Hundred and Twenty Day (120) period ("Disability Period").

c. The Disability Date shall be set at the date upon which the Disability Period is reached or the date the Partner or his personal physician so advises the Partnership that he is disabled (the "Disability Date").

2. Consequences of Disability and/or Death of a Partner Other Than MAIN-PARTNER[xxiv]

a. In the event of the Death or Disability, as defined in the paragraphs above, of a Partner, the Disabled Partner or the Estate of the deceased Partner shall be paid his or her pro-rata share of profits, if any, (determined in accordance with this Agreement) through the end of the month of the death or disability. MAIN-PARTNER may elect to prorate annual or quarterly earnings on a daily basis or to close the books of the Partnership as of such month end date. A payment for reimbursement for any business expenses as specified in this Agreement shall also be made. These payments shall be in full satisfaction of the rights of the disabled Partner, or the Estate of

the deceased Partner, as an employee of the Partnership (but not for such disabled or deceased Partner's interest in the Partnership).

b. In exchange for, and in full payment of, any rights or interests of such Partner in the Partnership, the Partnership shall pay such Partner an amount equal to the sum of the following amounts (the "Purchase Price"):

(i) Stated Value for Goodwill. However, if the stated value of the Goodwill is more than 12 months old, such value shall equal One Hundred and Twenty Five Percent (125%) of the average gross billings, as reduced by fiduciary fees which would terminate upon the death of or Permanent disability of the Partner being bought out, for the two calendar years preceding the year in which the event triggering this provision occurs.

(ii) Capital account balance on a cash basis, adjusted for any excess drawings.

(iii) Ninety Percent (90%) of the accounts receivable as of the end of the calendar year preceding the event triggering this repurchase.

(iv) Eighty Percent (80%) of the work in process as of the end of the calendar year preceding the event triggering this repurchase.

The above sum shall then be multiplied by the Partner's interest in the Partnership.

The Partnership is hereby authorized to redeem from such disabled partner (his committee, conservator, or guardian) or from such deceased partner's estate, any such interest in the Partnership, as provided in the provision "Appointment of Managing Partner as Attorney In Fact."

3. Accounting by Withdrawing Partner

An accounting shall be provided by the withdrawing Partner to the Partnership. This requirement shall apply to any former Partner who has terminated for cause, without cause, or for disability if such disabled former Partner continues to work in the accounting or consulting professions at anytime during the Two (2) calendar years following the calendar year of withdrawal. Such withdrawing Partner's books and records shall be made available for inspection in the event any inquiry is made as to whether the withdrawing Partner has performed any Services (or other activities reasonably within the scope of the provisions above "Restrictions; Limitations; Covenant

Not To Compete/Confidential Information") or had entered into an agreement to perform any Services for any of the Partnership's Clients. Should any withdrawing Partner sign a Partnership, shareholders, or employment agreement with any person following his withdrawal, during the period set forth in this paragraph, from the Partnership, such former Partner shall include a provision in such agreement protecting the rights of the Partnership to audit the books and records as provided in this provision.

O. Independent Advice of Counsel[xxv]

Each Partner hereto has been advised to seek the advice of counsel prior to executing this Agreement. Each Partner, by executing this Agreement, acknowledges that he has been advised to seek independent counsel, and that the execution of this Agreement can affect their legal rights, that reasonable time to consult with independent counsel has been afforded, and that he has consulted with independent counsel, or has of his own volition decided not to do so.

P. Bankruptcy or Insolvency of a Partner

In the event of bankruptcy or insolvency of a Partner, the other Partners shall have the right, by a vote as provided in this Agreement, to deem such bankruptcy or insolvency as a withdrawal of that Partner. Such determination shall be made upon a vote of, and, upon Notice to such Partner and an accounting shall proceed.

Q. Termination of a Partner for Cause

1. Determination of Cause

Any Partner shall be terminated for cause ("Cause") when it has been determined by a vote of the Partners that:

a. Suspension or other major disciplinary action of the STATE-NAME State Society of Certified Public Accountants which involves a serious or material breach of professional ethics or conduct,

the American Institute of Certified Public Accountants, and the State Board of Accountancy of STATE-NAME, or any similar organization has occurred. Where an appeals process exists, the Partner to be terminated may elect by Notice to the Partnership to temporarily resign as Partner, not triggering the buyout of such Partners interests pending conclusion of the appeals process. The Partnership shall then refrain from buying out such Partner's interest unless the malpractice insurance carrier used by the Partnership or the rules of professional conduct require otherwise, pending conclusion of such appeals process. If such appeals process is not concluded within One (1) calendar year, the Partnership may elect to terminate such Partner for cause.

b. Professional misconduct, which is damaging or reasonably expected to be damaging to the Partnership's reputation or ability to secure malpractice insurance protection at reasonable or standard rates, or material violation of the Code of Professional Ethics, if such misconduct continues after Notice has been give by the Partnership.

c. Any matter constituting "cause" under applicable State law.

d. Material theft of Partnership assets.

e. Action that materially injures the professional standing or reputation of the Partnership, if such action continues after Notice has been given by the Partnership.

f. Insolvency, bankruptcy, or assignment of assets for the benefit of creditors.

g. Conviction for a second degree or greater felony or greater crime or a crime involving moral turpitude.[xxvi]

h. Notwithstanding anything herein to the contrary, should any Partner not remain Duly Qualified, such Partner shall automatically be terminated without any vote of the Partners. Where an appeals process exists whereby it could reasonably be anticipated that such Partner could be reinstated as being Duly Qualified, the Partner to be terminated may elect by Notice to the Partnership to temporarily resign as Partner, not triggering the buyout of such Partners interests, pending conclusion of the appeals process. The Partnership shall then refrain from buying out such Partner's interest unless the malpractice insurance carrier used by the Partnership or the rules of professional conduct require otherwise, pending conclusion of such appeals process. However, if such Partner does not become Duly Qualified within One (1) year from the date of his

initial disqualification, such Partner shall be Terminated and his interest in the Partnership repurchased as provided in this Agreement.

2. Effects of Expulsion for Cause[xxvii]

Upon a determination that a Partner be expelled for Cause, he shall thereby be so expelled and shall have no right or interest thereafter in the Partnership or any of its assets, Partnership Clients, files, records, or affairs. A Partner terminated for cause shall not have any further professional duties to the Partnership or any of its clients and shall not serve any client thereafter. Such terminated Partner shall immediately remove himself and his personal effects from the Partnership offices. Upon any such termination, the terminated Partner shall not accept engagement for professional services from any Partnership Clients (defined for this provision only to include any persons who have been clients of the Partnership during the Two (2) years preceding the termination for Cause). The obligation not to accept such engagements shall continue for the Two (2) years ending on the Second (2nd) anniversary date of the termination. This restriction, however, does not preclude employment by a client.[xxviii]

From the effective date of the termination for Cause, the terminated Partner shall not participate in the income or losses of the Partnership or any distribution or drawings. The Partners acknowledge that factors which resulted in a termination for Cause will harm the reputation of the Partnership and damage the Partnership in amounts and ways that cannot be calculated or become liquidated in amount. Therefore every Partner agrees that the Partnership shall succeed to all of the rights of the terminated Partner (including but not limited to all amounts of cash capital or accrual capital and all of the terminated Partner's Clients) and shall retain all sums unpaid by it to the terminated Partner, whether accrued or not at the effective date of the termination. The receipt and retention by the Partnership of all such rights and sums shall satisfy and discharge the damages to the Partnership, and shall be retained by the Partnership as liquidated damages. No other indebtedness or liability of the terminated Partner to the Partnership shall be discharged (undischarged liabilities shall include, but not be limited to, the terminated Partner's responsibility for any acts of malpractice, negligence, or willful misconduct prior to the effective date of the termination for Cause).

If a Partner is terminated for Cause as defined above or if a Partner withdraws from the Partnership, the Partnership shall pay to such withdrawing Partner only his cash basis capital account balance less any amounts owed by the withdrawing Partner to the Partnership.

These provisions shall not in any manner limit or restrict other rights which the Partnership has against the terminated Partner under this Agreement or under state law.

R. Termination without Cause[xxix]

A Partner, other than MAIN-PARTNER, shall be separated after Thirty (30) days Notice, when it is determined by a vote of the interests of the Partners that such Partner shall be terminated without determination of any Cause therefor. This method of termination may be employed notwithstanding the fact that grounds may exist for termination for Cause.

Upon the termination of a Partner without Cause, the Partner so terminated shall have no right or interest thereafter in the Partnership nor shall he have any further professional duties to the Partnership. Such Partner shall immediately remove himself and his personal effects from the Partnership offices. Except as otherwise provided in this section, a Partner so terminated shall be entitled to receive the value of his interest in the Partnership as computed under the Payout provision above.

S. Retirement of a Partner[xxx]

A Partner shall retire at the age of Sixty Five (65) years.

A Retiring Partner shall be entitled to receive the value of his interest in the Partnership as computed under the Payout provision above. The Retiring Partner shall be entitled to receive such value under the terms of purchase set forth above.

T. Miscellaneous Provisions Concerning a Retirement, Death, or Separation of a Partner

1. No Partial Liquidation

There shall be no partial liquidation of a Partnership interest.

2. Withdrawal Shall Not Trigger Dissolution

The withdrawal at or about the same time of more than one Partner shall be deemed to be the withdrawal severally of such Partners and shall not be deemed a dissolution or partial dissolution of the Partnership.

3. Continuation and Successor Partnership

In the event of the death or withdrawal of any Partner or the termination, pursuant to the terms of this Agreement, of any Partner's interest in the Partnership, the Business shall be continued without any settlement or liquidation other than as provided in this Agreement, until the end of the calendar year during which the event occurs. At the end of said calendar year, the surviving and remaining active Partners shall form a Partnership upon the terms and conditions in this Agreement and shall execute such agreements or other instruments as may be necessary or desirable properly to carry out the intentions expressed herein. Retired and disabled Partners shall continue to have the same status in the successor Partnership. The rights, duties, and obligations of the remaining or surviving Partners shall remain or continue as they were prior to the occurrence of the death or withdrawal or termination of interest of a Partner insofar as the same are consistent with the terms of this Agreement. Wherever the term *Partnership* is used in this Agreement, it shall include the present Partnership and any successor thereto.

U. Appointment of Managing Partner as Attorney In Fact[xxxi]

a. In the event of the withdrawal of a Partner or the termination of a Partner's interest, whether for Cause or without Cause, death, disability, retirement, or other terminating event, the terminating Partner hereby appoints the Managing Partner as Attorney-In-Fact to handle all matters pertaining to such termination.

b. Each Partner hereby makes, constitutes, and appoints the Managing Partner with full power of substitution, his true and lawful attorney-in-fact to take any action and to do all things necessary and convenient to carrying out the intention and purposes of the Partnership and this Agreement, including but not limited to the power and authority to make, execute, sign,

acknowledge, deliver, file for recording at the appropriate public offices and publish in his name, place and stead such documents, conveyances, leases, contracts, loan instruments, mortgages, and all other documents which the Managing Partner deems necessary or convenient to carry out the operations and affairs of the Partnership and the provisions of this Agreement, including (i) any technical or conforming amendment to this Agreement which does not change the material substantive rights of any Parties, (ii) any Certificate of Partnership, limited liability company certificate, or an amendment or modification thereof, (iii) such other Certificates or instruments or amendments thereof as may be required by law or are necessary (A) to the conduct of the Partnership business, (B) to reflect the termination or dissolution of the Partnership, or (C) to reflect the transfer, admission, withdrawal, and substitution of Partners, and (iv) any documents required by the Internal Revenue Service in connection with an audit of the Partnership. Each Partner, within five days after receipt of the Managing Partner's written request therefore, shall execute such other documents, further powers of attorney, and instruments as the Managing Partner deems necessary to carry out the purposes of this provision.

c. The grant of authority under this provision is hereby declared to be a general power of attorney pursuant to the applicable laws of the State, pursuant to which each Partner appoints the Managing Partner as an attorney-in-fact to act in the name, place, and stead of each Partner, as if such Partner were personally present, with respect to all the matters mentioned herein, to the extent such Partner is permitted by law to act through an agent; with full and unqualified authority to delegate any or all of the powers enumerated herein to any person or persons whom the Managing Partner as attorney-in-fact shall select; hereby ratifying and confirming all that said attorney or substitute does or causes to be done. The powers granted hereunder are irrevocable powers coupled with an interest and shall survive the death, incapacity, bankruptcy, or insolvency of each Partner and the transfer by any Partner of his Interest.

V. Finances and Records

1. Books of Account

The Partnership shall maintain proper and complete books of account in accordance with the method used for income tax purposes, open to inspection at any time by any of the Partners, or by the designated representative of any of the Partners. However, for all other purposes, Partnership accounting, except for income taxes, shall be on the full accrual basis of accounting.

2. Files and Working Papers

Each Partner agrees that appropriate files are to be maintained for the purposes of retention of copies of income tax returns, financial statements, and other reports and documents prepared and issued by the Partnership, together with underlying work papers (collectively the "Papers"). The title to and ownership of such files shall be vested solely in the Partnership. However, a retired Partner, or the executor, administrator, or personal representatives of a deceased Partner, shall have the right to inspect such Papers for the period such person was a Partner. A withdrawing Partner may retain copies of the work papers of a client which he continues to serve.

W. Indemnification

Any Partner guilty of gross negligence or intentional misconduct which results in any liability to the Partnership which is not covered by malpractice or other insurance maintained by the Partnership, shall indemnify and hold the Partnership harmless for any costs incurred by the Partnership on account of such Partner's gross negligence or willful misconduct.

X. General Provisions

1. Burden and Benefit

The covenants and agreements contained herein shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties hereto.

2. Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the State of STATE-NAME. The parties hereto, by executing this Agreement, consent to personal jurisdiction in any court of competent subject matter jurisdiction within the State.

3. Pronouns and Plurals

All pronouns used herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the Person or Persons may require in the context, and the singular form of nouns, pronouns, and verbs shall include the plural, and vice versa, whichever the context may require.

4. Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto. The parties expressly agree that a facsimile, photocopy, PDF, or other electronic image of an executed copy of this Agreement shall be as valid and binding as an original.

5. Entire Agreement

This Agreement, together with the Exhibits attached, and to be attached, sets forth all (and are intended by all Partners to be an integration of all) of the promises, agreements, and understandings among the parties hereto with respect to the Partnership and the Business. There are no promises, agreements, representations or warranties, understandings, oral or written, expressed or implied, among the Partners other than as set forth herein.

6. Construction

In the event of any conflict between a provision of this Agreement and any Exhibit attached hereto, the provision of this Agreement shall control. In the event of any conflict between the provisions of this Agreement and the provisions of any separate Agreement affecting the admission of a new Partner, the provisions of such separate Agreement shall control with respect to that new Partner.

7. Captions

Section captions and Article captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

8. Effect of Amendment

No amendment to this Agreement shall affect the payments made to any Partner whose withdrawal, death, disability, or termination was effective prior to the date of such Amendment, unless such former Partner shall consent to such change in writing.

Y. Notice

Any notice required or permitted to be given under this Agreement or any Exhibit shall be deemed duly given if sent by facsimile, certified mail return receipt requested, Express Mail by the U. S. Postal Service, Federal Express or another recognized overnight courier, or by hand delivery, postage and expenses prepaid, addressed to the Partner at the address set forth in this Agreement, unless notice of a change of address is provided in accordance with the terms of this Section. A copy of any notice sent by any Partner must be sent to the Partnership, "Attention: MAIN-PARTNER", at the Partnership's principal place of business. Notices shall be effective as follows: if sent by hand delivery or facsimile on the day sent. However, if dispatch is after 3:00 p.m., such notice shall be effective on the next business day.

Notice by overnight courier shall be effective on the next business day following dispatch. Notice by mail shall be effective on the Third (3rd) business day following dispatch.

IN WITNESS WHEREOF, the parties have set their hands on the date first above written.

_____	_____
MAIN-PARTNER	Witness
_____	_____
NEW-PARTNER	Witness

Solely as to provisions specifically referencing continued use of RETIRING-PARTNER'S name:

_____	_____
RETIRING-PARTNER	Witness

For One (1) Dollar and other good and valuable consideration receipt of which is hereby acknowledged, the undersigned acknowledge and agree to be bound by the terms of this Agreement with respect to nonalienation and other provisions applicable to or affecting a spouse of a Partner, and agree and recognize that they have no claim for any value of the Partnership interests herein based on any formula other than the valuation provisions herein provided:

_____	_____
MAIN-PARTNER's SPOUSE	Witness
_____	_____
NEW-PARTNER'S SPOUSE	Witness

Z. Exhibit: Listing of Each Partner's Fiduciary Positions

Where a client is listed and the client is also the principal shareholder, partner, member of an entity, or the grantor or trustee of a trust, such ancillary entities shall also be deemed included.

i. Clients of MAIN-PARTNER:

[Attach list]

ii. Clients of NEW-PARTNER:

[Attach list]

_____ _____

MAIN-PARTNER Witness

_____ _____

NEW-PARTNER Witness

AA. Sample NEW-PARTNER BUY-IN AGREEMENT

THIS AGREEMENT, entered into this ___ day of MONTH YEAR, and effective January 1, EFFECTIVE YEAR, between MAIN-PARTNER, who resides at ADDRESS ("MAIN-PARTNER") and NEW-PARTNER, who resides at ADDRESS ("NEW-PARTNER"); (MAIN-PARTNER and NEW-PARTNER are referred to as the "Partners," or individually, the "Partner"); and PRACTICE-NAME & Co., CPAs, a STATE-NAME general Partnership, with its principal place of business at PRACTICE-ADDRESS (the "Partnership").

R E C I T A L S

1. WHEREAS, the Partners and the Partnership have entered into a Partnership Agreement dated MONTH DAY, YEAR, and effective EFFECTIVE-DATE.

2. WHEREAS, the Partners and the Partnership wish to provide for the buy-in ("Buy-In") of NEW-PARTNER into the equity of the Partnership.

NOW THEREFORE, the Parties hereto, in consideration of the mutual premises and covenants contained herein and in the Partnership Agreement hereby agree as follows:

T E R M S

1. Amount of Buy-In

The Partners and the Partnership hereby agree that any Buy-Ins for NEW-PARTNER shall be based on the following formula:[xxxii]

a. An applicable percentage of Eighty percent (80%), multiplied by

b. Annual gross billings for the calendar year preceding the year of the buy-in, as defined on Exhibit B, multiplied by

c. The percentage interest being purchased.

The Partners and the Partnership hereby agree that in INITIAL-YEAR NEW-PARTNER is buying a Five (5) percent interest in the Partnership.

2. Payment of the INITIAL-YEAR Buy-In

The Partners and the Partnership hereby agree that payment of the Buy-In for NEW-PARTNER shall be effectuated as follows:

a. NUMBER Thousand Dollars ($_____,000.00) payable upon execution of this Agreement.

b. NUMBER Thousand Dollars ($_____,000.00) payable on or before SECOND-PAYMENT-DATE.

c. NUMBER Thousand Dollars ($_____,000.00) payable monthly on the First (1st) Day of each month commencing with the month of PAYMENT-DATE and ending on FINAL-DATE. The unpaid portion of the Buy-In shall be evidenced by an interest-bearing promissory note secured by the Partnership interest as detailed in the exhibit attached.

d. An additional payment on January 1, 1997 in the amount of NUMBER Thousand Dollars ($____,000).

e. Payment of any future buy-ins should be in a manner mutually agreed to by the parties at the time of the buy-in.

3. Departure of NEW-PARTNER before CUT-OFF-DATE

The Partners and the Partnership hereby agree that in the event NEW-PARTNER or the Partnership terminate NEW-PARTNER's interest in the Partnership prior to MONTH DAY, YEAR, notwithstanding any provision in the Agreement to the contrary, NEW-PARTNER shall be entitled to receive the value of such Partner's interest in the Partnership as computed pursuant to the formula used to calculate his Buy-In.

IN WITNESS WHEREOF, the parties have set their hands on the date first above written.

_____ _____

MAIN-PARTNER Witness

_____ _____

NEW-PARTNER Witness

For One (1) Dollar and other good and valuable consideration receipt of which is hereby acknowledged, the undersigned acknowledge and agree to be bound by the terms of this Agreement with respect to nonalienation and other provisions applicable to or affecting a spouse of a Partner and agree and recognize that they have no claim for any value of the Partnership interests herein based on any formula other than the valuation provisions herein provided:

_____	_____
MAIN-PARTNER's SPOUSE	Witness
_____	_____
NEW-PARTNER's SPOUSE	Witness

AB. Exhibit: Sample Promissory Note of NEW-PARTNER to Purchase Partnership Interest[xxxiii]

Amount: $DOLLARS

City, State: CITY-NAME, STATE-NAME

Date: DATE

FOR VALUE RECEIVED, the undersigned promises to pay to the order of the Partnership or the holder hereof ("the Payee") at PRACTICE-ADDRESS, or at such other place as the Payee may, from time to time, designate in writing to the undersigned, without offset or defalcation or relief from appraisement or valuation laws the principal sum of DOLLARS Thousand ($_____,000.00) in lawful money of the United States of America in equal monthly installments as follows:

1. DOLLARS Thousand Dollars ($____,000.00) payable on or before PAYMENT-DATE.

2. DOLLARS Thousand Dollars ($___,000.00) payable monthly on the First (1st) Day of each month commencing with the month of START-MONTH and ending on END-DATE.

3. An additional payment on FINAL-DATE in the amount of DOLLARS Thousand ($_____,000.00).

Each of such payments shall be with interest at the interest rate provided under Internal Revenue Code of 1986 Section 1274(d), federal mid-term rate for the month in which this Note is executed.

Any remaining principal balance, if any, shall be due and payable on MATURITY-DATE, unless accelerated to an earlier date in accordance with the terms of this Promissory Note ("Note").

In the event of any default hereunder, interest shall begin to accrue from the date of such default at the rate provided under Internal Revenue Code of 1986 Section 1274(d), federal mid-term rate for the month in which such default occurs, plus Three percent (3%), or the highest rate allowed by law, if less. Such default interest shall accrue until all amounts due hereunder, inclusive if principal and prior interest charges and expenses are paid in full.

Payments made under this Note shall first be applied against payments of interest and then toward the reduction of principal.

A default shall occur in the event of: (i) the nonpayment of any sums due under this Note after a Ten (10) day grace period; (ii) the breach of any other covenant or agreement in this Note or the Partnership Agreement dated the same date as this Note ("Agreement") after written notice and a Thirty (30) day grace period; or (iii) then at the option of the holder hereof immediately and without notice upon the appointment of a Receiver or Trustee in bankruptcy or the filing of a petition in bankruptcy ("Default"). Upon the occurrence of a Default, the entire unpaid principal balance and interest due shall immediately become due and payable.

The undersigned does hereby pledge, transfer, and grant to Payee, security for the payment of his obligations under this Note his entire right, title, and interest in the Partnership "PRACTICE-NAME & Co, CPAs."

All covenants and agreements made by the undersigned in the Agreement are hereby made part of this Note, and undersigned shall keep same as if each one were set forth herein.

The undersigned may prepay any portion of the principal amount due under this Note without penalty.

Notwithstanding anything in this Note or the Agreement to the contrary, the total interest payments and payments which could be characterized as interest, shall not exceed the amount allowed to be charged under the applicable usury laws. Any interest payments in excess of the amount permissible shall be refunded by first applying such excess against amounts due under this Note and refunding any excess remaining to the undersigned.

If the Payee shall institute any action to enforce collection of this Note, there shall become due and payable from the undersigned, in addition to the unpaid principal and interest, all costs and expenses of that action (including reasonable attorneys' fees) and the Payee shall be entitled to judgment for all such additional amounts.

The undersigned irrevocably consent to the sole and exclusive jurisdiction of the Courts of the State of STATE-NAME and of any Federal court located in STATE-NAME in connection with any action or proceeding arising out of, or related to, this Note. In any such proceeding, the undersigned waives

personal service of any summons, complaint, or other process and agrees that service thereof shall be deemed made when mailed by registered or certified mail, return receipt requested to the undersigned. Within Twenty (20) days after such service, the undersigned shall appear or answer the summons, complaint, or other process. If the undersigned shall fail to appear or answer within that Twenty (20) day period, the undersigned shall be deemed in default and judgment may be entered by the Payee against the undersigned for the amount demanded in the summons, complaint, or other process.

The undersigned waives presentment, demand for payment, notice of dishonor, and all other notices or demands in connection with the delivery, acceptance, performance, default, or endorsement of this Note.

No delay or failure on the part of the Payee on this Note to exercise any power or right given hereunder shall operate as a waiver thereof, and no right or remedy of the Payee shall be deemed abridged or modified by any course of conduct. No waiver whatever shall be valid unless in a writing signed by the Payee.

This Note shall be governed by and construed in accordance with the State of STATE-NAME applicable to agreements made and to be performed in STATE-NAME.

This Note cannot be changed orally.

IN WITNESS WHEREOF, the undersigned intend to be legally bound by this Note and execute its signature as of the date first above written.

Obligor: Witness:

_____ _____

NEW-PARTNER

Address for Communication:

NEW-PARTNER ADDRESS

AC. Sample RETIRING-Partner Termination Agreement from the PRACTICE-NAME & Co., CPAs Partnership[xxxiv]

THIS AGREEMENT, entered into this ___ day of MONTH YEAR, and effective January 1, YEAR, between MAIN-PARTNER, who resides at ADDRESS ("MAIN-PARTNER") and NEW-PARTNER, who resides at ADDRESS ("NEW-PARTNER"), (MAIN-PARTNER and NEW-PARTNER are referred to as the "Partners," or individually, the "Partner"); RETIRING-PARTNER, who resides at ADDRESS ("RETIRING-PARTNER"); and PRACTICE-NAME & Co. CPAs, a STATE-NAME general Partnership, with its principal place of business at ADDRESS (the "Partnership").

R E C I T A L S

WHEREAS, the Partners, RETIRING-PARTNER, and the Partnership have previously entered into an Agreement dated MONTH DAY, YEAR, and effective MONTH DAY, YEAR.

WHEREAS, the Partners and the Partnership wish to provide for fees payable to the Partnership for certain accounting and tax services and promote the interests of the Partnership.

NOW THEREFORE, the Parties hereto, in consideration of the mutual premises and covenants contained herein and in the Partnership Agreement hereby agree as follows:

T E R M S

1. Certain Fees

RETIRING-PARTNER shall continue to bill certain persons for services rendered and shall pay the Partnership the following fees on account of such services rendered and billed by RETIRING-PARTNER ("Fees"):

a. One Half (½) of all billings of RETIRING-PARTNER with respect to the NAME-FAMILY TRUST.

b. One Half (½) of the billings with respect to accounting, tax, or consulting services performed by RETIRING-PARTNER for all other clients of the Partnership, excluding the following: LIST-CLIENTS.

c. Consulting Agreement with NAME-CLIENT Corp. for AMOUNT Thousand Dollars ($___,000) per annum.

d. Consulting Agreement with CLIENT-NAME FLP for AMOUNT Thousand Dollars ($____,000) per annum.

e. Consulting Agreement with BIG-CLIENT-NAME. for AMOUNT Thousand Dollars ($____,000) expiring DATE.

2. Repayment of Advance

RETIRING-PARTNER hereby acknowledges that RETIRING-PARTNER owes the Partnership the sum of NUMBER Thousand Dollars ($_____,000). RETIRING-PARTNER further agrees to repay such sum to the Partnership on terms mutually agreeable to RETIRING-PARTNER, the Partners, and the Partnership.

IN WITNESS WHEREOF, the parties have set their hands on the date first above written.

_____	_____
MAIN-PARTNER	Witness
_____	_____
NEW-PARTNER	Witness
_____	_____
RETIRING-PARTNER	Witness

For One (1) Dollar and other good and valuable consideration receipt of which is hereby acknowledged, the undersigned acknowledge and agree to be bound by the terms of this Agreement with respect to payment and other provisions, and agree and recognize that they have no interests or claim or right other than the as herein provided:

For One (1) Dollar in consideration, acknowledge and agree to be bound by the terms of this Agreement:

_____	_____
MAIN-PARTNER's SPOUSE	Witness

_____ _____

NEW-PARTNER's SPOUSE Witness

_____ _____

RETIRING-PARTNER's SPOUSE Witness

_____

[i] In many practices, when your staff accountant becomes a partner, he or she will purchase their new partnership interest. Despite some overlap with the Chapter 6 discussion on purchasing an accounting practice, the focus here is really very different. When a staff accountant, who has worked with your practice for years, becomes a partner, the due diligence that each of you need to undertake is substantially less. You know each other, and you both know the practice. Often, price is determined by participation rather than a determined fair value, or is a reduced price meant to reward the new junior partner or perhaps reflect some agreed value. Typically, in transactions in which a staff accountant is becoming a partner, the senior partner may retain control of the management, while enticements are put in place to retain and motivate the new junior partner. The documentation in this appendix illustrates this arrangement along with the documentation for the purchase of that interest by the new junior partner. This documentation illustrates the retirement of your current partner. Though this topic could be part of Chapter 8, it has been incorporated here to illustrate that practice transactions often have to coordinate several different types of transactions. The milestones in your practice generally do not occur in the "neat," systematic order of this book, a reality illustrated in this appendix. This appendix also reflects a general partner as the practice entity. Many practices continue as general partnerships, in spite of the obvious drawbacks, which have been discussed herein. The agreements in this appendix are based on the primary document of the new partnership agreement. The documentation for the purchase of partnership interests by the junior partner (and the termination of a semi-retired partner) are attached as exhibits. This approach keeps those documents separate from the main partnership agreement so that if future prospective partners request to see the partnership agreement, the figures and terms of these transactions are not disclosed. This document could also be adapted to reflect a new partner's buy in of half your practice, followed by a later buyout of the remaining half of the practice as a two-step or two-

stage transition. To accomplish this, you would be in the position of both “main Partner” and “retiring partner.”

[ii] Practice names are sensitive and must be addressed with specificity and caution. If a senior or founding partner retires, as in this illustrative document, the practice might benefit substantially from the continued use of the name, especially in telephone, Yellow Page, Web site, and similar listings. The continued use of a name should be expressly negotiated and documented. Further, the retiring partner should have some degree of assurance that liability suits will not adversely affect him or her because of the use of the name. Should payments be made for the use of the name? Should whatever retirement benefits are paid be made to include and cover the use of the name? If a junior partner is buying in, an important asset is access and continued use of the practice name. This, too, should be expressly addressed. In some instances, either currently or in the future (perhaps when some milestone is reached such as the junior generating a certain portion of revenues), the junior partner will want to have his or her name added to the firm name. The following provision does not address this possibility, which should nevertheless be kept in mind, and added as appropriate.

[iii] If there are hopes and intentions to continue to grow the practice in the future (for example, there are other staff accountants who may, in a few years, follow the footsteps of the staff accountant being promoted to junior partner in this agreement), then a generic buy-in formula, rather than simply a stated dollar figure, can be used in the agreement to establish some base or template for future deals. The percentages listed below are illustrative only, but have been retained in the sample document (rather than list a generic phrase "PERCENTAGE"). If this is to be a two-stage buy-in, buyout, of your interest, consider whether the same formula should apply to both sides of the transaction.

[iv] The following provision illustrates one of many control provisions ceded to you as principal partner in the practice.

[v] If this is to be a two-stage buy-in, buyout, of your interest, insert a new paragraph detailing the process.

[vi] It is very important in a small practice to address funding issues. Slow periods can occur if a major client is lost or has financial difficulties, or a large equipment purchase may be required. The manner in which this is handled is especially important if you, as a senior partner, has some financial stability while a younger junior partner is burdened with, for example, a mortgage and college savings obligations. If there is a substantial financial disparity between the partners, the weaker financial partner should be certain that the capital or loan calls are reasonable. You cannot reduce his or her capital interest too quickly, and the agreement does not pay the senior partner excessive interest. The 3 percent provided in the sample clause may be unfair. The junior partner may reasonably request that bank financing be used. These considerations are very different from the structure of similar provisions in a partnership agreement in which you and a relatively equal colleague form a practice.

[vii] Retaining the sole authority to establish reserves to minimize distribution is a powerful right. Nevertheless, if most of the capital and investment in the practice is yours, and the junior partner has only a modest capital interest at this stage (as in this agreement), this is a power or right that you should consider protecting.

[viii] Should the following types of drawings be permitted?

[ix] In a two-stage buy-in, buyout, profits may be shared disproportionately by you, then 50/50, and after the second step buyout, disproportionately by the buyer until your interests are completely phased out.

[x] Specific, likely sources of nonpractice income should be addressed in detail in the agreement. Although ancillary income is often the source of disputes, in many cases, an express requirement for full disclosure of any such fees is enough to preclude confrontation.

[xi] If the junior partner's compensation depends significantly, or entirely, on his or her profit generation, consider starting this partner with a base or guaranteed compensation that will stay in effect for either an initial interval or indefinitely, but subject to revision.

[xii] In many agreements, it is important to formalize the vacation time of each partner. In many agreements, the senior partner reserves more vacation time than the junior partner. In this case illustration, the partners get along well and indicate only that they will informally agree on vacation time.

[xiii] The restrictive clauses, including an agreement relating to covenants not to compete, nondisclosure, and related or additional restrictions, are critical to protect both you and the practice. A number of cautions are in order, because these clauses are often the subject of contentious legal wrangling. Always have an attorney review and refine the clauses. Specificity is important. Do not incorporate generic provisions; these restrictions should be carefully tailored to your specific practice. Details give substance to the provision. If specific items are confidential, list them in detail. Certainly, you can and perhaps should use the legal format of stating: "Confidential items shall include by way of example and not limitation [list items here]." This format makes it clear that there are other items, but with the inclusion of specific items it is clear that those items are intended to be protected.

All restrictive clauses, such as a covenant not to compete, should be viewed as balancing acts. Less is often more. An overly broad clause may not be enforceable while a more reasonable and detailed clause may be more enforceable. It can be preferable to use a less onerous provision that will really work rather than demand the sky and have less or nothing. These provisions are subject to changes in the laws that govern them, as well as the effects of significant and sometimes rapidly occurring court decisions. Therefore, periodically reviewing and updating your agreement with specific attention to these provisions is important.

[xiv] Confidentiality provisions are important, but many not be viable. As a practical matter, a disgruntled partner can copy vital practice data on a memory stick in a couple of minutes.

[xv] Periodic meetings are advisable, but a written requirement, such as the one illustrated below, holds a risk. Failure to comply with the provision is a documented violation of the formalities of the entity. In terms of liability, such a failure is of little consequence in a general partnership, but certainly may be relevant in other entities.

[xvi] If this agreement is adopted for a two-stage buy-in, buyout, at some point, New Partner should assume the role of managing partner.

[xvii] This provision is intended to give the principal shareholder greater latitude in maintaining his position and rights in the practice in the event of disability. The time periods and definitions of hours to work below are simply illustrative. The concept of "banding" is illustrated. If the provision below merely defined disability as a 6-month period, you could be out 5 months and three weeks, work a week, and not be disabled. In the next 6-month period, you could do the same. The "banding" concept is that a 24-month band is placed around the 6-month band so that if you are disabled for any 6-month period in the any 24-month period, disability will be triggered. If you attempted the scheme above, 5 months and 3 weeks off then one week of work, the next month of absence would trigger the disability classification.

[xviii] The provision following is intended to assure that if you incur a long-term disability, you will be able to return to your practice even if your compensation ends after some reasonable initial period. The time frame below of 3 years is quite long. From the perspective of your junior partner, is it practical to maintain the practice for 3 years without your return and without being able to sell the practice or an interest in the practice?

[xix] The percentages below are merely illustrative, and percentages that are appropriate for your practice should be substituted.

[xx] The following provision is drafted to reflect the possibility of more than one junior partner, even though the transaction, as presently reflected in this agreement, would allow only one junior partner to purchase the senior partner's interests in the event of his or her death or disability.

[xxi] There are a myriad of ways to structure a payment. The illustrated payment structure below is pegged to practice revenues to minimize the burden on the junior partner purchasing your interests. That approach, however, does impose some administrative and monitoring burden on your heirs and may not be the approach you prefer. The 20% is merely suggestive and should be based on the profitability of the

practice. The junior partner committing to the purchase may be concerned about the impact if practice profitability declines because of the costs incurred to replace your services, loss of clients, and so on.

[xxii] A personal guarantee is often a negotiable point. You should be uncomfortable if the sales price is not guaranteed as an assurance to you, or your heirs, that payment will be made. This is especially important to you in the second step of a two-step buy-in, buyout, deal. Junior partners hesitate to agree to a full personal guarantee. What if several of the practice's largest clients leave for a larger firm after your demise? Clients' loyalty to you may have kept them from leaving while you were still practicing. A compromise with either a partial guarantee or some exceptions to the guarantee can be discussed if this issue is not resolved.

[xxiii] The approach of this illustrative agreement is to provide separate buy-sell agreements for you as the senior, founding partner producing most of the business and for the junior partner. As noted elsewhere, consult with your business attorney concerning the appropriate waiver, to be signed by each partner, authorizing the access of other partners and the partnership to personal health information that will facilitate obtaining the physicians' letters needed to trigger disability. See the sample language below.

[xxiv] The figures and percentages below are illustrative only. They may be far too high or too low depending on the nature of the practice.

[xxv] The agreement, especially the noncompete and other restrictions, will be more enforceable if your junior partner is represented by his or her own attorney. If necessary, consider encouraging the junior partner to retain independent counsel by offering that the practice will contribute a fixed amount toward his or her legal fees.

[xxvi] If a partner has been charged, you might wish to suspend or even terminate at that point and not wait for a final conviction.

[xxvii] The following provision illustrates a two-year time frame for defining clients of the practice and for noncompetition. Longer or shorter periods may be appropriate.

[xxviii] The following provisions may be too severe in some instances, depending what actions have resulted in the termination.

[xxix] It is often difficult to demonstrate "cause," and even if demonstrated, it can often be argued or contested. Therefore, it is advisable to have a termination provision that does not require "cause." However, since there is no "cause" for such a termination, it is not fair to penalize the terminated partner. In exchange for this termination right, the partnership may consider offering a more reasonable payment, perhaps in the form of a bonus, for the terminated partner's interest. The following provision provides a payout based on the general buy out formula as an illustration. This provision excludes the right to terminate you as senior partner.

[xxx] The following is a very simplistic provision addressing retirement. You may not want mandatory retirement at a particular age. If retirement is mandatory, will the junior partners be able to repurchase your interests especially where you control a substantial majority of the equity? A retirement payment may become more sustainable if, during the years following the execution of such an agreement, the junior partner acquires additional partnership interests, and other junior partners are added.

[xxxi] If you control the vast majority of equity and power, it is advisable to consider including a power of attorney provision in which the junior partner authorizes you to sign certain documents on his or her behalf. The junior partner may wish to limit the documents which you can sign under such an arrangement.

[xxxii] This approach establishes a formula for the purchase of the interests in the partnership. A simpler alternative is to fix a price. The benefit of providing a formula is that it provides a template for all other buy in and buy-out provisions in the partnership agreement above, as well as another template for determining future equity purchases by the junior partner if the relationship is successful. If the transaction is a two-stage buy-in, buyout of your interest, either this buy-In agreement could be modified

to reflect both phases. Alternatively, a second buy-out agreement based on this agreement could be used to consummate the buyout of your remaining 50 percent interest.

[xxxiii] If the junior partner lacks the funds to purchase his or her interests in the partnership, the partnership or senior partner may have to advance funds via a note.

[xxxiv] This is a simple agreement acknowledging the final termination of a founding partner from involvement in the practice.

Appendix 5-1: Sample Partnership Agreement for Multipartner Accounting Practice

PARTNERSHIP AGREEMENT

CPA1NAME, CPA2NAME, AND COMPANY[i]

THIS AGREEMENT, entered into this MONTH DAY, YEAR between and among the undersigned individuals (the "Partners", or individually, the "Partner"), and FIRM-NAME and Company, a STATE-NAME general partnership, with its principal place of business at ADDRESS (the "Partnership").

R E C I T A L S

WHEREAS, the Partners are all Certified Public Accountants admitted to practice and duly licensed, in the State of STATE-NAME, and are members in good standing of the STATE-NAME State Society of Public Accountants and the American Institute of Certified Public Accountants ("Organizations").[ii]

WHEREAS, the Partners have formed the Partnership in order to practice public accounting and all activities incident and necessary thereto, including but not limited to, maintaining offices, owning property, managing, and operating of any property which comes to the partnership by way of fees or investments [define additional aspects of the practice] (the "Business").[iii] However, the Business shall be conducted in strict conformity with the rules, regulations, and ethical standards governing the practice of public accounting as prescribed by the STATE-NAME State Society of Certified Public Accountants, the American Institute of Certified Public Accountants, and the University of the State of STATE-NAME, State Education Department, and any other applicable

licensing body ("Regulators"). All Partners shall remain in good standing with or properly authorized by the Organizations and Regulators ("Duly Qualified").

WHEREAS, the Partners wish to provide for the management of the Partnership by an executive committee (the "Executive Committee") and to establish the authority of such Executive Committee.

WHEREAS, the Partners wish to provide for the succession of the Partnership, including the admission of new Partners and the retirement and termination of Partners.[iv]

NOW THEREFORE, the Parties hereto, in consideration of the mutual premises and covenants herein contained, the Parties hereto agree as follows:

T E R M S

A. NAME OF THE PARTNERSHIP

1. Change in Partnership Name Generally

Notwithstanding anything herein to the contrary, the name of the Partnership shall continue until it is changed by unanimous agreement of all Partners.

2. Use of the Names "CPA1NAME" and "CPA2NAME"[v]

The name of the Partnership shall be FIRM-NAME and Company. Should CPA1NAME or CPA2NAME, whose names appear in FIRM-NAME terminate their involvement with the Partnership for any reason, the remaining partners may, in their sole discretion, continue to use the names "CPA1NAME" and "CPA2NAME" as a part of

the name of the Partnership, or any successor partnership.

3. Use of Other Partners' Names in the Partnership Name

If any Partner permanently withdraws from the Partnership, his name may be deleted from the Partnership name in the discretion of the remaining Partners.[vi]

a. If CPA1NAME or CPA2NAME are the departing Partner, neither of them, nor their successors, heirs, or assigns, may demand the termination of the use of such Partner's name in the Practice, unless terminated hereunder without cause.

b. If any Partner, other than CPA1NAME or CPA2NAME, permanently withdraws from the Partnership for any reason other than death, disability, or retirement, such withdrawing Partner may request that the Partnership cease using his or her name in the Partnership name by giving Notice to the Partnership. Such Notice shall be effective Ninety (90) days after the effective date of such Notice.

4. Limitation on Use

The firm name may not be used by any person or group except the firm as defined herein.[vii]

B. FORMATION OF PARTNERSHIP; TERM

1. Formation[viii]

The Partners agree that they have heretofore formed the Partnership and operated such Partnership under oral agreements, which have been embodied in this Agreement.

2. Term

The partnership commenced operations on START-DATE and shall be effective as of EFFECTIVE-DATE.[ix] This partnership agreement shall continue in force and effect, subject to the terms and conditions set forth in this Agreement, until December 31, 2035, and from fiscal year to fiscal year thereafter unless modified or terminated by the Executive Committee. Such termination shall not release any Partner from any obligation hereunder arising prior thereto.

C. CAPITAL CONTRIBUTIONS[x]

1. Capital Accounts

Individual capital accounts shall be maintained for each partner.

a. Capital contribution of the Partners shall not be subject to withdrawal except by unanimous written agreement of the Partners or as specifically provided in this Agreement to the contrary.

b. No Partner shall be entitled to receive interest on his capital account.

2. Additional Capital Calls

The capital of the Partnership shall be maintained at a sufficient level to adequately provide necessary working capital and facilities for the reasonable operation of the Business, to comply with the requirements of any regulatory body, as determined in the sole discretion of the Executive Committee ("Minimum Capital").[xi]

3. Mandatory Loans by Partners

a. In lieu of requiring a Capital Call to meet the working capital needs of the Partnership, the Executive Committee, in its sole discretion, may determine that it is preferable to

have the Partners make mandatory loans to the Partnership to meet temporary working capital needs.

b. The Executive Committee, in its sole discretion, may authorize the Partnership to pay interest to the Partners on their mandatory loans to the Partnership. However, the interest rate paid on such loans shall not exceed the minimum interest rate which is sufficient to avoid the imputation of interest under the Internal Revenue Code of 1986, as amended, and the regulations there under (the "Code").

4. Mechanics of Making Additional Capital Contribution or Mandatory Loan

The Executive Committee may give each Partner Thirty (30) days advance Notice that an additional capital contribution or mandatory loan is required in order to achieve Minimum Capital ("Capital Call").[xii] Each Partner shall make an additional capital contribution or mandatory loan to the Partnership as required in such Notice. The amount of additional capital to be contributed or mandatory loan to be advanced by each Partner shall be determined by multiplying the aggregate additional capital, or mandatory loan, required to be contributed or advanced to achieve Minimum Capital by the following fraction: [Average total compensation of that Partner for the prior three years] divided by [Average total compensation paid to all Partners for the prior three years]. For purposes of calculating, the denominator of this fraction shall only compensation of Partners as of the date of the Capital Call shall be considered. Where any Partner fails to make the required additional capital contribution or mandatory loan, interest shall be charged to such Partner, and paid by such Partner, on the unpaid contribution or mandatory loan on the first day of each month after the required date for such contribution or advance.

Interest shall be charged at the interest rate the Partnership actually incurs in borrowing such amount, or the federal mid-term rate calculated for the month of the deficiency under Section 1274(d) of the Code, plus One percent (1%). The determination as to the appropriate interest rate to be charged shall be made in the sole discretion of the Executive Committee.[xiii]

D. PROFITS AND LOSSES

1. Generally

Net profits shall be calculated on a tax basis and shall equal net profits on the Partnership's federal income tax return, prior to any deductions for compensation to Partners.

Accrual basis profits shall be calculated in accordance with Generally Accepted Accounting Principles (GAAP).

2. Participation in Profits and Losses

Partners shall share in profits and losses in the proportions set forth in Exhibit A, attached, as amended from time to time.[xiv]

E. WITHDRAWALS BY PARTNERS

1. Maintenance of Drawing Account[xv]

A drawing account shall be maintained for each Partner. Profits and losses, calculated on a federal income tax basis, shall be credited or debited to each drawing account as soon as practicable after the close of each fiscal year of the Partnership. The drawing account shall at all times reflect the amount which can be withdrawn by each

Partner.

2. Drawing Account Reduced To Zero; Capital Account Below Minimum Required

If there is no balance in a Partner's drawing account, net losses shall be debited to that Partner's capital account. If that Partner's capital account is reduced below the Minimum Capital required to be maintained by that Partner, future profits otherwise allocable to that Partner, shall not be credited to his capital account until that Partner makes additional capital contributions sufficient to restore his capital account to the Minimum Capital required to be maintained by him. Thereafter future profits allocable to that Partner shall be credited to his drawing account.[xvi]

3. Limitations on Amount to Be Withdrawn[xvii]

Amounts to be withdrawn by each Partner shall be established by the Executive Committee, however, the amount to be withdrawn by a Partner shall be limited to the following amount: [One twelfth (1/12)] x [Eighty percent (80%)] x [Earnings of that Partner during the preceding fiscal year].[xviii]

If a Partner was not earning or was paid his or her regular salary for the full Twelve (12) months of the preceding fiscal year, his or her "Earnings" shall be calculated by analyzing the earnings received for such year, unless a specific monthly drawing amount is agreed to by the Partner and the Partnership and attached hereto as part of Exhibit A. A Partner may draw any excess in his capital account over the minimum capital such Partner is required to maintain, upon Thirty (30) days Notice to the Partnership.

F. MEETINGS[xix]

1. Quarterly Meeting

A meeting of Partners shall be held at least quarterly, after not less than Twenty (20) days Notice ("Quarterly Meeting"). Such Notice must state that the meeting called is to be the Partnership's quarterly meeting. Notice may be in written form by hand delivery or by email if a confirmation of receipt is received by the sender of the notice.

2. Special Meetings

The Executive Committee may, at any time, call a special meeting of the Partners, after not less than Ten (10) days Notice ("Special Meeting"). Such Notice shall be signed by at least two Partners who are current members of the Executive Committee.[xx]

In a situation which reasonably requires urgent or immediate action, the Executive Committee may provide Notice for a special meeting with only so much advance Notice as the Executive Committee reasonably deems necessary. Such Notice must state that the meeting called is to be a special emergency meeting of the Partnership.

3. Meeting to Vote on Executive Committee Members

Upon at least Thirty (30) days Notice, signed by not less than Twenty percent (20%) of the Partners, a meeting may be held to vote on the addition of a new Partner to the Executive Committee, or the removal of any Partner currently serving on the Executive Committee ("Election Meeting"). The purpose of this provision is to provide a significant minority of the Partners the ability to call a meeting to vote on the composition of the Executive Committee where the Executive Committee has not called a Special Meeting and the Partners do not wish to wait for the next Quarterly Meeting.[xxi]

4. Requirements for Notice of Meeting

Any Notice of a forthcoming meeting of the Partners shall specify the proposed issues to be addressed at such meeting. The matters to be addressed at any meeting called with less than Ten (10) days Notice shall be limited to the issues specified in the Notice.[xxii]

G. EXECUTIVE COMMITTEE

1. Purpose and Powers of Executive Committee

The Executive Committee shall be charged with running the day to day operations of the Partnership. The Executive Committee shall provide periodic written reports to the Partners of the matters addressed, actions considered, and actions taken. The Executive Committee shall have the power to make all management and other decisions other than those decisions specifically reserved to the Partners under this Agreement. However, the Executive Committee shall not obligate the Partnership to any single obligation or expenditure in excess of an amount equal to Five percent (5%) of the gross income of the Partnership. Gross income for these purposes shall be the average gross income reported on the federal partnership income tax returns for the Partnership for the most recently available Three (3) tax years.[xxiii]

The Executive Committee shall establish rules, regulations, and policies for the Partnership ("Rules"). The Rules shall be included in any Partnership office manual and shall be distributed to all Partners and to such employees of the Partnership as the Executive Committee may designate.

2. Vote on Election of and Termination of the Executive Committee

Partners shall be elected to or removed from the Executive Committee by a vote of at least Two Thirds (2/3) of the Partners at a regular quarterly meeting, a Special Meeting, or an Election Meeting.[xxiv]

3. Term of Executive Committee Membership

The Executive Committee shall be comprised of Six (6) Partners. The Partners serving on the Executive Committee as of the date of this Agreement, and their respective terms, are set forth on Exhibit B. Exhibit B shall be updated to reflect the addition or termination of any Executive Committee member.

a. A vote shall be held at least Twenty (20) days, but not earlier than the regularly scheduled Quarterly Meeting preceding the expiration of any Executive Committee member's term, to elect a replacement.

b. The term for each Executive Committee member shall be Three (3) years from the date such term began.

4. Subcommittees of the Executive Committee[xxv]

Any part or parts of the power, right, and authority vested in the Executive Committee may be delegated to a subcommittee of one or more Executive Committee members, selected by a vote of the Executive Committee. Such authority may be delegated with power in the subcommittee only to recommend to the Executive Committee what action

should be taken, or with power to act. Where the power to act is delegated, action of the subcommittee shall have the same force and effect as if it were an action by the full Executive Committee.

a. Any subcommittee, or the delegation of a specific power to a subcommittee, may be terminated by a vote of the Executive Committee at any time.

b. In no event may a subcommittee be granted power to act where the Executive Committee itself would not be authorized, under the terms of this Agreement, to act.

The Executive Committee shall determine the number of members of any subcommittee, the subcommittee's function, and the subcommittee's authority.[xxvi]

H. PARTNERS VOTING[xxvii]

1. Partners Voting Generally

a. Every Partner shall have one vote at any meeting.
b. Any Partner may vote on any matter, except as specifically prohibited by this Agreement.
c. Unless a greater percentage is specified elsewhere in this Agreement, a majority of the Partners present at any meeting (whether present or through proxy) may decide on any issue, so long as at least Fifty percent (50%) of the Partners are represented at such meeting. Such determination shall be binding upon the

Partnership and all Partners. Any proxy, however, must be submitted at the beginning of any such meaning to be valid.

2. Disqualification from Voting

A Partner shall not vote on the following specific issues:

a. A vote as to whether the Partnership should be terminated or liquidated, as provided below, as a result of a Partner having given Notice of his intent to withdraw from the Partnership.
b. Whether a Partner is under permanent disability.
c. Whether a Partner should be expelled from the Partnership for cause or without cause (including the determination as to whether cause exists).
d. Whether a Partner should be permitted to retire prior to age 57 or permitted to retire in stages.[xxviii]
e. Whether a Partner should be granted a temporary withdrawal from the Partnership.
f. Determining the amount of compensation to be paid for past services to a withdrawing Partner.

3. Right To Vote[xxix]

With the exception of those specific instances set forth above, no Partner in good standing shall be prohibited from voting at any meeting (whether in person or by proxy). The fact that a Partner's interests conflict with the interests of the Partnership or other Partners shall not affect a Partner's right to vote. A Partner shall be in good standing so long as he is Duly Qualified and his capital account is maintained at the minimum

required amount.

4. Voting on Disability, Expulsion, Retirement, New Partner

The Partners, by an affirmative vote of at least Seventy Five percent (75%) of the Partners at a properly called meeting, may determine that a Partner:

a. Is disabled.

b. May return from a period of disability and be reinstated as a Partner.

c. Should be terminated from the Partnership for cause or without cause.

d. Should be terminated as a result of a personal bankruptcy or insolvency.

e. Should be permitted to retire prior to age 57.

f. Should be permitted to attain retirement by gradual steps.

g. Should be granted temporary withdrawal from the Partnership, during which such Partner shall have no vote and shall not continue to participate in Partnership profits.

h. Whether a proposed new partner may be admitted as a Partner in the Partnership.

5. Amendment of Partnership Agreement[xxx]

This Agreement may only be amended by the following procedure:[xxxi]

a. Any Partner may give written Notice to the Executive Committee of a requested amendment to this Agreement.

b. The Executive Committee shall make a recommendation as to the proposed amendment. Such recommendation shall be included in the Notice given to the Partners in advance of the next Partners' meeting.

c. The Partners shall vote on such proposed amendment at the next Partners' meeting.

d. A vote of Seventy Five percent (75%) or more of the Partners is required to approve such Amendment.

I. Duties of Partners [xxxii]

1. Devotion Primarily to Professional Services

Each partner shall devote his or her best efforts to professionally serving the Partnership and the Partnership Clients. Subject to any exceptions provided in rules of the Partnership adopted by the Executive Committee or any other exceptions consented to by the Executive Committee, each partner shall devote substantially all of his normal business time to such services.

2. Charging for Professional Services

a. Each partner shall charge reasonably for all professional services rendered by him, following the policies of the Partnership as to fees charged. However, each partner may serve professionally without charge any member of his own family or any relative. With the consent of the Executive Committee, any partner may serve without charge, or at less than regular charge, any civic, educational, religious, or charitable organization or project.[xxxiii]

b. No salaries, commissions, fees, or gratuities of any substantial significance shall be accepted, directly or indirectly, by any Partner personally from any client or prospective client of the Partnership unless the express consent of the Executive Committee has been received in advance. The fair value of any such items received with such consent shall be treated for accounting purposes as compensation to the Partnership and shall be charged against such Partner as an advance on the next amount due from his drawing account. The Executive Committee may agree, however, to any exception or any provision of this section.

3. Professional Obligations

a. At Partnership expense, each Partner shall maintain memberships in good standing in the American Institute of Certified Public Accountants and the STATE-NAME State Society of Certified Public Accountants.
b. At Partnership expense, each partner shall maintain fully effective his license and privilege to practice in the state of STATE-NAME and in any other state in which he is licensed or the Partnership conducts business.
c. Each Partner shall, at all times, comply with all of the provisions of the Code of Professional Ethics as adopted by the American Institute of Certified Public Accountants, and by the statutes, rules, and regulations of the state societies and the boards of public accountancy in any state where such Partner is licensed.

J. Finances and Records

1. Life Insurance

The Executive Committee, in its discretion, shall determine from time to time what life insurance, if any, shall be carried on the lives of Partners for benefit of the Partnership. A schedule of such insurance shall be attached hereto as Exhibit F.

2. Other Insurance

The Executive Committee, in its sole discretion, shall determine from time to time what other insurance, if any, the Partnership shall carry.

3. Disbursements

Any Partner may commit the Partnership to the purchase of properties, equipment, furniture, fixtures, and supplies in amounts aggregating no more than One Thousand Dollars ($1,000) without approval of the Executive Committee.

4. Books of Account[xxxiv]

The Partnership shall maintain proper and complete books of account in accordance with the method used for income tax purposes, open to inspection at any time by any of the Partners or by the designated representative of any of the Partners. However, for all other purposes, Partnership accounting, except for income taxes, shall be on the full accrual basis of accounting.

5. Files and Work Papers

Each Partner agrees that appropriate files are to be maintained for the purposes of retention of copies of income tax returns, financial statements, and other reports and

documents prepared and issued by the Partnership, together with underlying work papers (collectively the "Papers"). The title to and ownership of such files shall be vested solely in the Partnership.

However, a retired partner, or the executor, administrator, or personal representatives of a deceased partner, shall have the right to inspect such Papers for the period such person was a Partner. A withdrawing partner may retain copies of the work papers of a client whom he continues to serve.[xxxv]

K. CHANGES IN PARTNERS

1. No Classes of Partners

All partners are of the same class and have identical rights except as specifically provided otherwise in this Agreement.

2. Addition of Partners

The executive committee may recommend the admission of an additional Partner, propose a salary for such proposed new Partner (the "Proposed Partner"), guarantees, and other terms of such admission:

a. Notice for a Special Meeting or Quarterly Meeting at which a vote on the admission of the Proposed Partner shall be taken. Such Notice shall include the name, work experience, client base, salary, and other arrangements concerning the Proposed Partner.

b. If the Proposed Partner is approved, as provided above, then all of the Partners and the Proposed New Partner shall execute an amendment to this Agreement or a revised version of this Agreement (which shall be identical to the latest amended version of this Agreement, with the name of the Proposed Partner

added, but no other change).[xxxvi] In the event that a Partner will not execute such amendment or the revised Partnership Agreement, then the Executive Committee may designate an attorney-in-fact to execute such document on such Partner's behalf. Every Partner hereby agrees to appoint any person selected by the Executive Committee to execute such amendment or revised Partnership Agreement as his attorney-in-fact.

L. DISABILITY

1. Definition of Disability

c. A Partner shall be considered disabled where, due to a mental or physical incapacity disability, he is unable to render substantially full-time services to the Partnership, and to discharge his duties as Partner, for a period of at least Three (3) consecutive months. The vote may also establish the date at which such Partner became disabled ("Disability Date").[xxxvii]

The Disability Date may be set at any date during the Three (3) month disability period.[xxxviii]

2. Consequences of Disability

The disabled Partner shall have no right to vote after the Disability Date. If a Partner is Disabled his distributive share of Partnership profits and losses shall continue without reduction during the period of his disability. A Partner who has been disabled for six months shall be deemed to have Retired, with full benefits at that time.

M. Retirement or Death of a Partner

1. Accounting

a. Upon the retirement or death of a Partner, an accounting shall be made of the retiring or deceased Partner's interest on a cash method of accounting and on an accrual method of accounting. These accountings shall be made at the end of the month within which the retirement or death occurs.

b. The cash method of accounting shall equal the capital account of the Partner as reflected on the most recent Partnership federal income tax return (so long as such return was prepared using the cash basis method of accounting), adjusted for income and expenses incurred through the end of the month in which retirement or death occurred.

c. The accrual method interest of a retired or deceased Partner shall be determined with the following adjustments: The excess of the fair market value of any stocks, bonds, other investment securities, or real estate which may be owned by the Partnership at the time, over the net book value of such assets, shall be added to the accrual method valuation of that Partner's interest.[xxxix] The accrual basis calculation shall include a pro-rata share of the Partnership's inventory of work-in-process and accounts receivable. Work-in-process shall be valued at the standard billing rates in effect at the time the services were performed, subject to a valuation reserve, if required. The valuation reserve shall be determined in the reasonable discretion of the Executive Committee. The Partner, or his estate or successors, shall share pro-rata in any amounts collected against the valuation reserve during the one year following the date upon which such reserve was established. The amount paid in consideration of accrual basis capital shall only be the amount by which the accrual basis capital exceeds the Partner's cash basis capital.

2. Calculation of Retirement or Death Benefits

Retirement or death benefits shall be calculated as follows:[xl]

a. The Special Partners shall receive the following retirement or death benefits:

   i. Capital - cash basis and accrual basis capital shall be payable on the same terms and conditions as such amounts are paid to other retiring Partners.

   ii. Additional amount - shall be payable as follows:

   *CPA1NAME - $750,000

   *CPA2NAME - $600,000

   *CPA3NAME - $450,000

b. All other Partners shall receive as their retirement benefit (unless reduced as a result of an early retirement) an amount equal to Sixty percent (60%) the sum of that Partner's earnings for his five highest years, including years such person employed by, or served as a Partner with, the Partnership.[xli] Where a Partner has worked for less then Five (5) years, the calculation shall be based on the aggregate earnings of that Partner for the period such person employed by, or served as a Partner with, the Partnership, multiplied by Sixty percent (60%).

c. The following limitations shall be imposed on the amounts payable to all retired, deceased, or terminated Partners during each fiscal year of the Partnership:[xlii]

   i. The aggregate payments made in any fiscal year to the Special Partners shall not exceed Twenty Five percent (25%) of the first Five Hundred

Thousand Dollars ($500,000) of Partnership net income, and Twenty percent (20%) of any net income in excess of such amount.

ii. The aggregate payments made in any fiscal year to all other Partners (that is, all Partners excluding the Special Partners) shall not exceed Twenty percent (20%) of any net income in excess of the Partnership.

iii. For purposes of applying these two percentage limitations, the payments to the Special Partners shall be paid first. Partnership net income shall than be reduced by the payments to the Special Partners in applying the percentage limitations to the other Partners.

iv. Where the percentage limitations limit the amount payable to either category of Partners (that is, retired Special Partners or retired other Partners) ("Category"), cash basis capital shall first be paid to all Partners within the Category. If sufficient funds remain, then the accrual basis capital amount shall be payable to the Partners within the Category. If any funds remain, they shall be used to pay the retirement benefits due. If insufficient funds are available to pay a complete schedule (that is, cash basis capital, accrual basis capital, or retirement benefits) ("Schedule") then the amount which can be paid shall be allocated ratably within such class in the following ratio: [Total payments due a Partner on account of such Schedule/Total payments due all Partners in that Category during that fiscal year].

d. Partnership net income, for purposes of calculating the limitation on payments made to Special Partners, is the net income as reported on the Partnership's federal income tax return Form 1065 for the particular tax year, but exclusive of any retirement payments to the Special Partners deducted on that return.

e. Partnership net income, for purposes of calculating the limitation on payments made to all other Partners, is the net income as reported on the Partnership's federal income tax return for such year, but exclusive of any retirement payments to the Special Partners or other Partners deducted on that return.

3. Timing of Payments to Retired Partner/Deceased Partner's Estate or Successors

The retired Partner, or the estate or successors of a deceased Partner, shall be entitled to receive such Partner's partnership interest as follows:[xliii]

a. Cash basis capital - within Sixty (60) days. Cash basis capital shall be the partner's capital account as calculated on the most recently completed federal income tax return, updated as provided above.

b. Accrual basis capital - Twenty percent (20%) of any insurance proceeds on policies owned by the Partnership, payable on the death of a Partner ("Partner Insurance") shall be applied to reduce the amount due a deceased Partner's estate, or successor, but not below zero. The remaining amount due shall be paid in Eighteen (18) equal monthly installments beginning on the first day of the Seventh (7th) month following the month in which retirement or death occurs.

c. Retirement benefits - Shall be paid in Eighty Four (84) monthly installments beginning on the first day of the month following the month in which retirement or death occurs. However, with respect to the Special Partners, these amounts shall not be payable until the Twenty Fifth (25th) month after retirement or death. No interest shall be paid on the deferred payments of any Partner's retirement benefit. The total amount due under this provision shall be reduced by the proceeds of any life insurance carried by the Partnership on the life of the Partner to the extent such proceeds were not applied to repay capital as provided above.

These insurance proceeds shall be paid to the Partner's estate or successors as soon as received by the Partnership. The remaining amount due will be paid in Eighty Four (84) monthly installments.

4. Mandatory Retirement Age

a. Any Partner, except CPA1NAME, CPA2NAME, and CPA3NAME (the "Special Partners"), who has attained the age of Sixty-Five (65) shall retire unless continuation of his service is requested by at least Seventy Five percent (75%) of the Partners at a meeting as provided in this Agreement.

b. The Special Partners shall retire on May 31, RETIRE-YEAR.

5. Early Retirement

a. After the completion of Fifteen (15) years of service with the Partnership and Ninety (90) days Notice, a Partner may elect early retirement anytime after reaching age Fifty-Seventh (57). Retirement prior to this age must be approved by at least Seventy Five percent (75%) of the Partners at a meeting as provided in this Agreement.

b. Any early retirement shall begin on the first day following the end of the Partnership year in which the Notice requesting early retirement was effective.

c. A Partner electing early retirement shall receive only the following percentage of the regular retirement benefit provided for under this Agreement:[xliv]

Age	Percentage of Benefits
57	50% of full benefits
58	52% of full benefits
59	54% of full benefits
60	60% of full benefits
61	68% of full benefits
62	75% of full benefits
63	85% of full benefits
64	95% of full benefits

This provision shall not affect the amount due to any Partner on account of his cash or accrual basis capital.

6. Characterization of Payments for Tax Purposes

All payments, other than the return of cash capital (not the excess of accrual capital over cash capital), are intended to be taxable to the recipients as compensation under Code Section 736(a)(1) to the recipient for past services and deductible by the remaining partners.

7. Alternate Payment Arrangements

If agreed upon by all of the parties in writing, any other method of payment may be utilized in compensating the retiring partner or the deceased partner's estate for his or her interest in the partnership.

N. Bankruptcy or Insolvency of a Partner

In the event of bankruptcy or insolvency of a Partner, the other Partners shall have the right, by a vote as provided in this Agreement, to deem such bankruptcy or insolvency as a withdrawal of that Partner. Such determination shall be made upon a vote and, upon Notice to such Partner, an accounting shall proceed. The interest of a Partner terminated under this provision shall be determined on the accrual basis. A Partner terminated under this provision shall be bound to make the Separation Payments.

O. Withdrawal of Partner but No Retirement

1. Withdrawing Partner Continues Working[xlv]

If a Partner withdraws from the Partnership and serves whether as employee, director, officer, consultant, independent accountant, or in any other capacity ("Services") any clients of the Partnership, within the first Twenty Four (24) months following his withdrawal (beginning with the first complete calendar month following withdrawal), such withdrawing Partner shall pay certain compensation to the Partnership ("Withdrawal Obligation").

2. Determining the Withdrawal Obligation

Not less frequently then once per year, the Executive Committee shall cause a schedule to be prepared listing all clients of the Partnership. This schedule shall be attached to this Agreement as Exhibit D and shall be conclusive proof of those clients which shall be considered Partnership clients for purposes of this provision ("Partnership Clients"). Any client who was served by the Partnership within the Three (3) years prior to the date of such list may be included as a Partnership client. The withdrawing Partner shall pay the

Partnership, on account of any clients he services after the effective date of his withdrawal, the greater of:

> [Thirty Seven percent (37%) of the preceding Thirty-Six (36) months' billings by the Partnership to such client, or the total billings of the preceding Twelve (12) months],

reduced by the dollar value of any clients such withdrawing Partner brought to the Partnership upon beginning work with the Partnership ("Partner's Clients").

Each Partner shall prepare a list of clients and estimated annual billings for such clients and submit his proposed list to the Executive Committee for review. This list shall be submitted within the later of:

(i) Sixty (60) days of the date the Partner first begins work for the Partnership (whether as an employee or Partner); or

(ii) Sixty (60) days from the date such Partner signs this Agreement.

If any Partner does not submit a list during these time periods it shall be conclusively presumed that such Partner's Clients are negligible.[xlvi]

The Executive Committee shall review the list submitted and approve such list for attachment to this Agreement as part of Exhibit E. A majority vote of the Executive Committee may correct any entry on such list which the Executive Committee does not believe, in its sole discretion, to be accurate. Every person shall be afforded an opportunity to present his arguments in support of such entry to the Executive Committee prior to the Executive Committee making its final determination. The final

determination of the Executive Committee as to the entries in any such list, and the acceptance of such list for attachment to this Agreement, shall be binding on the Partners and the Partnership.

3. Payments by Partnership to Withdrawing Partner[xlvii]

The Partnership shall pay to the withdrawing partner his cash basis capital account and his accrual basis capital account in the same manner as provided for retiring Partners. No withdrawing Partner that has not met the requirements in this Agreement for retiring may receive any retirement benefit. However, any payments estimated in good faith by the Executive Committee to be due to the Partnership by the Partner as a result of the Withdrawal Obligation may be offset against any amounts due the withdrawing Partner on account of his capital account. The Executive Committee shall send the withdrawing Partner its calculations of the amounts due such withdrawing Partner and any offsets made. The withdrawing Partner may present evidence of his Withdrawal Obligation to the Executive Committee for reconsideration.

4. Accounting by Withdrawing Partner[xlviii]

An accounting shall be provided by the withdrawing Partner to the Partnership. Such withdrawing Partner's books and records shall be made available for inspection in the event any inquiry is made as to whether the withdrawing Partner has performed any Services or had entered into an agreement to perform any Services for any of the Partnership Clients. Should any withdrawing Partner sign a partnership, shareholders, or employment agreement with any person following his withdrawal from the Partnership, such Partner shall include a provision in such agreement protecting the rights of the

Partnership to audit the books and records as provided in this provision.

P. Termination of a Partner for Cause

A Partner shall be terminated for cause when it has been determined by vote of Partners that:[xlix]

a. Suspension or other major disciplinary action of the STATE-NAME State Society of Certified Public Accountants, the American Institute of Certified Public Accountants, and the University of the State of STATENAME, State Education Department, or any similar organization.
b. Professional misconduct or violation of the Code of Professional Ethics, if such misconduct continues after Notice has been give by the Executive Committee.
c. Action that injures the professional standing of the Partnership, if such action continues after Notice has been given by the Executive Committee.
d. Insolvency, bankruptcy, or assignment of assets for the benefit of creditors, if such acts injure the professional reputation of the Partnership.[l]
e. Conviction for a felony or greater crime.

Notwithstanding anything herein to the contrary, should any Partner not remain Duly Qualified, such Partner shall automatically be terminated without any vote of the Partners.

1. Effects of Expulsion for Cause

Upon a determination that a Partner be expelled for cause, he shall thereby be so expelled and shall have no right or interest thereafter in the Partnership or any of its assets, Partnership Clients, files, records, or affairs. A Partner terminated for cause shall not have any further professional duties to the Partnership or any of its clients and shall

not serve any client thereafter. Such terminated Partner shall immediately remove himself and his personal effects from the Partnership offices. Upon any such termination, the terminated Partner shall not accept engagement for professional services from any Partnership Clients (defined for this provision only to include any persons who have been clients of the Partnership during the Five (5) years preceding the termination for cause). The obligation not to accept such engagements shall continue for the Five (5) years ending on the Fifth (5th) anniversary date of the termination. This restriction, however, does not preclude employment by a client. From the effective date of the termination for cause, the terminated partner shall not participate in the income or losses of the Partnership or any distribution or drawings from the net income. The Partners acknowledge that factors which resulted in a termination for cause for will harm the reputation of the Partnership and damage the Partnership in amounts and ways that cannot be calculated or become liquidated in amount. Therefore every Partner agrees that the Partnership shall succeed to all of the rights of the terminated Partner (including but not limited to all amounts of cash capital or accrual capital and all of the terminated Partner's Clients) and shall retain all sums unpaid by it to the terminated Partner, whether accrued or not, at the effective date of the termination. The receipt and retention by the Partnership of all such rights and sums shall satisfy and discharge the damages to the Partnership, and shall be retained by the Partnership as liquidated damages. No other indebtedness or liability of the terminated Partner to the Partnership shall be discharged (undischarged liabilities shall include, but not be limited to, the terminated Partner's responsibility for any acts of malpractice, negligence, or willful misconduct prior to the effective date of the termination for cause).

Q. Termination Without Cause[li]

A Partner shall be separated immediately when it is determined by a vote of the Partners that such Partner shall be terminated without determination of any cause therefore. This method of termination may be employed notwithstanding the fact that grounds may exist for termination for cause.

1. Effects of Termination Without Cause[lii]

Upon the termination of a Partner without cause, the Partner so terminated shall have no right or interest thereafter in the Partnership, nor shall he have any further professional duties to the Partnership. Such Partner shall immediately remove himself or herself and his or her personal effects from the Partnership offices. Except as otherwise provided in this section, a Partner so terminated shall be entitled to the same rights, the same payments by, and be subject to the same duties to the continuing Partnership as if he were then retiring from the Partnership; however, such terminated Partner shall be required to pay the Partnership the Withdrawal Obligation.

R. Miscellaneous Provisions Concerning Retirement, Death, or Separation of a Partner

1. No Partial Liquidation

There shall be no partial liquidation of a partnership interest.

2. Withdrawal Shall Not Trigger Dissolution

The withdrawal at or about the same time of more than one Partner shall be deemed to be the withdrawal severally of such Partners and shall not be deemed a dissolution or

partial dissolution of the Partnership.

3. Continuation and Successor Partnership

In the event of the death or withdrawal of any Partner or the termination, pursuant to the terms of this Agreement, of any Partner's interest in the Partnership, the Business shall be continued without any settlement or liquidation other than as provided in this Agreement, until the end of the fiscal year during which the event occurs. At the end of said fiscal year, the surviving and remaining active Partners shall form a partnership upon the terms and conditions in this Agreement and shall execute such agreements or other instruments as may be necessary or desirable properly to carry out the intentions expressed herein. Retired and disabled Partners shall continue to have the same status in the successor partnership. The rights, duties, and obligations of the remaining or surviving Partners shall remain or continue as they were prior to the occurrence of the death or withdrawal or termination of interest of a Partner insofar as the same are consistent with the terms of this Agreement. Wherever the term Partnership is used in this Agreement it shall include the present Partnership and any successor thereto.

S. Arbitration

In the event of a controversy or claim arising under or out of this Agreement, which cannot be settled by the Partners or their legal representatives, it shall be settled by arbitration in accordance with the rules of the American Arbitration Association, in the city of CITY-NAME, STATE-NAME. A judgment upon the award may be entered in any court having jurisdiction.

T. Indemnification

Any Partner guilty of gross negligence or intentional misconduct which results in any liability to the Partnership which is not covered by malpractice or other insurance maintained by the Partnership, shall indemnify and hold the Partnership harmless for any costs incurred by the Partnership on account of such Partner's gross negligence or willful misconduct.

U. General Provisions

1. Burden and Benefit

The covenants and agreements contained herein shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties hereto.

2. Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the State of STATE-NAME. The parties hereto, by executing this Agreement, consent to personal jurisdiction in any court of competent subject matter jurisdiction within the State.

3. Pronouns and Plurals

All pronouns used herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the Person or Persons may require in the context, and the singular form of nouns, pronouns, and verbs shall include the plural, and vice versa, whichever the context may require.

4. Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto.

5. Severability of Provisions

Each provision of this Agreement shall be considered severable and if for any reason any provision which is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any then existing law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

6. Entire Agreement

This Agreement, together with the Exhibits attached and to be attached, sets forth all (and are intended by all parties to be an integration of all) of the promises, agreements, and understandings among the parties hereto with respect to the Partnership, the Business. There are no promises, agreements, representations, or warranties, understandings, oral or written, expressed or implied, among the Partners other than as set forth herein.

7. Construction

In the event of any conflict between a provision of this Agreement and any Exhibit attached hereto, the provision of this Agreement shall control. In the event of any conflict between the provisions of this Agreement and the provisions of any separate Agreement affecting the admission of a new Partner, the provisions of such separate Agreement shall control with respect to that new Partner.

8. Captions

Section captions and Article captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

9. Affect of Amendment

No amendment to this Agreement shall affect the payments made to any Partner whose withdrawal, death, disability, or termination was effective prior to the date of such Amendment, unless such former Partner shall consent to such change in writing.

V. Notice

Any notice required or permitted to be given under this Agreement or any Exhibit shall be deemed duly given if sent by facsimile, certified mail return receipt requested, Express Mail by the U. S. Postal Service, Federal Express, or another recognized overnight courier, or by hand delivery, postage and expenses prepaid, addressed to the Partner at the address set forth in Exhibit A, unless notice of a change of address is provided in accordance with the terms of this Section. A copy of any notice sent by any Partner must be sent to the Partnership, "Attention: Executive Committee," at the Partnership's principal place of business. Notices shall be effective as follows: if sent by hand delivery or facsimile on the day sent. However, if dispatch is after 3:00 p.m., such notice shall be effective on the next business day. Notice by overnight courier shall be effective on the next business day following dispatch. Notice by mail shall be effective on the Third (3rd) business day following dispatch.

IN WITNESS WHEREOF, the parties have set their hands on the date first above written.[liii]

_____	_____
CPA1NAME	CPA2NAME
_____	_____
CPA4NAME	CPA3NAME
_____	_____
CPA6NAME	CPA5NAME
_____	_____
CPA7NAME	CPA8NAME
_____	_____
CPA9NAME	CPA10NAME

EXHIBIT A: PARTNERS AND PARTNER PROFIT AND LOSS SHARING RATIOS

PARTNER NAME	DRAWING	PROFIT AND LOSS RATIO
CPA1-NAME		
CPA2-NAME		
CPA4-NAME		
CPA3-NAME		
CPA5-NAME		
CPA6-NAME		
CPA7-NAME		
CPA8-NAME		
CPA9-NAME		
CPA10-NAME		

[Date and signature lines omitted].

EXHIBIT B: EXECUTIVE COMMITTEE MEMBERS AND TERMS

Name of Executive Committee Member	Date Term Expires
CPA1-NAME	
CPA2-NAME	
CPA5NAME	

[Date and signature lines for all partners omitted].

EXHIBIT C: DISCLOSURES

EXHIBIT D: LISTING OF PARTNERSHIP CLIENTS AS OF DATE

EXHIBIT E: PARTNERS' CLIENTS AS OF DATE

EXHIBIT F: INSURANCE ON PARTNERS' LIVES OWNED BY THE PARTNERSHIP

[i] This agreement illustrates a governing document for a ten-partner accounting practice. Although the benefits of using an entity that can provide some degree of liability limitation is obvious, this hypothetical practice, as so many others, has remained organized as a simple general partnership. This format provides no insulation for you from malpractice committed by other partners. Many of the provisions in the sample documents in the appendixes to Chapter 4 will be useful to negotiating and preparing a governing document for a multipartner practice. This illustrative document adds new provisions not addressed in Chapter 4, which become prevalent in a firm that has matured into a true multipartner practice. For example, management committees, more complex decision making provisions, retirement provisions (see Chapter 7), and other matters are addressed.

[ii] Any required licensure, professional society membership, and other prerequisites to partnership should be identified and stated in the governing document as obligations from inception upon signing the agreement) and ongoing thereafter.

[iii] Define clearly the scope of what the practice should and should not include by way of activities and business. This clarifies the practice's mission and provides a basis to reject proposed new clients or partners whose work will outside the agreed-upon scope. In a general partnership format, this is especially important as each partner will be held liable for any partner's malpractice. Even in an LLP, LLC, or other entity with limited liability for the malpractice of other partners, the protection is never water-tight if the entity is small; the reality is that many partners will typically be involved in every client file.

[iv] Another change illustrative of the maturation of your practice into a multipartner practice is the addressing of increasingly complex issues, such as retirement, in the governing document (see Chapter 7).

[v] In a small two-person practice, if one of the partners leaves, the name of that partner will likely have to be removed from the firm's name. As the firm grows in size, so that only a couple of the perhaps five to ten partners' names appear in the firm name, the name itself becomes more institutionalized and more important to protect as a practice asset. In a multipartner practice, retention of the name of the firm is usually addressed in more detail than in a smaller practice.

[vi] Suppose your purchase of a practice includes consideration for the goodwill of the practice, but the founding partner, whose name is first in the firm name, then departs. Have you really received the value that you anticipated?

[vii] If CPA1NAME or CPA2NAME die or permanently retire, should the remaining partners have the right to continue to use their names? Much of the goodwill of the firm should be associated with their names. Should they be allowed to leave and start a new practice and take their names with them? The agreement should perhaps expressly not permit this. What is the intent of the senior partners' whose names are involved? What is the objective of the remaining partners? If CPA1NAME or CPA2NAME separated from the firm due to a disability, should they thereafter be permitted to start a new practice using their names? The agreement should clarify it. The above provision addresses this by providing the firm the right to continue using the name in all events. If the provision in the agreement only permits the remaining partners to use their names, there could be uncertainty. For example, if replacement or new partners were added, would such a provision prohibit them from using the names of the founding partners in the practice name? The intent might be to permit the firm, and any successor firms, to use the names of the founding partners.

[viii] It is common in small accounting practices to operate without any type of written agreement or in a less than optimal entity format. When a better entity format is established or when a "handshake agreement" is finally memorialized, consider describing the prior arrangements, stating that the current arrangement supersedes them, but perhaps, if accurate, also stating that the current written arrangements are an embodiment of the prior oral (informal) agreements and that in the event of any dispute concerning the period between the formation of the practice and the memorialization of the agreements, the new agreement should be deemed to govern. This way, if there is a dispute predating the agreement you finally sign, those same provisions will have been agreed to by all as applying to the prior periods as well.

[ix] There could be some fixed ending date for the partnership, which will force the dissolution of the partnership or the renegotiation of the agreement. The date of the agreement can the date that the agreement is executed but the effective date could be earlier. If all the partners agree that the terms of the agreement should govern from the agreed effective date, then all partners should be bound by the terms of the agreement for an issue that predates the agreement but is within the parameters of the agreed upon effective date.

[x] This sample agreement does not recite capital contributions to be made upon execution of the agreement, but if the agreement were being written upon the formation of the partnership, this would be more likely. See the comprehensive example in Chapter 4 illustrating the formation of a practice by two partners' contributing their practices and making representations and warranties to each other.

[xi] Funding cash flow shortfalls is critical to the survival of most practices. Resolution can range informal agreement between the partners when the issue arises (and ignoring the issue in the governing agreement) to a detailed provision specifying which partners or committee can demand a loan or capital call, and when and to what extent. They can then determine the consequences for those who fail to meet the demands. The sample provision below gives the authority to make these decisions to a management committee called the "Executive Committee."

[xii] The Executive Committee may choose to require a loan without specifically providing for it. This provision makes that power clear and also clarifies the mechanics and interest charges on such loans.

[xiii] It may be easier to apply a statutory rate using Code Section 1274 mid-term rate (or some other specified rate) than to calculate the cost of borrowing to the firm, which might include a number of sources. On the other hand, the cost of borrowing to the firm may be the real measure of the economic value of the loans and may significantly exceed the rates provided under tax law provisions. If one of the other partners makes an advance to the partnership to cover the shortfall at a nominal interest rate, this should not enrich the partner failing to make the contribution. Therefore, the cost of borrowing to the partnership may or may not be the appropriate price to charge the partner failing to contribute. Also, additional details could be added regarding the mechanics of making additional contributions.

[xiv] Profit sharing is usually the most sensitive issue in any professional accounting partnership. However, it is common to include profit-sharing ratios in the agreement or to attach the exact allocation percentages in an exhibit, since they may change frequently. In the latter case, rather than re-execute a new agreement, the partners simply execute a new profit allocation exhibit. Another approach is to use a formula which can provide more flexibility than fixed percentages. An even more flexible approach, but one which provides at least some structure, is to list the criteria for making the determinations of how profits should be allocated. There are a host of approaches to doing this, many of which have been discussed in Chapter 5.

[xv] If the agreement provides definitions for tax and generally accepted accounting principles (GAAP) profits and losses, it should also specify calculated profit figures to be credited against the drawing account.

[xvi] Many agreements fail to address the consequences of a zero or negative capital account. The practical result in many cases is that if a partner's account falls below an acceptable level, the partners, especially in a small accounting partnership, may informally work out an arrangement

acceptable to everyone. As the number of partners grows, an informal arrangement becomes less practical, and the need for a more formal written consequence grows. The following provision takes some steps in this direction.

[xvii] The concept embodied in the following provision is that each partner can draw out an amount based on a percentage of prior year's earnings. The percentage should be set sufficiently low so that the practice won't have cash shortfalls if operating results in any period are less favorable then the prior year. If a year includes an unusually favorable event (for example, a large payment on a long disputed account or payment on a large account which had awaited the closing of a transaction,) then the percentage for future years might warrant a downward adjustment to prevent a problem.

[xviii] The following provision addresses how to protect partners who have been in the partnership for less than one year. Such an arrangement protects new partners or disabled partners returning to work. It might be desirable to require specified notice to the partnership before a partner makes a withdrawal from a capital account.

[xix] As discussed in the chapter, as the number of partners grows, it becomes more advisable to require a minimal number of periodic formal meetings. If a partner attends a meeting at which decisions are made, it will be more difficult to claim that, for example, decisions were made without his or her knowing. Formal meetings also minimize the fallout from confrontations if a partner leaves or is terminated. When a management committee or manager is making decisions for the practice, a periodic meeting assures communications between the other partners and the committee and increases the accountability of the committee.

[xx] The following is a practical safety-valve to address emergencies.

[xxi] The provisions should address whether notice has to be written and whether any advance notice has to be given and how much advanced notice. For example, in some of the meeting notice provisions, a ten-day advance notice period may be excessive in an emergency. In addition, written notice should not be a burden and is therefore generally preferable to oral notice, particularly if the matter to be discussed is controversial. Consider whether the provision should require that the purpose of a meeting be specified. But if the purpose is specified, then what is the effect of such a specification? Can other matters be discussed at the same meeting? Can other matters be decided at the meeting if less than all of the partners are present (and perhaps they would have been had they been informed of the additional matter to be addressed)? Should the agreement provide "teeth" to the requirement to specify the purpose of the meeting? For

example, if no purpose is specified, a greater number or percentage of partners will be required to approve an action on that matter.

[xxii] It is helpful to add a statement as to the purpose of the Executive Committee so that if any questions arise later as to its authority, this general statement will serve as a benchmark to interpret the provisions granting authority to the Executive Committee. Many approaches can be used to specify the power of the management committee. Powers can be expressly granted to the committee and all nongranted powers can then be left to a vote of the partners. Alternatively, specified matters, sometimes referred to as "Major Decisions," can be expressly left to the vote of the partners (possibly in varying percentages depending on the importance of the decisions), and the remaining powers are then left to the management committee. In the following illustrative provision, a definition for gross income is provided so that the 5% requirement would be clear. It would be simpler, however, to use an approach of stating a specific dollar amount, say $10,000.

[xxiii] The terms used in these provisions should all be defined. If there is no "Partnership Office Manual," then an alternative approach or terminology should be used. An important concept illustrated below is that if the management committee provides for rules, they must be communicated to all partners in order to be reasonably binding. A specific mechanism for doing so is provided. Rules don't need to be distributed to all employees. The executive committee should have the right to designate who should receive a copy. For example, it may not be appropriate to advise staff of certain policies only affecting partners.

[xxiv] A mechanism for appointing and removing partners from the management committee needs to be provided. In some instances, a senior and founding partner may be permanently on the management committee unless he or she is disabled, dies, or is terminated for cause.

[xxv] Depending on how many partners are in the practice and the complexity of the administration process, separate subcommittees can be formally established to deal with varying issues or spheres of responsibility. For most small accounting partnerships, the mere establishment of a management committee is a significant step toward becoming a larger multipartner practice. Often subcommittees and other layers of management detail are future developments that follow the initial management committee as more partners are added.

[xxvi] Provision could be made to permit contract (nonequity) partners, and even nonpartner employees, to serve on a subcommittee. No subcommittee should be authorized to do anything the executive committee cannot do.

[xxvii] Partnership voting is another key issue to address. As discussed in the chapter, this can range from “one-partner, one-vote” to a myriad of complex allocations or iterations. In addition to the weight afforded each partner's vote, a determination must be made as to how many (what percentage) of the partners’ vote is required to approve any particular issue. Consideration should also be given to specifying circumstances in which certain partners should be prohibited from voting. For example, if the partnership is considering hiring a family member of a partner or retaining a vendor related to a partner, that partner should not be permitted to participate in that particular vote. You might even consider mandating that this partner cannot participate (or even attend) the partners’ meeting at which the issues are discussed as well as voted on. This could avoid the discomfort other partners may have about frankly discussing the issue. Some partnerships might preclude a vote, but permit attendance at meetings for a partner that has a capital account (or drawing account) below the required minimum level.

[xxviii] Retirement is often not dealt with. In this illustrative agreement, it is addressed in a limited manner; ages are suggested, but different ages might be desirable. Some partnerships may provide for retirement in phases or by gradual steps. If so, these terms should be clearly defined. If a temporary withdrawal is permitted, it must be defined, the beginning and ending points determined, and its effect on the partner and partnership identified.

[xxix] A partner may be prevented from voting if he or she is subject to a disciplinary action by a state board of accountancy, is not current with continuing professional education (CPE) or other requirements, is subject to a fraud investigation, or for having had a felony or greater conviction that is subject to appeal (if a final determination has been made). Such a partner is likely to be terminated, so voting won't be relevant.

[xxx] The concept of temporary withdrawal can add additional flexibility to the partnership arrangements. The term, as with all such arrangements, must be clearly delineated. How should a temporary withdrawal affect a partner's right, for example, to vote or participate in profit sharing? If a partner has only temporarily withdrawn, and his or her capital account remains with the partnership, shouldn't he or she be entitled to some type of distribution or return? If this result is supposed to differ from a partner who withdraws and is later re-admitted as a new partner, then the differences should be clarified. For example, if the partner is to return, shouldn't he or she be permitted to vote on any change to the partnership agreement? Should he or she be required to resign from the Executive Committee? The partnership agreement should provide for a maximum period for which such a leave should be allowed, and if the partner doesn't return at that time, either the Executive Committee can grant a limited extension or he or she should be considered

to have voluntarily withdrawn and should be treated accordingly.

[xxxi] This provision establishes the mechanics for an amendment and conforms to the substantive provision contained in the proposed agreement. For example, if there are six partners on the Executive Committee and only ten partners in the practice (the four nonparticipating partners being junior partners with less rights and powers), if the Executive Committee doesn't approve the proposed amendment, it cannot pass. This approach makes sense provided that the number of partners does not grow.

[xxxii] A change in partners in a general partnership format as in this illustrative agreement is very serious since, as discussed above, every partner would be liable for every other partner's malpractice. Special time periods (for example, ten days notice and up to 20 days postponement could be incorporated). It could be provided that at any regular quarterly meeting or a special meeting, the issue of a new partner's admission could be voted upon. This serves to simplify the agreement since there really isn't a need for so many different types of meetings and notice arrangements. Also, I have added some additional details as to what the notice should contain, since partners who are not on the Executive Committee should have this information available prior to the meeting. Again, even though this may be done in any event, it is preferable to set it out in the agreement.

[xxxiii] Some limit could be placed on the right to do free work for family and other relatives.

[xxxiv] There could be a requirement to provide financial statements to all partners on some regular basis, say quarterly, before each quarterly meeting. See the detailed discussion in the chapter. Details as to what statements should be provided could also be included in the agreement.

[xxxv] This provision assumes that a retired partner won't service any clients. This should be carefully considered. For example, a retired partner should be prohibited from serving partnership clients or his or her retirement benefit could be reduced by the amount of the withdrawal obligation.

[xxxvi] Administratively, it seems easier to grant the Executive Committee this power. A recalcitrant partner can always resign. This approach seems preferable to the approach of having only 75% of the partners sign the new agreement.

[xxxvii] Although the partners vote on whether a partner is disabled, it is recommended that some standard be established, which will provide some guidance to the voting partners free them of

wondering whether they are treating a colleague harshly. A definition also makes it more difficult to arbitrarily vote a partner out under the guise of "disability."

[xxxviii] The agreement could limit the disabled partner's right to vote or provide that voting is permitted.

[xxxix] The agreement could state whether the adjustment should be added to the accrual or cash method of valuing the Partner's interest. The provision specifies the accrual method so that the cash impact on the Partnership will be delayed in accordance with the payment schedule below.

[xl] The founding partners who formed the practice, and over the years generated a significant majority of the clients, have been provided several special benefits to recognize their long-time contribution. In this illustrative agreement, they were denominated "Special Partners" and receive special consideration below. This arrangement for the Special Partners also has an impact on the ordering process with respect to the 20% limitation on all Partners' retirement payments, discussed later in the sample agreement. An allocation must be provided. See new provisions below.

[xli] The formula given is an approach to calculating retirement pay. This formula may be changed so as to only consider the three most recent years, or some other number of years, or some other percentage so as to be feasible and appropriate in light of practice economics.

[xlii] The figures below are based on a practice that is large enough to support such payments while still providing reasonable compensation for all working partners. Figures used should always leave sufficient margin in case of a downturn, especially one caused by the departure of partners. This sample agreement uses caps (ceilings) on payments based on net income. When net as opposed to gross income caps are used, there is always a greater likelihood of disputes over deductions, etc. This is why the chapter includes the recommendation that detailed provisions be included in the agreement concerning expenses, especially those that potentially have a personal element and are most likely to be questioned. Further, the use of a net income cap provides greater protection to the remaining partners in the event that the profitability of the practice is affected by the departure of the partners being paid.

[xliii] The payment should not be in excess of the cash basis capital account. If this is the intent, the provision "not below zero" is appropriate. The following clauses illustrate the application of insurance towards the payments. Also, the payments are indicated to be made over a period of

time that, based on economics of the practice involved, appear reasonably supportable.

[xliv] The illustrative table below endeavors to provide partners with the flexibility to retire earlier than the intended retirement age, but at a penalty amount that encourages continued participation and will make payments feasible for the partnership. In many practices, the ages set forth below would be extended.

[xlv] The provisions below could be tailored to address a withdrawing partner's continuing to work in public accounting. If a partner leaves and provides consulting instead of accounting services, is he really practicing public accounting? The answer may depend on the nature of the consulting and the scope of the partnership's practice at that time. In either event, the partnership should still be entitled to the appropriate protection.

[xlvi] This provision leaves a number of questions to be addressed. A procedure has been established for determining each partner's clients brought to the firm. As a part of this procedure, a list must be prepared when a person first begins work with the partnership, not when a person becomes a partner, which may be at a later date. The monthly periods may be difficult to administer. It would be much easier to base the payments on the fiscal year preceding the year of withdrawal and the two years prior to that. To protect the withdrawing partner and to make it more likely that a court (arbitrator) would enforce this provision, some cap should be placed on these payments to the partnership. For example, the payments to the partnership may be limited to 50% of the amounts collected by the withdrawing partner. Otherwise, this arrangement could be so unreasonable to the former partner as to force a violation. The proposed provision also covered any agreement entered into between the withdrawing partner and the client during the 24 month period. This is problematic because the services in such agreement may be performed long after the end of the 24-month period. The provision, as illustrated, may cover any services during the 24-month period, but none after that.

[xlvii] The following illustrative provision provides that the payments due to the withdrawing partner should be paid over 36 months. It may not be appropriate to pay a withdrawing partner who is leaving to compete at another firm faster than a faithful partner who merely retires, which is a possible result of the terms offered to each under the agreement. What if a retiring partner continues practicing and steals clients? Shouldn't this withdrawal obligation be required to be paid by them as well?

[xlviii] The provision requiring a former partner to include clauses in his or her new firm governing documents is necessary to protect your partnership. Otherwise, any withdrawing partner could

argue that, "My new partnership won't let you see their books," thus, undermining the enforceability of your partnership's rights.

[xlix] If a partner is licensed or governed by other regulatory or licensing bodies, these should be added in a separate provision for that partner.

[l] A felony conviction, as well as loss of license, is the basis for automatic termination. Termination for cause could also include, for example, such factors as failure to perform a minimum number of billable or other approved work hours (except when a partner is temporarily disabled) or general failure to perform the duties required of a partner. What if the conviction is appealable? What if it is appealable but is not being appealed?

[li] Many partners are loath to agree to any possibility of being terminated without cause. Realistically, the demonstration of cause is often a matter of interpretation, which means litigation. The practical compromise in many cases is to provide a provision for termination without cause, but to provide a generous, sometimes lucrative, payment to minimize the likelihood of it happening arbitrarily. Thus, at a high cost, the partnership has a means of terminating a partner.

[lii] If termination is without cause, it’s rather strong to immediately throw the partner out of the offices. Some period, perhaps several weeks, could be granted for moving.

[liii] The spouse or partner of each partner may be requested to sign to minimize the likelihood of a claim in a divorce proceeding that the provisions in this agreement were not known, or if known, not accepted. Those signature lines are omitted.

Appendix 5-2: Sample Language to Add to LLC Operating Agreement to Permit Directors, Committees, and Officers[1]

A. Board of Directors

1. Number and Designation of Directors

Any person designated as a Director must be a "Manager" as defined under STATE-STATUTE-REFERENCE. In addition, a person who is designated as a participant on the Board of Directors shall be required to be a Capital Contributor ("Member", as defined under STATE-STATUTE-REFERENCE). Directors shall be Certified Public Accountants in STATE-NAME.

a. The Company shall have NUMBER Directors:

i. DIRECTOR-NAME-1

ii. DIRECTOR-NAME-2

iii. DIRECTOR-NAME-3

iv. DIRECTOR-NAME-4

b. CHAIRMAN-NAME shall serve as Chairman of the Board of Directors.

2. Decision Making by Directors

Any decision to be made by the Directors shall be made by a majority of the Directors except as provided expressly to the contrary in this Agreement.

Directors, by a Three Fourths (3/4ths) or greater vote, shall have the right to determine those matters and actions set forth in this provision:

a. Major Decisions.

Major decisions, enumerated below, shall require the approval of Three Fourths (3/4ths) of the Board of Directors ("Major Decisions"). The Major Decisions shall include:

i. Acquisition or creation of a business other than the Business. This shall include the express right to add additional professional or related and ancillary services to the listing of services and practice areas contained in the Agreement.

ii. Financing arrangement to cover working capital or capital investment needs of the Business.

iii. Incurring any debt other than trade accounts payable or other debts incurred in the ordinary course of the Business or to guarantee any debt or other obligation where the amount involved exceeds Fifty Thousand Dollars ($50,000).

iv. Sale, lease, license, or other transfer of any material asset of the Business, where the lease or license is for more than a One (1) year period.

v. Acquisition by the Company of real property.

vi. Entering into any transaction in the name of the Company not reasonably within the scope of the Business as defined in the Agreement.

vii. Determination of the maximum and minimum working capital requirements of the Company where the amounts involved differ significantly from those historically maintained by the Company.

viii. The adjustment, settlement, or the compromise of any material claim, obligation, debt, demand, suit, or judgment against the Company, the officers or directors of the Company with respect to their relationship to the Company.

ix. Payment of fees to any related person or entity or to any entity in which a Partner has a significant equity interest.

x. To approve the admission of the new Member under this Agreement.

b. Implementation of Major Decisions.

The Directors shall, at the expense of and on behalf of the Company, implement or cause to be implemented all Major Decisions approved by the Board of Directors as herein required.

3. Compensation of Directors

No participant on the Board of Directors shall receive any additional compensation for such services.

4. Transactions Between Director and the Company

Except as otherwise provided in this Agreement, a Director may lend money to, borrow money from, act as a surety, guarantor, or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with the Company and, subject to other applicable law, the Director shall have the same rights and obligations with respect to any such matter as a person who is not a Director as set forth in STATE-STATUTE-REFERENCE.

5. Specified Power and Authority of Directors

a. General Duties and Powers of Directors

The Directors are given all powers afforded Managers under the applicable statute of the State, to the extent such powers are not specifically modified or eliminated by this Agreement.

b. Fiduciary Obligation Should Be Observed

The Directors as Managers shall act in accordance with the Manager's fiduciary responsibilities and obligations to the Members and Company.

The Board of Directors shall be responsible for the control and management of the general affairs, property, and interests of the Company and may exercise all powers of a Director of the Company, except as are prohibited by law or as are expressly reserved to the Members under this Agreement.

c. Specific Duties and Powers of Directors

The following decisions shall be made by Directors and shall not be delegated. These decisions shall be majority not Three-Fourths vote. However, in the event of any conflict between any provision below and the Major Decisions above, the Director voting requirement applicable to a Major Decision shall govern:

a. In the event of a disagreement by the Officers concerning the daily business operations of the Company, the decision of the Board of Directors shall control.
b. Assign and reassign responsibilities to the Officers and Members.
c. To give reasonable Notice to any Officer or Member to refrain from specific conduct specified in such Notice, such that if the misconduct specifically set forth in such Notice is not refrained from within a reasonable period of time following such Notice, the Officer may be terminated as a Director or Officer and if material or as a Member under the provisions of this Agreement governing termination with cause or termination without cause.
d. To approve and establish the details and terms of financial and legal arrangements with any Members, employees, or consultants engaged by the Company.
e. All material issues effecting the strategic direction of the Company, all material financial decisions, terms of any agreement retaining any Member, terms and decisions concerning any merger, joint venture or other strategic alliance which involve or affect more than Ten Percent (10%) of either current assets or overall net worth of the Company shall specifically be within the purview of the Board of Directors.
f. Determine compensation of any Member or any other employee of the Business.

6. Resignation of Director

a. Any Director of the Company may resign at any time by giving written Notice to the Members of the Company. The resignation of any Director shall take effect upon receipt of such Notice or at such later time as shall be specified in such Notice. Unless otherwise specified in the Notice, the acceptance of the resignation shall not be necessary to make it effective.
b. A Director's resignation as Director shall not automatically result in the Director's resignation as a Member the Director was also a Member at the time of giving the resignation Notice.

7. Directors Have Exclusive Duty to Company

The Directors shall be required to manage the Company as their sole and exclusive function, and they may have no other business interests and may not engage in other business activities other than passive personal investments in addition to those relating to the Company.

8. Committees

a. Generally

The Board of Directors, by resolution adopted by a majority of the entire Board of Directors, may from time to time designate from among its participants an executive committee and such other committees, and alternate members thereof, as they may deem desirable, each consisting of Two (2) or more members, with such powers and authority (to the extent permitted by law) as may be provided in such resolution. Each such committee shall serve at the pleasure of the Board of Directors, with the exception of the Finance Committee which shall serve as provided below unless a change is approved by the unanimous consent of all Members.

b. Finance Committee

DIRECTOR-NAME-2 and DIRECTOR-NAME-4 shall constitute a finance committee of the Board of Directors ("Finance Committee") and shall in such capacity have sole authority to, by way of example, and not limitation:

i. Hire and fire the Company's business management and administrative personnel.

ii. Establish tax and financial reporting decisions, policies, and the like, including but not limited to the Finance Committee or one of its participant's designation as the Tax Matters Partner.

iii. Hire on behalf of the Company a finance director, business executives, and administrators and obligate the Company for any contract with such persons.

iv. Negotiate and commit to any financing arrangement with any significant investor in the Company.

B. Officers

1. Officers

No Officer of the Company, acting in the capacity of Officer, may be a Manager.

However, any Officer who is also a Director may be a Manager in such capacity of being a Director.

An Officer shall be required to be a Member.

2. Powers of Officers

The Officers shall have the rights, powers, authority, and responsibilities stated in this Agreement. The Officers, subject to the rights and powers of the Board of Directors, shall be responsible for the daily management and operations of the Company. The Officers shall adhere to any directive of the Members specified in this Agreement.

3. Officers

The Board of Directors shall elect the following officers of the Company:

President - MEMBER-NAME-1.

Vice President- MEMBER-NAME-2.

Secretary - MEMBER-NAME-3.

Treasurer - MEMBER-NAME-4.

The Board of Directors is specifically authorized to create additional Vice Presidents, an Assistant Secretary, and an Assistant Treasurer, without amending this Agreement and without obtaining Member Approval.

4. Compensation of Officers

No Officers shall receive any additional compensation for serving as Officers.

5. Duties of Officers

a. Generally.

i. The daily Business and affairs of the Company only shall be managed by its officers. Daily affairs shall mean only the ongoing, regular, routine affairs of the Company, but shall specifically exclude any item defined as a Major Decision.

ii. To prepare and execute engagement letters for any client engagements.

iii. To establish billing rates for all Members and other employees of the Business.

iv. Officers shall each have such powers and duties as may, from time to time, be specifically conferred or imposed by the Board of Directors. To conduct routine banking and investment transactions.

v. To secure and protect any assets of the Company, including but not limited to obtaining insurance coverage.

vi. To purchase liability and other insurance to protect the Company Property and Business of the Company, including but not limited to malpractice coverage for the Company and any member. To invest any Company funds temporarily (by way of example but not limitation) in time deposits, short-term governmental obligations, commercial paper, or other investments.

vii. To execute, subject to the discretion of the Board of Directors, on behalf of the Company all instruments and documents such checks, drafts, patent applications, and documents to perfect any financing statements, but not documents providing for the acquisition, mortgage, or disposition of the Company Property, material leases, material licenses, partnership agreements, and any other instruments or documents material in nature (materiality determined in the discretion of the Directors).

viii. To do and perform all other acts as may be necessary or appropriate to the daily and routine operation and maintenance of the Business.

b. Duties of Specific Officers.

i. The President shall be the primary operating officer of the Company. The President shall preside at all meetings of the Board of Directors or of the Capital Contributors where the President is present. The President may sign, in the name of the Company, contracts or other instruments authorized either generally or specifically by the CEO or the Board of Directors, and shall have the general supervision of the affairs of the Company. The President may, with the approval of the Board of Directors and subject to the provisions of this Agreement, appoint, fix the compensation, and suspend or remove all nonofficer employees of the Company. The President may, with the approval of the Board of Directors and subject to the provisions of this Agreement, fix the compensation for any nonofficer class or category of employees of the Company. The President shall perform all other duties and possess all other powers as are incident to the office or as are assigned by the CEO or the Board of Directors.

ii. The Vice President shall be the subordinate executive officer of the Company, reporting to the President. The Vice President shall perform all other duties and possess all other powers as are incident to the office or as are assigned by the Board of Directors or the President.

iii. The Secretary shall cause notices of all official meetings to be served and shall keep the minutes of all meetings of the Capital Contributors, Board of Directors, and any committees of the Board of Directors shall have charge of the corporate records and the transfer and registration of the Units of the Company. The Secretary may attest to the execution of contracts and other instruments signed in the name of the Company which are authorized and proper in the conduct of the Business. The Secretary shall perform all other duties and possess all other powers as are incident to the office or as are assigned by the President or the Board of Directors.

iv. The Treasurer shall have the custody of the funds and securities of the Company, subject to the provisions of this Agreement, and shall keep or cause to be kept regular books of account for the Company. The Treasurer shall account to the President and the Board of Directors, whenever they may require, concerning all transactions made as Treasurer and concerning the financial condition of the Company. The Treasurer shall perform all other duties and have all

other powers as are incident to the office or as are assigned by the President or the Board of Directors.

6. Other Provisions Governing Officers

a. Each Officer shall hold office until his or her successor shall have been elected and qualified, or until his or her death, resignation or removal.

b. Any Officer may resign at any time by giving Notice of such resignation to the Board of Directors, or to the President or the Secretary of the Company. Unless otherwise specified in such Notice, such resignation shall take effect upon receipt thereof by the Board of Directors or by such Officer, and the acceptance of such resignation shall not be necessary to make it effective.

c. Any Officer may be removed, either with or without cause, and a successor elected by a majority vote of the Board of Directors at any time.

d. A vacancy in any Officer position by reason of death, resignation, inability to act, disqualification, or any other cause, may at any time be filled for the unexpired portion of the term by a majority vote of the Board of Directors.

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[1] In many instances, if your practice is formed as a limited liability company (LLC), you may still want to have a board of directors, committees, and subcommittees of directors, and even officer titles and positions. These commonly used titles and functional descriptions are convenient and connote certain expected results. With this approach, it is easy to incorporate illustrative clauses and language from any professional firm shareholders agreement or bylaws into your LLC operation agreement to govern your practice. Director positions can be used alone, without officer positions. The mechanism to incorporate directors and officers into an LLC statutory format (which obviously must conform to your state's LLC statute) is to make the LLC managers merely committees of managers, rather than directors and committees of the board. Officers are subservient to and report to managers, that is, directors.

Appendix 6-1: Nondisclosure Agreement Short Form[i]

This Agreement is entered into and effective as of this ___ day of DATE between YOUR-PRACTICE ("Company") and TARGET-PRACTICE, Inc., a New Jersey Corporation ("Target"). Company and Target are collectively referred to as "parties" and individually as "party." The terms *Company* and *Target* shall each include and bind the partners of each of Company and Target personally, as well as in their capacities as members or managers, or both, shareholders, directors, or officers, or all of the above of Company and Target, respectively.

WHEREAS, both parties, for their mutual benefit, desire that certain information be disclosed by each party to the other concerning each party's present and future professional accounting practice, for the purposes of determining whether a sale of Target to Company can be negotiated [or merger of Company and Target can be consummated].

NOW THEREFORE, in consideration of disclosure by each party to the other of such confidential and proprietary practice information, both parties agree that neither party shall disclose any information contained in any written or electronic document that is marked by the other party as "Proprietary," to any person, firm, or corporation, or use it for its own benefit except as provided herein. This provision shall also apply to any information conveyed orally by either party to the other, provided such information is identified at the time of transmittal as being Proprietary and is reduced to writing, marked "Proprietary" and delivered to the other party within ten days after disclosure of such information.

Each party shall limit disclosure of Proprietary Information only to its partners or shareholders (but shall expressly not disclose Proprietary Information to non-equity employees) having the need to know.

Each party shall take all reasonable steps to prevent any inadvertent or wrongful disclosure by such partners or shareholders. Neither party shall copy such Proprietary Information, in whole or in part, without prior written consent of the other party.

Either party shall return or destroy at the other party's option, the original and any and all copies of Proprietary Information at the termination of this Agreement or upon written request of the other, whichever occurs first.

The parties hereto agree that information shall not be deemed Proprietary and neither party shall have any obligation with respect to any such information which:

1. Is already known without restriction to the party; or
2. Is or becomes publicly known through no wrongful act of the party.
3. Is received from a third party without restriction and without breach of this Agreement.
4. Is independently developed by the party.

This Agreement sets forth the entire Agreement and understanding between the parties and supersedes and merges all prior oral and written understandings, representations, and discussions between the parties respecting its subject matter. This Agreement may be amended only by a written agreement executed by Target and Company.

No rights, obligations, representation, or terms other than those expressly recited herein are to be implied from this Agreement.

This Agreement will be governed by the laws of the State of STATE-NAME.

Each of the parties to this Agreement has caused this Agreement to be signed in its name and on its behalf by its duly authorized representative as of the effective date of this Agreement and shall hereafter have a counterpart of this Agreement executed by every partner or shareholder.

YOUR-PRACTICE	TARGET-PRACTICE, Inc.
By: _____	By: _____
Title: _____	Title: _____

[i] This document is illustrative of a simple nondisclosure agreement, which can be tailored and signed by all parties involved. To hasten the execution, the managing partners of the two firms

sign the document on behalf of the respective firms and commit to getting all partners to sign at a later date. The mechanism to identify confidential data should be reviewed. In this sample document, materials to be treated as confidential have to be labeled as “confidential.” An alternative is to list items specifically constituting confidential information in the agreement. A combination of approaches can be used.

Appendix 6-2: Sample Nondisclosure Agreement Longer Form[i]

This Agreement is entered into and effective as of this ___ day of DATE, by and between YOUR-NAME, CPAs, L.L.C., a STATE-NAME Limited Liability Company, with its principal place of business at ADDRESS ("Practice"), and PRACTITIONER'S-NAME, an individual who resides at ADDRESS, and whose principal place of business is at the same address ("Target"). The Practice and Target are referred to as "parties" or individually "party."

R E C I T A L S

WHEREAS, Practice is considering merging Target's accounting business into the Practice ("Merger"). The due diligence activities of each party on behalf of its investigation of the potential merger are quite broad. These may include identifying client files, other work product, business financial data, procedures and techniques, and so forth.

WHEREAS, the Parties, for their mutual benefit, desire that each party have access to the other party's Confidential Information (as defined below) to enable each party to evaluate the other party's operations for purposes of pursing in good faith and in a diligent manner the merger of Target into the Practice (the "Purpose").

WHEREAS, The Parties desire to protect Practice's Confidential Information.

NOW THEREFORE, in consideration of the mutual premises contained herein, including the reasonable and cooperative disclosure of Confidential Information by each party to the other for the Purpose, and for other good and valuable consideration receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

A. Practice Confidential Information

1. During the term of this Agreement, while each party reasonably pursues the Purpose set forth above, certain information, listed herein by way of example and not limitation, including client work papers, financial and other operating data, agreements, contracts, client and practice records, technical data, peer review reports, malpractice history,

accounts receivable and work in process analysis, trade secrets, and the like, whether or not such information is protected by state or federal copyright or trademark law, and the like, records of transactions, suppliers, client lists, and other information concerning the business of each party, as well as all other information, existing currently or in the future, relating to each party, that the other party knows or should know to treat as confidential (collectively, "Confidential Information"), may be communicated to the other Party, or otherwise come into the other party's possession.

2. Each party as to the other recognizes and acknowledges that all Confidential Information is the sole property of other party to whom such information pertains, and is strictly confidential, and secret, and that the disclosure or unauthorized duplication of any Confidential Information, or any use thereof, without the prior written consent of that party, which may be withheld for any legitimate reason in such party's reasonable discretion, is prohibited whether or not marked "Proprietary," or in any other manner so designated.
3. The restrictions herein on disclosure shall be effective expressly without time limit so long as the information should reasonably remain confidential to protect party's interests as described herein.
4. Each part expressly acknowledges and shall abide by all applicable rules of professional conduct incumbent or a certified public account in protecting confidential client data.

B. The Restricted Person Shall Not Disclose Confidential Information

Each party acknowledges that the protection of each party's respective practice goodwill, and the Confidential Information which embodies it is essential to each party's practice's business, and further agrees that neither party shall not, directly or indirectly, at any time except if authorized in writing by the other:

1. Disclose Confidential Information to employees, agents, or others unless such persons have executed a counter-parts to this Agreement or have a legitimate need to know and

who are bound by written agreements to safeguard the Confidential Information in accordance with the terms of this Agreement.

2. Divulge to any persons, firms, corporations, governmental entities, or agencies or other entities, other than the parties and the members of their respective practices who have signed counterparts to this Agreement ("Third Parties"), or use or cause or authorize any Third Parties to use, any such Confidential Information, or any other information which a party knows or should know is regarded as confidential and valuable by Practice (whether or not any of the foregoing information is actually novel or unique, whether or not such information is marked "Proprietary"), except as otherwise set forth below in the provision entitled "Exceptions to Nondisclosure of Confidential Information."
3. Use the confidential information except for the Purpose stated above.
4. Use or exploit in any manner the confidential information of the other party for themselves or any Third Party.
5. Treat such Confidential Information otherwise than in a confidential manner.

C. Exceptions to Nondisclosure of Confidential Information

Notwithstanding the foregoing, the restrictions contained in this Agreement shall not apply to any Confidential Information or portion thereof which:

1. At the time of disclosure by the other party is generally and readily available to the public other than by an act or omission on the part of that other party.
2. At the time of disclosure by the other party, the Confidential Information has been acquired from or made available to that other party by a Third Party other than a third party having the lawful right to disclose such information.
3. The other party is required to disclose pursuant to any state or federal law, rule, or regulation or by an applicable judgment, order, or decree of any court or government body or agency having jurisdiction over such matter. However, at least Twenty (20) days prior written notice of such required disclosure before such disclosure is made to enable

the party to whom the Confidential Information pertains to seek an appropriate protective order or to take such other actions as it deems necessary or appropriate.

D. Obligation to Return Confidential Information

Each party agrees that any Confidential Information, along with any copies made, if any, provided by one party to the other party hereunder shall be returned by that other party to the providing party no later than Ten (10) days following the termination or impracticability of the Purpose, or within Five (5) days following Notice by that party demanding such return. In the event that either party does not return the Confidential Information of the other party, such failure to comply with the provisions of this Agreement shall constitute a breach, in accordance with the provision below entitled "Consequences of Breach."

E. Consequences of Breach

1. Each party expressly acknowledges that any violation of this Agreement may cause irreparable damage to the other party, which damages may be difficult of precise measurement. Therefore, the aggrieved party may not have an adequate remedy at law to redress the harm which such violation will cause. Therefore, each party agrees that the other party may be entitled as a matter of right to specific performance, injunctive, and other equitable relief, including but not limited to temporary or permanent restraining orders, or both, to restrain a violation or threatened violation of this Agreement by that party.
2. Any action based upon an alleged breach of this Agreement may be brought in any court of competent jurisdiction. Nevertheless, the parties agree to personal jurisdiction in the State of STATE-NAME wherein all parties acknowledge personal jurisdiction. In any action to adjudicate or enforce the terms of this Agreement, the losing party shall pay the prevailing party's attorneys' fees and costs incurred in this action. In any action, to

adjudicate or enforce the terms of this Agreement, the nonviolating party may also seek and obtain the specific performance or injunctive relief against the parties who have violated this Agreement.

F. Indemnification

Each party agrees to indemnify and hold harmless the other party hereto for any costs or damages, including reasonable attorney fees, resulting from any breach of this Agreement.

G. Miscellaneous and Construction

1. The failure of either party to seek redress for violation of or to insist upon the strict performance of any provision or condition of this Agreement shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation.
2. The terms of this Agreement shall be governed by the law of the State of STATE-NAME and the courts of STATE-NAME shall have personal jurisdiction over the parties.
3. The Agreement shall be binding upon the parties, the principals of the parties, the officers, directors, shareholders, members, and managers of the parties and all respective successors and assigns.
4. This Agreement and the right to view or use the Confidential Information shall not be assigned by either party without the prior written consent of the other party, which consent may be withheld for any or no reason.
5. This Agreement shall remain in force regardless of whether either party concludes or pursues the Purpose.
6. If any one or more of the provisions or subjects contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity and enforceability of any other

provisions or subject hereof. Further, should any provisions within this Agreement ever be reformed or rewritten by a judicial body, those provisions as rewritten shall be binding on the Parties as if contained in the original Agreement.

7. This Agreement may be executed in counterparts, each of which shall be deemed to constitute an original and shall become effective when one or more counterparts have been signed by each of the parties.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the day and year first above written:

YOUR-NAME, CPAs, L.L.C.: Company Seal:

By_____

YOUR-NAME, Manager

Restricted Person:

_____

PRACTITIONER'S-NAME

[i] The following is a more comprehensive nondisclosure agreement intended to address more details than the simpler agreement given in Appendix 6-1. Note the different mechanism for defining what is confidential. Signature lines should perhaps be added if other practice personnel are to sign a counterpart to this agreement.

Appendix 6-3: Sample Letter of Intent

DATE

VIA HAND DELIVERY

SELLER-NAME

SELLER-ADDRESS

Re: Offer to Purchase: SELLER'S-PRACTICE

Dear Mr. SELLER-NAME:

YOUR-NAME, CPA, LLC hereby make a **nonbinding** offer to purchase the above referenced accounting practice (the "Practice") for and under the following preliminary and general price, terms, and conditions.

When this Offer to Purchase is signed by you, as the owner of the Practice, or an authorized representative of your Practice, this agreement shall constitute an Offer to Purchase for the acquisition of the Practice by the undersigned.

The purpose of this Offer to Purchase is to:

1. Indicate certain of the terms upon which the undersigned buyer is prepared to purchase the Practice from you, and upon which you as owner are prepared to sell the Practice to the undersigned buyer.

2. Set forth certain rights and obligations of the buyer and seller pending the execution of a comprehensive and formal Contract of Sale between the parties ("Contract"), with the express understanding that this Offer to Purchase shall not be binding until such time as the Contract is formally executed.

By signing this Offer to Purchase you, or your authorized representative, grants the buyer the exclusive right, subject to the execution of the Contract incorporating the terms of this Offer, and otherwise mutually satisfactory to buyer, the owner, and their respective counsel, to purchase the Practice

During the period from the date of the execution of this Offer to Purchase, through the closing of such purchase, the buyer may examine the Practice and any business records relating thereto. The owner shall reasonably cooperate with the buyer and buyer's designated professionals and shall permit reasonable access to the Practice and its business records. You may, however, request a reasonable nondisclosure agreement to protect the confidentiality of any records.

The Contract of Sale shall include, among other things, the following terms and conditions:

a. Purchase Price: $_____,000.00 (NUMBER Hundred Thousand Dollars):

b. Payments:

(i) $____,000.00 to be paid as a deposit upon the authorized representative of the owner executing the Contract of Sale, such deposit shall be held by buyer's law firm in escrow in a noninterest bearing account until closing.

(ii)$_____,000.00, the balance of the Purchase Price, to be paid at the closing for transfer of Title. No purchase money financing is required.

c. Title to the Practice and all practice assets to be purchased at closing must be free and clear of all liens and encumbrances. Title shall be transferred by a good and sufficient documents of transfer in forms acceptable to buyer's attorney, conveying good and clear marketable title free and clear of any encumbrances except those agreed to in the Contract of Sale (none of which shall adversely effect the marketability of title of the Practice and the assets use as contemplated by the buyer in buyer's accounting practice).

d. There shall be no outstanding lawsuits or claims against the Seller or the Practice as of the Closing.

e. There are no brokers involved in this transaction.

If buyer shall have not received one signed original of this Offer to Purchase in buyer's office by **END-DATE**, this Offer to Purchase shall be void.

Should you have any questions, please call me. We look forward to working with you.

Sincerely,

YOUR-NAME, CPA, LLC

By: _____

YOUR-NAME, Member

Accepted by:_____

Date:_____

Appendix 6-4: Merger: Sample Operating Agreement for Two Individual Practitioners Merging Accounting Practices Into One[i]

Merger and Operating Agreement

CPA-FIRM-NAME, L.L.C.

THIS OPERATING AGREEMENT is made and entered into as of MONTH 1, YEAR between and among:

a. CPA-FIRM-NAME, L.L.C., a STATE-NAME limited liability company, doing business at FIRM-ADDRESS (hereinafter the "LLC" or the "Practice").

b. CPA-1NAME, who resides at CPA1-ADDRESS ("CPA-1NAME").

c. CPA-2NAME, CPA, who resides at CPA2-ADDRESS ("CPA-2NAME").

CPA-1NAME and CPA-2NAME are individually referred to as "Member", and collectively as the "Members." The Practice and the Members are referred to individually as "Party" and collectively as "Parties."

W I T N E S S E T H:

1. WHEREAS, the Members are both Certified Public Accountants licensed to practice in the State of STATE-NAME, and are members in good standing of the STATE-NAME State Society of Certified Public Accountants and the American Institute of Certified Public Accountants [list any other organizations or licenses] (the "Organizations").

2. WHEREAS, CPA-1NAME has practiced accounting for NUMBER years, and has been a sole practitioner with an accounting practice emphasizing tax preparation, bookkeeping services, and consulting on divorce, matrimonial, and pension matters [describe practice].

3. WHEREAS, CPA-2NAME has practiced accounting for NUMBER years, and has been a sole practitioner with an accounting practice emphasizing tax preparation, bookkeeping services, and consulting and business services primarily for closely held manufacturing clients [describe practice].

4. WHEREAS, CPA-1NAME and CPA-2NAME wish to combine their efforts in a merger of their independent predecessor Practices for their mutual benefit, including economies of scale to reduce

overhead costs, sharing of administrative burdens, economies of office space, and to provide services to each other's clients in order to enhance combined revenues and better service all clients by providing more comprehensive professional services ("Merger").

5. Whereas, the Members desire to enter into this operating agreement ("Operating Agreement" or "Agreement") for the purposes of merging their separate practices into one combined practice, and governing the operation of the postmerger Practice.

6. Whereas, The Members have formed the Practice in order to practice accounting and all activities incident and necessary thereto, including but not limited to, maintaining offices, owning property, and managing and operating of any revenues which comes to the Practice by way of fees or investments.

7. Whereas, the Parties intend that the Practice shall be conducted in strict conformity with the rules, Regulations (hereinbelow defined), and ethical standards governing the practice of Certified Public Accountancy in accordance with the rules and regulations of the Organizations or any other governing body (collectively, the "Regulations"). The Parties agree that any delays, changes, or modifications to this Agreement necessary to comply with the Regulations shall be made.

8. WHEREAS, the Members shall appoint CPA-1NAME as the sole Manager of the Practice [every Member as a Manager].[ii]

9. Whereas, the Members intend to operate the Business and provide for the restriction on the transfers of ownership interests in the Practice ("Interests").

NOW, THEREFORE, in consideration of the mutual premises below, and other good and valuable consideration receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

A. Incorporation of Recitals

The Recital clauses above are hereby incorporated into this agreement by reference and made a part hereof.

B. Organization

1. Organizational Fees

The LLC shall pay all expenses incurred in the organization of the LLC. Where a Member has incurred ordinary and necessary expenses incident to the organization of the LLC, the LLC once formed, shall reimburse same upon submission of reasonable corroboration.

However, each Member shall be personally responsible for the costs each such Member and that Member's predecessor practice incurred in negotiating and consummating the Merger. Those costs shall not be included in the above reference to expenses.

2. Formation

The Practice has been organized as a STATE-NAME Limited Liability Company to engage in the Practice under and pursuant to the STATE-NAME Limited Liability Practice Act (the "Act") by the filing of Certificate of Formation [in some states "Articles of Organization"] ("Articles") with the Department of State of STATE-NAME as required by the Act.[iii]

1. As part of the organization of the Practice, CPA-1NAME and CPA-2NAME shall transfer to the Practice the assets listed in Exhibit A. Notwithstanding anything herein to the contrary, in the event that CPA-1NAME shall cease to be a member of the Practice for any reason, the assets set forth in Exhibit A-1 shall be returned to CPA-1NAME and not to CPA-2NAME, without any cost or expense to CPA-1NAME for such assets. As used herein, the term *Assets* shall refer to all of the assets initially contributed to the Practice by the parties and all assets thereafter acquired by the Practice.
2. Neither the Practice nor CPA-2NAME shall have any rights or interests in the building located at ADDRESS, leased to and used by the Practice.

3. The Practice shall publish, at the Practice's expense, a notice in the STATE-NAME CPA Journal and the CITY-NAME News, and any other papers of public circulation reasonably requested by Buyer stating that CPA-1NAME and CPA-2NAME have joined to form the Practice. The Practice shall update CPA-1NAME and CPA-2NAME's records with INTERNET-CPA-SEARCH to reflect the formation of the Practice.[iv]

3. Name

The name of the Practice shall be the "CPA-1NAME & CPA-2NAME, L.L.C." In the event any Member retires or ceases to be a member by reason of death or disability, such Member's name may continue to be used in the Practice name with no additional compensation or payments to such Member. The Practice, however, shall be under no obligation to continue to use any name it chooses not to so use. If any Member permanently withdraws from the Practice, his or her name may be deleted from the Practice name in the discretion of the remaining Member or Members.

4. Purpose

The purposes of the Practice shall solely be to operate a certified public accounting firm and perform matters incident and related thereto.

5. Duration

The Practice shall continue in existence perpetually or until the Practice shall be sooner dissolved and its affairs wound up in accordance with the Act or this Operating Agreement.

6. Registered Office and Resident Agent

The Registered Office and Resident Agent of the Practice shall be CPA-1NAME, LLC-ADDRESS.

7. Intention for Practice

The Members have formed the Practice as a Limited Liability Company under and pursuant to the Act. The Members specifically intend and agree that the Practice shall not be, for legal purposes, a partnership (including, a limited partnership) or any other venture, but shall be a Limited Liability Company under and pursuant to the Act. This intention shall not affect the classification of the Practice as a partnership for income tax purposes.

8. Share Certificates May Be Issued[v]

A Member's interest in the Practice may be evidenced by a certificate of limited liability company interest issued by the Practice ("Share Certificate"). In the event of any conflict between the interests indicated by any such Share Certificate and the Membership Interests indicated in the executed Operating Agreement, as Amended (including any Exhibits hereto as amended) the Operating Agreement, as Amended (including any Exhibits hereto as amended) shall control.

C. Operations of LLC

1. References to Titles[vi]

Each of CPA-1NAME and CPA-2NAME shall be Members and may in such capacity be referred to as Members or "Partners."

2. LLC Property

Title or interest to all LLC property shall be acquired and held for the LLC purposes set forth in this Agreement in the LLC's name only.[vii]

The building in which the Practice shall operate, however, is not property of the LLC and shall not be owned by the LLC.

3. Banking

a. Bank Accounts. The Manager, or any one Manager where there are more than one, designated by a majority decision of the Members, may from time to time open bank accounts in the name of the LLC.

Only persons approved by the Members shall have the authority to deposit and withdraw funds from any LLC bank account or sign checks or other instruments on behalf of the LLC.

b. Separate Bank Accounts. All funds of the LLC shall be maintained in a bank account or accounts, and no funds of the LLC shall be commingled with funds or accounts of any Member or Manager or person related to any Member or Manager.

c. No Borrowing. No Member shall have the right to borrow money on behalf of any other party or the LLC or to use the credit of any other party or the LLC, for any purpose, except as specifically set forth in this Agreement.

d. Large Disbursements Require Additional Signatures. All drafts or checks issued by the LLC which are not routine in nature and which exceed Ten Thousand Dollars ($10,000.00) shall be signed by any Two (2) Managers of the LLC.

4. Qualification

All Members shall remain in good standing with or properly authorized by the Organizations ("Duly Qualified").[viii]

If a Member is no longer Duly Qualified, and is precluded from again becoming Duly Qualified as a result of a nonappealable holding, then such Member's interest shall be sold as if such Member were deceased, however, the amount required to be paid to such Member for his interest shall only be equal to Sixty Percent (60%) of the amounts which would otherwise have been paid in the event of death of such Member.

5. Expenses Generally

The LLC shall pay or reimburse reasonable out-of-pocket expenses incurred by any Manager in his or her capacity as a Manager. Reimbursement shall only be made where the expense is a reasonable, necessary, and ordinary expense of the LLC incurred in the furtherance of the LLC's Business and which is substantiated in accordance with the rules and regulations promulgated under "Code" (hereinafter defined) Section 162 and 274.

The Parties acknowledge that the Practice will have to purchase additional computer equipment to accommodate CPA-2NAME and that the cost shall be considered an expense of the Practice.

6. Staffing

1. The Practice shall retain and pay for reasonable staff to assist each Member in performing professional services.
2. The Parties acknowledge that CPA-1NAME presently has, and for the foreseeable future shall have, NUMBER-STAFF full time secretaries and other administrative staff consisting of DESCRIBE.
3. The Parties acknowledge that CPA-2NAME presently has, and for the foreseeable future shall have, NUMBER-STAFF full time secretaries and other administrative staff consisting of DESCRIBE.

7. Insurance[ix]

1. The Practice shall obtain and maintain hazard, casualty and fire, and related insurance coverage with an aggregate liability for claims of not less than One Million Dollars ($1,000,000). Said insurance shall cover all employees of the Practice and all Assets, including the lease of the Building in accordance with the Lease. Insurance coverage shall meet any Department of Labor of the State of STATE-NAME, or other governmental, requirements.
2. Malpractice insurance shall be obtained and maintained for the Practice with amounts of not less than NUMBER Million ($___,000,000) per incident and NUMBER Million ($____,000,000) in aggregate, with a deductible of not more than NUMBER Thousand Dollars ($___,000). In the event of any Member of the Practice works on a part time basis, due to disability or partial retirement, the maximum malpractice insurance shall continue to be maintained for such Member, and such Member shall be a reasonable portion of the cost of such coverage personally to equitably adjust for the reduced revenue then generated.

8. Payments to Related Parties

a. Related Party Payments Generally[x]

The LLC may deal and contract with affiliated or related persons to provide services or materials for the LLC, provided that such services or products are specifically described and accounted for, and the fees to be paid therefor, and the terms and conditions thereof, are not less favorable to the LLC than those which could be reasonably obtained by the LLC from equally qualified but unaffiliated third parties.

b. Office Building Lease

1. The Building in which the Practice operates shall be leased from CPA-1NAME or a party related to CPA-1NAME pursuant to a Lease substantially in the form attached hereto as Exhibit F.

2. The Parties acknowledge that the leasehold improvements set forth in Exhibit F-1 are owned by CPA-1NAME (or an entity or persons related to CPA-1NAME) and not by the Practice.[xi]
3. The rent pursuant to the Lease shall be set at the fair market value rent. In the event of any argument over fair market value rent, an appraisal mechanism shall be used as follows. CPA-1NAME shall select an appraiser at CPA-1NAME's expense, and CPA-2NAME, if he shall not agree with CPA-1NAME's appraiser, shall select an appraiser at CPA-2NAME's expense. If the two appraisers do not agree, they would jointly select a third appraiser whose determination would control. The costs of this Third (3rd) appraiser shall be borne equally by CPA-1NAME and CPA-2NAME.
4. CPA-1NAME's spouse shall be employed as office manager of the Practice pursuant to an Employment Agreement substantially in the form attached in Exhibit __, which shall provide, among other things, for such person to work DESCRIBE and shall receive compensation of NUMBER Dollars ($___,000.00) per month in compensation and additional benefits of DESCRIBE-DETAILS [describe - need to set out the term of employment].[xii]

9. Accounts Receivable[xiii]

a. CPA-1NAME's existing accounts receivable and work in process are listed in Exhibit A-2. Amounts collected by the Practice on said accounts shall belong solely to CPA-1NAME.

b. The division of fees allocated otherwise as between CPA-2NAME and CPA-1NAME is based on a reasonable approximation of the services performed prior to the Contract Date by CPA-1NAME and services anticipated to be performed from the Contract Date forward by CPA-2NAME and with reasonable consideration of the relative responsibility assumed by each as required under ETHICS-CITATIONS.

D. Books, Records, and Accounting

1. Books and Records

The Practice shall maintain complete and accurate books and records of the Practice's business and affairs as required by the Act, and such books and records shall be kept at the Practice's Registered Office.

Fiscal Year; Accounting

The Practice's fiscal year shall be the calendar year. The particular accounting methods and principles to be followed by the Practice shall be selected by the accountant for the Practice ("Accountant"). The Accountant shall be selected in the reasonable discretion of CPA-1NAME and shall be a Certified Public Accountant practicing in STATE-NAME who is not related to CPA-1NAME.

2. Reports[xiv]

The Manager shall provide reports concerning the financial condition and results of operation of the Practice and the "Capital Accounts" (as defined below) of the Members to the Members in the time, manner, and form as the Manager determine(s). Such reports shall be provided at least annually as soon as practicable after the end of each calendar year and shall include a statement of each Member's share of profits and other items of income, gain, loss, deduction, and credit.

3. Member's Capital Accounts

Separate Capital Accounts for each Member shall be maintained by the Practice. Each Member's Capital Account shall reflect the Member's capital contributions and increases thereto as a result of the Member's

share of any net income or gain of the Practice. Each Member's Capital Account shall also reflect decreases for distributions made to the Member and the Member's share of any losses and deductions of the Practice.

a. Definition of Capital Account. A separate capital account shall be maintained for each Member or Assignee in accordance with the provisions below ("Capital Account").

b. Increases in Capital Account. Each Member's Capital Account shall be increased by:

(i) The amount of money contributed by the Member to the Practice.

(ii) The fair market value of property contributed by the Member to the Practice (net of liabilities secured by such contributed property that the Practice is considered to assume or take subject to under Code Section 752). If any property other than cash is contributed to or distributed by the Practice, the adjustments to Capital Accounts required by the Treasury Regulations under Section 1.704 shall be made.

(iii) Allocations to the Member of Profit.

(iv) Allocations to the Member of income or gain as provided under this Agreement or otherwise by Regulations under Section 1.704.

c. Decreases in Capital Account.

(i) Each Member's Capital Account shall be decreased by:

(ii) The amount of money distributed to the Member by the Practice.

(iii) The fair market value of property distributed to the Member by the Practice (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752).

(i) Allocations to the Member of Losses.

(ii) Allocations to the Member of deductions, expenses, Nonrecourse Deductions, and Net Losses allocated to it pursuant to this Agreement, and the Member's share of Practice expenditures which

are neither deductible nor properly chargeable to Capital Accounts under Code Section 705(a)(2)(B), or are treated as such expenditures under Treasury Regulations under Section 1.704.

d. Capital Account of Transferee. In the event of a permitted sale or exchange of an Interest in the Practice, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Interest in accordance with Regulations under Section 1.704.

e. Capital Accounts Shall Comply with Code Section 704(b). The manner in which Capital Accounts are to be maintained pursuant to this Agreement is intended to comply with the requirements of Code Section 704 and the Regulations thereunder. It is the specific intent of the Members that all such further or different adjustments as may be required pursuant to Code Section 704, and any Regulations thereunder be made, so as to cause the allocations prescribed hereunder to be respected for tax purposes. Therefore, if in the opinion of the Manager the manner in which Capital Accounts are to be maintained pursuant to this Agreement should be modified to comply with Code Section 704(b) and the Regulations thereunder, then notwithstanding anything to the contrary contained in this Agreement, or any other agreement between the Parties, the method in which Capital Accounts are maintained shall be so modified. However, any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members. Each Member hereby appoints the Manager the Tax Matters Member and agent for the purpose of making any amendment to this Agreement solely for purposes of complying with this provision.

E. Capital Contributions

1. Initial Commitments and Contributions

By the execution of this Operating Agreement, the Members hereby agree to make the capital contributions set forth in the attached Exhibit A, which consist of substantially all the assets used in their respective pre-Merger practices.

The interests of the respective Members in the total capital of the Practice (their respective "Sharing Ratios," as adjusted from time to time to reflect changes in the Capital Accounts of the Members and the total capital in the Practice) are also set forth in Exhibit A.

No interest shall accrue on any capital contribution and no Member shall have any right to withdraw or to be repaid any capital contribution except as provided in this Operating Agreement.

2. Additional Contributions

In addition to the initial capital contributions, the Managers may determine from time to time that additional capital contributions are needed to enable the Practice to conduct its business and affairs. Upon making such a determination, notice thereof shall be given to all Members in writing at least Ten (10) business days prior to the date on which such additional contributions are due. Such notice shall describe in reasonable detail, the purposes and uses of such additional capital, the amounts of additional capital required by such member (the "commitment"), and the date by which payment of the additional capital is required. Each Member shall be obligated to make such additional capital contribution to the extent of their commitment. Any Member who has fulfilled that Member's commitment shall have the right, but not the obligation, to make the additional capital contributions needed to make-up commitments not made by other Members according to that Member's Sharing Ratio.

3. Failure to Contribute

If any Member fails to make a capital contribution when required, the remaining Members may elect to contribute the amount of such required capital themselves according to their respective Sharing Ratios. In such an event, the remaining Members shall be entitled to treat such amounts as an extension of credit to such defaulting Member, payable upon demand, with interest accruing thereon at the federal mid-term rate provided for under Code Section 1274(d), plus Three percent (3%) until paid, all of which shall be secured by such defaulting Member's Interest in the Practice, each Member who may hereafter default, hereby granting to each other Member who may hereafter grant such an extension of credit, a security interest in such defaulting Member's Interest in the Practice.

F. Allocations and Distributions

1. Allocations

Except as may be required by the Code as amended or this Operating Agreement, net profits, net losses, and other items of income, gain, loss, deduction, and credit of the Practice, after reduction for "Draws" (as defined and set forth in Exhibit A, as amended) shall be allocated among the Members based on the relative Gross Revenues generated by each Member. To determine Gross Revenues attributable to each Member, the following rules shall apply:

a. Gross Revenues shall be the Gross Revenues actually received on a cash basis by the Practice as reported on the Practices Form 1065, Partnership Income Tax Return for the year in question.[xv]

b. Revenues generated by Clients listed on Exhibit A-2 shall be presumed to be CPA-1NAME's unless otherwise agreed to in writing by CPA-1NAME.[xvi]

c. On each new client file, the file shall indicate: "1" for CPA-1NAME client, "2" for CPA-2NAME client, or "P" for Practice client. CPA-1NAME client matters shall be PERCENTAGE allocated to CPA-1NAME, CPA-2NAME clients shall be PERCENTAGE allocated to CPA-2NAME, and Firm clients shall not be considered in the calculation (so that they shall be allocated in the ratio of other Gross Revenues). However if CPA-2NAME (CPA-1NAME) provides NUMBER-PERCENTAGE Percent (_____%) or more of the services on a CPA-1NAME (CPA-2NAME) client, then the Gross Revenues on such client shall be divided NUMBER-PERCENTAGE Percent (___%) based on origination, and NUMBER-PERCENTAGE (___%) based on relative services performed by each Member.

2. Distributions

a. The Manager may authorize or make distributions to the Members from time to time. It is the intent of the Members that periodic draws be paid at least twice monthly and a bonus paid following year end or when determined appropriate by the Managing Partner. Amounts to be withdrawn by each Member shall be established by the Managing Partner unless the Members unanimously agree otherwise.[xvii]

b. Unless and until the Manager determines otherwise, the amount to be paid as a Draw periodically to a Member shall be limited the following amount: [One/Twenty-Fourth (1/24)] x [Eighty Percent (80%)] x [Earnings of that Member during the preceding year]. Where a Member was not receiving a regular draw for the full Twelve (12) months of the preceding fiscal year, his "Earnings" shall be calculated by analyzing the earnings received from each predecessor practice, unless a specific monthly drawing amount is agreed to by the Members and the Practice and attached hereto as part of Exhibit A.

c. All distributions shall be made to the Members in accordance with their Sharing Ratios. Distributions shall be in cash or property or partially in both, as determined by the Manager.[xviii] No

distribution shall be declared or made if, after giving it effect, the Practice would not be able to pay its debts as they become due in the usual course of business or the Practice's total assets would be less than the sum of its total liabilities plus, the amount that would be needed if the Practice were to be dissolved at the time of the distribution, to satisfy the preferential rights of other Members upon dissolution that are superior to the rights of the Members receiving the distribution.

d. Capital contribution of the Members shall not be subject to withdrawal, except by unanimous written agreement of the Managers, or as specifically provided in this Agreement to the contrary.

e. No Member shall be entitled to receive interest on such Capital Account.

3. Basis for Distributions

The Draw reflected in Exhibit A for CPA-2NAME is based on $AMOUNT collectible billings from CPA-2NAME's work efforts. If his work efforts do not generate at least $AMOUNT of collectible billings said amount shall be reduced as reasonably agreed to by the Parties.

G. No Disposition of Membership Interests

No Member shall be entitled to assign, convey, sell, encumber, or in any way alienate all or any part of its Membership Interest in the Practice and as a Member except:[xix]

1. With the prior written consent of the Manager, and at least 75% of the other Members.
2. On the death or disability of such Member in which event the Practice shall repurchase such Membership Interest.

   Transfers in violation of this provision shall not be effective.

H. Meetings of Members[xx]

1. Voting

Except to the extent provided to the contrary in this Agreement, all Members shall be entitled to One (1) vote per Member on any matter submitted to a vote of the Members. Notwithstanding the foregoing, the Members shall have the right to vote on each of the following matters: (a) the dissolution of the Practice pursuant to the provisions of this Operating Agreement that permit a dissolution of the Practice upon the unanimous consent of all Members; (b) the merger of the Practice; (c) a transaction involving an actual or potential conflict of interest between a Member, a Manager, and the Practice; (d) an amendment to the Certificate of Formation; or (e) the sale, exchange, lease, or other transfer of all or substantially all of the assets of the Practice other than in the ordinary course of business.

2. Disqualification from Voting

A Member shall not be entitled to and shall not vote on the following specific issues:

a. A vote as to whether the Practice should be terminated or liquidated, as provided below, as a result of that Member having given Notice of his intent to withdraw from the Practice.

b. Whether such Member should be expelled from the Practice, for cause or without cause (including the determination as to whether cause exists).

c. Whether a Member should be granted a temporary withdrawal from the Practice.

d. Determining the amount of compensation to be paid for past services to a withdrawing Member.[xxi]

e. No Member in good standing shall be prohibited from voting at any meeting (whether in person or by proxy). The fact that a Member's interests conflict with the interests of the Practice or other Members shall not affect a Member's right to vote.

f. A Member must be in good standing in order to vote. A Member is in good standing so long as he is Duly Qualified, and his capital account is maintained at the minimum required amount established by the Managing Partner in his reasonable discretion.

3. Required Vote

Unless a greater vote is required by this Agreement, the Act, or the Certificate of Formation, the affirmative vote or consent of a majority of the Sharing Ratios of all the Members entitled to vote or consent on such matter shall be required.

4. Meetings

An annual meeting of Members for the transaction of such business as may properly come before the Meeting shall be held at such place, on such date, and at such time as the Manager shall determine with reasonable notice to the Members. Special meetings of Members for any proper purpose or purposes may be called at any time by the Manager or the holders of at least Twenty Percent (20%) of the Sharing Ratios of all Members. The Practice shall deliver or mail written notice stating the date, time, place, and purposes of any meeting to each Member entitled to vote at the meeting. Such Notice shall be given not less than Ten (10), and no more than Sixty (60), days before the date of the meeting. All meetings of Members shall be presided over by the Manager. A Member may participate and vote at such meeting via telephone conference call.

5. Consent

Any action required or permitted to be taken at an annual or special meeting of the Members may be taken without a meeting, without prior notice, and without a vote, if consents in writing setting forth the action so taken, are signed by the Members having not less than the minimum number of votes that

would be necessary to authorize or take such action at a meeting at which all Membership Interests entitled to vote on the action were present and voted. Every written consent shall bear the date and signature of each Member who signs the consent. Prompt notice of the taking of action without a meeting by less than unanimous written consent shall be given to all Members who have not consented in writing to such action.

I. Management of Business[xxii]

1. The Manager may also be referred to as the Director, and shall have, in addition to powers expressly noted herein or in the STATE-NAME LLC statute, the powers and authority traditionally given to a corporate Director.
2. The Manager, as Director, shall act in accordance with the Manager's fiduciary responsibilities and obligations to the Members and Company.
3. The Practice shall be managed by the Manager who shall be CPA-1NAME.
4. Any meeting of the Members shall be presided over by CPA-1NAME as the Manager.
5. The term and duties of the Manager shall be to manage the affairs and business of the Practice.
6. No person shall receive extra compensation for serving as Manager if such Manager is also a Member in the Practice.
7. The duties of the Manager shall be those duties reasonably necessary to conduct the Business of the Practice.

J. General Powers of Managers; Managing Partner

1. Except as otherwise provided in this Operating Agreement, all ordinary and usual decisions concerning the business and affairs of the Practice shall be made by the Manager. The Manager has the power, on behalf of the Practice, to do all things necessary or convenient to carry out the business and affairs of the Practice, including the power to: (a) purchase, lease, or otherwise

acquire any real or personal property; (b) sell, convey, mortgage, grant a security interest in, pledge, lease, exchange, or otherwise dispose or encumber any real or personal property; (c) open one or more depository accounts and make deposits into and checks and withdrawals against such accounts; (d) borrow money, incur liabilities, and other obligations; (e) enter into any and all agreements and execute any and all contracts, documents, and instruments relating to the Business; (f) engage consultants and agents, define their respective duties, and establish their compensation or remuneration; (g) obtain insurance covering the Business and affairs of the Practice and its property, including malpractice insurance; (h) commence, prosecute, or defend any proceeding in the Practice's name; and (i) participate with others in partnerships, joint ventures, and other associations and strategic alliances only where same are directly in pursuit of the Business, as defined above.

2. The Manager shall have the power to make all management and other decisions other than those decisions specifically reserved to the Members under this Agreement.
3. The Manager is charged with running the day to day operations of the Practice.
4. The Manager shall provide periodic written reports to the Members of the matters addressed, actions considered, and actions taken.
5. The Manager shall establish rules, regulations, and policies for the Practice ("Rules").[xxiii] The Rules shall be included in any office manual and shall be distributed to all Members and to such employees of the Practice as the Managers may designate.

K. Unanimous Membership Approval for Certain Acts[xxiv]

Notwithstanding the foregoing and any other provision contained in this Operating Agreement to the contrary, no act shall be taken, sum expended, decision made, obligation incurred, or power exercised by any Member on behalf of the Practice except by the unanimous consent of all Membership Interests with respect to:

1. Any significant and material purchase, receipt, lease, exchange, or other acquisition of any real or personal property.
2. The sale of all or substantially all of the assets and property of the Practice.
3. Any mortgage, grant of security interest, pledge, or encumbrance upon all or substantially all of the assets and property of the Practice.
4. Any merger.
5. Any amendment or restatement of the Articles or of this Operating Agreement.
6. Any matter which could result in a material change in the amount or character of the Practice's capital.
7. Any significant change in the character of the business and affairs of the Practice.
8. The commission of any act which would make it impossible for the Practice to carry on its ordinary business and affairs.
9. Any act that would contravene any provision of the Articles, this Operating Agreement, or the Act.

L. Standard of Care; Liability

The Manager shall discharge his or her duties as a manager in compliance with all Regulations, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner he or she reasonably believes to be in the best interests of the Practice. A Manager shall not be liable for any monetary damages to the Practice for any breach of such duties except for receipt of a financial benefit to which the Manager is not entitled; voting for or assenting to a distribution to Members in violation of this Operating Agreement or the Act; or a knowing violation of the law.

M. Exculpation of Liability: Indemnification

Unless otherwise provided by law or expressly assumed, a person who is a Member or Manager, or both, shall not be liable for the debts or liabilities (excluding malpractice when such person was responsible or as otherwise required by the Regulations) of the Practice.

N. Disability[xxv]

1. A Member shall be considered disabled where, due to a mental or physical incapacity disability, he is unable to render substantially full-time services to the Practice or to discharge his duties as a Member for a period aggregating at least One Hundred (100) Days in any consecutive Twelve (12) calendar month period and the day next following such given day is hereinafter referred to as the "Disability Date." In determining the Disability Date, holidays, vacation days, and days the Practice is closed shall not count.
2. The draw of a disabled Member shall not be reduced during said One Hundred (100) Day period.[xxvi]
3. A Disabled Member shall have no right to vote or receive a Draw after the Disability Date. A Disabled Member's distributive share of Practice profits and losses earned prior to the Disability Date shall be paid in full in accordance with the regular customs of the Practice. During the first six (6) month period following the Disability Date, the Disabled Member shall be entitled to receive Fifty Percent (50%) of the amount of profits and losses he would have been entitled to receive prior to the Disability Date. Thereafter, no distributions shall be made to the Disabled Member. If the Disabled Member does not resume practice on a basis of at least Seventy Five Percent (75%) of his pre-Disability time commitment by the Eighteen (18th) Month anniversary of the Disability Date, such Member shall be deemed terminated from the Practice and shall be entitled to receive the payments provided for a Deceased Member, below.

O. Deceased Member[xxvii]

1. The Members agree that the Stated Value of the entire Practice, inclusive of goodwill at the execution date of this Agreement is the value set forth in "Exhibit B: Certificate of Stated Value," attached.
2. On or before November 15 of each year hereafter, the Members shall agree on an updated Stated Value of the Practice, which updated Stated Value shall be set forth in either a Certificate of stated value or the minutes of the Practice executed by the Members.[xxviii]
3. In the event that the Members have failed to have updated the Stated Value for a period of Eighteen (18) months prior to the date of the death of a Member or the "buy-out" date, hereinafter defined in the case of a disabled Member, then such last Stated Value and the Stated Value buyout shall be void, and each Party (or such Party's successors, assigns, heirs, committee, and so forth, collectively "Representative") shall designate an appraiser. If the Two (2) appraisers cannot agree on a value, the Two (2) appraisers shall designate a Third (3rd) appraiser whose decision as to value shall control. Such appraisals shall consider the health and status of the surviving or non-disabled Member.
4. The following provisions shall govern the purchase of a deceased or disabled Member's Interests under this Stated Value method:
    a) The Closing for the sale and transfer of Shares of the deceased or disabled Member's Interest pursuant to this Stated Value buyout shall take place at the office of the Practice within Ninety (90) Days of the event triggering the buyout.
    b) At the Closing, the Membership Interests of the deceased or disabled Member shall be surrendered and transferred to the Practice, or if the Practice does not so purchase such Membership Interests, then the other Member shall purchase such Membership Interests.[xxix]

c) The Practice or the purchasing Members shall deliver to such disabled or deceased Member, or such Member's Representative, a certified or bank check to the order of the Member or the estate of the deceased Member if applicable, in an amount equal to the lesser of: (i) Twenty Five Percent (25%) of the Stated Value Purchase Price of the Membership Interests being purchased; (ii) or Fifty Thousand Dollars ($50,000). The Practice or Member purchasing the deceased or disabled Members Interests shall pay the balance of the Stated Value Purchase Price in equal quarterly installments over a Five (5) year period. Such five (5) year period shall commence on the first business day of the first full calendar Quarter beginning after the date on which the Closing takes place, and payments shall be made at the end of each calendar quarter. No such installment shall be less than Five Thousand Dollars ($5,000).

d) The Practice or the purchasing Member, or both as the case may be, shall execute and deliver notes evidencing such obligations for the Membership Interests being purchased.

e) Installments shall be payable with interest on the unpaid balance at the Federal Mid-term rate in effect at the date of such Closing, as determined under Code Section 1274(d) and the announcements and regulations thereunder (the "Rate").

f) The Practice or the purchasing Member, as the case may be, shall have the right to prepay the balance of the Stated Value Purchase Price at any time in whole or in part without premium, but together with interest on the amount prepaid to the date of each prepayment (each prepayment to be applied to unpaid installments in the inverse order of their maturities).

g) The unpaid balance of the Stated Value Purchase Price shall be subject to acceleration on notice to the Practice or purchasing Members by the transferor Member or such transferor Member's representative: (i) For default, other than by reason of the death or disability of all remaining Members, in any payment of principal or interest continuing beyond Notice and a grace period of Thirty (30) days (not more than Two (2) grace periods during the period of any such deferred payment); or (ii) In the event the Practice is adjudicated, bankrupt, or insolvent.

h) In the event that either life insurance or disability buy-out insurance is purchased specifically to fund such buyout, then the down payment paid at the Stated Value Closing above shall not be less than the proceeds available from such policies.

i) In the event of the permanent disability or death of the remaining Member, if no additional Members have been admitted to the Practice prior to such permanent disability or death, the payments due the first Member to die or be subject to a purchase based on Disability, shall cease. The Practice shall be wound up and sold or liquidated with the net proceeds from the Assets as set forth in Exhibit A to be paid to CPA-1NAME or his Representative, and the excess net proceeds after such payment to be divided equally between the Members or their respective Representatives.

P. Disability or Death of a Member Calculated Buyout[xxx]

If no valid Certificate of Stated Value exists, then the following provisions shall apply to govern the purchase of a disabled or deceased Member's Interest:

1. Upon the disability or death of a Member, an accounting shall be made by an independent Certified Public Accountant, approved by the members or their assigns ("Accountant") of the disabled or deceased Member's interest on a cash method of accounting and on an accrual method of accounting. These accountings shall be made as at the end of the month within which the disability (that is, the Disability Date) or death occurs.
2. The cash method of accounting shall equal the capital account of the Member as reflected on the most recent Practice federal income tax return (so long as such return was prepared using the cash basis method of accounting), adjusted in the Accountant's reasonable discretion for income and expenses incurred through the end of the month in which disability or death occurred.
3. The accrual method calculated interest of a disabled or deceased Member shall be determined with the following adjustments:

a. The excess of the fair market value of any stocks, bonds, other investment securities, or real estate which may be owned by the Practice at the time over the net book value of such assets, shall be added to the accrual method valuation of that Member's interest.

b. The accrual basis calculation shall include a pro-rata share of the Practice's inventory of work-in-process and accounts receivable. Work-in-process shall be valued at the standard billing rates in effect at the time the services were performed, subject to a valuation reserve, of Twenty Percent (20%). The valuation reserve may be adjusted in the reasonable discretion of the Manager. The Member, or his estate or successors, shall share pro-rata in any amounts collected against the valuation reserve during the One (1) year following the date upon which such reserve was established. The amount paid in consideration of accrual basis capital shall only be the amount by which the accrual basis capital exceeds the Member's cash basis capital.

4. Death benefits shall be calculated as follows:

a. All Members shall receive as their death benefit an amount equal to Sixty Percent (60%), the average of that Member's earnings for his or her Three (3) most recent calendar years [some use five years, others use the three highest years of the last five], including years such person was employed by or served as a Member with, the Practice. Where a Member has worked for less then Three (3) years, the calculation shall be based on the aggregate earnings of that Member for the period such person employed by or served as a Member with the Practice, multiplied by Sixty percent (60%).

b. The following limitations shall be imposed on the amounts payable to all deceased or terminated Members during each fiscal year: The aggregate payments made in any fiscal year to the Members shall not exceed Twenty Percent (20%) of net income of the Practice in excess of such amount, as determined in the discretion of the Accountant. When the percentage limitations limit the amount payable to any Members, cash basis capital shall first be paid to all Members who have terminated for death or disability. If sufficient funds remain,

then payments shall be made to other terminated Members. If sufficient funds remain, then the accrual basis capital amount shall be payable to the terminated Members.

c. Practice net income, for purposes of calculating the limitation on payments made to terminated Members, is the net income as reported on the Practice's Partnership Federal Income Tax return for such year, but exclusive of any payments to the Members for termination deducted on that return.

5. The disabled Member, or the estate or successors of a deceased Member, shall be entitled to receive such Member's interest as follows:

a. Cash basis capital - within Ninety (90) days. Cash basis capital shall be the Member's capital account as calculated on the most recently completed federal income tax return, updated as provided above.

b. Accrual basis capital - Any insurance proceeds on policies owned by the Practice and payable to a deceased or disabled Member (or his or her assigns, committee, and so forth) shall be paid as soon as practicable and applied to reduce the amount otherwise payable on account of accrual basis capital. Such insurance shall be applied to reduce the amount due a deceased or disabled Member's estate or successor, but not below zero. The remaining amount due shall be paid in Thirty (30) equal monthly installments beginning on the first day of the Third (3rd) month following the month in which disability or death occurs.

Q. Other Activities of Members

No Member may engage in other active business ventures of any nature with the exception of the following, unless the Members unanimously agree in writing:

1. CPA-1NAME may serve as DESCRIBE.
2. CPA-2NAME may serve as DESCRIBE.

Any fees earned for such activities or any expenses incurred shall be solely receivable or payable by the Member involved.

R. Mutual Representations and Warranties of CPA-1NAME and CPA-2NAME[xxxi]

CPA-1NAME hereby represents and warrants to CPA-2NAME, and CPA-2NAME hereby represents and warrants to CPA-1NAME that:

1. Power and Authority

Each of them possesses all requisite power and authority to:

a. Have owned and operated his or her pre-Merger independent practice as it was conducted until the Merger.

b. Own and operate the Practice as it is anticipated to be conducted.

c. To execute and deliver this Agreement.

d. To consummate the transactions hereby contemplated.

2. Binding Agreement

This Agreement, and the Exhibits, constitutes valid and binding obligations of each of them, enforceable against him or her in accordance with their terms.

3. No Default

The execution and delivery of this Agreement and the consummation of the transactions contemplated in this Agreement do not constitute, and with the passage of time will not constitute, a default under any agreement to which either Member is a party or is bound.

4. Suits, Claims, and Judgments

Except as otherwise set forth in Exhibit D:

1. There are no liens, mortgages, leases, or other claims against any of the Assets being contributed pursuant to this Merger by either Member, or which are listed in Exhibit A.
2. There are no pending or threatened suits or proceedings, at law or in equity, or before or by any governmental agency or arbitrator against or affecting either Member, or any of the Assets being contributed by him or her and which are listed in Exhibit A, or against the pre-Merger practice he or she operated independently.
3. There are no ethics complaints, malpractice complaints, or similar complaints or filings against either Member or his or her pre-Merger Practice.
4. There are no unsatisfied or outstanding judgments, orders, decrees, or stipulations affecting him or her or to which he or she is or may become a party which would constitute or result in a breach of any representation, warranty, or agreement set forth in this Agreement or interfere with CPA-1NAME's ability to perform under this Agreement.

5. Statements Herein Complete and Accurate, etc.

No statements, representations, warranties, or covenants have been made by him or her in this Agreement or in the Exhibits attached hereto which are untrue statements of any material fact or misstatements of any fact which would make the statements contained herein or therein misleading.

6. No Further Approvals Necessary

No other individual, entity, or business own, or have any interest in or claim against, the Assets or any interest or right, or both which would require that such other individual, entity, or business be made a

party to this Agreement in order to fully effectuate the transactions contemplated herein, including the Merger.

7. Financial Matters

CPA-1NAME's gross income has averaged approximately $500,000 per year for the preceding Five (5) complete calendar years for the pre-Merger independent practice.
CPA-2NAME's gross income has averaged approximately $300,000 per year for the preceding Five (5) complete calendar years for the pre-Merger independent practice.

8. Good Title

Each contributing Member has, and will give the Practice, good and marketable title to the Assets free and clear of all liens, claims, or encumbrances, except as specifically listed in Exhibit ___.

9. Books and Records

The books and records of each Member for that Member's pre-Merger practice are complete and correct in all respects and have been maintained in accordance with good business practice.

10. Insurance Coverage

Each Member has maintained continuously for the past Ten (10) years malpractice insurance coverage in amounts of not less than NUMBER Million ($___,000,000) per incident and NUMBER Million ($___,000,000) in aggregate, with a deductible of not more than NUMBER Thousand Dollars ($___,000), as set forth in detail, inclusive of actual claims histories, carrier names, coverage policy numbers, and other relevant details in Exhibit ___.

S. Dissolution and Winding Up

1. Dissolution

The Practice shall dissolve, and its affairs shall be wound up on the first to occur of the following events: (a) at any time specified in the Articles or this Operating Agreement; (b) upon the happening of any event specified in the Certificate of Formation or this Operating Agreement; (c) by the unanimous consent of all of the Members, (d) upon the death, withdrawal, expulsion, bankruptcy, or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member in the Practice unless within Ninety (90) days after the disassociation of membership, a majority of the remaining Members consent to continue the business of the Practice and to the admission of one or more Members as necessary.

2. Winding Up

Upon dissolution, the Practice shall cease carrying on its business and affairs and shall commence the winding up of the Practice's business and affairs and complete the winding up as soon as practicable. Upon the winding up of the Practice, the assets of the Practice shall be distributed first to creditors to the extent permitted by law, in satisfaction of Practice debts, liabilities, and obligations and then to Members and former Members first, in satisfaction of liabilities for distributions and then, in accordance with their Sharing Ratios. Such proceeds shall be paid to such Members within One Hundred Twenty (120) days after the date of winding up.

T. Miscellaneous Provisions

1. Terms

Nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular, and plural as the identity of the person or persons, firm, or corporation may in the context require. The term *Code* shall refer to the Internal Revenue Code of 1986, as amended.

2. Article Headings

The Article headings and numbers contained in this Operating Agreement have been inserted only as a matter of convenience and for reference, and in no way shall be construed to define, limit, or describe the scope or intent of any provision of this Operating Agreement.

3. Independent Advice of Counsel

Each Party has been advised to seek the advice of independent legal, accounting, pension, and tax counsel prior to executing this Agreement. Each Party, by executing this Agreement, acknowledges that such Party has been advised to seek independent counsel, and that the execution of this Agreement can affect such Party's legal rights, that reasonable time to consult with independent counsel has been afforded, and that each Party has consulted with independent counsel or has of such Party's own volition decided not to do so. The Parties acknowledge that FIRM-NAME has represented only CPA-2NAME, CPA-1NAME, and no other Member.

4. Counterparts

This Operating Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which will constitute one and the same. A photocopy, facsimile, PDF, or other electronic image of a signed document shall be as valid as an original.

5. Entire Agreement

This Operating Agreement constitutes the entire agreement among the parties hereto and contains all of the agreements among said parties with respect to the subject matter hereof. This Operating Agreement supersedes any and all other agreements, either oral or written, between said parties with respect to the subject matter hereof.

6. Severability

The invalidity or unenforceability of any particular provision of this Operating Agreement shall not affect the other provisions hereof, and this Operating Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

7. Amendment

This Operating Agreement may be amended or revoked at any time by a written agreement executed by all of the parties to this Operating Agreement, except where a lesser percentage of Membership Interests is permitted elsewhere in this Operating Agreement. No change or modification to this Operating Agreement shall be valid unless in writing and signed by all of the parties to this Operating Agreement.

8. Notices

Any notice permitted or required under this Operating Agreement shall be conveyed to the party at the address reflected in this Operating Agreement and will be deemed to have been given, when deposited in the United States mail, postage paid, or when delivered in person, or by a national overnight courier, or by facsimile transmission (the receipt of which is confirmed).

9. Binding Effect

Subject to the provisions of this Operating Agreement relating to transferability, this Operating Agreement will be binding upon and shall inure to the benefit of the parties and their respective distributees, heirs, successors, and assigns.

10. Governing Law

This Operating Agreement is being executed and delivered in the State of STATE-NAME and shall be governed by, construed, and enforced in accordance with the laws of the State of STATE-NAME.

11. Further Assurances

The parties shall, subsequent to the Closing, execute and deliver such further instruments, documents, and agreements, and take such further action, in each case without cost to the other party, as may be reasonably requested or may be necessary or desirable to evidence and perfect the completion of the transactions contemplated herein. By way of example and not limitation, each Member agrees to execute and cooperate in the filing and other appropriate actions to:

1. Executing bills of sale to transfer ownership of any personal property, including furniture, fixtures, and equipment of that Member's separate pre-Merger practice to the Practice.

2. Filing of final payroll and other tax returns under the pre-Merger practices tax identification numbers.
3. Assignment of the pre-Merger practice domain names, email addresses, and telephone numbers to the post-Merger Practice.
4. Assignment of any service or other contracts with respect to the equipment, software, or other rights used in that Member's pre-Merger practice to the Practice.
5. Apply for malpractice and other insurance coverages in the name of the new Practice and to cancel any pre-Merger coverages to avoid the Practice incurring costs therefore.
6. Notifying clients of both practices of the results of this Merger.
7. Terminating their pre-Merger practice entity at such member's sole cost and expense.

12. No Waiver

The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence subsequently to that term or any other term of this Agreement. Any waiver must be in writing.

IN WITNESS WHEREOF, the parties hereto make and execute this Operating Agreement on the dates set below their names, to be effective on the date first above written.

WITNESSETH:

Dated: MONTH ___, YEAR Practice Seal:

CPA-1NAME & CPA-2NAME, L.L.C.

By: _____

CPA-1NAME, Manager

_____

CPA-1NAME

_____

CPA-2NAME

Exhibit A: Member Listing, Draws, Capital Contributions

MONTH ___, YEAR

Member	Agreed Semi-Monthly Draw	Capital Contribution	Percentage Interest/ Sharing Ratios
			%
			%
Total			100.00%

Accepted and Agreed:

Dated: MONTH DAY, YEAR

CPA-1NAME & CPA-2NAME, L.L.C.

By: _____

CPA-1NAME, Manager

_____

CPA-1NAME

_____

CPA-2NAME

Practice Seal:

Exhibit A-1: Fixed Assets Contributed by CPA-1NAME

Asset Type	Model/ Serial No.	Quantity	Aggregate Value	Comment

Exhibit A-2: CPA-1NAME Accounts Receivable and Work in Process

Client Name/File No.	Work in Process	Accounts Receivable	Contingency Fee in Process

Accepted and Agreed:

WITNESSETH:

Dated: MONTH DAY, YEAR

CPA-1NAME & CPA-2NAME, L.L.C.

By: _____

CPA-1NAME, Manager

_____

CPA-1NAME

_____

CPA-2NAME

Practice Seal:

Exhibit A-3: Other Assets Contributed by CPA-1NAME.[Omitted]

Exhibit A-4: Fixed Assets Contributed by CPA-2NAME.[Omitted].

Exhibit B: Certificate of Stated Value

The Members hereby agree and designate, as the Stated Value of the Practice, inclusive of goodwill, but exclusive of the Assets set forth in Exhibit A-1, as of the date of this consent, the following figure:

$_____.

Such figure shall be multiplied by a disabled or deceased Members Interest as set forth in the then most current Exhibit A to determine the price to be paid to purchase a deceased or disabled Member's Interest.

Accepted and Agreed:

Dated: MONTH DAY, YEAR

CPA-1NAME & CPA-2NAME, L.L.C.

By: _____

CPA-1NAME, Manager

_____

CPA-1NAME

_____

CPA-2NAME

Practice Seal:

Exhibit C: CPA-2NAME's Malpractice Insurance Coverage

Year	Carrier	Policy No.	Per Incident	Aggregate

Exhibit D: CPA-1NAME's Disclosure Statement.[Omitted].

Exhibit E: CPA-2NAME's Disclosure Statement.[Omitted]

Exhibit F: Lease for the Practice to Lease the Building.[Omitted]

Exhibit F-1: Leasehold Improvements Owned by CPA-1NAME or A Party Related to CPA-1NAME and not by the Practice

Improvement Description	Quantity	Room/Location	Value

[i] The following sample operating agreement illustrates simplified documentation (not recommended) that you might use if you and another independent practitioner merge your practices. In terms of due diligence and documentation, merging is really the equivalent of the purchase of each practice by the other. This is why, if you and the other practitioner were willing, more comprehensive documents should be used, including due diligence documents, documents to transfer title, and so forth. If you're merging with another practitioner, you need to investigate and understand the other practice as well as if you were purchasing it. This agreement, consistent with the asset purchase agreement illustrated below and the scope of this book, is specifically designed for a smaller accounting practice and therefore does not address many of the more complex issues that arise in large mergers.

[ii] Will every member be a manager? Will only a senior professional be manager? Will the professionals designate one or more persons to serve as managers (if the number of members is sufficient, a management committee could be considered). The form must be modified extensively to address these control issues.

[iii] To effect the merger of the two practices, on formation of this new practice LLC, each of the founding members in this illustrative agreement will contribute their former practice assets to this new LLC. In this hypothetical, CPA-1NAME has superior negotiation powers and owns the building in which the practice is operated. The disparity in control is reflected in the following provision, which can be amended to fit your transaction.

[iv] Indicate details as to agreed notices, mailings, and other announcements.

[v] Determine whether it is appropriate to issue certificates. If so, be certain to follow through with all requisite formalities; otherwise, delete this provision.

[vi] Consider appropriate titles. How will clients respond to a person called "Manager" or "Member?" Provision can be made to utilize corporate names such as "President." See Chapter 5.

[vii] The following language addresses the fact pattern of this illustrative agreement, in that the CPA-1NAME owns the building leased to the practice.

[viii] Consider implications to the practice of loss of qualification. The buy-out formula at 60 percent of death benefit is merely a suggestion of a concept of working with one valuation figure or approach, but recognizing the greater cost of funding a buyout without the benefit of life insurance proceeds. Further, the 60 percent figure incorporates a penalty payment because of the potential harm to the practice of a partner losing his or her ability to practice. This approach may not be viewed as fair and should be discussed.

[ix] What minimum insurance amounts does each profession want? This should be addressed in the context of malpractice as well as other coverage. This is a common area of difference in practice "cultures." The purpose is to assure that all professionals agree on the insurance coverage to avoid claims or problems at a later date if the coverage is inadequate or if someone wishes to increase profits by lowering coverage. If CPA-2NAMe is a more senior practitioner, and this merger is part of an exit strategy, consider addressing current malpractice coverage terms as well as a minimum tail coverage, if necessary, on actual retirement.

[x] Document and agree in detail as to permissible related party transactions, as they can often become a significant source of contention.

[xi] Consider an independent trigger mechanism for any related party price payment to be set.

[xii] This provision addresses an employment package for a key related person to which the professionals agree. In this illustrative document it is, as before, assumed that CPA-1NAME has more control and power, evidenced below by the continued employment of his spouse postmerger.

[xiii] When two or more professionals join and form a firm (LLC) or a new professional with an existing practice is added, consider accounts receivable and other assets.

[xiv] Specify reports to avoid later disagreements.

[xv] Consider and modify the agreements concerning origination or other business arrangements between the professionals. See the detailed discussion of these issues and the more numerous and comprehensive sample clauses and explanations in Chapter 5.

[xvi] Modify to reflect business arrangements between and among professionals. A point system or simple fixed percentage ownership interests can also be used. See Chapter 5.

[xvii] Address cash flow for distributions. Should it be in sole discretion? Should parameters based on prior years be used? An important factor in the resolution of this issue is the manner in which the selection of the manager was addressed above. If one partner, who in this illustrative case study is CPA-1NAME and has dominant control over the practice, is the sole manager, then the other partner will likely endeavor to negotiate more control over these provisions. In contrast, if the two partners are more equal in stature (see sample agreement and annotations in Chapter 4), then this entire agreement would be simplified.

[xviii] This illustrative provision below should be modified to address sharing ratios versus more detailed or specific allocations above, depending on what decisions you make.

[xix] How should key decisions be made? These provisions will have to be coordinated with the provisions above on selection of manager. If CPA-1NAME is the sole manager, then some offsetting protection for CPA-2NAME should be provided below. If both are co-managers in a more equal relationship, then the provisions below become more academic and the entire operating agreement might be simplified as a mere equal vote of the members.

[xx] Meetings can be provided. However, for a practice of more than two members, formal meetings might be important. For a practice of two members with equal power and control, the need for meetings would be academic.

[xxi] Additional provisions governing voting are provided below.

[xxii] The provisions below incorporate the use of the title "director" for the manager. If both members are to serve as managers, then the provisions below must be revised accordingly.

[xxiii] Should rules be permitted? Any parameters? How should they be communicated? In this particular illustrative agreement, since CPA-2NAME has already ceded management to CPA-1NAME, granting the authority to CPA-1NAME to promulgate rules may be excessive. However, if there are other more junior partners and staff, it may be more reasonable.

[xxiv] Should all members be permitted to vote? What key issues require protection?

[xxv] Disability provisions are often treated as a stepchild since few professionals take the time to work out the details and far fewer are willing to address the cost of, for example, disability buy-out insurance. Consider the following a starting point: Should a senior professional be afforded longer time periods within which to return from disability? Should partial and total disability be treated differently? What if there is more than one professional who becomes disabled or dies, and simultaneous buy-out is required? See the more extensive treatment of this issue in Chapter 5.

[xxvi] The salary continuation is often coordinated with the waiting period on individual professionals' personal disability policies.

[xxvii] Calendar a procedure to periodically update any stated value and have the accountant for the practice review any appropriate adjustments.

[xxviii] For a professional practice, a formula approach rather than an appraisal approach may be simpler and less confrontational.

[xxix] Terms must be reasonable to finance without destroying the practice. Again, as noted above, consider the impact of multiple pay-outs.

[xxx] Consider some version of the following as an option.

[xxxi] Representations and warranties must be extensively tailored to reflect the specific situation, and in this illustrative agreement, the contribution of each premerger practice. In most agreements, the representations and warranties are drafted as separate provisions for each practitioner. Separate representation provisions to show the respective demands of the buyer and seller. The illustrative provision below endeavors to combine the representations into one provision to illustrate a possibly different approach in light of this illustration reflecting a merger.

Appendix 6-5: Purchase: Sample Documents to Purchase a Small 1040/Bookkeeping Practice[i]

A. Asset Purchase Agreement[ii]

AGREEMENT executed this DAY day of MONTH, YEAR to be closed and effective as of the EFFECTIVE-DATE, between and among SELLING-CPA, doing business at ADDRESS (the "Seller", or "SELLING-CPA"); and SELLING-CPA & BUYING-CPA, P.C., doing business at ADDRESS (the "Buyer"). The Seller and Buyer are referred to collectively as the "Parties." The parties recognize that SELLING-CPA & BUYING-CPA, P.C. is a professional service corporation in process of formation by BUYING-CPA and that such Corporation shall be recognized as the party hereto where any document is executed in the name of such corporation.

Recitals

1. SELLING-CPA has operated an accounting, bookkeeping, and tax practice (the "Practice") at ADDRESS (the "Premises"). SELLING-CPA wishes to retire from the practice of accounting in a phased out manner and to sell the Practice to the Buyer on the terms and conditions provided for in this Agreement.[iii]
2. The Buyer wishes to purchase the assets of the Practice (which are listed in Exhibit A), including the goodwill and telephone numbers of the Practice, subject only to those liabilities which Buyer specifically agrees to assume (which are listed in Exhibit C) on the terms and conditions provided for in this Agreement. To assure the transfer of the goodwill and to smooth the transition and transfer of the Practice, the Buyer wishes to retain the services of SELLING-CPA with a consulting agreement, as described below, and in Exhibit H (the "Consulting Agreement").
3. The Buyer intends to continue and expand the Practice, to provide accounting, bookkeeping, tax preparation, and other related services and believes that the limited use of SELLING-CPA's name is essential to accomplish this goal.[iv] Buyer also wishes to gain the limited right to the use of

SELLING-CPA's name for a period of Three (3) years solely for use in the Practice (the "License"). Therefore SELLING-CPA shall own a single share of stock in Buyer, subject to certain limitations.

4. Buyer will pay the agreed to purchase price for the Practice, subject to certain adjustments over time. To secure such future payments, Seller wishes certain protection and assurances, including a personal guarantee and notes.[v]
5. NOW THEREFORE, in consideration of the promises and the covenants herein contained, the parties hereto agree as follows:

1. Purchase and Sale of Assets[vi]

a. *All Assets of Practice Sold*

Seller agrees to sell, assign, transfer, and deliver to the Buyer, and the Buyer shall purchase from Seller, the assets of the Practice identified in Exhibit A attached hereto (the "Assets") including all computers, client lists and files, office equipment, books, telephone numbers, goodwill, and each and every other asset of the Practice, except as specifically provided to the contrary herein. Prepaid insurance, service contracts, and the like associated with any Assets are included in the purchase. Seller shall take any necessary steps to assure that Buyer may assume the benefits of such items. By executing this Agreement, Seller hereby assigns any rights or interests in such contracts or rights to Buyer.

b. *No Liabilities*

These Assets represent substantially all of the assets used in the conduct of the Practice. The Buyer shall only assume responsibility for those liabilities listed in Exhibit C attached hereto (the "Liabilities"). Other than those Liabilities, the Buyer is purchasing all of the Assets free and clear of all liens and encumbrances. This transaction is referred to as the "Sale."

c. *Tax Allocations*

The amounts allocated to each Asset in Exhibit A shall be used by all of the Parties for reporting for federal tax purposes.

d. *Excluded Assets*

The Sale shall not include any assets listed in Exhibit B.

e. *Accounts Receivable*[vii]

(i) The Seller's interests in accounts receivable for work completed prior to the Closing Date (as defined below) are not included in the Sale. A listing of all accounts receivable as of the date of this Contract is attached as Exhibit A, Schedule A-8, and an updated list current of the Closing Date shall be attached hereto as Exhibit A, Schedule A-8. Seller affirmatively represents as of the date of this Agreement, and shall so represent at Closing, that all accounts receivable are for work which has been completed in its entirety, and that none of such receivables constitutes retainers or other arrangements for work to be completed (the "Accounts Receivable"). Where any account receivable represents, in whole or in part, a retainer for future services agreed to be rendered (as described in Exhibit D), and said services are, in fact, rendered by the buyer, Buyer may take either of the following actions ("Remedies"):

AA. Collect and retain One Hundred Percent (100%) of such accounts receivable or alternatively in Buyer's discretion,

BB. Offset the next payment to be made on the Purchase Price by the value of the services rendered. By way of example and not limitation, if Seller has billed a client for monthly work, and such amount is listed as an accounts receivable, but the work for that month has not yet been performed, Buyer may offset the Purchase Price by the portion of the account receivable attributable to the work performed by the Buyer to satisfy the client.

(ii) The Practice shall collect the Accounts Receivables on behalf of the Seller, in name of Seller, and shall pay Seller monthly One Hundred Percent (100%) of the monies collected on these Accounts Receivables.[viii] The Seller shall be fully responsible for the actual out-of-pocket costs which the Practice will incur in collecting the Accounts Receivable, including but not limited to legal fees, collection fees, and the like.[ix]

(iii) In the event that a payment is received from a client which owes money on Accounts Receivable to Seller, and has accounts receivable incurred following the date of Closing due to Buyer, then any payment (regardless of any designation on such payment made by the client) received by the Practice, Buyer or Seller, shall be applied pro-rata towards the payment of Accounts Receivable and accounts receivable of Buyer. For example, should a client owe Seller $2,000 on Accounts Receivable and owe at the time a payment is received $1,000 to Buyer for accounts receivable arising post Closing date, the payment shall be allocated Two-Thirds (2/3rds) to Seller and One-Third (1/3rd) to Buyer.

(iv) If Seller, pursuant to any contract or business arrangement whether or not in writing, entered into by Seller prior to the Closing Date where Seller has already collected monies for services, but which contract or business arrangement requires additional services to be provided after Closing, then Buyer, in Buyer's discretion, may pursue either of the Remedies set forth above.

f. *Documents of Title*

Seller shall evidence the transfer of the Assets by executing the bill of sale in favor of Buyer in the form attached hereto as Exhibit F (the "Bill of Sale").

2. Purchase Price[x]

a. *Purchase Price*

The purchase price for the Sale shall be One Hundred Fifty Thousand Dollars and 00/100s ($150,000.00) (the "Purchase Price").[xi]

The Purchase Price is exclusive of interest at Five Percent (5%) simple interest, compounded quarterly (the "Rate").

b. *Payment of the Purchase Price*

The Purchase Price shall be paid as follows:[xii]

(i) Forty Thousand Dollars ($40,000.00) by check, payable to Seller at the Closing (the "Down payment") to be held in Escrow, as provided herein.

(ii) Ten Thousand Dollars ($10,000.00) by check, payable to Seller PAYMENT-DATE. Interest shall be payable on such amount from the date of Closing at the Rate. Such interest agreed to be exactly AMOUNT ($_____,000.00), for a total payment of AMOUNT and 00/100s ($_____.00).

(iii) One Hundred Thousand Dollars ($100,000.00) paid quarterly, as described below, and which amount shall be secured by Notes ("Deferred Purchase Price").[xiii]

(iv) On EVENT-DATE the first quarterly installment of principal shall be paid on account of the period START-DATE through END-DATE. The amount of such payment shall be Nine Thousand Twenty Five Dollars and Eighty Three Cents ($9,025.83), inclusive of interest at Five Percent (5%) simple interest at the Rate (the "Quarterly Payment"). Thereafter on each calendar quarter: May 1, October 1, November 1, and February 1, the Quarterly Payment shall be made until the entire Deferred Purchase Price has been paid.

(v) The amounts of the Purchase Price shall be evidenced by Twelve (12) notes for each of the Quarterly Payments as set forth in Exhibit S, Amortization Schedule for Deferred Purchase Price.

c. *Purchase Price Reduction*

The Purchase Price shall be reduced if any of the following occur ("Reduction") only for the calendar year YEAR:[xiv]

(i) Billings for the purchased business client list (Exhibit A, Schedule A-6.1) decreases by more than Ten Percent (10%) for any calendar year during the payout period.

(ii) Billings for the purchased individual tax client list (Exhibit A, Schedule A-6.2) decreases by more than Twenty Percent (20%) for any calendar year during the payout period.[xv]

(iii) The Reduction shall be calculated as follows:

[(Revenues from Business Clients per Schedule) x 70%] - [Actual cash basis revenues received from Business Clients listed in Exhibit A, Schedule A-6.1 during the calendar year YEAR] x 150%

PLUS

[(Revenues from Individual Tax Clients per Schedule) x 85%] - [Actual cash basis revenues received from Individual Tax Clients listed in Exhibit A, Schedule A-6.2 during the calendar year YEAR] x 125%

The amount of the Reduction shall be applied to Buyer to reduce the next payment due Seller. If no further payments are due Seller, then Seller shall promptly refund to Buyer the amount of such Reduction from Purchase Price payments made previously.

(iv) The Reduction amount shall be reduced by the amount of revenue realized during such year by a new client introduced by SELLING-CPA to Buyer where SELLING-CPA replaces any client who is lost to Buyer's reasonable satisfaction.

3. Consulting Agreement and Covenant Not to Compete[xvi]

a. *NAME-SELLING-CPA*

In order to facilitate the transfer of goodwill of the Practice, the Parties shall execute at Closing a Consulting Agreement attached as Exhibit H-1. Seller shall not, for the Two (2) year period following the Closing, compete with the Practice as a consultant, employee, or officer of any competing accounting practice, or perform accounting, bookkeeping, tax planning, tax preparation, write-up, or related consulting services within the area within a Twenty (20) Mile radius of the Premises.

b. *VALUED-EMPLOYEE-NAME*[xvii]

In order to facilitate the transfer of goodwill of the Practice, the Buyer and EMPLOYEE-NAME shall execute at Closing a Consulting Agreement attached as Exhibit H-2. EMPLOYEE-NAME shall not, for the

Two (2) year period following the Closing compete with the Practice by performing accounting, bookkeeping, tax planning, tax preparation, write-up, or related consulting services directly or through any employer, partner, or other third party, for any of the Clients listed in Exhibit A, Schedule A-6.1, Exhibit A, Schedule A-6.2, or Exhibit A, Schedule A-6.3 which shall be a listing of all clients of the Practice as of Closing which are not listed on either Exhibit A, Schedule A-6.1 or Exhibit A, Schedule A-6.2. As consideration for this Agreement Buyer shall pay EMPLOYEE-NAME NUMBER Thousand Dollars ($____,000.00) on Closing ("Fee") and the same amount on the first and second anniversary dates of the Closing, if EMPLOYEE-NAME is not in default of this provision. In the event that EMPLOYEE-NAME defaults on this provision, EMPLOYEE-NAME shall pay to Buyer Five times the Fee, no further payments shall be due by Buyer hereunder, and EMPLOYEE-NAME shall be solely responsible for all of Buyer's costs incurred in collection of the Fee, including all attorney and collection costs.

4. Lease of Premises[xviii]

a. *New Lease Required*

The Purchase Price and the Sale are contingent upon the Buyer obtaining a lease for not less than Three (3) years from the landlord for the Premises on terms of not less favorable than those of the Practice, including but not limited to a rent of AMOUNT Dollars ($____,000.00) per month. Said lease shall be substantially in the form attached hereto as Exhibit R. If said Lease is not available, and any required correction or adjustment of any Certificate of Occupancy, then notwithstanding anything herein to the contrary, Buyer shall, in Buyer's sole discretion have the right to defer the Closing for not more than Thirty (30) days pending obtaining such Lease or cancel the Closing and receive a complete refund of any monies deposited or paid hereunder.

b. *Seller's Rights*

The Seller hereby assigns any rights and interests in the Premises to the Buyer. SELLING-CPA shall execute any reasonable documents to have the Premises leased directly to the Buyer.

5. Tax Protection of Seller[xix]

If during the period of time during which Seller shall own any share of stock in the corporation SELLING-CPA & BUYING-CPA, P.C., Seller shall have any tax liability attributable to such ownership, then within Thirty (30) days of request by Seller, Buyer shall make a "with" and "without" incremental tax calculation of the incremental tax due by Seller as a result solely of Seller's possession of such stock and reimburse Seller for same. If Buyer determines that SELLING-CPA & BUYING-CPA, P.C. shall elect to be taxed as an S corporation, then Seller agrees to execute any documents reasonably necessary to affect same. The parties acknowledge that the Seller is not a "responsible party" for the payment of any withholding or other taxes.

6. Representations, Warranties, and Covenants of the Parties[xx]

a. The Seller represents, warrants, and covenants to Buyer each of the items listed below, and that each of said representations, warranties, and covenants shall be as true at Closing as upon the execution hereof and Seller shall attest at Closing to same:

(i) This Agreement constitutes, and each instrument to be executed and delivered by Seller in accordance herewith shall constitute, a valid and legally binding obligation, enforceable in accordance with its respective terms. The Seller is not aware of any circumstances which

would affect the validity, legality, or enforceability of this Agreement, or of his right to practice accounting, in STATE-NAME.

(ii) No statements have been made by Seller in this Agreement or in the Exhibits attached hereto which are untrue statements of any fact, or misstatements of any fact which would make the statements contained herein or therein misleading, including but not limited to the tax returns, lists of assets, and other exhibits attached hereto.

(iii) Seller has all requisite authority to own, lease, and operate the Assets and to carry on its Practice as presently conducted.

(iv) Seller is a member in good standing of the STATE-NAME Association of Public Accountants, National Society of Public Accountants [list other organizations].

(v) No other individual, entity, or business own or have any interest in or claim against the Assets or any interest or right, or both, which would require that such other individual, entity, or business be made a party to this Agreement in order to fully effectuate the transactions contemplated herein.

(vi) To the best of Sellers knowledge, all services rendered that have been paid for have been completed.

(vii) Seller has previously furnished or will furnish Buyer with true and complete copies of: (1) Schedule C of his personal income tax returns [or other appropriate returns] for LIST-YEARS (2) a general ledger for YEAR, (3) complete listing of accounts receivable, accounts payable, and work in process (collectively the "Financial Statements"). The Financial Statements are correct and complete in all material respects and reasonably represent the financial position of Seller as at the dates thereof and the results of its operations for the periods indicated therein. Seller does not have any material liabilities or obligations, whether accrued, absolute, contingent, or otherwise, except as reflected in the Financial Statements.

(viii) There has not been in the prior Three (3) years with respect to the Practice: (1) any adverse change in the financial condition, net worth, results of operations or business of Practice; (2) any material damage, destruction, or loss, whether or not covered by insurance, adversely affecting the Assets and the Practice; (3) any material adjustment in any asset

account or events indicating that such adjustments may be appropriate to make; or (4) to the best of Seller's knowledge, any violation of any ordinance, rule, or regulation of any governmental or regulatory body.

(ix) All income, unemployment, and other tax, franchise, and similar returns and reports (the "Returns and Reports") for Seller required by federal, state, and local law have been duly and timely filed and all taxes, assessments, and other governmental charges upon Seller or upon its properties and the Assets which are due and payable have been paid. There have been no audits of Seller's tax returns questioning or affecting the Practice, and Seller is not aware of any imminent or pending audit or any basis for any additional assessments against it with respect to the Practice. There are no waivers in effect of the applicable statutes of limitations in respect of federal income taxes for any year. Seller shall be responsible for responding to all tax audits for tax periods ending on or before or subsequent to the Closing Date, at its expense, and for all tax liabilities arising with respect thereto.

(x) Neither Seller nor the Practice, except as set forth in Exhibit D - Seller's Disclosure Statement:

(1) Is a party to any pending legal proceeding.

(2) Has knowledge of any threatened lawsuit, legal proceeding, or disciplinary action, including but not limited to those by the IRS, State-Name Department of Treasury, any other regulatory or licensing body.

(3) Has ever had a professional reprimand or a professional license of any nature suspended or revoked or has been subject of any order, judgment, or decree of any state, federal, or regulatory authority barring, suspending, or limiting the right to engage in any business or professional activity.

(4) Engaged, to the best of his knowledge, in any activity in connection with the purchase or sale of any security in violation of any federal or state securities laws.

(5) Paid or received any illegal kickback or bribes.

(6) Been convicted of any felony or greater crime.

(xi) To the best of Seller's knowledge, neither Seller nor the Practice is not in default under, or in violation of, any provision of any indenture, agreement, deed, contract, lease, license, instrument, order, arbitration award, judgment, or decree or other instrument or arrangement to which it, or any of the Assets, are subject. Each contract, agreement, or arrangement to which Seller is a party is in full force and effect.

(xii) Seller has, and on the Closing Date will give Buyer, good and marketable title to the Assets free and clear of all security interests, liens, encumbrances, restrictions, and other burdens.

(xiii) The furniture, fixtures, and equipment set forth in Exhibit A are, or will be as of the Closing Date, in good working order and repair and are suitable and fit for the purposes for which such Assets are now being used and will be used by Buyer as contemplated herein.[xxi]

(xiv)The insurance presently in effect on the Assets and Seller's business adequately covers losses or damages in amounts which are reasonable and sufficient. The Assets have been, and shall continue to be, insured up to the Closing at the expense of Seller for their full insurable values, against loss or damage by fire, theft, or other risks, at the standard rates for similar assets in STATE-NAME, and in amounts not less than the values represented by Seller in Exhibit A for the Assets.

(xv) To the best of Seller's knowledge, the books and records of Seller are complete and correct in all respects, have been maintained in accordance with good business practice, and accurately reflect the basis for the financial condition and results of operations set forth in the Financial Statements and those occurring subsequent thereto, and do not fail to disclose any significant trend or development in the Practice.

(xvi) To the best of Seller's knowledge, each and every material liability of Seller, whether contingent or certain, has been fully disclosed in this Agreement and the Exhibits.

(xvii) Seller has delivered or shall deliver prior to Closing to Buyer true and complete copies of all documents referred to in this Agreement and Exhibits.

(xviii)Seller shall update any Exhibit, and shall, as of Closing represent, covenant, and warrant each item represented, covenanted, and warranted in this Contract, including but not

limited to the following items for any changes occurring from that date of this Agreement to the date of Closing: Assets listed in Exhibit A; liabilities assumed by Buyer (if any) listed in Exhibit C; the prepaid expenses listed in Exhibit A, Asset Schedule A-9; the accounts receivables listed in Exhibit A, Asset Schedule A-8.

(xix) The Buyer represents, warrants, and covenants to the Seller each of the items listed below, and that each of said representations, warranties, and covenants shall be as true at Closing as upon the execution hereof and Seller shall attest at Closing to same:

(i)Buyer has and shall throughout the term of this Agreement maintain, a valid license to practice accounting in the state of STATE-NAME and is and shall remain a member in good standing of the STATE-NAME State Society of Certified Public Accountants and the American Institute of Certified Public Accountants.

(ii) No statements have been made by Buyer in this Agreement or in the Exhibits attached hereto which are untrue statements of any fact or misstatements of any fact which would make the statements contained herein or therein misleading.

(iii) This Agreement and each and every Exhibit constitute, and each instrument to be executed and delivered by Buyer in accordance with this Agreement constitute, a valid and legally binding obligation of Buyer enforceable against the Buyer in accordance with their respective terms. Buyer is not aware of any circumstances which could affect the validity, legality, or enforceability of this Agreement or his licenses to practice accounting in STATE-NAME.

(iv) Buyer is not aware of any pending or threatened lawsuits against it, other than those set forth in Exhibit E - Buyer's Disclosure Statement.

(1) Buyer is not, nor has not, except as set forth in Exhibit E - Buyer's Disclosure Statement:

(aa) A party to any pending legal proceeding.

(bb) Knowledge of any threatened lawsuit, legal proceeding or disciplinary action.

(cc) Ever had a professional reprimand or a professional license of any nature suspended or revoked or has been subject of any order, judgment, or decree of any state, federal, or regulatory authority barring, suspending, or limiting the right to engage in any business or professional activity.

(dd) Engaged, to the best of his knowledge, in any activity in connection with the purchase or sale of any security in violation of any federal or state securities laws.

(ee) Paid or received any illegal kickback or bribes.

(ff) Been convicted of any felony or greater crime.

(v) Buyer guarantees each and every payment to be made to Seller under this Agreement and the Exhibits and performance under the Assignment.

(vi) The Buyer shall be responsible for all insurance of the Assets from the date of Closing.

(1)All representations, warrants, and covenants of the Parties shall survive Closing.

7. Conditions Precedent to Buyer's Obligations

The obligation of Buyer to close under this Agreement is subject to the fulfillment at or prior to the Closing of each of the following conditions:

a. Seller shall have delivered true and complete copies of all documents set forth in the Disclosure Statement and Exhibits.

b. From the date of execution of this Agreement to and inclusive of the date of Closing, Seller shall operate the Practice in a manner consistent with prior operations, in a manner reasonably calculated to minimize any loss, damage, theft of assets, or diminution of client base, goodwill, or other assets, whether tangible or intangible. Seller, by way of example and not limitation, shall maintain all insurance in force reasonably necessary to protect and insure the assets of the Practice, continue correspondence and work for and with clients, and so forth.

c. All representations and warranties of Seller contained in this Agreement shall be deemed to have been made at and as of the time of the Closing and shall be then true and correct in all respects.

d. The value of the Assets, inclusive but not limited to good will, shall not have been materially and adversely affected by reason of any loss, destruction, or physical damage, whether or not insured against.

e. Seller shall not have become incapacitated or have died.

f. Seller shall have performed and complied with all agreements and conditions required by this Agreement and the Exhibits to be performed and complied with by it prior to or on the Closing Date.

g. There shall be no court order or judgment preventing Seller from selling the Assets.

h. Buyer shall have received the Lease and Certificate of Occupancy.

In the event that any of the above conditions are not satisfied, Buyer shall have the option in his sole and absolute discretion to cancel this Agreement and receive a complete refund of any monies theretofore paid, or extend the Agreement for a period of not more than Thirty (30) days to permit Seller an opportunity to cure, if possible.

8. Further Assurances

The Parties hereto shall, subsequent to the Closing, execute and deliver such further documentation and take such further action, in each case without cost to the other Parties hereto, as shall be reasonably requested by any other Party hereto, to further evidence and perfect the completion of the Sale and other transactions described in this Agreement and the Exhibits.

9. Cross Default; Buyer and Seller's Remedies

Any default by Buyer or Seller under any Exhibit to this Agreement shall automatically constitute a default under this Agreement and every other Exhibit, and any default under this Agreement shall constitute an automatic default under every Exhibit.

10. Insurance

Seller shall purchase, at Buyer's expense, life insurance on Buyer of the following amounts, with Seller as named beneficiary of such insurance:

First 12 months - $100,000 term insurance.

Next 12 months - $ 75,000 term insurance.

Final 12 months - $ 50,000 term insurance.

Seller shall cooperate with the applications and administrative steps in securing such insurance. And Any proceeds of such insurance shall be applied by Seller towards the repayment of any amounts due by Buyer under this Agreement or any Exhibits attached hereto.

11. Indemnification

Buyer and Seller hereby agree to indemnify and hold harmless the other, against any and all losses, damages, or expenses, including reasonable attorney's fees arising out of or relating to any breach of any representation, warranty, or covenant contained in this Agreement and the Exhibits or any failure to otherwise comply with the terms of this Agreement. This section shall not preclude any Party from raising any defense which it may have in law or in equity in connection with any claim for indemnification. This section shall survive Closing.

12. Brokers and Expenses

The Seller and the Buyer represent and warrant to each other that the only broker with whom they have dealt with in connection with this Agreement and the transaction set forth herein is BROKER-NAME, with Office located at ADDRESS, and that they know of no other broker who has claimed or who has a right to claim a commission in connection with this transaction. The commission of BROKER-NAME shall be paid entirely by Buyer pursuant to a separate agreement contained in Exhibit O.

13. Governing Law; Savings Clause and Construction

a. This Agreement shall be construed in accordance with the laws of the State of STATE-NAME applicable to agreements made and to be performed in STATE-NAME.

b. This Agreement shall be interpreted, in the event of any conflict between this Agreement and any Exhibit attached hereto, so that this Agreement shall be controlling.

14. Entire Agreement

This Agreement and the Exhibits contain all of the agreements and understandings of the Parties with respect to the Sale and all other aspects of the transactions discussed in this Agreement and the Exhibits. No terms or provisions of this Agreement or the Exhibits may be changed except by a written document executed by the Parties to be bound to such change.

15. Notices

a. Any notice required or permitted to be given under this Agreement or any Exhibit shall be deemed duly given if sent by certified mail return receipt requested, Express Mail by the U. S. Postal Service, Federal Express, or by hand delivery, postage and expenses prepaid, addressed to the person and address first above written, unless notice of a change of address is provided in accordance with the terms of this Section.

b. In the case of notice to Seller, a copy shall be sent by the same means to LAWYER-NAME, LAWYER-ADDRESS.

c. In the case of Buyer, with a copy to NAME, ADDRESS.

16. Nonassignability

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors. This Agreement, however, may not be assigned by any Party without the written consent of the other Parties hereto, which shall not be unreasonably withheld. In the event that Buyer shall transfer by way of either sale or admission of a new principal equity holder Fifty Percent (50%) or

more of the equity interests in the Practice, the Notes shall be accelerated and immediately due. However, the Seller may assign the right to receive any payments hereunder to a family member or a trust for a family member.

IN WITNESS WHEREOF, the undersigned parties have duly executed and delivered this Agreement as of the date first above written:

Seller:

By:_____

SELLING-CPA

EMPLOYEE-NAME (As to provision

governing the Fee, only)

_____

Buyer:

SELLING-CPA & BUYING-CPA, P.C.

By: _____

BUYING-CPA, President

(Corporation in formation)

Exhibit A: Assets Sold

No.	Asset Description	Fair Value	Comment	Sch. Ref.
1	Computer Equipment	$*	All F&F	A-1
2	Telephone Numbers	$ -0-	000-000-0000 000-000-0000	A-2
3	Furniture	$ *	All F&F	A-3
4	Office Equipment	$ *	All F&F	A-4
5	Library and Resource Materials	$ *	All F&F	A-5
6	Client Lists and Files	$		A-6
7	Restrictive Covenant	$		
8	Inventory	$ -0-	Not Applicable	A-7
9	Accounts Receivables	$ -0-	Not Included	A-8
10	Prepaid Items	$ -0-	None transferred	A-9
	Goodwill	$		
	Total Purchase Price			

Exhibit ___: Asset Schedule A-2 Telephone Numbers

Comment: The value of a clever telephone number could be a significant asset that is overlooked. It might even be reasonably separated from practice good will. For example, what would "(800) BEAT IRS" be worth?

SELLING-CPA, P.A.

ADDRESS

MONTH DAY, YEAR

VIA CERTIFIED MAIL

PHONE COMPANY NAME

PHONE COMPANY ADDRESS

RE: Assignment/Transfer of Telephone Numbers

Dear Sirs:

This letter hereby authorizes you to transfer the telephone numbers [List Numbers] to SELLING-CPA & BUYING-CPA, P.C., doing business at ADDRESS.

Sincerely,

_____

SELLING-CPA

Exhibit ___: Individual Client Listing

Comment: Client lists are invariably a problem because of confidentiality. The typical solution, although often an imperfect one, is having this data coded until closing. Where there is a concentration on a particular client type or dependency of the practice on a small group of clients, this could adversely or positively affect the value of the practice, depending on the relationship and circumstances. Another alternative is to have the parties sign nondisclosure agreements as illustrated in Appendix 6-B.

Exhibit ___: Asset Schedule A-6.3

Individual Tax Client Lists YEAR

YEAR Client Name	Type of Work	Years with Firm	Estimated Annual Fee	Comments

[i] This sample agreement and exhibits illustrate the purchase by a younger practitioner ("Buyer") of an older practitioner's ("Seller") accounting practice and assumes that each practiced as solo practitioners

prior to the sale. The asset purchase agreement illustrates many of the issues discussed in the chapter, including, for example, due diligence, representations, identification of assets, allocation of purchase price, and adjustments for various postpractice results. This agreement, as the merger or operating agreement illustrated in Appendix 6-4, are specifically designed for a smaller accounting practice and therefore does not address many of the more complex issues that would appear in a larger practice purchase or sale. Most exhibits to this sample agreement have been omitted.

[ii] The transaction can be simplified, as can the record keeping for the transaction, by selecting an effective date which differs from the date the agreement is ultimately signed. The following paragraph recognizes that the buyer had not previously formed an entity for her practice and is doing so while the contract is being negotiated. The buyer opted to form a corporation and not an LLC. This fact should be reflected in any documentation signed (not in the buyer's personal name, but by the buyer expressly on behalf of a corporation in formation), and once the entity is formed, any previously signed documents should be re-executed in the name of the acquiring corporation.

[iii] How much value is properly attributable to the consulting agreement, and how much of it is really simply another form for the payment of purchase price? When a consulting agreement is used, what happens if the seller wishes to stay longer? Leave sooner? Becomes disabled or dies? The approach illustrated in the following paragraph, as recommended throughout this book, is to relegate secondary or ancillary documents to exhibits attached to the main document. This approach simplifies, for example, the primary or lead document and minimizes conflicts in language. From a negotiation perspective, this approach facilitates moving the deal to conclusion by focusing you and the other parties on the key issues in the primary transaction document. Once the primary terms are agreed to, the ancillary documents can more readily be addressed. This approach prevents the more minor issues in the secondary documents from complicating or detracting from the main deal issues reflected in the primary document.

[iv] What is the value of the name of the selling practitioner? In many purchase transactions, continued use of the seller's name in the practice name, or at least on the letterhead, may be viewed as essential to the

transfer of the seller's goodwill. In other instances, the continued presence of the seller in some limited capacity (for example, as a consultant) is more vital. The realities of the situation affecting the practice you are purchasing should be reflected in the purchase agreement. From the seller's perspective, the continued use of the seller's name is a significant advantage if there are deferred payments on the purchase price. If the buyer defaults, and the seller is forced to take back the practice, the continued use of the seller's name may preserve more of the goodwill value on the re-acquisition.

[v] The economic arrangements in this transaction were to set a fixed purchase price to be adjusted if certain postpurchase benchmarks are not achieved. If the buyer had been able, he or she may have preferred to negotiate a base purchase price, with additional purchase price payments payable only if the benchmarks were achieved; in other words, an arrangement with the dynamics the opposite of those illustrated below.

[vi] What portion of the purchase price is properly attributable to specific or hard assets, and how much is ignored in the "horse-trading" to determine the price in a small transaction?

[vii] When accounts receivable are not included in the sale, the methods used for collection and the allocation of receipts received by the buyer or seller following the closing of the purchase as between buyer and seller, should be addressed. Carefully separating the billing for pre- and postclosing work may solve much of the potential complications, but is not always sufficient, and specific provision are provided below. The provision below incorporates postsigning updating of information for the closing, as discussed in the chapter.

[viii] What about administrative costs of accounts receivable? How should accounts receivable be valued when not retained by the SELLING-CPA in a clean manner as below? Another approach is for the buyer to remit the actual receipts less actual costs of collections. To avoid disputes over the determination of such costs, another approach would be to remit 97 percent of the collections (or some other agreed percentage) with the 3 percent constituting a payment for the administrative costs of collection. Another

advantage to this approach for the seller is that it provides some incentive for the buyer to collect the receivables.

[ix] This provision, as many provisions in this agreement, uses examples to elucidate and clarify the provisions to which were agreed. This can be a helpful method of making the legal provisions easier for all parties to understand and apply.

[x] The price is arm's-length, but what adjustments are necessary? Consulting? Interest? Other items?

[xi] Interest should be set at a rate sufficient to avoid any imputation of interest rules.

[xii] Interest is frequently not included or included at a below or above market rate to accomplish other objectives. Discounting, for example, is appropriate, but at what interest rate?

[xiii] Is 5 percent interest reasonable or simply the result of "horse-trading"? Does it meet minimum requirements to avoid interest imputation under the tax laws?

[xiv] Different formulae and provisions are made for business and 1040 clients, given the differences in the client relationships. Distinctions can be made in different practice purchase situations. For example, the differences between larger and smaller clients may be worth addressing. For instance, within a group of 1040 clients, some small clients might not be particularly profitable, while more complex income tax return clients generate larger family groups of returns, higher billing rates, and nontax season work. See the chapter discussion of this provision as well.

[xv] How should a contingent reduction reflected in an agreement be factored in, if the formula of the agreement is being applied in a matrimonial proceeding where there is no reduction applicable because of a going concern assumption?

[xvi] Should part of the "purchase price" be allocated to noncompete below and not be deemed part of the value of the practice?

[xvii] In some instances, retaining a key employee of the seller may be important in effecting the transition of purchased accounts. In other situations, the seller may, out of loyalty, seek to assure job security and continuity for a long-time employee.

[xviii] Is the lease an arm's-length arrangement or another means of directing value? In this illustrative case, it was intended to be arm's-length, but often this is not the situation. If the lease is a fundamental component of the transaction, there should be assurance that the lease can be assigned or sublet, and any extensions or other modifications should also be obtained before buyer is bound by the transaction. On the other hand, the seller may not be willing to approach the landlord and risk jeopardizing the status of the lease until it is certain that the practice sale will close.

[xix] In this illustrative transaction, the buyer was advised that to secure the proper use of the seller's name in the practice's name, the seller had to own one share of stock in the professional corporation. Since this was the sole motivation for the seller owning any such stock, a tax indemnification provision illustrated below was provided.

[xx] Properly negotiated and documented seller's representations and warranties can provide a road map for addressing significant risks and concerns about the practice you are purchasing. Don't rely on standard forms or provisions. Start by tailoring, in detail, all standard forms to reflect any issues and concerns identified by you during the preliminary stages of due diligence, as explained in Chapter 5. Use the representations and warranties to "smoke out" potential problems.

[xxi] Prepaid assets should be addressed in the analysis and adjustments made, unless they are considered immaterial or adjusted at closing.

Appendix 7-1: Sample Termination Agreement for Partner in Small Accounting Firm[i]

THIS TERMINATION AGREEMENT, made this DATE ("Termination Agreement") between and among:

Parties

a. FIRM-NAME, a STATE-NAME general partnership formed on FORMATION-DATE in STATE-NAME (the "Partnership") governed by a partnership agreement dated DATE (the "Partnership Agreement").
b. CPA1NAME, an individual residing at ADDRESS, and as a general partner in the Firm ("CPA1NAME").
c. CPA2NAME, an individual residing at ADDRESS, and as a general partner in the Firm ("CPA2NAME").
d. CPA3NAME, an individual residing at ADDRESS, and as a general partner in the Firm ("CPA3NAME").
e. CPA4NAME, an individual residing at ADDRESS, and as a general partner in the Firm ("CPA4NAME").
f. TERMINATING-CPANAME, an individual residing at ADDRESS, and as a general partner in the Firm ("TERMINATING-CPANAME").

CPA1NAME, CPA2NAME, CPA3NAME, and CPA4NAME may be referred to collectively as the Partners and individually as Partner (for purposes of this Termination Agreement the term excludes TERMINATING-CPANAME). The

Partners and TERMINATING-CPANAME may be referred to collectively as the Parties and individually as Party.

Recital Clauses[ii]

a. WHEREAS, TERMINATING-CPANAME has determined that he wishes to withdraw from the Partnership.

b. WHEREAS, the Partners have determined that they wish to purchase TERMINATING-CPANAME's interest in the Partnership and continue the Partnership.[iii]

c. WHEREAS, Section PROVISION-NUMBER of the Partnership Agreement provides that if a partner of the Partnership wishes to withdraw from the Partnership, the remaining partners may elect to purchase the withdrawing partner's interest in the Partnership. Alternatively, if the remaining partners do not elect to purchase the withdrawing partner's interest in the Partnership, the Partnership shall be liquidated.

d. WHEREAS, Section PROVISION-NUMBER of the Partnership Agreement provides the terms for the calculation of the valuation of a withdrawing partner's interest in the Partnership.

e. WHEREAS, the Parties wish to provide for the orderly withdrawal of TERMINATING-CPANAME and an orderly transition period between the date of this Termination Agreement and the date upon

which TERMINATING-CPANAME shall withdraw from the Partnership (the "Transition Period").

NOW THEREFORE, in consideration of the mutual premises and covenants herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree:

A. Incorporation of Recitals

The recitals are hereby incorporated by reference into this Termination Agreement.

B. Timing

TERMINATING-CPANAME shall withdraw from the Partnership no later than the effective date of DATE (the "Termination Date"). Before the close of business on the Termination Date, TERMINATING-CPANAME shall:[iv]

a. Remove all his personal belongings from the Partnership offices (which shall include, but not be limited to the items set forth in Exhibit 1, each of which the Partners acknowledge is solely the personal property of TERMINATING-CPANAME).
b. Return all property in his possession belonging to the Partnership.[v]
c. Have completed all other acts necessary to terminate his relationship with the Partnership.[vi]

C. Audit of Partnership Accounts

Thirty (30) days before the Termination Date, the Partnership shall:

1. Make its books and records available to INDEPENDENT-CPA ("INDEPENDENT-CPA").

2. Give INDEPENDENT-CPA copies of the Partnership's filed Federal income tax returns for the Partnership's last Five (5) taxable years.

3. Financial statements for the last Five (5) years, including notes and supporting schedules and documentation.

4. Partnership or buy-sell agreements, or both.

5. Listing of all consummated buy-ins and buyouts.

6. Copy of all leases in effect at the valuation date.

7. Fee schedules of the practice in place during the last Five (5) years.

8. Listing of staff with experience and length of time associated with the practice.

9. Depreciation schedule of fixed assets.[vii]

10. Aging of accounts receivable for different years, including an explanation of the SPECIAL-ACCOUNT.

11. Detail listing of prepaid expenses as of the most recent balance sheet.

12. Listing of all benefits and expenses paid for by the practice on behalf of the members of the Partnership.

13. INDEPENDENT-CPA shall review the books and records to determine and confirm that they have been kept in accordance with Generally Accepted Accounting Principles (GAAP) or some other appropriate or

reasonable basis of accounting standard. INDEPENDENT-CPA shall review the tax returns for accuracy and compliance with applicable income tax laws.

14. INDEPENDENT-CPA shall provide a report to all Parties indicating whether, in his professional judgment, any adjustments, corrections, or other amendments should be made to the books, records, or tax returns of the Partnership (the "INDEPENDENT-CPA Report").

D. Purchase of TERMINATING-CPANAME Interest

1. *Determination of Underlying Elements of Purchase Price*[viii]

a. Accounts Receivable

(i) Within Four (4) calendar days after the Termination Date, the Partners and TERMINATING-CPANAME shall jointly prepare a list of the accounts receivable of the Partnership as of the Termination Date (the "Accounts Receivable Report"). The date upon which the Accounts Receivable Report is prepared and agreed to by the Parties shall be the First Determination Date. The Accounts Receivable Report shall not include the account of SPECIAL-ACCOUNT.

(ii) Any account about which the Parties are unable to agree as to whether it should be included on the Accounts Receivable Report, or any account about

which the Parties are unable to agree as to any element of said account (for example,, the amount of the receivable) shall be listed on a separate report, with notations indicating the nature of the dispute associated with such account (the "Dispute Report"). The Dispute Report shall not include the account of SPECIAL-ACCOUNT.

(iii) The status of accounts on the Dispute Report shall be determined by an independent auditor who shall not be the accountant of the Partnership. The Parties shall agree upon the identity of the independent auditor. If they are unable to agree, then the Partners shall designate One (1) auditor, TERMINATING-CPANAME shall designate One (1) auditor, and the Two (2) auditors so designated shall select a Third (3rd) auditor. The Three (3) auditors so selected shall review the status of accounts on the Dispute Report and determine whether they should have been included on the Accounts Receivable Report and if so in what amounts. In reviewing the items on the Dispute Report, the auditor (or auditors) shall have full and complete access to the books and records of the Partnership and to the INDEPENDENT-CPA Report. The independent auditor or independent auditors shall each sign a reasonable confidentiality and nondisclosure agreement protecting the client information that may be disclosed in such an analysis.

(iv) Upon completion of the review of the Dispute Report, the auditor or auditors shall provide the Parties with a report listing those accounts that were listed in the Dispute Report which the auditor or auditors determined should have been included in the Account Receivables Report (the "Audit

Report"). The date upon which the auditor or auditors provide the Audit Report to the Parties is the Second Determination Date.

b. SPECIAL-ACCOUNT Account[ix]

(i) The Parties agree that the current account receivable due the Partnership from SPECIAL-ACCOUNT ("SPECIAL-ACCOUNT") as of the date of this Termination Agreement is AMOUNT Thousand Dollars ($____000,00).

(ii) The Parties acknowledge that SPECIAL-ACCOUNT has been slow to pay this account and that there is uncertainty as to whether this account receivable will ever be fully collected from SPECIAL-ACCOUNT.

(iii) The Parties acknowledge that the most accurate procedure for the purchase by the Partners of TERMINATING-CPANAME's share of the SPECIAL-ACCOUNT account receivable would be for the Partners to pay TERMINATING-CPANAME AMOUNT Percent (____.0%) of every payment the Partnership receives from SPECIAL-ACCOUNT, regardless of when received. The maximum total amount so paid to TERMINATING-CPANAME would be AMOUNT Percent (_____.0) of AMOUNT Thousand Dollars ($_____,000.00).

(iv) However, in the interest of certainty and finality, the Parties agree to liquidate and reduce the amount of the SPECIAL-ACCOUNT account due to TERMINATING-CPANAME on account of his partnership interest at a discount of Twenty AMOUNT Percent (_____%). Therefore, the Parties

expressly agree that TERMINATING-CPANAME shall be entitled to AMOUNT Thousand Dollars ($____,000), calculated at follows:

(AMOUNT) x (Rate) x (OWNERSHIP %) = AMOUNT-DUE

c. Debts and Certain Prior Year Income[x]

(i) Within Four (4) calendar days after the Termination Date, the Partners and TERMINATING-CPANAME shall jointly prepare a summary of:

(ii) The amounts due from TERMINATING-CPANAME to the Partnership in repayment of debt due the Partnership.

(iii) The amounts due TERMINATING-CPANAME from the Partnership in repayment of debt.

The net amount due to or from TERMINATING-CPANAME shall be referred to as the "Debt Amount".

(iv) Within Four (4) calendar days after the Termination Date, the Partners and TERMINATING-CPANAME shall jointly prepare a summary of any balance of income for prior years remaining in TERMINATING-CPANAME's income account which is not reflected in TERMINATING-CPANAME's capital account, and on which TERMINATING-CPANAME has not paid income taxes (the "Prior Income Amount").

(v) If the Parties are unable to agree upon the Debt Amount or the Prior Income Amount, the INDEPENDENT-CPA Report shall control as follows:

(1) If the INDEPENDENT-CPA Report determines that the books and records of the Partnership are accurate, then the Debt Amount and the Prior Income Amount shall be as set forth in the books and records of the Partnership.

(2) If the INDEPENDENT-CPA Report determines that the books and records are not accurate and should be adjusted with respect to debt or loan amounts between the Partnership and TERMINATING-CPANAME,or with respect to prior year income remaining in TERMINATING-CPANAME's income account which is not reflected in TERMINATING-CPANAME's capital account, and on which TERMINATING-CPANAME has not paid income taxes, then the Debt Amount or the Prior Income Amount, or both (as the case may be) shall be the amounts set forth in the books and records of the Partnership, adjusted as the INDEPENDENT-CPA Report indicates.[xi]

2. *Determination of Purchase Price*

The Purchase Price shall be the sum of the Initial Purchase Price and the Purchase Price Correction:

a. Initial Purchase Price

The Initial Purchase Price shall be the total of the following amounts:

(i) AMOUNT Percent (_____.0%) of the total of all accounts included in the Accounts Receivable Report.

(ii) The Debt Amount.

(iii) The Prior Income Amount.

(iv) SETTLEMENT-AMOUNT Dollars ($_____.000.00).

b.Purchase Price Correction

The Purchase Price Correction shall be the AMOUNT Percent (____.00%) of the total of all accounts included in the Audit Report.

3. Payment Terms[xii]

a. The Partners shall purchase TERMINATING-CPANAME's Partnership interest for the Purchase Price.
b. The Purchase Price shall be paid by the Partners to TERMINATING-CPANAME as follows:

    (i) An amount equal to the Initial Purchase Price paid in Eighteen (18) equal installments, each payment due and payable on the First (1st) day of the month. The First (1st) payment shall be due on the First (1st) day of the First (1st) full month following the month containing the First Determination Date. Each monthly payment to TERMINATING-CPANAME (equaling One Eighteenth (1/18th) of the Initial Purchase Price) shall be made in One (1) of the following manners:

(aa) A single check drawn on a bank authorized to do business in the State of STATE-NAME on the account of the Partnership.

(bb) A bank or cashier's check made by a bank authorized to do business in the State of STATE-NAME.

(cc) No legal tender of the United States of America (that is,, Cash) shall be used to effect any portion of the payments under this Agreement.

(ii) An amount equal to the Purchase Price Correction paid in Eighteen (18) equal installments, each payment due and payable on the First (1st) day of the month. The First (1st) payment shall be due on the First (1st) day of the First (1st) full month following the month containing the Second Determination Date. Each monthly payment to TERMINATING-CPANAME (equaling One Eighteenth (1/18th) of the Purchase Price Correction) shall be made be combined with the monthly payment of the Initial Purchase Price and made in the same manner as the monthly payment of the Initial Purchase Price. Should there be payments of the Purchase Price Correction due and owing after the Initial Purchase Price shall have been completely paid, then the monthly payment of the Purchase Price Correction shall be made in One (1) of the following manners:

(aa) A single check drawn on a bank authorized to do business in the State of STATE-NAME on the account of the Partnership.

(bb) A bank or cashier's check made by a bank authorized to do business in the State of STATE-NAME. No legal tender of the United States of America (that is, Cash) shall be used to affect any portion of the payments under this Agreement.[xiii]

E. Representations and Warranties

Each Partner represents and warrants to the TERMINATING-CPANAME that:

1. During the last Six (6) years: the books and records of the Partnership have been maintained in accordance with generally accepted accounting principles; that all accounts of the Partnership have been included in the books and records of the Partnership; and that no accounts have been excluded, whether negligently or intentionally, from the books and records of the Partnership.

2. Such Partner has not, at any time in the Two (2) years preceding the date of this Termination Agreement, done anything that would give rise to TERMINATING-CPANAME having a colorable claim of libel, slander, libel *per se*, or slander *per se* against such Partner.

3. During the Transition Period, the books and records of the Partnership shall be maintained in the usual and ordinary manner as they have been usually and ordinarily maintained since the inception of the Partnership (which predates the date of the Partnership Agreement).

TERMINATING-CPANAME represents and warrants to the Partnership and the Partners that TERMINATING-CPANAME has not, at any time in the Two (2) years preceding the date of this Termination Agreement, done anything that would give rise to TERMINATING-CPANAME having a colorable claim of libel, slander, libel *per se*, or slander *per se* against any Partner or the Partnership.

F. Liquidated Damages

1. *Breach Defined*

A breach of this Termination Agreement ("Breach") shall include, but not be limited to, the performance of any act prohibited herein, and the failure to perform any act required herein. If any Representation or Warranty is found to be materially false, the Party whose representation or warranty is materially false shall have committed a Breach.

2. *Liquidated Damages to TERMINATING-CPANAME*

In the event that any Partner commits a Breach, TERMINATING-CPANAME shall be entitled to the following damages in liquidation of his claim for Breach against the Partners:

A payment from the Partners equal to One Third (a) of the sum of the accounts included in the Accounts Receivable Report and the Audit Report.

3. *Liquidated Damages to Partners*

In the event that TERMINATING-CPANAME commits a Breach, TERMINATING-CPANAME shall be entitled to receive only One Half (½) of the Purchase Price, determined as provided for in this Agreement, as payment for his Partnership Interest. If the Breach occurs after TERMINATING-CPANAME has already received One Half (½) of the Purchase Price, then TERMINATING-CPANAME shall receive no further payments of the Purchase Price under this Termination Agreement and shall be under a strict obligation to refund within Ten (10) business days any portion of the Purchase Price already received by him from the Partners in excess of the One Half (1/2) amount. If any payments are made later than said Ten day period they shall bear interest at the Internal Revenue Code Section 1274 long term rate plus Three Percent (3%).

G. Nonmolestation

The Partners and TERMINATING-CPANAME agree that upon the Termination Date, and forever thereafter, each Party is free to engage in the practice of Accounting in the State of STATE-NAME, and in any other state of the United States of America, without any interference, hindrance, impediment, or obstacle. No Party shall take any action or shall fail to take any action, where such action or failure to take such action, shall serve to interfere, hinder, impede, or obstruct the free practice of Accounting by any other Party.

H. No Waiver

The failure of any Party to insist upon strict adherence to any term of this Termination Agreement on any occasion shall not be considered a waiver and shall not deprive that Party of the right thereafter to insist upon strict adherence to that term or any other term of this Termination Agreement. Any waiver must be express and in writing.

I. Governing State Law

This Termination Agreement shall be governed by, and construed in accordance with, the Laws of the State of STATE-NAME, and every party hereto agrees to personal jurisdiction within STATE-NAME.

J. Entire Agreement; Amendment

This Termination Agreement constitutes the entire agreement of the Parties with respect to the withdrawal of TERMINATING-CPA-NAME from the Partnership. This Termination Agreement may only be amended by a unanimous written approval of all the Parties.

K. Severable Provisions

Every provision of this Termination Agreement is intended to be severable. If any term or provision of this Termination Agreement is held to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Termination Agreement. This Termination Agreement shall be construed in all respects as if such invalid or unenforceable provisions (or portion thereof) were omitted, and, to the extent lawful and practical, the Parties shall in good faith negotiate alternative terms or provisions to effectuate their original intent.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seal the DATE and as Partners in the Firm:

[Signature lines, notary forms, and Exhibits omitted]

[i] This agreement illustrates the negotiated termination of a partner from a five-partner accounting practice by the four remaining partners. This scenario is quite different than, for example, a planned departure under a retirement arrangement. This sample agreement is drafted to be signed before the actual termination date for the departing partner. It covers the time period beginning with the date it is signed, running through the date of withdrawal, and afterwards during the calculation of the buy-out amount (since the buyout in this illustration cannot be calculated before the actual date of termination).

[ii] The provision below indicates that the terminating partner is "withdrawing" from the partnership. The practice governing documents should be carefully reviewed to determine which provision or provisions might govern the withdrawal. The terminology of the agreement could have implications in the event of a dispute. For example, the use of the term *withdraw* might have a different implication then, for example, the term *retire*.

[iii] In some instances, it may be preferable to specifically reference the termination provision in the practice governing document. In other situations, it might be preferable to state that this termination agreement will govern or expressly state that the provisions of the termination agreement have been negotiated in lieu of the termination provisions in the practice governing documents. Consider how each of these options might affect your negotiating position.

[iv] A date for the actual withdrawal must be agreed upon and fixed. This will affect the value of the payments under the partnership agreement, the partnership's, and the terminating partner's respective liabilities for, for example, partnership acts.

[v] The general statement below should present all steps required to unwind the relationship of the terminating partner and the partnership. The steps can be elucidated in a detailed checklist presented as an exhibit or incorporated into the termination agreement. Even simple and supposedly noncontroversial items like surrounding keys, destroying any practice-issued credit cards, and changing the address on the departing partner’s CPA license and various accounting society memberships.

[vi] In this hypothetical termination arrangement, an independent accountant or appraiser agrees to review the books of the practice to ensure that they are accurate and that nothing has been left out, misrepresented, or otherwise adjusted in a manner detrimental to TERMINATING-CPANAME's interests. The agreement could also have this outside expert address specific liabilities, possible claims, or tax exposures, to implement the termination agreement.

[vii] If one or more accounts are treated differently than most accounts receivable, they should be identified and addressed separately.

[viii] The following is a mechanism by which the partnership and the terminating partner can agree on the valuation of as many of the accounts receivable as possible as of the termination date. Those specific receivables that cannot be agreed upon will be evaluated by an independent auditor. A mechanism is also provided to resolve any disagreement between the parties about selecting a specific auditor.

[ix] There are often specific clients or types of clients for which special billing arrangements exist or for which a special allocation agreement exists between the partnership and the terminating partner. The following illustration is primarily meant to recognize the existence of exceptions and special situations, not to suggest the wide applicability of the selected methodology.

[x] The following provision endeavors to create a mechanism to ascertain the amounts due to or from the terminating CPA on loans to or from the partnership and on undistributed income.

[xi] The purchase price is bifurcated to facilitate the specific calculation and resolution of any disputes, reduce the likelihood of a broad-scale dispute, and begin the payment of undisputed accounts, while the status of the disputed accounts (if any) are being resolved. This approach is intended to move the opposing parties towards resolution and prevent the partnership from unfairly withholding larger amounts from the terminating partner. Absent this type of approach, the partnership would probably be inclined to withhold, for example, all amounts due on the accounts receivable so long as any items remained in dispute, but such action could lead to more antagonism. However, paying for anything that is not in dispute or can be resolved, will encourage resolution and minimize costs (for example, the costs of multiple experts).

[xii] The following illustrates a detailed payment schedule that provides some accommodation to the cash flow concerns of the partnership, while avoiding delay and uncertainty for the terminating partner.

[xiii] Review the governing agreement for the practice to determine whether there are any covenants not to compete or similar restrictions. The termination agreement should address those provisions, and if advisable from your perspective, negotiate additional modifications to them. In this illustrative agreement, however, it is assumed that the partnership agreement governing the practice did not have any restrictions. Related to but independent of a covenant not

to compete is a provision assuring that the partners have not and will not malign the terminating partner, and that the terminating partner will not malign the partnership.

Appendix 7-2: Sample Division Agreement for Dividing Existing Accounting Practice Into Two Separate Firms[i]

DIVISION AGREEMENT dated ("Effective DATE") among and between:

1. PREDECESSOR-FIRM, P.C., a STATE-NAME professional corporation doing business at ADDRESS (the "Predecessor Firm").
2. The Shareholders and "Partners" of the Predecessor Firm who include:[ii]

    a. CPA1-FIRM-A ("CPA1-FIRM-A").
    b. CPA2-FIRM-A ("CPA2-FIRM-A").
    c. CPA3-TEAM-B ("CPA3-TEAM-B").
    d. CPA4-TEAM-B ("CPA4-TEAM-B").
    e. CPA5-FIRM-A ("CPA5-FIRM-A").
    f. CPA6-TEAM-B ("CPA6-TEAM-B").
    g. CPA7-FIRM-A ("CPA7-FIRM-A").
    h. CPA8-TEAM-B ("CPA8-TEAM-B").
    i. CPA9-TEAM-B ("CPA9-TEAM-B").
    j. CPA10-FIRM-A ("CPA10-FIRM-A").

Individually the above persons are referred to as "Partner" or collectively as "Partners" and sometimes referred to as "Shareholder" or "Shareholders." The term *Shareholder* is limited to CPA1-FIRM-A, CPA2-FIRM-A, CPA3-TEAM-B, and CPA4-

TEAM-B as the Shareholders of the Predecessor Firm pursuant to the Predecessor Firm's "Shareholders Agreement." However, the other persons included in the above listing of Partners have all been considered, in some respects principals, of the Predecessor Corporation, although it is acknowledged that they do not hold equity in the Predecessor Firm.

3. TEAM-B PRACTICE, a STATE-NAME professional corporation doing business at ADDRESS (the "TEAM-B PRACTICE") whose shareholders will include: CPA4-TEAM-B, CPA3-TEAM-B, CPA6-TEAM-B, CPA8-TEAM-B, and CPA9-TEAM-B; and

FIRM-A PRACTICE doing business at ADDRESS (the "FIRM-A PRACTICE"), whose members shall consist of CPA1-FIRM-A, CPA2-FIRM-A, CPA5-FIRM-A, CPA7-FIRM-A, CPA10-FIRM-A, and NEW-FIRM-A-PARTNER (NEW-FIRM-A-PARTNER not being a party to this Division Agreement since he was not a Partner in the Predecessor Firm).

Collectively the "TEAM-B PRACTICE" and the "FIRM-A PRACTICE" are referred to as the "Successor Entities".

4. Collectively, the Predecessor Firm, the TEAM-B PRACTICE and the FIRM-A PRACTICE are referred to as the "Accounting Practices."
5. REAL-ESTATE-ENTITY, a STATE-NAME general partnership doing business at ADDRESS (the "Real Estate Entity").
6. Collectively, the Predecessor Firm, the Partners, the TEAM-B PRACTICE, the FIRM-A PRACTICE, and the Real Estate Entity, are referred to as the "Parties."
7. This Agreement is referred to as the "Division Agreement", or the "Agreement."

R E C I T A L S:

a. WHEREAS, pursuant to this Agreement the Predecessor Firm shall execute this Division Agreement dividing the Predecessor Firm into Two (2) successor firms, the FIRM-A PRACTICE and the TEAM-B PRACTICE.

b. WHEREAS, Subsequent to the execution of the Division Agreement, the FIRM-A PRACTICE will consummate the acquisition of the practice of another unrelated practitioner, NEW-ACQUISITION (the "NEW-ACQUISITION Practice"). The TEAM-B PRACTICE and its shareholders acknowledge that they have no claims, rights, or interests in the FIRM-A PRACTICE's purchase of the NEW-ACQUISITION Practice even though the negotiations to enter such arrangement were commenced under the auspices of the Predecessor-Firm.

c. WHEREAS, the Partners and the Shareholders wish to continue practicing accounting as Certified Public Accountants independent of the Predecessor Firm as the Successor Entities and wish to provide for the Wind-Down of the Predecessor Firm, the termination of TERMINATED-PARTNER the distribution of assets from the Predecessor Firm to the two Successor Entities, the purchase of malpractice insurance reasonable to protect all parties, collection of accounts receivable and related and ancillary matters (the "Wind-Down").

d. WHEREAS, the Parties wish that every provision of this Agreement be interpreted to be in accordance with all applicable ethics rules and opinions affecting the practice of accounting as Certified Public Accountants in the State of STATE-NAME, including but not limited to all applicable rules of professional conduct, and any other restrictions or requirements of the STATE-NAME Society

of CPAs, and the American Institute of CPAs, or any other governing body (collectively, the "Regulations"). The Parties agree that any delays, changes or modifications to this Agreement necessary to comply with the Regulations shall be made.

e. WHEREAS, certain Shareholders in the Predecessor Firm organized the ownership and operation of Two (2) offices of the Predecessor Firm in a real estate entity known as REAL-ESTATE-ENTITY, a STATE-NAME general partnership, and wish to provide for the wind-down of such entity as part of the Wind-Down.[iii]

f. WHEREAS, TERMINATED-PARTNER, who resides at ADDRESS ("TERMINATED-PARTNER") has prior to the execution of this Division Agreement terminated his relationship with the Predecessor Firm pursuant to a "Termination Agreement" of even date. Although his name still appears in the Predecessor Firm name, he is acknowledged by all Parties hereto not to be involved in the Predecessor Firm.

NOW THEREFORE, THE PARTIES, HERETO, for good and valuable consideration, receipt of which is hereby acknowledged, and for the mutual premises hereinbelow contained, agree as follows:

A. Incorporation of Recitals

All Recitals set forth hereinabove are hereby incorporated into and made a part of this Agreement.

B. Compliance with Regulations

1. It is the express intent of all Parties that all transactions contemplated as part of the Wind-Down be handled in a manner which is in conformity with good business practices and consistent with any guidelines, rules or regulations governing the practice of public accounting. Each provision herein shall be so interpreted and implemented. The Parties shall, by way of example and not limitation, assure the sending of all required or appropriate client notices (as hereinbelow described) and placing of reasonable announcements to alert third persons as to the change in the relationship of the parties.

2. Each Accounting Firm shall publish a notice in the STATE-NAME CPA Journal, and a newspaper of general circulation informing the public and profession of the changes effected.

C. Transfers, Payments, Distributions

The following distributions, transfers, and payments to TERMINATED-PARTNER are in complete settlement of any and all claims, rights, titles, and interests, which any Partner or Shareholder has in or against the Predecessor Firm and the Real Estate Entity:

1. *Accounts Receivable; Work in Process; Client Files and Matters*

a. The FIRM-A PRACTICE shall receive sole control and rights, to the extent permitted under the Regulations, in all pending cases, client files, and any related matters for the clients listed in Exhibit I-1. Excluded from this transfer are any matters for clients listed on Exhibit I-1 who advise any of the Accounting Practices that they do not wish to have their files and cases transferred to the FIRM-A PRACTICE. In the event that either the FIRM-A PRACTICE or the TEAM-B PRACTICE receives any such notice in response to the written Notices to be sent to each of said clients such Firm will immediately inform the Predecessor Firm and cooperate with the Accounting Practices in assuring that the client files are handled as requested by the client.[iv]

b. The TEAM-B PRACTICE shall receive sole control and rights, to the extent permitted under the Regulations, in all pending engagements and client files,

and any related matters for the clients listed in Exhibit I-2. Excluded from this transfer are any matters for clients listed on Exhibit I-2 who advise any of the Accounting Practices that they do not wish to have their files transferred to the FIRM-A PRACTICE. In the event that either the FIRM-A PRACTICE or the TEAM-B PRACTICE receives any such notice in response to the written Notices to be sent to each of said clients, such Firm will immediately inform the Predecessor Firm and cooperate with the Accounting Practices in assuring that the client files are handled as requested by the client.

c. TERMINATED-PARTNER assumes responsibility for any closed or active client files and matters transferred to him and shall remain responsible for any matters which may arise with respect to such files.[v]

d. For any client files so transferred, TERMINATED-PARTNER shall retain such files for the longest applicable statute of limitations period, and in no event, for a lesser period of time than as required under the Regulations. In the event of any claim arising with respect to any of such files which could relate to matters performed or handled by the Predecessor Firm, TERMINATED-PARTNER shall immediately notify the Accounting Practices.[vi]

e. For any client files not transferred to TERMINATED-PARTNER the Accounting Practices shall retain such files for the longest applicable statute of limitations period, and in no event for a lesser period of time than as

required under the Regulations. In the event of any claim arising with respect to any of such files which could relate to matters performed or handled by the Predecessor Firm in which TERMINATED-PARTNER may have any involvement, the Accounting Practice having such file shall immediately notify TERMINATED-PARTNER.

f. The FIRM-A PRACTICE shall assume responsibility for the storage of any closed or inactive files of the Predecessor Firm. TERMINATED-PARTNER agrees to share in an equitable portion of said storage costs to be billed and paid monthly.[vii]

2. *Additional Assets Transferred To TERMINATED-PARTNER*[viii]

The assets set forth in Exhibit C-1 shall be transferred to TERMINATED-PARTNER, pursuant to the Bill of Sale set forth in Exhibit C-2, as part of the Arrangement herein. Such assets shall be subject to the claims, mortgages, or other encumbrances only as noted therein.

3. *Compensation and Payments to TERMINATED-PARTNER*[ix]

a. TERMINATED-PARTNER shall be paid his regular periodic salary or draw through and including _____, [insert month and day]. If said period extends beyond TERMINATION-DATE, such extension shall be merely one of payment and shall not preserve or create any rights in TERMINATED-PARTNER or any obligations on TERMINATED-PARTNER.

b. TERMINATED-PARTNER has no further rights or claims for salary or distributions from the Predecessor Firm, or the Real Estate Entity, other than as expressly provided for herein.

c. TERMINATED-PARTNER acknowledges that the "Shareholders Agreement" of PREDECESSOR-FIRM, dated DATE and the "PREDECESSOR-FIRM Shareholders and Redemption Agreement" provide for certain payments, including but not limited to the following:

    (i) Shareholders Agreement Article _____, page __, addresses involuntary termination of a shareholder's employment. It states "in the event a shareholder's employment is involuntarily terminated, such shareholder shall be entitled to the payment of the sum of NUMBER Thousand dollars ($____,000.00) payable beginning after thirty (30) days of termination in equal

monthly installments over a period of five (5) consecutive years without interest".

(ii) Redemption Agreement Article __, page ___, states "... upon a shareholder's separation from service with the Corporation for any reason, the shareholder or his personal representative shall sell it and transfer to the Corporation, and the Corporation shall purchase out of its surplus, from the Shareholder or his personal representative and redeem all Shares of the Corporation then known by the Shareholder in accordance to the terms and conditions set forth below."

(1) TERMINATED-PARTNER waives his right to claim any payments or amounts due as a result of either of these agreements, including but not limited to the provisions set forth above, in exchange for the transfer of assets, payments, and other aspects of this Arrangement.

(2) No additional compensation for services performed, or other distributions, whether as an employee, officer, director, shareholder, or partner are due to TERMINATED-PARTNER by the Predecessor Firm, or the Real Estate Entity and no payments shall be made on account of this Agreement for compensation for services performed other than as provided for herein.

(3) No other payments of any nature are due to TERMINATED-PARTNER from the Accounting Practices, or the Real Estate Entity.

4. *Tax Consequences of Property Division and the Arrangement*[x]

a. The Predecessor Firm shall provide each Party hereto with copies of all applicable tax filings relating to the arrangement and the Predecessor Entity, and the Real Estate Entity as soon as practicable following the end of the calendar year for each of such entities. TERMINATED-PARTNER shall not be responsible for the cost of any of such filings, including any statements or documentation incurred with respect to the Arrangement, all of said costs to be born by the Predecessor Firm.

b. The accounting firm of OUTSIDE-CPA-FIRM, doing business at ADDRESS, shall prepare Form 8594 or other forms it deems necessary or advisable to effect the Arrangement, Form 1065 (for the Real Estate Entity) and including all applicable Forms K-1, and Form 1120, with respect to the Arrangement and for the YEAR calendar year and any stub or partial year beginning or ending in YEAR, and all Parties agree to be bound by, and report all tax filings and positions therein, in a manner consistent with such returns.

c. All Parties agree to report all tax consequences of the Arrangement in a manner consistent with the provisions in this Arrangement and the Exhibits attached hereto.

d. TERMINATED-PARTNER shall assume sole responsibility for the federal, state, and other income or other tax consequences of the Arrangement and of each of

the transactions herein, including but not limited to the Relinquishment of his rights in the Predecessor Firm, and the Real Estate Entity. TERMINATED-PARTNER has not relied upon counsel or the accountants for the Accounting Practices, or the Real Estate Entity concerning the tax impact of the Arrangement. TERMINATED-PARTNER acknowledges that if the distributions from any of said entities are disproportionate to him, tax consequences could ensue.

5. *Life Insurance*[xi]

The Predecessor Firm agrees to cooperate with TERMINATED-PARTNER to transfer ownership of any life insurance policy insuring the life of TERMINATED-PARTNER to TERMINATED-PARTNER upon his request and at no cost to TERMINATED-PARTNER.

6. *Documents of Title*

Seller shall evidence the transfer of the Assets by executing the appropriate documents necessary to transfer title, which shall include:[xii]

a. A bill of sale in favor of Terminated Partner in the form attached hereto as Exhibit C-2 to transfer the title of personal property included in the Assets (the "Bill of Sale").

b. An assignment in favor of TERMINATED-PARTNER to transfer the Predecessor Firm's rights and interests in certain leased equipment.
c. Such other documents as TERMINATED-PARTNER shall reasonably request before or after Closing to assure the proper transfer of the Assets.

The above documents are collectively referred to as "Title Documents."

7. *Acknowledgement of Title to all Other Property*

a. The Accounting Practices and the Real Estate Entity acknowledge that TERMINATED-PARTNER shall have title, without any claims by them or any person claiming under or through them, to each asset specifically set forth in Exhibit C-1 as part of this Arrangement as belonging to TERMINATED-PARTNER.
b. TERMINATED-PARTNER acknowledges that any assets not specifically stated to be his pursuant to this Arrangement shall belong to the Accounting Practices or the Real Estate Entity, respectively. By way of example and not limitation assets and rights not transferred to TERMINATED-PARTNER include: the names "PREDECESSOR-FIRM," "REAL-ESTATE-ENTITY," or any similar or like sounding name shall not be used by TERMINATED-PARTNER, the telephone numbers of the Predecessor Firm shall belong solely to such firm or the FIRM-A PRACTICE, the furniture, fixtures, equipment, or other assets of the Predecessor Firm or the Real Estate Entity, or both, which have not been listed in Exhibit C-1, are not subject to any claims or rights of TERMINATED-PARTNER, the NEW-

ACQUISITION Practice, any client files not listed in Exhibit ___ except as otherwise required by the Regulations or as otherwise requested by other clients, cash balances, leasehold interests, for example.

c. TERMINATED-PARTNER, prior to or upon the execution hereof has or shall return all property of the Predecessor Firm and the Real Estate Entity, including all keys to the premises, except if the BUILDING-1ADDRESS building is listed in Exhibit C-1 in which event the keys to such building shall be retained by TERMINATED-PARTNER.[xiii]

d. TERMINATED-PARTNER acknowledges that he has prior to the execution hereof retrieved any property of his which was located at OFFICE-ADDRESS. If the BUILDING-1ADDRESS building is not listed in Exhibit C-1, then TERMINATED-PARTNER shall by DATE retrieve any personal property there.

D. Waiver of Required Notice to Relinquish Interests

Pursuant to the Shareholders Agreement, Article ___, page __, a shareholder's interest can terminate upon thirty days written notice to the Predecessor Firm. The Predecessor Firm hereby accepts this Arrangement as adequate "notice" from TERMINATED-PARTNER and waives any claims concerning such notice period.

E. TERMINATED-PARTNER's Relinquishment of All Interests

1. *Equity and Related Interests*[xiv]

The execution of this Agreement shall constitute TERMINATED-PARTNER's release and surrender of any interests (whether as an equity holder or otherwise) in each of the following entities. This surrender shall include, but not be limited to any claim on the stock (in any corporate entity), membership interests (in any limited liability company), or in the profits or capital (in any partnership), as well as any claim on the underlying assets of any of such entities listed herein, including but not limited to the: accounts receivable, furniture and fixtures, leasehold improvements or leasehold interests, goodwill, intangible property interests, telephone numbers, P.O. Box NUMBER, name, files, business opportunity rights, and so forth, except as explicitly provided for herein (the "Relinquishment").

The Relinquishment shall be evidenced as follows:

a. Predecessor Firm: TERMINATED-PARTNER shall execute a Stock Power attached hereto as Exhibit A-1 transferring any shares or other interest in the Predecessor Firm to the Predecessor Firm.
b. Real Estate Entity: TERMINATED-PARTNER shall execute an assignment of partnership interests attached hereto as Exhibit A-2 transferring all partnership interests or other interests in the Real Estate Entity to the Real Estate Entity.

2. *Positions and Titles*[xv]

a. The execution of this Agreement shall constitute TERMINATED-PARTNER's resignation of any position as an officer, director, or committee member, or in any other capacity, of the Predecessor Firm. In furtherance, hereof, TERMINATED-PARTNER shall execute Exhibit B-1.
b. The execution of this Agreement shall constitute TERMINATED-PARTNER's resignation of any position as a general partner, or any other capacity, position, or title, of the Real Estate Entity. In furtherance, hereof, TERMINATED-PARTNER shall execute Exhibit B-2.

F. Use of Firm and Individual Names

a. The name of the Predecessor Firm as set forth in its Certificate of Incorporation is "PREDECESSOR-FIRM." This name shall be changed to be the same name as the partners of the postdivision FIRM-1-PRACTICE. The Shareholders Agreement lists the name as PREDECESSOR-FIRM in the agreement. Article __, Section ___, Page ___ states that a shareholder may be deleted from the firm name upon "withdrawal ... from the firm." The Parties acknowledge such provision and through the resignation of TERMINATED-PARTNER from the Predecessor Firm, his name is deemed deleted from said shareholders agreement and the related redemption agreement. However, the Parties further

agree to the limited use of the name "TERMINATED-PARTNER" as provided herein below.

b. The Predecessor Firm has operated under the name "PREDECESSOR-FIRM," which includes TERMINATED-PARTNER's name. The Predecessor Firm, following the execution of this Agreement, shall not actively conduct business, but rather shall endeavor as quickly as possible to "wind-up" its business operations.[xvi] For this purpose, the Parties acknowledge and agree that it would be helpful and advisable for the Predecessor Firm to maintain a telephone listing, letterhead, envelopes, mailing address, and certain other administrative matters using and including the name "TERMINATED-PARTNER." TERMINATED-PARTNER shall reasonably permit such use so long as such use is for the limited purposes of winding up the Predecessor Firm's business affairs and so long as such use is strictly professional, not in violation of the Regulations, and not done in a manner which could detract clients from following, or new clients from retaining, TERMINATED-PARTNER.

c. Upon the completion of the "winding-up" of its business affairs, the Predecessor Firm shall destroy all letterhead or other items, excluding business and client records which it must retain, which include "TERMINATED-PARTNER's" name and cease thereafter using his name (other than as a historical reference in the context of biographical information, for example, the TEAM-B PRACTICE indicating that certain of its partners were formerly affiliated with "PREDECESSOR-FIRM").

d. Upon the execution hereof, TERMINATED-PARTNER shall destroy all letterhead, business cards, or other items, excluding business and client records which he must retain, which include "PREDECESSOR-FIRM", and he shall cease hereafter using such name (other than as a historical reference in the context of biographical information, for example, that he was a former partner with "PREDECESSOR-FIRM").

G. Confidentiality and Nondisclosure[xvii]

1. Each of the Parties hereto recognizes and acknowledges that during the course of negotiations in connection with this Agreement, each has disclosed to the others and granted access to certain procedures, books, and records relating to its operations, personnel, and practices, as well as records, documents, and information concerning its business activities, practices, procedures, and other confidential information (all of the foregoing, collectively, the "Confidential Information"), all of which constitute and will constitute valuable, special, and unique assets of such Party's business, name, and reputation. Each Party shall treat such Confidential Information as confidential, make all reasonable efforts to preserve the confidentiality thereof, and not duplicate or disclose such Confidential Information in connection with the transactions contemplated hereby, except to such Party's advisors, attorneys, and accountants.

2. All client files, names, records, and other related matters shall be kept in strictest confidence by all Parties as required under any applicable Regulations.

H. Mutual Releases[xviii]

1. TERMINATED-PARTNER shall execute a general release, in the form attached hereto as Exhibit E-1, in favor of the Accounting Practices and the Real Estate Entity, releasing each of them from each and every liability, claim, or other right which he may now have or could claim to have against them relating to any transactions concerning his relationship with such persons except for any claim relating to malpractice.

2. The Predecessor Firm and the Real Estate Entity shall execute a general release, in the form attached hereto as Exhibit E-2, in favor of TERMINATED-PARTNER releasing him from each and every claim, right, or liability which they may now have or could claim against him relating to any transactions concerning his relationship with such entities, except for TERMINATED-PARTNER's obligations under this Agreement and except for any claim relating to malpractice. TERMINATED-PARTNER, however, shall not have any claim or right if TERMINATED-PARTNER should have known the correct state of facts as a result of his position as an officer, director, shareholder, partner, committee member, or other relationship with the Predecessor Firm and the Real Estate Entity.

I. Legal Fees[xix]

Each Party has retained its own counsel and shall be solely responsible for any legal fees or costs incurred in connection with such counsel. Each Party acknowledges that by executing this Agreement that such Party has been afforded an opportunity to, and has been advised to, seek and obtain the advice of independent counsel and that if any Party did not do so, such Party chose not to of its own decision. The Parties acknowledge that LAW-FIRM has only represented CPA5-FIRM-A and the FIRM-A PRACTICE.

J. Work Product, Papers, and Other Corporation Materials

1. TERMINATED-PARTNER warrants that he has previously turned over to the Predecessor Firm, and the Real Estate Entity, any original business records and client files, contracts, or other records which were in his possession as a result of his tenure with or ownership in such entities, with the exception of the documentation pertaining to the client files listed in Exhibit ___.
2. Any client (excluding client matters turned over to TERMINATED-PARTNER pursuant to this Arrangement) or business records required to be maintained shall be maintained by the Predecessor Firm or the FIRM-A PRACTICE and TERMINATED-PARTNER agrees to share in an equitable portion of the costs incurred in storing such records.

3. The Predecessor Firm and the Real Estate Entity, and on behalf of each of their successors and assigns, hereby agree to provide TERMINATED-PARTNER with timely tax returns and information reasonably necessary for TERMINATED-PARTNER to report the consequences of the Arrangement and his tenure with such entities for tax purposes, reasonable access to business and client records, which are necessary and required for TERMINATED-PARTNER to defend himself against a malpractice claim or audit by the Internal Revenue Service or other litigation matters. Such access shall only be during normal business hours and on reasonable Notice and for matters occurring prior to the Termination Date.

4. The Parties agree that NEUTRAL-ADMINISTRATOR, or her successor office manager of the FIRM-A PRACTICE (to the extent permissible under the Regulations, and if not a designee of the FIRM-A PRACTICE) shall control the copying and access to said records and files. Any such access shall be at TERMINATED-PARTNER's sole expense.

5. TERMINATED-PARTNER, and on behalf of each of his successors and assigns, hereby agrees to provide the Predecessor Firm and the Real Estate Entity, and each of their successors and assigns, with reasonable access to business and client records which are necessary and required for any of such persons to defend themselves (or a partner or shareholder of such entices to defend himself) against a malpractice claim or audit of the Internal Revenue Service or other litigation matter.[xx] Such access shall only be during normal business hours and on reasonable Notice and for matters occurring prior to the Effective Date. Any such access shall be at the requesting person's sole expense.

6. The Predecessor Firm and the Real Estate Entity, and on behalf of each of their successors and assigns, hereby agree to provide TERMINATED-PARTNER with timely tax returns and information reasonably necessary for TERMINATED-PARTNER to report the consequences of the Arrangement and his tenure with such entities for tax purposes, reasonable access to business and client records which are necessary and required for TERMINATED-PARTNER to defend himself against a malpractice claim or audit of the Internal Revenue Service. Such access shall only be during normal business hours and on reasonable Notice and for matters occurring prior to DATE. Any such access shall be at TERMINATED-PARTNER's sole expense.

K. YEAR Tax Information

The parties agree that YEAR tax filings to report and reflect the tax consequences of the Arrangement shall be prepared by OUTSIDE-CPA-FIRM, doing business at ADDRESS (the "Accountant") at the expense of the Predecessor Firm, and all Parties shall be provided with adequate tax forms and supporting documentation to prepare their respective tax returns and to understand the basis for any reporting position taken. If any Party shall not agree with the conclusions of Accountant, then such Party shall give the other Parties hereto Notice of same and shall enter into negotiations to resolve any such difference. No Party, however, may file any tax return or report which takes a different position than that set forth by the Accountant.

L. Representations and Warranties of TERMINATED-PARTNER[xxi]

TERMINATED-PARTNER hereby represents and warrants to the Predecessor Firm and the Real Estate Entity and each of their respective partners/members/shareholders, managers/officer/directors/general partners, that each of said representations, warranties and covenants are true, except as otherwise set forth in Exhibit H, TERMINATED-PARTNER Disclosure Statement:

1. *Power and Authority*

TERMINATED-PARTNER possesses all requisite power and authority to wind down the practice heretofore having been conducted to execute and deliver this Agreement and to consummate the transactions hereby contemplated.

2. *Binding Agreement*

This Agreement and the Exhibits constitute valid and binding obligation of TERMINATED-PARTNER, enforceable against TERMINATED-PARTNER in accordance with its terms.

3. *Agreement Will Not Trigger Defaults*

The execution and delivery of this Agreement and the consummation of the transactions contemplated in this Agreement do not constitute, and with the passage of time will not constitute, a default under any agreement to which the TERMINATED-PARTNER is a party.

4. *Accounts Receivable and Work in Process*

a. TERMINATED-PARTNER accepts sole responsibility for the files listed in Exhibit ___ for all matters arising after the date hereof.

b. All arrangements comply with any applicable Regulations and any adjustments required to meet the Regulations shall be complied with.

c. The division of accounts receivable, work in process, and fees as between TERMINATED-PARTNER and Predecessor Firm is based on a reasonable approximation of the services performed prior to the date of this Agreement by Predecessor Firm and by TERMINATED-PARTNER and with reasonable consideration of the relative responsibility assumed by each.

5. *Suits, Claims, and Judgments*

a. There are no liens, mortgages, leases, or other claims against any of the assets, the Accounting Practices, or the Real Estate Entity which TERMINATED-

PARTNER does or should have knowledge, which have not been disclosed in this Agreement or the Exhibits.

b. There are no pending or threatened suits or proceedings, at law or in equity, or before or by any governmental agency or arbitrator, which TERMINATED-PARTNER does or should have knowledge, which have not been disclosed in this Agreement or the Exhibits.

c. There are no ethics complaints, malpractice complaints, or similar complaints.

d. There are no unsatisfied or outstanding judgments, orders, decrees, or stipulations affecting TERMINATED-PARTNER or to which he is or may become a party which would constitute or result in a breach of any representation, warranty, or agreement set forth in this Agreement or interfere with his ability to perform under this Agreement.

e. There are no unsatisfied or outstanding judgments, orders, decrees, or stipulations against the Accounting Practices or the Real Estate Entity which TERMINATED-PARTNER does or should have knowledge, which have not been disclosed in this Agreement or the Exhibits.

f. To the best of TERMINATED-PARTNER's knowledge, each and every liability of the Accounting Practices and the Real Estate Entity, whether contingent or certain, has been fully disclosed in this Agreement and the Exhibits, or during preceding negotiations relating hereto.

Statements Herein Complete and Accurate, etc.

No statements, representations, warranties, or covenants have been made by TERMINATED-PARTNER in this Agreement or in the Exhibits attached hereto which are untrue statements of any fact or misstatements of any fact which would make the statements contained herein or therein misleading.

7. *Documents*

TERMINATED-PARTNER has delivered or shall deliver to the Accounting Practices and the Real Estate Entity, true and complete copies of all documents referred to in this Agreement and Exhibits.

8. *Good Faith Actions*

TERMINATED-PARTNER shall use best efforts in good faith to take or cause to be taken all action necessary or desirable under this Agreement on TERMINATED-PARTNER's part as promptly as practicable, so as to permit the consummation of the transactions contemplated hereby at the earliest possible date, and to cooperate fully with the other Party hereto to that end.

9. *Notices and Announcements*[xxii]

To the extent not completed prior to the execution hereof:

a. TERMINATED-PARTNER shall, at his sole cost and expense, publish a notice in the STATE-NAME CPA Journal and the NEWSPAPER-NAME stating that he has established his own practice or joined another practice and that he is no longer affiliated with the Predecessor Firm.

b. TERMINATED-PARTNER shall update his records with WEBSITE and the CPA-DIRECTORY to reflect the Arrangement.[xxiii]

c. TERMINATED-PARTNER has or shall give written notice to each client listed in Exhibit ___, and to no other clients of the Accounting Practices, in conformity with applicable Regulations and in such manner as reasonable to apprise each client of his having established his own practice or joined another practice, and in a manner to afford each such client of a reasonable opportunity to notify TERMINATED-PARTNER of such client's approval of TERMINATED-PARTNER retaining or receiving the client's files, or of the client's disapproval of the transfer of the client's files and a request to return such client's files to the client or another accountant designated by such client, including but not limited to one of the Accounting Practices. Said notice shall state that the client has the right to retain other accountants, take possession of the client's file and property, and that if no response is received within Sixty (60) days of the sending of such notice, or if the client's rights would be prejudiced by a failure to act during that time (by way of example and not limitation, missing a tax filing deadline), then

TERMINATED-PARTNER may act on behalf of the client until otherwise notified by the client. TERMINATED-PARTNER shall apprise the Predecessor Firm as soon as practical of each such response and shall cooperate with Predecessor Firm in assuring compliance with this provision.

d. All notices and announcements shall be at TERMINATED-PARTNER's sole expense and shall be in conformity with all applicable Regulations.[xxiv]

10. *Insurance Coverage*[xxv]

a. TERMINATED-PARTNER shall maintain reasonable and adequate hazard, casualty, and liability insurance. Said insurance coverage provides for aggregate liability claims of not less than ____ Million Dollars ($___,000,000). Such insurance shall cover the BUILDING-1ADDRESS property and any equipment, and shall name the Predecessor Firm and to the extent appropriate the Real Estate Entity and their respective shareholders, partners, officers, directors, and general partners named insured until such time as the transfer of such assets to TERMINATED-PARTNER is completed.

b. TERMINATED-PARTNER shall maintained continuously in future years during which he practices law, or thereafter he shall purchase a tail insurance policy, malpractice insurance coverage, in an amount of not less than _____ Million Dollars ($___,000,000) per claim and ____ Million Dollars ($___,000,000) in

aggregate to cover any malpractice claims occurring after the execution date of this Agreement. Said coverage shall be arranged in a manner that avoids any gaps in coverage from the prior coverage. Said insurance policy shall provide that the Accounting Practices shall receive Notice of any claim filed with respect to any client listed in Exhibit ___.

M. Representations and Warranties of the Predecessor Firm

The Predecessor Firm and each of its shareholders, officers, and directors, hereby represents and warrants to TERMINATED-PARTNER that each of said representations, warranties, and covenants are true, except as otherwise set forth in Exhibit G, Predecessor Firm Disclosure Statement:

1. *Power and Authority*

Predecessor Firm possesses all requisite power and authority to wind down the practice heretofore having been conducted, to execute and deliver this Agreement and to consummate the transactions hereby contemplated. The board of directors and the shareholders of Predecessor Firm have approved this Agreement and the Exhibits hereto, and all other corporate requirements of Predecessor Firm have been complied with.

2. *Binding Agreement*

This Agreement and the Exhibits constitutes valid and binding obligations of Predecessor Firm, enforceable against Predecessor Firm in accordance with its terms.

3. *Agreement Will Not Trigger Defaults*

The execution and delivery of this Agreement, and the consummation of the transactions contemplated in this Agreement, do not constitute, and with the passage of time will not constitute, a default under any agreement to which the Predecessor Firm is a party.

4. *Title to Assets of Practice*

Predecessor Firm has good title to the assets to be transferred under this Arrangement to TERMINATED-PARTNER, free and clear of all liens, claims, restrictions, encumbrances, and security interests, except as set forth herein or in the Exhibits hereto, and except as for the mortgage on the BUILDING-1ADDRESS property or any items which a title search for such property would show. In the event that any other liens, claims, restrictions, encumbrances, and security interests are discovered or identified, Predecessor Firm, at its expense, shall remove same.

5. ***Accounts Receivable and Work in Process***

a. The files listed in Exhibit ___ are specifically agreed, to the extent permitted in the Regulations, to belong solely to TERMINATED-PARTNER.
b. The division of accounts receivable, work in process, and fees as between TERMINATED-PARTNER and Predecessor Firm is based on a reasonable approximation of the services performed prior to the date of this Agreement by Predecessor Firm and by TERMINATED-PARTNER and with reasonable consideration of the relative responsibility assumed by each.
c. Ledgers of costs for each client, account receivable, or work in process matter, have been or shall be, provided to TERMINATED-PARTNER.

6. ***Suits, Claims, Judgments, etc.***

a. There are no liens, mortgages, leases, or other claims against any of the assets, except for the mortgage on the BUILDING-1ADDRESS property, existing equipment leases on any equipment, and except as otherwise indicated in this Agreement and the Exhibits.
b. There are no pending or threatened suits or proceedings, at law or in equity, or before or by any governmental agency or arbitrator.
c. There are no ethics complaints, malpractice complaints, or similar complaints.
d. There are no unsatisfied or outstanding judgments, orders, decrees, or stipulations affecting Predecessor Firm or to which he is or may become a party which would constitute or result in a breach of any representation, warranty, or

agreement set forth in this Agreement or interfere with Predecessor Firm's ability to perform under this Agreement.

e. To the best of Predecessor Firm's knowledge, each and every liability of Predecessor Firm, whether contingent or certain, has been fully disclosed in this Agreement and the Exhibits, or during preceding negotiations relating hereto.

7. *Statements Herein Complete and Accurate, etc.*

No statements, representations, warranties, or covenants have been made by Predecessor Firm in this Agreement or in the Exhibits attached hereto which are untrue statements of any fact or misstatements of any fact which would make the statements contained herein or therein misleading.

8. *Documents*

Predecessor Firm has delivered or shall deliver to TERMINATED-PARTNER true and complete copies of all documents referred to in this Agreement and Exhibits.

9. *Good Faith Actions*

Predecessor Firm shall use best efforts in good faith to take or cause to be taken all action necessary or desirable under this Agreement on Predecessor Firm's part as

promptly as practicable, so as to permit the consummation of the transactions contemplated hereby at the earliest possible date, and to cooperate fully with the other Party hereto to that end.

10. ***Notices and Announcements***

To the extent not completed prior to the execution hereof:

a. Predecessor Firm shall publish a notice in the STATE-NAME CPA Journal and the NEWSPAPER-NAME stating the changes to the firm.
b. Predecessor Firm shall update its records with SEARCH-ENGINE-NAMES and the STATE-NAME CPA Society Web site to reflect the Arrangement.
c. The Accounting Practices shall give written notice to all of its clients which are not listed in Exhibit ___ in conformity with applicable Regulations and in such manner as reasonable to apprise each client of the status of Predecessor Firm, and in a manner to afford each such client of a reasonable opportunity to notify one of the Accounting Practices of such client's approval of one of the Accounting Practices retaining or receiving the client's files, or of the client's disapproval of the transfer of the client's files and a request to return such client's files to the client or another accountant designated by such client. Said notice shall state that the client has the right to retain other counsel, take possession of the client's file and property, and that if no response is received within Sixty (60) days of the sending of such notice, or if the client's rights would be prejudiced by a failure to act during that time, one of the Accounting Practices may act on

behalf of the client until otherwise notified by the client. The Accounting Practices shall apprise TERMINATED-PARTNER as soon as practical of any such client requesting that their files be transferred to him rather than to one of the Accounting Practices.

d. All notices and announcements shall be at Predecessor Firm's sole expense and shall be in conformity with all applicable Regulations.

11. *Insurance Coverage*

a. Predecessor Firm has maintained reasonable and adequate hazard, casualty, and liability insurance. Said insurance coverage provides for aggregate liability claims of not less than ____ Million Dollars ($___,000,000).

b. Predecessor Firm has maintained continuously for the past Five (5) years malpractice insurance coverage, through a policy purchased from _____[name of insurance company], in an amount of not less than _____ Million Dollars ($___,000,000) per claim and ____ Million Dollars ($___,000,000) in aggregate to cover any malpractice claims occurring after the execution date of this Agreement. Said coverage shall be arranged in a manner that avoids any gaps in coverage from the prior coverage.

12. *Limitation*

No claim shall be permitted for the violation of any representation or warranty which TERMINATED-PARTNER, in his capacity as a shareholder or officer/director partner should have or could have known.

N. Representations and Warranties of the Real Estate Entity

The Real Estate Entity and each of its general partners, hereby represents and warrants to TERMINATED-PARTNER that each of said representations, warranties, and covenants are true, except as otherwise set forth in Exhibit G, Predecessor Firm Disclosure Statement:

1. *Power and Authority*

Real Estate Entity possesses all requisite power and authority to execute and deliver this Agreement and to consummate the transactions hereby contemplated.

2. *Binding Agreement*

This Agreement and the Exhibits constitutes valid and binding obligations of Real Estate Entity, enforceable against Real Estate Entity in accordance with its terms.

3. *Title to Assets*

Predecessor Firm has good title to the assets to be transferred under this Arrangement to TERMINATED-PARTNER, free and clear of all liens, claims, restrictions, encumbrances, and security interests, except as set forth herein or in the Exhibits hereto, and except as for the mortgage on the BUILDING-1ADDRESS property or any items which a title search for such property would show. In the event that any other liens, claims, restrictions, encumbrances, and security interests are discovered or identified, Real Estate Entity, at its expense, shall remove same.

4. *Suits, Claims, Judgments, etc.*

a. There are no liens, mortgages, leases, or other claims against any of the assets, except for the mortgage on the BUILDING-1ADDRESS property, existing equipment leases on any equipment, and except as otherwise indicated in this Agreement and the Exhibits.

b. There are no pending or threatened suits, or proceedings, at law or in equity, or before or by any governmental agency or arbitrator.

5. *Statements Herein Complete and Accurate, etc.*

No statements, representations, warranties, or covenants have been made by Real Estate Entity in this Agreement or in the Exhibits attached hereto which are untrue statements of any fact, or misstatements of any fact which would make the statements contained herein or therein misleading.

6. *Good Faith Actions*

Real Estate Entity shall use best efforts in good faith to take or cause to be taken all action necessary or desirable under this Agreement on Real Estate Entity's part as promptly as practicable, so as to permit the consummation of the transactions contemplated hereby at the earliest possible date, and to cooperate fully with the other Parties hereto to that end.

7. *Insurance Coverage*

Real Estate Entity has maintained reasonable and adequate hazard, casualty, and liability insurance.

8. *Limitation*

No claim shall be permitted for the violation of any representation or warranty which TERMINATED-PARTNER, in his capacity as a general partner should have or could have known.

O. Termination of Any Agreements

1. *Predecessor Firm Shareholders' Agreement*

Any shareholders' or other agreement of any nature between TERMINATED-PARTNER and the Predecessor Firm, including but not limited to:

a. The "Shareholders Agreement" of Predecessor-Firm, dated DATE.
b. The "Predecessor-Firm Shareholders and Redemption Agreement" redeeming the stock of TERMINATED-PARTNER.
c. The oral modifications of either or both of the above agreements at the MEETING.

Each of the above is hereby terminated and canceled with respect to TERMINATED-PARTNER's participation in same.

2. *REAL-ESTATE-ENTITY*

The "Partnership Agreement" of REAL-ESTATE-ENTITY, the Real Estate Entity, is hereby amended as provided in Exhibit J, to remove TERMINATED-PARTNER as a General Partner of same. TERMINATED-PARTNER's resignation as a partner is hereby accepted by the individual partners. The remaining General Partners hereby agree to continue said partnership. Notwithstanding the forgoing, the Real Estate Entity and the remaining partners shall endeavor to have the lenders holding mortgages on the property at ADDRESS, STATE-NAME remove TERMINATED-PARTNER's name as a guarantor or partner on said loan. Similarly, if the Arrangement requires the transfer of the office at BUILDING-1ADDRESS to TERMINATED-PARTNER, then the Real Estate Entity shall remain authorized by TERMINATED-PARTNER, and TERMINATED-PARTNER shall cooperate with same and pursue obtaining the release and removal of the Real Estate Entity's name and the personal names of the remaining partners of the Real Estate Entity from any loan, guarantee, or otherwise with respect to the property in BUILDING-1ADDRESS.

P. Notice

Any notices provided herein shall be written and shall be sent via certified mail, return receipt requested, registered mail, by overnight courier, or personal delivery, to the addresses first above listed, or to such other address as is designated in accordance with the terms hereof ("Notice"). Notice shall be effective on the Third (3rd) business

day after the date such Notice was sent via certified mail, return receipt requested, or by registered mail, upon the first business day after the date such Notice was sent by overnight courier, and upon the date of delivery when such Notice is personally delivered. [List each party and their address and that party's attorney name and address, for notice] ... or at such other addresses as may be provided in writing as provided herein.

Q. Miscellaneous

1. *Captions*

The captions have been inserted for convenience only and shall not be construed to affect the interpretation of any provision of this Agreement.

2. *Further Assurances*

The parties shall, subsequent to the Closing, execute and deliver such further instruments, documents, and agreements, and take such further action, in each case without cost to the other party, as may be reasonably requested or may be necessary or desirable to evidence and perfect the completion of the transactions contemplated herein.

3. *Governing Law*

This Agreement shall be governed by and construed in accordance with the laws of the State of STATE-NAME, and each party hereto agrees to personal jurisdiction of the Courts in the State of STATE-NAME.

4. *Savings Clause*

The invalidity or unenforceability of any provision of this Agreement or portion thereof shall not affect the other provisions or portions thereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or portion thereof were omitted. Any provision which is deemed to or does violate any Regulation shall be modified and interpreted in a manner that complies with any and all applicable Regulations.

5. *Counterparts*

This Agreement may be executed in one or more counterparts each of which shall be deemed to constitute an original and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

6. ***Independent Advice of Counsel***

Each Party has been advised to seek the advice of independent legal, accounting, pension, and tax counsel prior to executing this Agreement. Each Party, by executing this Agreement, acknowledges that such Party has been advised to seek independent counsel and that the execution of this Agreement can affect such Party's legal rights, that reasonable time to consult with independent counsel has been afforded, and that each Party has consulted with independent counsel, or has of such Party's own volition decided not to do so.

7. ***Notices***

Any notice required or permitted to be given hereunder shall be deemed duly given if in writing and if sent by registered mail, return receipt requested, express mail by the United States Postal Service, Federal Express, or by hand delivery, postage and expenses prepaid, addressed as follows: [List each party's name and address and that party's attorney's name and address for notice] ...or at such other addresses as may be provided in writing as provided herein.

8. *Successors and Assigns*

This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors, but shall not be assigned by either party without the written consent of the other.

9. *Headings*

Headings in this Agreement are for convenience only and are not to be used in interpreting or construing any provision hereof.

10. *No Waiver*

The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence subsequently to that term or any other term of this Agreement. Any waiver must be in writing.

11. *Entire Agreement*

This Agreement and the Exhibits contain all of the agreements and understandings of the Parties with respect to the Sale and all other aspects of the transactions discussed in this Agreement and the Exhibits. No terms or provisions of this Agreement or the

Exhibits may be changed except by a written document executed by the Parties to be bound to such change. This Agreement shall be interpreted, in the event of any conflict between this Agreement and any Exhibit attached hereto, so that this Agreement shall be controlling.

12. *Nonassignability*

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors. This Agreement, however, may not be assigned by any Party without the written consent of the other Parties hereto, which shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the date first above written.

FIRM-A-PRACTICE:

By:_____

CPA5-FIRM-A, Manager and Member

TEAM-B PRACTICE:

By:_____

CPA4-TEAM-B, Shareholder and President

TERMINATED-PARTNER

By:_____

TERMINATED-PARTNER

PREDECESSOR-FIRM

By: _____

CPA1-FIRM-A, Shareholder and President

REAL-ESTATE-ENTITY

By: _____

, General Partner

Exhibit A: Relinquishment - Documents Transferring TERMINATED-PARTNER Equity Interests

Exhibit A-1: TERMINATED-PARTNER's Stock Power Transferring All Shares of Stock in the Predecessor Entity

a. FOR VALUE ONE HUNDRED DOLLARS ($100.00) AND OTHER GOOD AND VALUABLE CONSIDERATION RECEIVED, receipt and adequacy of which is hereby acknowledged, I TERMINATED-PARTNER, who resides at ADDRESS (the "Transferor") hereby sell, assign, and transfer unto PREDECESSOR-FIRM, a STATE-NAME professional corporation doing business at ADDRESS (the "Transferee"), any and all Shares of stock (the "Shares") in PREDECESSOR-FIRM (the "Predecessor Firm").
b. Any Shares, standing in my name on the books of said Predecessor Firm, whether or not represented by any Share Certificates, I do hereby tender said Share Certificates or rights to Shares, to the Corporation herewith for cancellation, making no request that any new certificates be issued therefore.
c. This Stock Power authorizes and hereby shall effect the transfer of any equity interests of any nature in the Predecessor Firm whether under:
    1. The "Shareholders Agreement" of PREDECESSOR-FIRM, dated DATE (including the indication therein of the issuance to TERMINATED-PARTNER of 20 shares of 100 shares);

2. The "PREDECESSOR-FIRM Shareholders and Redemption Agreement;" or
3. The modifications of either or both of the above agreements dated DATE;
4. The Division Agreement dated DATE.
5. Any other claim or basis.

d. I do hereby irrevocably constitute and appoint each of the remaining Shareholders of PREDECESSOR-FIRM, as attorney-in-fact and agent to transfer the said stock on the books and records of the Predecessor Firm with full power of substitution in same, to affect the transfers set forth herein.

e. I hereby agree to execute and deliver such further instruments, documents, and agreements, and take such further action, in each case without cost to the Predecessor Firm, as may be reasonably requested or may be necessary or desirable to evidence and perfect the completion of the transaction contemplated herein.

IN WITNESS WHEREOF, I have caused this Agreement to be executed the date written below.

Dated: DATE

TRANSFEROR:

_____ Witness:_____

TERMINATED-PARTNER

ACCEPT RELINQUISHMENT OF SHARES:

PREDECESSOR-FIRM

By: _____ Witness:_____

CPA5-FIRM-A

By: _____ Witness:_____

CPA4-TEAM-B

CORPORATE SEAL:

Exhibit A-2: TERMINATED-PARTNER's Partnership Assignment Transferring All Partnership Interests in the Realty Entity[xxvi]

a. FOR VALUE AND CONSIDERATION RECEIVED, receipt and adequacy of which is hereby acknowledged, I TERMINATED-PARTNER, Esq., who resides at ADDRESS (the "Transferor") hereby sell, assign, and transfer unto REAL-ESTATE-ENTITY, a STATE-NAME general partnership doing business at ADDRESS (the "Transferee"), any and all partnership interests (the "Partnership Interests") in REAL-ESTATE-ENTITY (the "Real Estate Entity").
b. The Twenty Percent (20%) general partnership interest and any other partnership interests, standing in my name on the books of said Real Estate Entity, whether or not represented by any partnership agreement (written or oral) or otherwise, I do hereby tender said partnership interests or rights to partnership interests, including any rights to profits or capital of said partnership, to said partnership herewith for cancellation.
c. This Partnership Assignment authorizes and hereby shall effect the transfer of any equity interests of any nature in the Real Estate Entity whether under any written or oral agreement between the partners of the Real Estate Entity, or as indicated in any tax filing or certificate filed with any county or the State of STATE-NAME, or otherwise.
d. I do hereby irrevocably constitute and appoint each of the remaining general partners of the Real Estate Entity, as attorney-in-fact and agent to transfer the

said partnership interests on the books and records of the Real Estate Entity with full power of substitution in same, to affect the transfers set forth herein.

e. I hereby agree to execute and deliver such further instruments, documents, and agreements, and take such further action, in each case without cost to the Real Estate Entity, as may be reasonably requested or may be necessary or desirable to evidence and perfect the completion of the transaction contemplated herein.

IN WITNESS WHEREOF, I have caused this Agreement to be executed the date written below.

Dated: DATE

TRANSFEROR:

_____ Witness:_____

TERMINATED-PARTNER

ACCEPT RELINQUISHMENT OF PARTNERSHIP INTERESTS:

REAL-ESTATE-ENTITY

By: _____ Witness:_____

, General Partner

Exhibit B: Resignation of Positions and Titles by TERMINATED-PARTNER

Exhibit B-1: Resignation of Positions and Titles in the Predecessor Firm by TERMINATED-PARTNER

Pursuant to the Shareholders Agreement of PREDECESSOR-FIRM, a STATE-NAME professional corporation doing business at ADDRESS (the "Predecessor Firm"):

a. Article ___, page __, the day to day business shall be managed by the management committee which consists of CPA3-TEAM-B, TERMINATED-PARTNER, and CPA5-FIRM-A.
b. Article ___ on page __, Compensation Committee is indicated to address profit distributions and salaries of all partners. The Compensation Committee consisted of CPA1-FIRM-A, CPA2-FIRM-A, CPA3-TEAM-B, CPA4-TEAM-B, and TERMINATED-PARTNER.
c. TERMINATED-PARTNER hereby resigns such positions, and any claims or rights to such positions, effective as of the date hereinbelow.
d. TERMINATED-PARTNER hereby resigns any other position, whether as an officer, director, committee member, or otherwise, which he, the undersigned, has held or may hold in the Corporation, PREDECESSOR-FIRM.

Dated: DATE

Witness:

_____ _____

TERMINATED-PARTNER

Exhibit B-2: Resignation of Positions and Titles in the Real Estate Entity by TERMINATED-PARTNER

TERMINATED-PARTNER hereby resigns as general partner, and any other position, whether as an officer, director, committee member, or otherwise, which he, the undersigned, has held or may hold in the REAL-ESTATE-ENTITY effective on the date below.

Dated: DATE

Witness:

_____ _____

TERMINATED-PARTNER

Exhibit C: Assets Transferred to TERMINATED-PARTNER

Exhibit C-1: Chart of Assets Transferred to TERMINATED-PARTNER

No.	Asset Description	Fair Value	Paid by TERMINATED-PARTNER*	Excess Value over Payment
1		$	$	
2		$	$	
3		$	$	
4		$	$	
5		$	$	
6		$	$	
7		$	$	
8		$	$	
9		$	$	
10	Accounts Receivable	$	$ -0- in Arrangement	
11	Work in Process	$	$ -0- in Arrangement	
12		$	$	
	Total Purchase Price			

*Include mortgages, liens, or lease obligations to be assumed by TERMINATED-PARTNER, and indicate same herein.

Exhibit C-2: Bill of Sale to Transfer Assets to TERMINATED-PARTNER

KNOW ALL MEN BY THESE PRESENTS, that PREDECESSOR-FIRM, a STATE-NAME professional corporation doing business at ADDRESS (the "Predecessor Firm"); and REAL-ESTATE-ENTITY, a STATE-NAME general partnership doing business at ADDRESS, (collectively, the "Transferor") for and in consideration of the sum of $1.00 and Twenty (20) Shares of Common Stock in the Predecessor Firm, and other matters more fully set forth in an "Arrangement" of even date between and among the parties hereto, to TERMINATED-PARTNER, who resides at ADDRESS ("TERMINATED-PARTNER")(the "Transferee"), has granted, transferred, and conveyed and by these presents does grant, transfer, and convey unto the said Transferee, and said Transferee's successors and assigns, property as hereinafter described:

ALL THE RIGHT TITLE AND INTEREST in the following asset ("Asset") set forth in the "Exhibit C-1: Chart of Assets Transferred to TERMINATED-PARTNER," including all Transferor's right, title, and interests in the Asset.

Transferor hereby represents and warrants that it or they has and have good and marketable title to the Asset name hereinabove, subject to no liens, mortgages, security interests, encumbrances, or charges of any nature (other than the mortgages or liens indicated in the "Agreement" of even date between and among the parties or the exhibits thereto).

This Bill of Sale has been executed to complete the transfers as required pursuant to an Agreement of even date between the parties.

Nothing herein contained shall be deemed or construed to confer upon any person or entity other than Transferee any rights or remedies by reason of this instrument.

TO HAVE AND TO HOLD the same unto the said Transferee and the Transferee's successors and assigns forever; and the Transferor covenants and agrees to and with the said Transferee to warrant and defend the said described Asset against all and every person or persons whomsoever.

IN WITNESS WHEREOF, the Transferor has set his or her hand and seal to be hereto affixed this DATE.

Sworn, Signed, Sealed and Delivered

PREDECESSOR-FIRM:

By:_____

CPA5-FIRM-A, Manager and Member

TEAM-B-PRACTICE:

By:_____

CPA4-TEAM-B, Shareholder and President

TERMINATED-PARTNER

By:_____

TERMINATED-PARTNER, Esq.

PREDECESSOR-FIRM

By: _____

CPA1-FIRM-A, Shareholder and President

REAL-ESTATE-ENTITY

By: _____

, General Partner

Exhibit D: Corporate Documents of the Predecessor Firm[xxvii]

Exhibit D-1: Minutes of the Predecessor Firm

PREDECESSOR-FIRM

UNANIMOUS CONSENT OF ALL SHAREHOLDERS AND DIRECTORS

The undersigned, constituting all of the shareholders and directors of the Corporation, hereby agree to, approve, and take the following actions:

RESOLVED, That the Bylaws attached hereto are hereby adopted.

RESOLVED, The following persons shall be elected to serve as directors of the corporation until their successors are elected and qualified:

CPA1-FIRM-A

CPA2-FIRM-A

CPA3-TEAM-B

CPA4-TEAM-B

RESOLVED, The following persons shall serve as officers of the Corporation until their successors are elected and qualified:

President	- CPA5-FIRM-A
Vice President	- CPA1-FIRM-A
Vice President	- CPA3-TEAM-B
Secretary	- CPA2-FIRM-A
Assistant Secretary	- CPA4-TEAM-B

Treasurer - CPA2-FIRM-A

Assistant Treasurer - CPA4-TEAM-B

RESOLVED, The Corporation shall enter into a written agreement with TERMINATED-PARTNER referred to as the "Arrangement," substantially in the form attached hereto.

RESOLVED, That the Corporation accept TERMINATED-PARTNER's resignation as officer, director, and committee member.

RESOLVED, That the Corporation accept TERMINATED-PARTNER's tender of all of his stock in the Corporation and cancel same on the Corporation's books and records.

RESOLVED, That the "Shareholders Agreement" of the Corporation, dated DATE and the "PREDECESSOR-FIRM Shareholders and Redemption Agreement" are hereby deemed amended to reflect the resignation of TERMINATED-PARTNER and his tender of stock to the Corporation and the acceptance and cancellation of same.

RESOLVED, The officers of the Corporation are hereby authorized to take any actions necessary and appropriate to implement the above Resolutions.

In Witness whereof, the following persons, who include all officers, directors, and shareholders of the Corporation, execute their names as of the date hereinbelow set forth:

DATED: DATE

PREDECESSOR-FIRM

By:_____

CPA5-FIRM-A, President

_____

TERMINATED-PARTNER, Resigned as

Shareholder, Officer and Director

_____

CPA1-FIRM-A, Shareholder, Officer and Director

_____

CPA2-FIRM-A, Shareholder, Officer and Director

_____

CPA3-TEAM-B, Shareholder, Officer and Director

_____

CPA4-TEAM-B, Shareholder, Officer and Director

_____

CPA5-FIRM-A

_____

CPA6-TEAM-B

_____

CPA7-FIRM-A

_____

CPA8-TEAM-B

_____

CPA9-TEAM-B

_____

CPA10-FIRM-A

Exhibit D-2: Bylaws

Bylaws

of

PREDECESSOR-FIRM

Unless provided to the contrary in the "Shareholders Agreement" of PREDECESSOR-FIRM Shareholders and Redemption Agreement", as amended, the following provisions shall govern the operations of the Corporation:

1. OFFICES

The office of the Corporation shall be located in the City and State designated in the Certificate of Incorporation. The Corporation may also maintain offices at such other places within or without the State of STATE-NAME and the United States as the Board of Directors may, from time to time, determine. The Board of Directors may also change the location of the office of the Corporation from the City and State designated in the Certificate of Incorporation, so long as such change does not violate the laws of the State of STATE-NAME.

2. MEETING OF SHAREHOLDERS

a. Annual Meetings of the Shareholders

(i) The annual meeting of the shareholders of the Corporation shall be held within five months after the close of the fiscal year of the Corporation, or as otherwise

agreed, for the purpose of electing directors, and transacting such other business as may properly come before the meeting.

(ii) If a specific date for a meeting is not set, the meeting shall be held on the First (1st) Tuesday in May following the close of each fiscal year.

(iii) The shareholders may execute a unanimous consent in lieu of a meeting where such is permissible by law.

b. Special Meetings

(i) Special meetings of the shareholders may be called at any time by Two (2) members of the Board of Directors, or by the President, and shall be called by the President or the Secretary at the written request of the holders of Ten percent (10%) of the shares then outstanding and entitled to vote thereat, or as otherwise required under the provisions of the Business Corporation Act.

(ii) Special meetings of the Corporation shall be held at the principal office of the Corporation.

(iv) Notice of the time, place, and purpose for a special meeting shall be provided in the same manner required herein for notice of the annual meeting of the shareholders, however, such notice shall be given not less than Ten (10), nor more than Sixty (60) days before the date of the special meeting.

(v) The shareholders may execute a written consent at such special meeting waiving the above notice requirement.

(vi) Shareholders may execute a written unanimous consent in lieu of a special meeting.

c. Place of Meetings of the Shareholders

All meetings of shareholders shall be held at the principal office of the Corporation, or at such other places as shall be designated in the notices or waivers of notice of such meetings, within or outside the State of STATE-NAME.

d. Notice of Meetings

(i) Except as otherwise provided by statute, written notice of each meeting of shareholders, whether annual or special (except as specifically provided to the contrary above), stating the time when and place where it is to be held, shall be served either personally or by mail, not less than Ten (10) or more than Fifty (50) days before the meeting, upon each shareholder of record entitled to vote at such meeting, and to any other shareholder to whom the giving of notice may be required by law. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called, and shall indicate that it is being issued by, or at the direction of, the person or persons calling the meeting. If, at any meeting, action is proposed to be taken that would, if taken, entitle shareholders to receive payment for their shares pursuant to statute, the notice of such meeting shall include a statement

of that purpose and to that effect. If mailed, such notice shall be directed to each such shareholder at his address, as it appears on the records of the shareholders of the Corporation, unless he shall have previously filed with the Secretary of the Corporation a written request that notices intended for him be mailed to some other address, in which case it shall be mailed to the address designated in such request.

(ii) Notice of any meeting need not be given to any person who may become a shareholder of record after the mailing of such notice and prior to the meeting, or to any shareholder who attends such meeting, in person or by proxy, or to any shareholder who, in person or by proxy, submits a signed waiver of notice either before or after such meeting. Notice of any adjourned meeting of shareholders need not be given, unless otherwise required by statute.

e. Quorum

(i) Except as otherwise provided herein, or by statute, or in the Certificate of Incorporation (such Certificate and any amendments thereof being hereinafter collectively referred to as the "Certificate of Incorporation"), at all meetings of shareholders of the Corporation, the presence at the commencement of such meetings in person or by proxy of shareholders holding of record a majority of the total number of shares of the Corporation then issued and outstanding and entitled to vote, shall be necessary and sufficient to constitute a quorum for the transaction of any business. The withdrawal of any shareholder after the commencement of a meeting shall have no effect on the existence of a quorum, after a quorum has been established at such meeting.

(ii) Despite the absence of a quorum at any annual or special meeting of shareholders, the shareholders, by a majority of the votes cast by the holders of shares entitled to vote thereon, may adjourn the meeting. At any such adjourned meeting at which a quorum is present, any business may be transacted at the meeting as originally called if a quorum had been present.

f. Voting

(i) Except as otherwise provided by statute or by the Certificate of Incorporation, any corporate action, other than the election of directors, to be taken by vote of the shareholders, shall be authorized by a majority of votes cast at a meeting of shareholders by the holders of shares entitled to vote thereon.

(ii) Except as otherwise provided by statute or by the Certificate of Incorporation, at each meeting of shareholders, each holder of record of stock of the Corporation entitled to vote thereat, shall be entitled to one vote for each share of stock registered in his name on the books of the Corporation.

(iii) Each shareholder entitled to vote or to express consent or dissent without a meeting, may do so by proxy. However, the instrument authorizing such proxy to act shall have been executed in writing by the shareholder himself, or by his attorney-in-fact, thereunto duly authorized in writing. No proxy shall be valid after the expiration of eleven months from the date of its execution, unless the person executing it shall have specified therein the length of time it is to continue in force. Such instrument shall be exhibited to the Secretary at the meeting and shall be filed with the records of the Corporation.

(iv) Any resolution in writing, signed by all of the shareholders entitled to vote thereon, shall be and constitute action by such shareholders to the effect therein expressed, with the same force and effect as if the same had been duly passed by unanimous vote at a duly called meeting of shareholders and such resolution so signed shall be inserted in the Minute Book of the Corporation under its proper date.

3. BOARD OF DIRECTORS

Any person serving as a Director shall be a Certified Public Accountant licensed to practice in the State of STATE-NAME.

a. Number, Election, and Term of Office

(i) The number of the directors of the Corporation shall be not less than the number of Shareholders of the Corporation, unless and until otherwise determined by vote of a majority of the entire Board of Directors. The number of directors shall not be less than three, unless all of the outstanding shares are owned beneficially and of record by less than three shareholders, in which event the number of directors shall not be less than the number of shareholders permitted by statute.

(ii) Except as may otherwise be provided herein or in the Certificate of Incorporation, the members of the Board of Directors of the Corporation, need not be shareholders,

shall be elected by a majority of the votes cast at a meeting of shareholders, by the holders of shares, present in person or by proxy, entitled to vote in the election.

(iii) Each director shall hold office for One (1) year, or until his or her successor is elected and qualified, unless he or she dies, resigns or is removed, prior to such time.

b. Duties and Powers

The Board of Directors shall be responsible for the control and management of the affairs, property, and interests of the Corporation and may exercise all powers of the Corporation, except as are in the Certificate of Incorporation or by statute expressly conferred upon or reserved to the shareholders.

c. Annual and Regular Meetings; Notice

(i) A regular annual meeting of the Board of Directors shall be held immediately following the annual meeting of the shareholders at the place of such annual meeting of shareholders.

(ii) The Board of Directors, from time to time, may provide by resolution for the holding of other regular meetings of the Board of Directors and may fix the time and place thereof.

(iii) Notice of any regular meeting of the Board of Directors shall not be required to be given and, if given, need not specify the purpose of the meeting. However, in case the Board of Directors shall fix or change the time or place of any regular meeting, notice of such action shall be given to each director who shall not have been present at the meeting at which such action was taken within the time limited, and in the manner set forth herein with respect to special meetings, unless such notice shall be waived in the manner set forth herein.

d. Special Meetings; Notice

(i) Special meetings of the Board of Directors shall be held whenever called by the President or by one of the directors, at such time and place as may be specified in the respective notices or waivers of notice thereof.

(ii) Except as otherwise required by statute, notice of special meetings shall be mailed directly to each director, addressed to him or her at his or her residence or usual place of business, at least Three (3) days before the day on which the meeting is to be held, or shall be sent to him or her at such place by telegram, radio, or cable, or shall be delivered to him or her personally or given to him or her orally, not later than the day before the day on which the meeting is to be held. A notice or waiver of notice, except as required elsewhere herein, need not specify the purpose of the meeting.

(iii) Notice of any special meeting shall not be required to be given to any director who shall attend such meeting without protesting prior thereto or at its

commencement, the lack of notice to him or her, or who submits a signed waiver of notice, whether before or after the meeting. Notice of any adjourned meeting shall not be required to be given.

e. Chairman

At all meetings of the Board of Directors, the Chairman of the Board, if any and if present, shall preside. If there shall be no Chairman, or he shall be absent, then the President shall preside, and in his absence, a Chairman chosen by the directors shall preside.

f. Quorum and Adjournments

(i) At all meetings of the Board of Directors, the presence of a majority of the entire Board shall be necessary and sufficient to constitute a quorum for the transaction of business, except as otherwise provided by law, by the Certificate of Incorporation, or by these bylaws.

(ii) A majority of the directors present at the time and place of any regular or special meeting, although less than a quorum, may adjourn the same from time to time without notice, until a quorum shall be present.

g. Manner of Acting

(i) At all meetings of the Board of Directors, each director present shall have one vote, irrespective of the number of shares of stock, if any, which he may hold.

(ii) Except as otherwise provided by statute, by the Certificate of Incorporation, or by these Bylaws, the action of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. Any action authorized, in writing, by all of the directors entitled to vote thereon and filed with the minutes of the corporation shall be the act of the Board of Directors with the same force and effect as if the same had been passed by unanimous vote at a duly called meeting of the Board.

h. Vacancies

Any vacancy in the Board of Directors occurring by reason of an increase in the number of directors, or by reason of the death, resignation, disqualification, removal (unless a vacancy created by the removal of a director by the shareholders shall be filled by the shareholders at the meeting at which the removal was effected), or inability to act of any director, or otherwise, shall be filled for the unexpired portion of the term by a majority vote of the remaining directors, though less than a quorum, at any regular meeting or special meeting of the Board of Directors called for that purpose.

i. Resignation

Any director may resign at any time by giving written notice to the Board of Directors, the President or the Secretary of the Corporation. Unless otherwise specified in such written notice, such resignation shall take effect upon receipt thereof by the Board of Directors or such officer, and the acceptance of such resignation shall not be necessary to make it effective.

j. Removal

Any director may be removed with or without cause at any time by the affirmative vote of shareholders holding of record in the aggregate at least a majority of the outstanding shares of the Corporation at a special meeting of the shareholders called for that purpose and may be removed for cause by action of the Board.

k. Salary

No salary shall be paid to directors, as such, for their services, but by resolution of the Board of Directors a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board. However, nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

I. Contracts

(i) No contract or other transaction between this Corporation and any other corporation shall be impaired, affected, or invalidated, nor shall any director be liable in any way by reason of the fact that any one or more of the directors of this Corporation is or are interested in, or is a director or officer, or are directors or officers of such other corporation, provided that such facts are disclosed or made known to the Board of Directors.

(ii) Any director, personally and individually, may be a party to or may be interested in any contract or transaction of this Corporation, and no director shall be liable in any way by reason of such interest, provided that the fact of such interest be disclosed or made known to the Board of Directors, and provided that the Board of Directors shall authorize, approve, or ratify such contract or transaction by the vote (not counting the vote of any such director) of a majority of a quorum, notwithstanding the presence of any such director at the meeting at which such action is taken. Such director or directors may be counted in determining the presence of a quorum at such meeting. This Section shall not be construed to impair or invalidate or in any way affect any contract or other transaction which would otherwise be valid under the law (common, statutory, or otherwise) applicable thereto.

m. Committees

The Board of Directors, by resolution adopted by a majority of the entire Board, may from time to time designate from among its members an executive committee and such other committees, and alternate members thereof, as they may deem desirable, each consisting of three or more members, with such powers and authority (to the extent permitted by law) as may be provided in such resolution. Each such committee shall serve at the pleasure of the Board.

4. OFFICERS

a. Number, Qualifications, Election, and Term of Office

(i) The officers of the Corporation shall consist of a President, a Secretary, a Treasurer, and such other officers, including a Chairman of the Board of Directors, and one or more Vice Presidents, Assistant Treasurers, and Assistant Secretaries, as the Board of Directors may from time to time deem advisable. Any officer other than the Chairman of the Board of Directors may be, but is not required to be, a director of the Corporation. Any two or more offices may be held by the same person.

(ii) The officers of the Corporation shall be elected by the Board of Directors at the regular annual meeting of the Board following the annual meeting of shareholders, or by a unanimous consent executed in lieu of a meeting.

(iii) Each officer shall hold office until the annual meeting of the Board of Directors next succeeding his election, or until his or her successor shall have been elected and qualified, or until his or her death, resignation, or removal.

(iv) Any person serving as an officer shall be a Certified Public Accountant licensed to practice in the State of STATE-NAME.

b. Resignation

Any officer may resign at any time by giving written notice of such resignation to the Board of Directors or to the President or the Secretary of the Corporation. Unless otherwise specified in such written notice, such resignation shall take effect upon receipt thereof by the Board of Directors or by such officer, and the acceptance of such resignation shall not be necessary to make it effective.

c. Removal

Any officer may be removed, either with or without cause, and a successor elected by a majority vote of the Board of Directors at any time.

d. Vacancies

A vacancy in any office by reason of death, resignation, inability to act, disqualification, or any other cause, may at any time be filled for the unexpired portion of the term by a majority vote of the Board of Directors.

e. Duties of Officers

(i) Officers of the Corporation shall, unless otherwise provided by the Board of Directors, each have such powers and duties as generally pertain to their respective offices as well as such powers and duties as may be set forth in these bylaws or may from time to time be specifically conferred or imposed by the Board of Directors.

(ii) The President shall be the chief executive officer of the Corporation. The President shall preside at all meetings of the Board of Directors of the shareholders where the President is present. The President may sign, in the name of the Corporation, contracts or other instruments authorized either generally or specifically by the Board of Directors and shall have the general supervision of the affairs of the Corporation. The President shall, with the approval of the Board of Directors, appoint, fix the compensation, and suspend or remove all nonofficer employees of the Corporation. The President shall perform all other duties and possess all other powers as are incident to the office or as are assigned by the Board of Directors.

(iii) The Vice President shall, at the direction of the Board of Directors and the President, perform the duties of the President when the President is unable.

(iv) The Secretary shall cause notices of all meetings to be served as required in these bylaws and shall keep the minutes of all meetings of the shareholders, Board of Directors, and all committees of the Board of Directors, shall have charge of the seal of the Corporation and the corporate records, and the transfer and registration of the capital stock of the Corporation. The Secretary may attest to the execution of contracts and other instruments signed in the name of the Corporation which are authorized and proper in the conduct of its business, and may affix the corporate seal thereto. The Secretary shall perform all other duties and possess all other powers as are incident to the office or as are assigned by the President or the Board of Directors.

(v) The Treasurer shall have the custody of the funds and securities of the Corporation and shall keep or cause to be kept regular books of account for the Corporation. The Treasurer shall account the President or the Board of Directors, whenever they may require, concerning all transactions made as Treasurer and concerning the financial condition of the Corporation. The Treasurer shall perform all other duties and have all other powers as are incident to the office or as are assigned by the President or the Board of Directors.

f. Sureties and Bonds

In case the Board of Directors shall so require any officer, employee, or agent of the Corporation shall execute to the Corporation a bond in such sum and with such surety or sureties as the Board of Directors may direct, conditioned upon the faithful performance of his duties to the Corporation, including responsibility for negligence and for the accounting for all property, funds, or securities of the Corporation which may come into his hands.

g. Shares of Other Corporations

Whenever the Corporation is the holder of shares of any other Corporation, any right or power of the Corporation as such shareholder (including the attendance, acting, and voting at shareholders' meetings and execution of waivers, consents, proxies, or other instruments) may be exercised on behalf of the Corporation by the President, any Vice President, or such other person as the Board of Directors may authorize.

5. SHARES OF STOCK

a. Certificate of Stock

(i) The certificates representing shares of the Corporation shall be in such form as shall be adopted by the Board of Directors and shall be numbered and registered in

the order issued. They shall bear the holder's name and the number of shares and shall be signed by (aa) the Chairman of the Board or the President or a Vice President, and (bb) the Secretary or Treasurer or any Assistant Secretary or Assistant Treasurer and shall bear the corporate seal.

(ii) No certificate representing shares shall be issued until the full amount of consideration therefore has been paid, except as otherwise permitted by law.

(iii) To the extent permitted by law, the Board of Directors may authorize the issuance of certificates for fractions of a share which shall entitle the holder to exercise voting rights, receive dividends, and participate in liquidating distributions, in proportion to the fractional holdings; or it may authorize the payment in cash of the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined; or it may authorize the issuance, subject to such conditions as may be permitted by law, of scrip in registered or bearer form over the signature of an officer or agent of the Corporation, exchangeable as therein provided for full shares, but such scrip shall not entitle the holder to any rights of a shareholder, except as therein provided.

b. Lost or Destroyed Certificates

The holder of any certificate representing shares of the Corporation shall immediately notify the Corporation of any loss or destruction of the certificate representing the same. The Corporation may issue a new certificate in the place of any certificate theretofore issued by it, alleged to have been lost or destroyed. On

production of such evidence of loss or destruction as the Board of Directors in its discretion may require, the Board of Directors may, in its discretion, require the owner of the lost or destroyed certificate, or his legal representatives, to give the Corporation a bond in such sum as the Board may direct, and with such surety or sureties as may be satisfactory to the Board, to indemnify the Corporation against any claims, loss, liability, or damage it may suffer on account of the issuance of the new certificate. A new certificate may be issued without requiring any such evidence or bond when, in the judgment of the Board of Directors, it is proper to do so.

c. Transfers of Shares

(i) Transfers of shares of the Corporation shall be made on the share records of the Corporation only by the holder of record thereof, in person or by his duly authorized attorney, upon surrender for cancellation of the certificate or certificates representing such shares, with an assignment or power of transfer endorsed thereon or delivered therewith, duly executed, with such proof of the authenticity of the signature and of authority to transfer and of payment of transfer taxes as the Corporation or its agents may require.

(ii) The Corporation shall be entitled to treat the holder of record of any share or shares as the absolute owner thereof for all purposes and, accordingly, shall not be bound to recognize any legal, equitable, or other claim to,or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided by law.

d. Record Date

In lieu of closing the share records of the Corporation, the Board of Directors may fix, in advance, a date not exceeding Fifty days, nor less than Ten days, as the record date for the determination of shareholders entitled to receive notice of, or to vote at, any meeting of shareholders, or to consent to any proposal without a meeting, or for the purpose of determining shareholders entitled to receive payment of any dividends, or allotment of any rights, or for the purpose of any other action. If no record date is fixed, the record date for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given, or, if no notice is given, the day on which the meeting is held. The record date for determining shareholders for any other purpose shall be at the close of business on the day on which the resolution of the directors relating thereto is adopted. When a determination of shareholders of record entitled to notice of or to vote at any meeting of shareholders has been made as provided for herein, such determination shall apply to any adjournment thereof, unless the directors fix a new record date for the adjourned meeting.

6. DIVIDENDS

Subject to applicable law, dividends may be declared and paid out of any funds available therefore, as often, in such amounts, and at such time or times as the Board of Directors may determine.

7. FISCAL YEAR

The fiscal year of the Corporation shall be fixed by the Board of Directors from time to time, subject to applicable law.

8. CORPORATE SEAL

The corporate seal, if any, shall be in such form as shall be approved from time to time by the Board of Directors.

9. AMENDMENTS

Unless provided to the contrary in the "Shareholders Agreement" of PREDECESSOR-FIRM, dated DATE or the "PREDECESSOR-FIRM Shareholders and Redemption Agreement", as amended:

a. By Shareholders

All bylaws of the Corporation shall be subject to alteration or repeal, and new bylaws may be made by the affirmative vote of shareholders holding of record in the aggregate at least a majority of the outstanding shares entitled to vote in the election of directors at any annual or special meeting of shareholders, provided that the notice or waiver of notice of such meeting shall have summarized or set forth in full therein the proposed amendment, unless provided to the contrary in the "Shareholders Agreement" of PREDECESSOR-FIRM dated DATE or the "PREDECESSOR-FIRM Shareholders and Redemption Agreement", as amended.

b. By Directors

(i) Two-Thirds (2/3) of the Board of Directors shall have power to make, adopt, alter, amend, and repeal, from time to time, bylaws of the Corporation. The shareholders entitled to vote with respect thereto as provided above may alter, amend, or repeal bylaws made by the Board of Directors. The Board of Directors shall have no power to change the quorum for meetings of shareholders or of the Board of Directors, or to change any provisions of the bylaws with respect to the removal of directors or the filling of vacancies in the Board resulting from the removal by the shareholders. If any bylaw regulating an impending election of directors is adopted, amended, or repealed by the Board of Directors, there shall be set forth in the notice of the next meeting of shareholders for the election of directors, the bylaw so adopted,

amended, or repealed, together with a concise statement of the changes made, unless the shareholders execute a unanimous consent to such change.

(ii) Emergency bylaws may be enacted by the Board of Directors, subject to repeal or change by action of the shareholders, as permitted under applicable state law.

10. INDEMNITY

(i) Any person made a party to any action, suit, or proceeding, by reason of the fact that he, his testator, or intestate representative is or was a director, officer, or employee of the Corporation or of any Corporation in which he served as such at the request of the Corporation shall be indemnified by the Corporation against the reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with the defense of such action, suit, or proceedings, or in connection with any appeal therein, except in relation to matters as to which it shall be adjudged in such action, suit, or proceeding, or in connection with any appeal therein that such officer, director, or employee is liable for negligence or misconduct in the performance of his duties.

(ii) The foregoing right of indemnification shall not be deemed exclusive of any other rights to which any officer or director or employee may be entitled apart from the provisions of this section.

(iii) The amount of indemnity to which any officer or any director may be entitled shall be fixed by the Board of Directors, except that in any case where there is no

disinterested majority of the Board available, the amount shall be fixed by arbitration pursuant to the then existing rules of the American Arbitration Association.

The undersigned certifies that the foregoing bylaws have been adopted as the first bylaws of the Corporation.

DATE: MONTH DAY, YEAR

CERTIFIED AS ADOPTED BY BOARD:

_____

CPA2-FIRM-A, Secretary

_____

CPA4-TEAM-B, Assistant Secretary

Exhibit E: General Releases and Indemnifications

Exhibit E-1: General Release and Indemnification from TERMINATED-PARTNER

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, KNOW THAT on this DATE:

TERMINATED-PARTNER, an individual, with an address, who resides at ADDRESS ("TERMINATED-PARTNER"), as Releasor, in consideration of One Dollar ($1.00) and other good and valuable consideration received from:

1. PREDECESSOR-ENTITY, a STATE-NAME professional corporation doing business at ADDRESS (the "Predecessor Firm");
2. TEAM-B-PRACTICE, a STATE-NAME professional corporation doing business at ADDRESS (the "TEAM-B PRACTICE");
3. FIRM-A-PRACTICE doing business at ADDRESS (the "FIRM-A PRACTICE").
4. REAL-ESTATE-ENTITY, a STATE-NAME general partnership doing business at ADDRESS (the "Real Estate Entity") collectively and individually, and including each of their respective partners/members/shareholders, managers/officer/directors/general partners.

   The Above collectively referred to as “Releasee,” receipt said consideration which is hereby acknowledged by Releasor, who hereby releases and discharges the Releasee's and Releasee's heirs, executors, administrators, successors, transferees, and assigns, and partners/members/shareholders,

managers/officer/directors/general partners, from any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty, or equity, which against the Releasee, the Releasor, the Releasor's heirs, executors, administrators, successors, transferees, and assigns, ever had, now have or hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever, including but not limited to:

> the conduct of an accounting practice by the Predecessor Firm, except for any claims relating to malpractice; the conduct of a real estate ownership and leasing by the Real Estate Entity.

and certain transactions and matters relating thereto, from the beginning of the world to the day of the date of this Release. This Release shall not apply to violations of the representations and warranties in the Arrangement between Releasor and Releasee.

Releasor hereby agrees to hold Releasee harmless and indemnify Releasee against any costs or claims, including reasonable attorney fees, arising out of these matters.

Whenever the text hereof requires, the use of singular number shall include the appropriate plural number as the text of the within instrument may require.

This Release and Assignment may not be changed orally.

IN WITNESS WHEREOF, the Releasor has hereunto set Releasor's hand and seal:

WITNESS: RELEASOR:

_____ _____

TERMINATED-PARTNER

Exhibit E-2: General Release and Indemnification to TERMINATED-PARTNER

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, KNOW THAT on this DATE:

1. PREDECESSOR-FIRM, a STATE-NAME professional corporation doing business at ADDRESS (the "Predecessor Firm");
2. TEAM-B-PRACTICE, a STATE-NAME professional corporation doing business at ADDRESS (the "TEAM-B PRACTICE");
3. FIRM-A-PRACTICE doing business at ADDRESS (the "FIRM-A PRACTICE").
4. REAL-ESTATE-ENTITY, a STATE-NAME general partnership doing business at ADDRESS (the "Real Estate Entity") collectively and individually, and including each of their respective partners/members/shareholders, managers/officer/directors/general partners.

   The above collectively referred to as “Releasor,” in consideration of One Dollar ($1.00) and other good and valuable consideration received from:

   TERMINATED-PARTNER, Esq., an individual, with an address, who resides at ADDRESS ("TERMINATED-PARTNER"), individually, as Releasee, receipt said consideration which is hereby acknowledged by Releasor, who hereby releases and discharges: the Releasee's and Releasee's heirs, executors, administrators, successors, transferees, and assigns, from any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions,

claims, and demands whatsoever, in law, admiralty, or equity, which against the Releasee, the Releasor, the Releasor's heirs, executors, administrators, successors, transferees, and assigns, ever had, now have or hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever, including but not limited to Releasee's involvement in:

> the conduct of an accounting practice by the Predecessor Firm, except for any claims relating to malpractice; the conduct of a real estate ownership and leasing business by the Real Estate Entity

and certain transactions and matters relating thereto, from the beginning of the world to the day of the date of this Release. This Release shall not apply to violations of the representations and warranties in the Arrangement between Releasor and Releasee.

Releasor hereby agrees to hold Releasee harmless and indemnify Releasee against any costs or claims, including reasonable attorney fees, arising out of these matters.

Whenever the text hereof requires, the use of singular number shall include the appropriate plural number as the text of the within instrument may require.

This Release and Assignment may not be changed orally.

IN WITNESS WHEREOF, the Releasor has hereunto set Releasor's hand and seal:

PREDECESSOR-FIRM

By:_____

CPA5-FIRM-A, President

TEAM-B PRACTICE

By:_____

CPA3-TEAM-B

FIRM-A PRACTICE

By:_____

CPA5-FIRM-A, Manager and Member

REAL-ESTATE-ENTITY

By:_____

CPA1-FIRM-A, General Partner

INDIVIDUALLY:

_____

CPA1-FIRM-A

_____

CPA2-FIRM-A

_____

CPA3-TEAM-B

_____

CPA4-TEAM-B

CPA5-FIRM-A

CPA6-TEAM-B

CPA7-FIRM-A

CPA8-TEAM-B

CPA9-TEAM-B

CPA10-FIRM-A

Exhibit F: Termination of Bank Signature Authority

Exhibit F-1: PREDECESSOR-FIRM

PREDECESSOR-FIRM

ADDRESS

DATE

_____[Name of Bank]

_____[Street Address]

_____[City, State Zip]

RE: A/C:_____

Termination of TERMINATED-PARTNER Signature Authority.

Dear Sirs:

Please be advised that TERMINATED-PARTNER's signature authority over the above bank account should terminate immediately.

Thank you for your prompt attention to this matter.

Sincerely,

_____

TERMINATED-PARTNER, Esq.

PREDECESSOR-FIRM

By:_____

CPA5-FIRM-A, President

Exhibit F-2: REAL-ESTATE-ENTITY

REAL-ESTATE-ENTITY

ADDRESS

DATE

_____[Name of Bank]

_____[Street Address]

_____[City, State Zip]

RE: A/C:_____

Termination of TERMINATED-PARTNER Signature Authority.

Dear Sirs:

Please be advised that TERMINATED-PARTNER's signature authority over the above bank account should terminate immediately.

Thank you for your prompt attention to this matter.

Sincerely,

_____

TERMINATED-PARTNER, Esq.

REAL-ESTATE-ENTITY

By:_____

CPA5-FIRM-A, General Partner

Exhibit G: Client Files of Predecessor Firm

Exhibit G-1: Named Accounts Transferred to FIRM-A PRACTICE

Client Code	Client Name/Matter/ Description	Amount A/R; WIP	FIRM-A PRACTICE	Comment

Exhibit G-2: Named Accounts Transferred to TEAM-B PRACTICE

Client Code	Client Name/Matter/ Description	Amount A/R; WIP	TEAM-B PRACTICE	Comment

Exhibit H: Amendment of REAL-ESTATE-ENTITY Partnership Agreement

Amendment of Partnership Agreement

AGREEMENT, dated DATE between:

a. CPA1-FIRM-A.

b. CPA2-FIRM-A.

c. CPA3-TEAM-B.

d. TERMINATED-PARTNER.

e. CPA4-TEAM-B.

WHEREAS, the Undersigned became parties to a "Partnership Agreement" dated DATE, and hereby agreed to amend and revise same, primarily to recognize TERMINATED-PARTNER's resignation from same.

NOW THEREFORE, for good and valuable consideration, receipt, and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

Items A. through and including E are Agreed to by all parties:

1. Article __ - TERMINATED-PARTNER resigns as, and is hereby removed as, a General Partner.
2. Article ___ - TERMINATED-PARTNER shall not hereafter use the name "REAL-ESTATE-ENTITY", or any similar or like sounding name.
3. Article 7 - TERMINATED-PARTNER waives any right or claim to the capital of the partnership.
4. Article 8 - TERMINATED-PARTNER waives any right or claim to the profits of the partnership.

5. The Parties hereto agree to abide by and use the tax reporting positions reflecting the transactions herein as determined by INDEPENDENT-CPA-FIRM.

Items 6. through and including 10 are Agreed to by all parties other than TERMINATED-PARTNER (who has resigned his interest):

6. Except as otherwise expressly provided in the Partnership Agreement, no Partner shall have any authority to act for, or assume any obligations or responsibility on behalf of, any other Partner. Nothing herein shall be construed to authorize any of the Parties to act as general agent for any other Party or to permit any Party to bid for or to undertake any other contract for any other Party.
7. The Partners shall pay or arrange for the payment of all insurance premiums, debts, and other obligations of the Property, including but not limited to premiums for property and casualty insurance in an amount at least equal to Ninety percent (90%) of the fair market value of the Property.
8. Capital Account.

Definition of Capital Account

A separate capital account shall be maintained for each Partner or Assignee in accordance with the provisions below.

Increases in Capital Account

Each Partner's Capital Account shall be increased by:

a. The amount of money contributed by the Partner to the Partnership.

b. The fair market value of property contributed by the Partner to the Partnership (net of liabilities secured by such contributed property that the Partnership is considered to assume or take subject to under Code Section 752). If any property,

other than cash, is contributed to or distributed by the Partnership, the adjustments to Capital Accounts required by Treasury Regulation Section 1.704-1 shall be made.

c. Allocations to the Partner of Profit.

d. Allocations to the Partner of income or gain as provided under this Agreement, or otherwise by Regulations under Section 1.704-1.

Decreases in Capital Account

Each Partner's Capital Account shall be decreased by:

a. The amount of money distributed to the Partner by the Partnership.

b. The fair market value of property distributed to the Partner by the Partnership (net of liabilities secured by such distributed property that such Partner is considered to assume or take subject to under Code Section 752).

c. Allocations to the Partner of Losses.

d. Allocations to the Partner of deductions, expenses, Nonrecourse Deductions, and Net Losses allocated to it pursuant to this Agreement, and the Partner's share of Partnership expenditures which are neither deductible nor properly chargeable to Capital Accounts under Code Section 705(a)(2)(B) or are treated as such expenditures under Treasury Regulations under Section 1.704-1.

Capital Account of Transferee

In the event of a permitted sale or exchange of an Interest in the Partnership, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Interest in accordance with Regulations under Section 1.704-1.

Capital Accounts Shall Comply with Code Section 704(b)

The manner in which Capital Accounts are to be maintained pursuant to this Agreement is intended to comply with the requirements of Code Section 704(b) and the Regulations thereunder. It is the specific intent of the Partners that all such further or different adjustments as may be required pursuant to Code Section 704, and any Regulations thereunder be made, so as to cause the allocations prescribed hereunder to be respected for tax purposes. Therefore, if in the opinion of the General Partner, the manner in which Capital Accounts are to be maintained pursuant to this Agreement should be modified to comply with Code Section 704(b) and the Regulations thereunder, then notwithstanding anything to the contrary contained in this Agreement or any other agreement between the Parties, the method in which Capital Accounts are maintained shall be so modified. However, any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Partners. Each Partner hereby appoints the General Partner his agent for the purpose of making any amendment to this Agreement solely for purposes of complying with this provision.

Return of Partners' Contributions to Capital

A Partner shall not receive a return of any part of its Capital Contribution until all liabilities of the Partnership (excluding liabilities to Partners on account of their Capital Contributions), have been paid or there remains Partnership Property sufficient to pay

them. A Partner, irrespective of the nature of its Capital Contribution, has no right to demand and receive any property other than cash in return for its Capital Contribution.

Capital Contribution

The total amount of capital contributed or agreed to be contributed to the Partnership by each Partner or credited to each Partner's interests, pursuant to the terms of this Agreement and as reflected in Schedule A attached hereto, as amended from time to time. Any reference to the Capital Contribution of a Partner shall include the Capital Contribution made by a predecessor holder of the Interest of such Partner.

10. Other than as indicated above, the Parties hereto reaffirm the prior Partnership Agreement in all respects.

IN WITNESS WHEREOF, the parties have set their signatures below as of the date indicated above:

_____

CPA1-FIRM-A

_____

CPA2-FIRM-A

_____

CPA3-TEAM-B

_____

CPA4-TEAM-B

AS TO ITEMS A through D:

_____

TERMINATED-PARTNER

---

[i] This illustrative agreement provides for the division of an existing multipartner firm (10 partners) into two successor practices upon the predecessor partners' determination that they could not continue to operate as a single practice. The focus of this annotated agreement and case study is this division of one accounting practice into two separate practices, despite the integration of a number of other issues and life-cycle events. The complexity and variations caused by these issues are not uncommon, and thus illustrate the life an accounting practice. As practice politics and other problems mounted, the firm (referred to as the Predecessor-Firm), took three steps in the hope of staving off the inevitable breakup: (1) A partner who had been perceived problematical was terminated (TERMINATED-PARTNER) to eliminate some of the tensions in the firm; (2) negotiations were undertaken to acquire another small practice, in order to boost profits and alleviate the firm's economic issues with incremental revenue and business opportunities; and (3) one faction hired a new partner to supply the technical tax expertise that was being lost as the tax partners sided with the other postdivision firm. The confluence of these events integrates various aspects of the termination of an accounting practice: (1) division of a firm breaking up; (2) the purchase of another practice, which provided the exit strategy for that practitioner; and (3) the negotiated termination of a partner, which forced his exit strategy.

Thus, the fact pattern for the following document incorporates a number of the life-cycle or milestone phases discussed in this book. The practice had grown to an 11- partner firm, and one of the partners was terminated as part of the disintegration of the firm, the TERMINATED-PARTNER. The practice was plagued by divisiveness, and two competing factions developed. Unable to resolve their differences, the firm then divided into two separate successor practices (FIRM-A and TEAM-B). When the division seemed inevitable, one of the successor practices negotiated and hired a new partner to replace a practice skill they would lose in the division, the NEW-PARTNER. This division agreement illustrates how to divide a multipartner practice and also presents many of the necessary ancillary documents and steps. The termination of a partner that neither successor firm wanted was another indication of the firm's problems. The addition of a new partner as the PREDECESSOR-FIRM disintegrated further complicated the negotiation and documentation. These complications, whether or not duplicated in your firm dissolution or division, illustrate the real world problems that can affect practices that are disintegrating. Often, if the strife is significant, the situation becomes a "slippery slope" and the problems compound until

they are addressed. As with many practices, dissolution involves ancillary issues or "loose-ends." In this illustration, the division must also address the ownership by a separate entity of the building in which the PREDECESSOR-FIRM practiced.

[ii] Names are identified to indicate which postdivision practice each partner in the former or predecessor firm was joining. For simplicity, one postdivision firm is referred to as FIRM-A and the second post division firm is referred to as TEAM-B. The postdivision firm consisting of all Firm A partners is referred to as FIRM-A PRACTICE and the postdivision firm consisting of all Team B partners is referred to as TEAM-B PRACTICE.

[iii] In Chapters 1 and 3, planning for the ownership of a building or other key asset separate from the practice was discussed. The following provision and the other provisions pertaining to the building address the handling of such a property, absent the recommendations presented in earlier chapters. Because it was not previously addressed, the value and ownership of the building is a negotiation issue in this agreement.

[iv] Although the general approach may be to divide clients based on the supervising or managing partner, this illustrative case includes the additional step of then letting all clients know which successor firm was going to take their files and continue the engagement, if applicable, and giving each client the opportunity to request a different arrangement.

[v] The terminated partner had clients that he had worked with over the years. Since there was no remaining firm (as the Predecessor Firm divided), the terminated partner was requested to assume responsibility for storing and maintaining any old client files that had been his responsibility before the termination.

[vi] Because the practice divided, any partner leaving (in this provision, that is, the terminated partner) should be required to notify both postdivision practices since partners in each of those separate firms were partners in the Predecessor Firm that provided services to that client.

[vii] When a firm breaks up, who assumes responsibility for old client files in storage? In this illustrative case one of the postdivision firms, FIRM-A, assumed this responsibility.

[viii] Any assets to be transferred to the successor firms or the terminated partner (or any other person on a practice's breakup) should be listed, and the appropriate legal document to transfer title prepared. For personal property, a bill of sale should be completed. Again, as noted elsewhere, the recommended

approach is to attach a listing and the required ancillary document as an appendix to simplify and organize the recordkeeping for the transaction.

[ix] Separate documentation is necessary and advisable for the terminated partner. Since the terminating firm, the Predecessor Firm, is itself in the process of disintegration, the documents should include the successor firms are party to the arrangements. The compensation for any departing partner, under any conditions, should be addressed in detail. The following provision refers to the other documents governing compensation, as well as the "deal" struck. It is important to avoid any ambiguity as to the possible relevance of other documents. For example, rights that the terminated partner may have had under other practice documents are expressly waived to eliminate the risk that he could assert a right to receive those payments in addition to the payments provided under the termination documents.

[x] Responsibility for all tax filings should be specified, and all partners should agree to be bound by those filings and not to report inconsistently with them. If the returns cannot be prepared in time for the execution of the termination or division, or both, a mechanism must be put in place to avoid potential problems with the IRS that may arise if battling partners taking opposing reporting positions. For instance, partners can agree on the documented year-to-date data.

[xi] Practice-held or cross-purchase-held life insurance on terminating partners is often requested and transferred to them. If feasible, obtain the insurance policy transfer forms and have them completed and attached as exhibits.

[xii] The purpose of the following detail is to effectively provide a checklist of all of the formal legal documents necessary to properly transfer the ownership of assets to the correct people as contemplated in the transaction. When the primary contract is agreed upon by the parties, these ancillary documents can then be prepared and reviewed for attachment as exhibits.

[xiii] When a partner is terminated, all items to be surrendered, even obvious or ceremonial ones (for example, the office keys, since you will undoubtedly change the locks) should all be specified in the agreement.

[xiv] When your practice terminates a partner, you want to obtain finality to all open matters and resolve any possible claims.

[xv] Final resolution of all issues pertaining to any terminated partner should also entail obtaining a written confirmation of that partner's resignation in any corporate or other capacity. Without such confirmation,

the mere surrender of stock does not automatically constitutel resignation as an officer, director, or manager of the practice.

[xvi] The goal of the following paragraphs a practical accommodation of the realities of winding down a firm that is being terminated. The TERMINATED-PARTNER agrees to the temporary use of his name so that, for example, new letterhead need not be purchased for the brief anticipated wind down of the Predecessor Firm that will be reconstituted following the division.

[xvii] All departing partners should agree not to disclose confidential partnership information. In the case of a firm break-up, perhaps all of the partners and successor entities should agree to expressly hold the terms of the break-up, the contents of all correspondence, email, and documents pertaining to the break-up, in confidence.

[xviii] When a partner is terminated or a practice is divided, the parties should all give each other broad, mutual releases so that there are no remaining issues. If, in fact, open issues remain, they should be carved out in the releases and in the provision in the division agreement that pertains to the releases, as shown in the example herein. This will assure that all issues, other than those noted, are resolved.

[xix] Each party should be afforded the opportunity to hire an attorney. Regardless of the decision made, each should also having been given such an opportunity. Documenting the law firms chosen to provide representation precludes the possibility of conflicts coming to light in the future, if a firm represents one of the successor practices.

[xx] As illustrated throughout this illustrative division agreement, all ancillary entities are to be addressed in the documentation to resolve all open issues. Hence, in the following paragraph, as in many others, the ancillary entity that owned the practice's building is included.

[xxi] In the following provisions, representations and warranties by each party are provided to give some assurance to the other parties that the details of the transaction were agreed to and understood.

[xxii] Consider requiring agreed-upon notifications in appropriate industry, trade, and general circulation newspapers and magazines to inform clients and others of the status of the firm. Public notices that meet strict legal criteria may also be advisable if you have a general partnership; third parties may assume reasonably that a terminated partner is not only your partner, but that he or she still has the legal authority to contract for and bind your practice,

[xxiii] The following arrangements reflect a decision by the accountants to permit clients to choose which practitioner to work with following the termination of the terminated partner. This level of flexibility may not be necessary, and if a covenant not to compete and the allocation of clients had been addressed prior to the termination, arrangements made under those agreements may have been followed.

[xxiv] If you significantly distrust the terminated partner, agree on the language and formatting for any such announcements and include them in the body of the agreement or as an attached exhibit and specify that all announcements made shall use that agreed upon format. Similarly, you might wish to draft a client information letter, have all parties agree to use only that agreed format and language, and attach the approved letter to this division agreement as an exhibit.

[xxv] Although obvious to every accounting practitioner, insurance coverage can easily be overlooked during the commotion of a firm breakup. Be certain that someone is responsible for payments for coverage, and that coverage is reviewed and monitored to properly reflect all the various iterations in physical locations, practices, and partners.

[xxvi] The agreements with the terminated partner refer to his relinquishing any rights to his interests in a separate real estate entity which owned the building the practice operated in. In addition to such statements, a formal transfer of the equity interest in that entity, in accordance with the provisions of the document *governing that entity, should be included***.**

[xxvii] Any major structural change or milestone event in your practice should trigger a review to confirm that the general governing documents for the practice are current. If your practice has not elected officers or directors in years, and the prior listed officers and directors have not been with the practice for years, who has authority to sign the documents to effect the current transaction? These formalities, while they should be addressed regularly, should always be reviewed prior to consummating a major transaction.