The Entrepreneur’s Crash Course and 1st Year Survival Guide

Your Best Introduction to Small Business Law, Finance, Accounting and Small Business Resources!

Protect your business and its assets
Legal forms, Find money for your business
Tax law and common business deductions
Accounting, Venture capital, Tax savings
Intellectual Property, Purchasing a business
Franchises, Avoid bad debt loses and More!

ACTIVE FILINGS LLC
The Best Way To Start Your Business!
Fast, Easy and Affordable Incorporation Services
http://www.activefilings.com - E-Mail: info@activefilings.com
# Table of Contents

1. **INTRODUCTION** .................................................................................................................................................... 1

2. **START-UP BUSINESS CHECKLIST** ..................................................................................................................... 1

3. **BUSINESS ENTITIES** ............................................................................................................................................... 5

   - Importance of Choosing the Right Entity .................................................................................................................. 5
   - Factors Going into the Choice of Entity Decision ................................................................................................... 5
   - Limited Liability Companies .................................................................................................................................. 6
   - Corporations .......................................................................................................................................................... 8
   - Partnerships ........................................................................................................................................................ 15
   - Limited Partnerships ........................................................................................................................................... 18
   - Tax Aspects of Partnerships, S-Corps, and LLCs .................................................................................................. 20
   - Sole Proprietorship ............................................................................................................................................ 22

4. **SMALL BUSINESS ACCOUNTING** ........................................................................................................................ 24

   - Financial and Bookkeeping Records ....................................................................................................................... 24
   - Do It Yourself or Hire Someone Else? ....................................................................................................................... 24
   - Doing It Yourself ................................................................................................................................................ 25
   - Income/Revenue Records ................................................................................................................................... 26
   - Asset Records ....................................................................................................................................................... 27

5. **FEDERAL, STATE AND LOCAL TAXATION** ............................................................................................................. 28

   - Federal Taxes ....................................................................................................................................................... 28
   - Income Taxes on Employees and How to Pay Them: ............................................................................................. 29
   - To Pay Federal Taxes on Employees’ Wages: ........................................................................................................ 29
   - State Taxes ........................................................................................................................................................ 31
   - Local Taxes ......................................................................................................................................................... 31
   - Small Business Deductions .................................................................................................................................. 31

6. **THE HOME BASED BUSINESS** ............................................................................................................................. 34

   - Home Office Deduction ......................................................................................................................................... 34
   - Using “Losses” from Your Micro Business to Offset Other Income ..................................................................... 36
   - Taxes on Home-Based Businesses ......................................................................................................................... 37

7. **CONTRACTS FOR THE SMALL BUSINESS** ............................................................................................................... 38

   - Overview of Contracts ........................................................................................................................................ 38
   - Contracts for the Sale of Goods/UCC .................................................................................................................. 39
   - Service Contracts ................................................................................................................................................ 47

8. **EMPLOYEES** ........................................................................................................................................................... 49

   - Interviewing Prospective Employees .................................................................................................................... 49
   - Equal Employment Opportunity Laws (Know Them!) .......................................................................................... 50
   - Termination of Employees .................................................................................................................................. 52

9. **BUSINESS INSURANCE** ............................................................................................................................................ 54

   - Types of Insurance ............................................................................................................................................. 54
   - Buying Insurance ............................................................................................................................................... 56

10. **PURCHASING AN EXISTING BUSINESS** .................................................................................................................. 58
11. BUYING A FRANCHISE OPERATION ..................................................................................67
   TYPES OF FRANCHISE OPERATIONS .................................................................................67
   STATE AND FEDERAL REGULATION OF FRANCHISORS ..................................................67
   WHAT SHOULD A BUYER LOOK FOR IN A FRANCHISOR ....................................................68
12. EXTENDING CREDIT TO ANOTHER BUSINESS ..............................................................71
   BEFORE GIVING CREDIT ....................................................................................................72
   COLLECTING ON BAD DEBT .............................................................................................73
   DEBT COLLECTION .............................................................................................................73
13. OBTAINING CAPITAL FOR A SMALL BUSINESS ..............................................................76
   BANKS ....................................................................................................................................76
   FRIENDS AND FAMILY .........................................................................................................76
   OTHER BUSINESSES WITH A CONNECTION TO YOUR BUSINESS ..................................77
   FINDER ....................................................................................................................................77
   INVENTION PROMOTION FIRMS .....................................................................................77
   BUY OUT FUNDS/MEZZANINE FUNDS .............................................................................77
   DIRECT PUBLIC OFFERING ON THE INTERNET (THE FUTURE?) ....................................78
   VENTURE CAPITAL FUNDING .............................................................................................78
14. INTRODUCTION TO COMMERCIAL BANKING .................................................................84
   COMMON TERMS USED IN THE BANKING INDUSTRY ......................................................84
   HOW BANKERS SEE THE WORLD ......................................................................................85
   DEALING WITH BANKERS ..................................................................................................87
15. INTELLECTUAL PROPERTY LAWS ....................................................................................89
   PATENT LAW .......................................................................................................................89
   TRADEMARKS/SERVICEMARKS .........................................................................................91
   COPYRIGHT .........................................................................................................................94
   INTERNATIONAL TRANSFERS OF INTELLECTUAL PROPERTY ....................................96
16. BANKRUPTCY ..................................................................................................................102
17. SECURITIES LAWS ...........................................................................................................105
   LEGAL WAYS TO OFFER AND SELL SECURITIES WITHOUT REGISTERING WITH THE SEC 106
   STATE LAW REQUIREMENTS ..........................................................................................111
18. LEGAL FORMS LIBRARY ..................................................................................................112
   CORPORATE ORGANIZATIONAL FORMS ..........................................................................112
      Checklist for Organization of a Corporation ......................................................................112
      Sample Name Reservation Form ......................................................................................114
      Sample Pre-incorporation Agreement (Illinois example) ...................................................115
      Sample Articles of Incorporation (Delaware example) .....................................................117
      Sample By-Laws of a Corporation (Delaware example) ..................................................118
      Minutes of Organizational (i.e., first) Meeting of Board of Directors (Illinois example) ....129
      Sample Shareholders Resolutions Naming Board of Directors ........................................134
      Directors Resolutions Authorizing Corporation to Execute a Material Contract ...............135
      Directors Resolutions Accepting Resignation of Director/Officer and Filling Vacancy .......137
      Sample Minutes for a Board of Directors Meeting ............................................................138
      Sample Shareholders Agreement (Illinois example for an S-Corp) ....................................140
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sample Agreements for Employees</td>
<td>146</td>
</tr>
<tr>
<td>Sample Employment Agreement for Business Employees</td>
<td>146</td>
</tr>
<tr>
<td>Sample Employment Termination Agreement</td>
<td>149</td>
</tr>
<tr>
<td>Sample Employee Assignment of Inventions and Non-competition</td>
<td>153</td>
</tr>
<tr>
<td>Sample Consulting Agreements</td>
<td>158</td>
</tr>
<tr>
<td>Standard Consulting Agreement</td>
<td>158</td>
</tr>
<tr>
<td>Sample Computer Software Industry Consulting Agreement</td>
<td>163</td>
</tr>
<tr>
<td>Sample Owner’s Guaranties</td>
<td>169</td>
</tr>
<tr>
<td>Sample Guaranty of Performance of a Contract to be Performed by Business</td>
<td>169</td>
</tr>
<tr>
<td>Sample Guaranty of Business Debts</td>
<td>171</td>
</tr>
<tr>
<td>Sample Agreement Among Shareholders for Sharing Liability</td>
<td>173</td>
</tr>
<tr>
<td>Sample Finder Fee Agreement</td>
<td>175</td>
</tr>
<tr>
<td>Sample Owner Agreements for Partnerships and Limited Liability Companies</td>
<td>179</td>
</tr>
<tr>
<td>Sample Manager-Managed LLC Operating Agreement (Illinois example)</td>
<td>179</td>
</tr>
<tr>
<td>Sample Purchase Order Language (Buyer Friendly)</td>
<td>191</td>
</tr>
<tr>
<td>Business Acquisition Documents</td>
<td>194</td>
</tr>
<tr>
<td>Asset Acquisition Agreement</td>
<td>194</td>
</tr>
<tr>
<td>Financial Documents</td>
<td>205</td>
</tr>
<tr>
<td>Promissory Term Note</td>
<td>205</td>
</tr>
<tr>
<td>Secured Promissory Note Payable in Agreed Installments</td>
<td>206</td>
</tr>
<tr>
<td>Security Agreement</td>
<td>208</td>
</tr>
<tr>
<td>Contract Terms Checklist</td>
<td>213</td>
</tr>
<tr>
<td>Sample Intellectual Property Forms</td>
<td>215</td>
</tr>
<tr>
<td>Website Copyright Notice and Disclaimer</td>
<td>215</td>
</tr>
<tr>
<td>Sample Source Material License Agreement</td>
<td>216</td>
</tr>
<tr>
<td>Sample Online Access Agreement</td>
<td>221</td>
</tr>
<tr>
<td>Appendix A Due Diligence Checklist for an Acquisition</td>
<td>232</td>
</tr>
<tr>
<td>Appendix B Checklist for Items Appearing in an Asset Purchase Contract</td>
<td>237</td>
</tr>
<tr>
<td>Appendix C Checklist for Items Appearing in a Stock Purchase Contract</td>
<td>239</td>
</tr>
<tr>
<td>Appendix D Employee Matters Checklist</td>
<td>240</td>
</tr>
<tr>
<td>Appendix E Credit Terms Abbreviations</td>
<td>242</td>
</tr>
<tr>
<td>Appendix F List of Miscellaneous Resources</td>
<td>243</td>
</tr>
<tr>
<td>Appendix G Economic Development Regional Administration Offices</td>
<td>245</td>
</tr>
<tr>
<td>Appendix H Banks Friendly to Small Business</td>
<td>246</td>
</tr>
<tr>
<td>Appendix I Small Business Investment Company Listing</td>
<td>251</td>
</tr>
<tr>
<td>Glossary</td>
<td>292</td>
</tr>
<tr>
<td>Index</td>
<td>294</td>
</tr>
</tbody>
</table>
1. Introduction

This book is designed to give you an introduction to the basic concepts of law, finance, accounting, and related topics which you must be familiar with before you start running your own small business. If you are already running your own small business, this book will serve as a ready reference guide for you. This book will also help you avoid professional fees for lawyers and accountants by helping you understand what functions those professionals are performing for you. You can then make an informed choice as to what functions you feel you could do yourself, and what functions you want them to perform for you.

Information regarding legal entities, small business accounting, basic taxation, contracts, employees, insurance, buying and selling a business, franchises, credit terms, obtaining investment capital or bank loans is included to give you an overview of what sorts of issues small businesses routinely face. This book also provides you with a library of common legal forms currently used by small businesses and informational appendices containing even more helpful information and business contacts.

This book is not designed to make your accountant and lawyer unnecessary. You still need to consult them on matters. But this book will make you better understand what your business needs from those professionals, and thus save you time and money when lawyers or accountants are used.

2. Start-up Business Checklist

1. Decide on the legal form of your business:
   - Sole Proprietorship
   - Partnership
   - Limited partnership
   - Subchapter S Corporation
   - Subchapter C Corporation
   - Limited liability company

2. Decide “home” of business and file appropriate forms (all legal entities):
   - Choose the state in which business is a “resident” and comply with all filing requirements for states
   - Complete tax filings (Federal Employee Identification Number (“FEIN”), federal income, states sales, etc)
   - Complete any occupational permits required (e.g., barber’s license)
   - Complete environmental filings (if required, check with your state and local governments)
   - Complete city and county filings (local and state governments often require business permits or other filings, so call your local and state government small business offices)
     - obtain city permits
     - obtain county permits
     - notify health departments of city/county (if necessary)
   - Filings required for operation in states besides “home” state
3. If you are creating a corporation:
- Pre-incorporation subscription agreement for equity interests if there is more than one owner (one page form usually)
- Reserve corporate name with secretary of state
- File articles of incorporation
- File the subchapter s-corp election (Form 2553) with the IRS (if applicable)
- Obtain minute book, corporate seal and stock certificates
- Execute shareholder agreements and other organizational documents
- Approve board of director initial meeting/organizational minutes
- Have board approve the minutes electing the corporate officers and directors
- Issue stock certificates to shareholders who have paid for the shares

4. If you are creating a partnership:
- Draft partnership agreement
- File partnership taxation election form with IRS
- File certificate with state (if necessary)

5. If you are creating a limited partnership:
- Determine who (or what entity) will be the general partner and who (or what entities) will be the limited partners
- Draft limited partnership agreement
- File limited partnership taxation election form with IRS
- File certificate of limited partnership with state (if necessary)

6. Accounting Concerns:
- Hire an accountant
- Obtain federal employee identification number
- Open banking accounts (and determine who can sign checks)
- Start keeping receipts
- Establish record-keeping practices, including payroll

7. Financial Concerns:
- Estimate costs for initial advertising, fixtures, decorating, inventory, professional fees, and ongoing monthly expenses (rent, utilities, etc.)
- Estimate monthly income (be very, very conservative)
- Estimate and budget for consultants, lawyers, accountants needed
- Begin establishing a relationship with bankers for future loans
- Obtain insurance

9. Employees
- Obtain FEIN number (we know we mentioned it before, but it is important)
- Obtain forms: INS & Worker’s Compensation
- Draft employee employment agreement (if necessary)
- Prepare non-competition agreements (if necessary)
- Prepare job descriptions
- Payroll records established (and maintained!)
✓ prepare employee manual (if needed)

10. Buying a business

✓ How is local/national economy?
✓ Family support decision?
✓ Reason (career change, money, right opportunity, etc.)
✓ Alternatives to purchasing the business (other investments offering better return, partnering with other investors, etc.)
✓ Will you be able to get financing for purchase, continuation of operation, etc.
✓ Do you have sufficient resources to continue operation after purchase?
✓ DETERMINE WHAT IS BEING BOUGHT!
✓ Select advisors to help organize purchase business: lawyers & business broker/appraiser
✓ Appraise the rough value of business before making an offer:
  • determine years of successful operation/goodwill
  • determine if key personnel are needed for operation
  • examine condition of facilities and equipment
  • talk to customers and vendors
  • gauge worth of current location
  • investigate competitors
  • value trademarks/patents/trade secrets/copyrights
  • investigate economic trends in industry/region/nation/world
  • can you add substantial value to business through expertise, resources or economies?
  • employees/labor matters
  • key employees necessary to business
  • union labor involved
✓ See Appendix A, B and C
✓ Determine preferred allocations among assets to maximize tax benefits to buyer

11. Taxes

✓ Record all social Security numbers of employees
✓ Track income tax (on business)
✓ Track self-employment tax (on owner)
✓ Track (and pay!) employment taxes (on business and employees)
✓ Track state and federal excise taxes (on products and services of business)
✓ Buy tax/accounting software

12. Entering into Contracts for the Sale of Goods/Warranties

✓ What are goods?
✓ Understand what are the legal requirements for a contract?
✓ Written contracts vs. oral contracts
✓ What constitutes delivery of goods and what constitutes acceptance?
✓ When does risk of loss pass?
✓ Seller's remedies in contract?
What will happen in the event of failure to deliver goods?

13. Employees

✓ Hire employees
✓ Learn how not to engage in illegal discrimination
✓ Learn how to properly terminate employees
✓ Comply with federal labor laws
✓ Protect your business from competition by employees
3. Business Entities

As you probably know, there are legal entities which allow a business to take on an existence apart from its owners, even though the owners still control the business. Corporations and partnerships were the two traditional legal entities that allowed this, but that list has grown longer to include limited partnerships, limited liability companies, and Subchapter-S corporations. This first part of the First Year Small Business Survival Kit provides you with a brief overview of what choices you have when selecting a legal entity for your business and the relative merits of each.

_Importance of Choosing the Right Entity_

Why is the type of legal entity you chose for your business important? Because owners can be liable for tax liabilities and tortious injuries (think: slip and fall, employee lawsuits, etc.) caused by their business. Whether the owner is then personally liable for such liabilities of the business often hinges on the type of legal entity chosen. What this means is that depending on the type of entity you choose, you (the owner) could be personally sued (as opposed to just your business being sued) by the government or private parties if things go wrong and people are looking to get money out of someone. With the proper choice of legal entity, you can worry less about such a thing happening (law, being an uncertain science, can never promise you that there is nothing to worry about).

_Factors going into the Choice of Entity Decision_

Every single fact concerning your business is relevant to the choice of entity decision. Not all of them are of equal importance, but they all matter to some degree. For almost all start-up companies, the considerations that should be in the forefront when choosing the type of entity are not the sale of ownership interests to the public or venture capital financing these things come later (hopefully!). Instead, the initial focus should be on:

- The tax and tort liability issues
- Cost of maintenance of the entity
- Protection of intellectual property (very important and often overlooked)
- Size and complexity of the entity
- Local, state or federal regulatory requirements
- Proposed business activity
- And other similarly mundane issues

These are much more relevant to a young business, albeit less exciting than “going public” or getting loans and venture capital money. Still, success depends upon them. Please pay attention to your choice of entity at some point, it really does make a very large difference later on.
Here is a list of standard business entities. Each one is subsequently discussed in greater detail.

- Limited Liability Companies
- S-Corporation
- Limited Partnerships and Partnerships
- C-Corp
- Sole Proprietorship

**Limited Liability Companies**

Limited liability companies (“LLC”) were first allowed in 1977 when Wyoming passed a statute allowing their creation. Now every state and the District of Columbia allow business people to form LLCs. The main advantages of an LLC are the protection the LLC owners receive from business creditors and the fact that, unlike a limited partnership, all the owners can fully participate in the management of the business. We discuss LLCs in this section and conclude with a brief discussion of the taxation issues involved in an LLC.

**Formation**

An LLC is formed by submitting articles of organization to the Secretary of State of a state. There is a fee usually associated with the formation of the LLC, the size of which varies depending on the state. The “e-Business Press LLC Formation Kit” contains specific instructions in how to do this for each state.

After the parties submit the articles of organization, the owners of the LLC (called “members”) usually enter into a written agreement about how the LLC will be run, who is in charge of running it, how profits will be divided up, etc. This agreement is called the operating agreement and it is similar to a limited partnership agreement. (See the “Sample Operating Agreement” contained in the Legal Forms Library Section.) If there is no operating agreement, then the state “default” rules come into effect. These default rules are found in the LLC statutes of the state where the articles of incorporation are filed. Generally speaking, it is better to have an operating agreement than it is to rely on the default rules, if only because it forces the members to think about many practical aspects of running a business at the outset and agree about such matters before real money is at stake.

The people who actually run the LLC for the members are usually called the managers. The managers can be, but usually do not have to be, members of the LLC (it depends on the state law where the LLC is incorporated). The managers can be set up to resemble a board of directors if that is what the members want.

**LLC Advantage Over Partnership Entities**

The LLC has one very large advantage over the general partnership: members of an LLC do not take on any personal liability for the obligations of the LLC, and members are only liable for debts of the LLC to the extent of their ownership interest in the LLC. Also, there is no requirement that the LLC have a general partner liable for LLC debts found in limited partnership entities. Moreover, unlike a limited partnership, there is little chance that
members will somehow lose the LLC’s liability protection by running the business affairs of the LLC.

**LLC Managers**

As mentioned earlier, an LLC can opt for a management structure that allows certain people called “managers” to control the LLC. These managers usually possess the same scope of powers as a general partner would have in a standard general partnership: they can sign contracts, sell assets, and make other important business decisions for the business. The actual powers are spelled out in the state statute or, more often, in the LLC operating agreement.

But managers are not required if you want to form an LLC. The members may simply retain all managerial authority for themselves. Or they can grant partial or limited powers to certain members and/or managers. In fact, almost any practical division of power among members and/or managers is possible with an LLC. This flexibility of control by the owners is one of the very best features of the LLC.

**Continuity of Existence**

The death, retirement, withdrawal, or bankruptcy of a member or manager may, in some states, end the existence of the LLC. But the laws concerning this issue are currently changing, so we cannot tell you the state of the law in general. The operating agreement will usually cover this topic and your attorney should know whether the state where the articles of organization are filed allows continuity of existence in such instances. (If he does not, find a more sophisticated attorney!)

Apart from the death, retirement, bankruptcy or withdrawal of a member or manager, an LLC usually only ends upon the date of expiration (often set at 25-30 years from the date of formation) or, if there is no expiration date, then upon mutual agreement of a majority of the members. Expiration dates, dissolution of LLCs upon the certain events, and similar rules are state law remnants from an earlier time when the IRS had some peculiar rules about limited liability companies.

**Why use it?**

The LLC is often attractive to entrepreneurs because they can retain control of the business by acting as the manager or controlling member while still being able to enjoy the tax benefits of a tax flow-through entity. LLCs are rapidly becoming the preferred entity over limited partnerships and S-Corporations (both of which provide similar tax benefits) because LLCs do not need a general partner and do not require the legal (i.e., costly) “maintenance” associated with a Subchapter S-Corporation (discussed below).

**Tax Aspects of a Limited Liability Company:**

The LLC enjoys the same “flow-through” tax treatment that partnerships and S-Corporations do. The rules concerning capital accounts, contributions and other basic partnership taxation principles apply to LLCs as well. You may want to jump to our discussion of LLC, partnership and Subchapter S Corporation taxation if you haven't reviewed it already.
In short, this means that although the LLC must file a tax return, the LLC owners report income and pay the taxes owed on such income using their personal returns. The LLC itself does not pay taxes on its income. (At this time, the IRS has not developed a separate tax return form for LLC, so the same form used for partnerships is used IRS Form 1065.) The owners will each file a Schedule K-1 with their personal income tax return, which will show their “share” of the LLC income. While this structure avoids the double taxation dilemma of the C-corporation, there is a downside. The taxation downside is that, unlike a C-corporation, an LLC (just like a partnership or an S-Corporation) cannot retain earnings (see Glossary for definition of “retained earnings”) without the owners of the business having to pay income taxes on those earnings.

One of the very best features of the LLC is the fact that you can divide up the ownership—the “voting” interests differently from the rights to distribution of profits (and losses) the “profits” interests. For example, suppose you went into business with another person and both of you wanted to own 50% of the business. But you were going to work for the LLC full-time while the other person was going to keep her full-time job and work for the business part-time. Well, you could each still own 50% of the voting interests while dividing the profits interests into a 75%-25% split or some other ratio to reflect your different levels of effort. While you can still technically do this with a partnership, it is more difficult from a tax compliance point of view.

You should be aware that some states impose a tax on LLC income tax (for no clear reason other than a simple money grab). So you should check with the state tax authority of each state in which your LLC will earn income to make sure that you are not going to have to pay an additional amount of money in LLC income taxes.

Our Preference

We recommend this structure, it really is a good entity. (We use it for the business affairs of e-Business Press!) But you will need the advice of a good business attorney if you want to implement some of the more sophisticated LLC ownership options.

Corporations

There are different types of corporations, but the one nearly every entrepreneur is interested in is the general business corporation. Corporations are creations of state laws (or a foreign nation, like Bermuda, if you want to be exotic). The basic structure and attributes of a corporation do not change much regardless of the state, although there can be a great deal of variety concerning the more particular characteristics and duties of a corporation in any particular state.

This guide to corporations is a rough sketch. Your state's laws (or the state in which you wish to incorporate, if different from your home state) may differ in ways that will affect your decision, so be sure to talk to an attorney familiar with corporate law. You do not have to incorporate in the state where you live. And just because you live in Utah, Michigan, New York, or wherever does not necessarily mean you want to incorporate there! Talk to an expert in corporate law who can explain (1) how your home state will treat a business incorporating there relative to other states and (2) discuss the benefits of some of the other
states commonly chosen by business people as the state of incorporation. All states are not alike in their corporate laws. That being said, the differences between the laws are usually marginal factors to consider, not central ones.
Formation

Although the selection of a state for incorporation is one open to your discretion, the manner of incorporation is not! Laws governing incorporation must be strictly followed, otherwise the attempt at incorporation may fail and a partnership may result. Fortunately, the necessary actions to incorporate are fairly standard:

- Prepare and execute a pre organization subscription agreement for the stock that the corporation will issue
- Prepare and file the corporate charter with the appropriate secretary of state
- Prepare the by-laws
- Hold an organizational meeting of the board of directors
- Establish the books, records, home office, etc. of the corporation
- File any follow-up and annual reports required by the state

These actions are all discussed in greater detail in the e-Business Press Corporation Incorporation Kit.

Characteristics of a Corporation

Like an LLC, a corporation is an autonomous legal entity, existing apart from its shareholders, officers and directors, whereas neither the sole proprietorship nor the partnership can truly be considered entirely distinct from the persons creating it. For a startup, the most important characteristics of a corporation are the continuity of existence, lack of flow-through tax treatment, limited liability for investors, and the ease of adding investors and selling interests.

Continuity of Existence

Corporations have a kind of legal immortality. With proper care and maintenance, the Corporation should exist for as long as the shareholders (i.e., the owners of the business) desire. A corporation continues on regardless of the circumstances surrounding the owners. Deaths and transfers of interests in the corporation have no impact, and unless the state law has put a limitation on the existence of a corporation, it can continue indefinitely.

The shareholders can dissolve a corporation by a vote, and legal proceedings can also end a corporation's existence. Often, one of these two methods will be employed by shareholders when the corporation's future looks bleak. Judicial dissolution is the commonly used method when there is infighting among the shareholders.

Limited Liability

Unlike partnerships and sole proprietorships, corporate shareholders are not liable for any of the corporation's debts. This means that what you pay for the stock is the total sum that you are risking, and nothing more (just like a limited liability company). This is true regardless of how much a shareholder participates in management. A shareholder who owns 100% of a business and makes every decision cannot be held liable for the debts of the corporation, unless he runs afoul of a certain area of law known as “piercing the corporate veil”. Also, the corporation will be liable for the acts of its employees and agents who commit tortious acts, but the owner will not.
This protection against liability for corporate debts and liabilities is deceptive to the uninitiated. You must understand that most lenders (banks, investors, etc.) who offer money to small corporations make the principal owners sign personal guarantees for the loans made to the corporations, so the limited liability of this structure (and all other structures) is somewhat misleading. As a young, untested business, you will probably have to take on some of the liabilities of the corporation by signing personal guarantees. The benefit to incorporating still exists, however, because you only take on those liabilities to which you consciously agree. But remember, if you sign a personal guaranty for corporate debt or liabilities, the limited liability feature of a corporation (or any other entity) is no protection against the enforcement of that guaranty.

**Note:** The limited liability feature of LLCs, corporations and limited partnerships will not protect you against lawsuits alleging fraudulent or criminal actions by you in the course of corporate business, but that is just common sense. After all, you cannot expect corporate laws to protect crooks from suffering the consequences of breaking the law.

**Piercing the Corporate Veil**

This is a dramatic name for a simple act. When a corporation experiences financial problems, and creditors are not going to get back all of their money, courts are often asked to issue a judicial order stating that the corporate owners are liable for the corporation's unpaid debts. If the courts agree to issue the order, this act is known as “piercing the corporate veil”. Before issuing such an order, courts look at certain actions by the owners and management of the business to determine if the order is warranted.

Generally, the court looks at three factors:

- Did the owners fail to observe corporate formalities such as keeping minute books, passing resolutions, and holding board meetings?
- Did the shareholders treat the corporation as a separate entity or as a simple artifice?
- Did the corporation have any money to start with or in its infancy or was it merely a shell?

To avoid such judicial action, shareholders and directors of smaller corporations should follow a few basic rules:

- Treat all corporate money as just that, corporate money. Do not commingle personal funds with corporate funds.
- Deal with third parties as an officer of the corporation, not as a person making a business deal on his or her own.
- Start the corporation with enough money to make it legitimate. (How much is enough? Talk to a competent business attorney! At least if he gets it wrong you will be able to sue him if the corporate veil gets pierced because of undercapitalization. But we have started corporations with as little as a few thousand dollars.)
- Treat the corporation like it is a separate entity. Take care of the minute books, save all documents, make sure the small stuff is taken care of and observe all formalities. A little time spent this way can save a lot of money later.
Ease of Adding Investors and Selling an Interest

To add new investors or sell an interest, the transacting parties simply exchange shares. Absent a shareholders’ agreement to the contrary, there is no requirement that the other shareholders agree to the transfer, and there is no way that the other shareholders can withhold any of the benefits of stock ownership from the new shareholders. The new shareholders step into the place of the old ones without any diminution of rights or interest. In a small business, this kind of transferability is not a good thing for the other, non-selling shareholders. After all, who wants strangers coming into the business through a stock sale? That is why a Shareholders Agreement restricting such actions is commonly signed among the shareholders. (See the Sample Shareholders Agreements in the Legal Forms Library Section.)

Maintenance

Corporations require greater maintenance than other business entities. In addition to the state filing fees, states often require corporations to pay franchise fees or other taxes as part of their yearly re-licensing. Added to this is the expense of board and shareholder minute preparation, registered agent fees, board of directors proceedings and legal fees stemming from an increased need for attorney's advice about how to perform corporate actions “properly.” Moreover, more owner and employee time is spent on caretaking of the entity than is generally performed for other entities.

Where to Incorporate

As you may know, each state has its own version of incorporation statutes. Any one of the fifty states can be chosen by a small startup deciding to incorporate, regardless of what state in which the owners reside or conduct their business. Some states, however, are generally preferred due to their more sophisticated body of law concerning corporate law. Delaware, New York, and (happily, for all you Left Coasters) California are all considered to be among the “top-level” states when incorporating a new business.

People often choose Delaware as the state of incorporation due to the flexibility and the management-friendly body of legal rulings handed down by the state's court system. With an expeditious incorporation process, no minimum capitalization requirements and broad rules concerning a corporation's indemnification of its directors, Delaware is in some ways very attractive to small startups. Nevada and Maryland are among the other corporation-friendly states.

Please note, however, that where you incorporate is not the only place where you will have to worry about state laws affecting your business. Whatever states (or countries!) in which your business (be it a partnership, corporation or anything else) actually does business, your business will be subject to that state or country's laws, and you could be hauled into court in that jurisdiction as well. As ever, sound legal advice is a good thing when entering a new state or country for the first time. California, for instance, requires “foreign” (this term includes corporations from other states) corporations to comply with some terms of the California state corporate laws when those foreign corporations start to do business in California.
Management and Control

According to law, day-to-day management of a corporation rests with the officers appointed by the board of directors, who are ultimately responsible for the management of the corporation. The board of directors is elected by the votes of the shareholders.

The exact duties of the board and the officers are usually spelled out in the by-laws or, less frequently, the articles of incorporation.

Oftentimes, there are agreements between the shareholders of smaller corporations dictating who the shareholders will put on the corporate board of directors. Other voting arrangements include creating different classes of stock entitled to different numbers of votes.

In addition to voting for the board, shareholders have the right to inspect the corporate records and official documents.

Death of a shareholder has no impact on the corporate structure, unlike a partnership.

Fiduciary Obligations of Officers and Directors

Officers and directors of a corporation owe that corporation and its shareholders a fiduciary duty of good faith and fair dealing. In essence, the fiduciary duties of a director or officer require them to act in the best interests of the corporation and use reasonable care when performing their duties. Essentially, this means that you, as an officer or director, have to do what is best for the corporation, even if that is not what is best for you. These duties exist whether the corporation is public or private, big or small.

Although these duties sound easy enough—being and honest, forthright and conscientious officer or director is enough most of the time in the tangled spaghetti relationships that usually exist in small corporations, where directors, shareholders, officers and creditors are often all the same people, discerning the proper course of action is sometimes difficult. And it is important to know that an officer or director’s failure to observe his or her fiduciary duties creates a potential legal liability for that officer or director.

Recently, courts have begun imposing the fiduciary duties on the majority shareholders of small corporations who are dealing with the minority shareholders. For instance, if the corporation is very profitable and the minority shareholders want a dividend to be paid out, but the majority shareholders are refusing to do so (hoping that this forces the minority shareholders to sell their shares to the majority shareholders at a lower price), a court is likely to step in and treat the majority harshly. The court may impose a monetary award to the minority shareholders or otherwise involve itself in the management of the business until things get worked out.

Transferability of Interests

As said earlier, unless there are specific agreements to the contrary, owners of shares may freely transfer them to potential purchasers (subject to securities laws).

Parties may agree to reasonable restrictions on the sale of shares in a corporation. This type of agreement, called a shareholder’s agreement, is often done to prevent a shareholder from selling to a new party which the other shareholders find unacceptable. Also, majority
shareholders usually have a duty not to knowingly (including those instances where they should have known) sell their shares to a purchaser who intends on “looting” the corporation's assets.

But just because you can transfer shares does not mean someone will be eager to buy them. Shares in a small corporation are often difficult to sell, unless the shares are listed on a recognized exchange, and even then large blocks may be difficult to sell. Moreover, successful small businesses are often dependent on the personal relationships of the people running them. The continuation of sales, supplies, and personnel may all depend heavily on the few people running the corporation. A person buying such a business cannot be sure that when he buys the business, he will get everything that he sees in the business before the purchase. And if it is less than a majority stake, the purchaser is stepping into position of weakness relative to the other shareholders. For all these reasons, shares of smaller corporations tend to be hard to sell unless there are extensive discussions among the parties and their legal advisors.

**Tax Aspects of a Corporation**

This is the downside to corporations, at least as far as small businesses are concerned. With a corporation, you do not get the “flow-through” tax benefits that all of the other small business entities enjoy. What this means is that the profits and losses of the company are, *in terms of tax-reporting*, the company's profits and losses, not yours. The corporation will have to file a tax return and pay taxes on the income it receives. Then, if dividends are then paid to the owners (you!), those owners will have to pay taxes again on the money received as dividends. This is the “double taxation” that so many corporate shareholders grumble about.

There are ways, however, for small corporations to avoid the double taxation of corporate income. Often, a small corporation will pay its owners salaries rather than pay dividends. This is a plus since the corporation gets a deduction for the amount paid to shareholders. But the IRS watches such salary payments very closely, and if you push it too far, those salary payments may be treated as dividends. Not surprisingly, startup businesses rarely adopt the traditional corporate format (unless it is going to “go public” almost immediately after creation, something that occurs about as often as Immaculate Conception). Instead, small businesses usually opt for one of the other corporate forms we discuss in this section, including Subchapter S Corporations.

**Subchapter S-Corporations**

A Subchapter S-Corporation (an "S-Corp") (the name comes from the IRS tax code subchapter governing s-corps) is a hybrid between partnerships and C-Corporations. S-Corps are formed much like the traditional corporation described above (known as a "C-Corp") and have a very similar structure. S-Corps have shareholders, by-laws, articles, stock, etc., just like C-Corps. But the tax treatment of the S-Corp is markedly different from that of the C-Corp.

Unlike a C-Corp, all income and losses of a S-Corp are attributed pro rata to the owners, so owners of S-Corps receive the same sort of “flow-through” tax treatment as owners of
partnerships and limited liability companies. This means that there is no “double taxation” of an S-Corp’s income like there is with the C-Corp.

Another advantage to a S-Corp is the lower taxation rates applicable to S-Corp income as compared to the C-Corp. You see, the tax rates the IRS applies to regular C-Corps are generally higher than those applied to individuals. Thus, when S-Corp's income (i.e., profits) is distributed, it will be taxed at the rate of the individual owners, rather than the higher rate applicable to C-Corps.

Please note, however, that you need to meet certain guidelines to be eligible for S-Corp status.

- The corporation is formed under the laws of one of the fifty United States
- The corporation has no more than thirty-five (35) shareholders
- Only individuals or their estates (and certain types of trusts) own shares in the corporation
- The corporation’s owners do NOT include any nonresident aliens
- The corporation is not a holding company of another company, a bank, thrift, insurance company, DISC or section 936 corporation

(If you don’t know what a DISC or section 93 corporation is, you almost certainly don’t have to worry about falling into those categories!)

In addition to satisfying those prerequisites, S-Corps need to file IRS Form 2553 with the IRS in order to qualify as a S-Corp. Once filed, the S-Corp election will remain in force until you notify the IRS that you revoke the S-Corp election. Please note that you can file an S-Corp election at any time for a particular tax year up until the sixteenth day of the third month of that tax year.

If you are going to run a small business using a corporation, the S-Corp structure is a much better entity than the traditional C-Corp. So you should probably make an S-Corp election if you wish to use a corporate entity. But, frankly, we are not big fans of S-Corps. We prefer the limited liability company because it requires less legal “maintenance” than the S-Corp.

**Partnerships**

There are two types of partnerships, general and limited, each of which are discussed below. Like all other business entities, partnerships are a creation of state law. It is an interesting fact that, where there is more than one owner, the majority of small business enterprises are general partnerships. Given the liability business people face as general partners, this fact is somewhat disturbing.

**General Partnerships**

General partnerships consist of two or more partners, and each one of those partners carries unlimited personal liability for the obligations of the partnership. Each partner has complete and equal managerial control over partnership affairs unless there is a partnership agreement stating otherwise.
The law governing general partnerships can be found in the Uniform Partnership Act (the “U.P.A.”). The U.P.A. is a model law that states around the country have adopted with greater or lesser fidelity. Some states modify it or fail to update their laws as the U.P.A. is revised, so there is some state to state variance.

The laws contained in the U.P.A. are general guidelines for partnerships and are usually open to modification by the partners. In the parlance of attorneys, the U.P.A. rules are “default rules” that apply if the partners have not expressly contracted otherwise. Because the U.P.A. serves as only a fallback or “default regime”, business people have a great deal of flexibility to craft agreements governing the issues important to their businesses.

Although a partnership can be formed very informally and without legal aid, it is preferable to have your lawyer draw up an agreement reflecting your particular needs, if only to prevent future disagreements between the partners.

A partnership has some characteristics of a separate legal entity. Often, a partnership can sue other parties in courts and convey or buy property. But again partnerships retain one very large disadvantage of the sole proprietorship: partners are held personally liable for the obligations of the partnership. Unpaid debts and tax bills of the partnership can result in the partners' personal assets being subject to seizure.

**Formation**

Formation of a partnership can be easy. Two people who say to each other, “let’s share the profits from this business!” may be partners under the law, even if they do not write anything down or say another word on the topic. Clearly this is not the best way to form a relationship where any more than nominal amounts of money are going to be involved.

Assuming you have a lawyer help form your partnership, the expense will come from the attorney-time necessary to craft a proper partnership agreement. Partnership agreements tend to be less standardized than other business entity agreements and thus need more attention. In any event, the expense should never be over $2000, and it is worth the expense to have the clarity that a well-drafted partnership agreement can bring to your partnership. Even though formalities are unnecessary when forming a partnership, each state's law should be consulted to insure that there are no particular requirements (for example, New York requires a filing in every county where the partnership will be doing business).

Note that it is possible that the law will treat your business as a general partnership in certain circumstances (e.g., sharing profits, failure to legally create a limited partnership or a corporation, representing oneself as a partner) even without any formal agreement between the supposed partners.

Forming partnerships haphazardly is very risky financially since, as noted above, each partner is liable for the partnership liabilities and a partner's personal assets can be seized to pay such liabilities. When coupled with the fact that each partner has complete and total power to act on behalf of the partnership, you have a potentially ruinous situation. Imagine, for example, your partner taking out a loan from a bank in the partnership's name, which he could legally do, and then he loses it all in a risky derivatives deal that was a “sure thing”.

16
Who is liable? The partnership, and that means you are liable. Such occurrences can be easily avoided by selecting a different entity.

*Maintenance Costs*

Partnerships are often cheaper to maintain than corporations. Partnerships do not have to make minutes detailing their actions like corporations so there is less paperwork needed in running a partnership.

*Personal Liability for Partnership Debts*

Each general partner in a general partnership has personal liability for all of the partnership debts. Under the U.P.A., general partners are jointly liable for partnership obligations. This means that each general partner must, in the event of the partnership being unable to pay its bills, pay the proportionate amount of the partnership debts equal to his ownership interest in the partnership. For example, if the partnership in which you have a 66% ownership interest cannot pay its bank loan of $100,000, then you will be personally liable to the bank for $66,666.67 of that amount (perhaps more depending on the state law and loan terms). The other $33,333.33 would be owed by the owner(s) of the remaining 33% interest.

Moreover, general partners are jointly and severally liable for the tortious acts of co-partners who are acting within the scope of the partnership business. Suppose there is a civil “slip and fall” court case against your business which results in a $100,000 judgment against your business. You would be personally liable for all of the money owed, regardless of the percentage of your ownership interest. Assuming that your partnership was broke and you paid the whole $100,000, your 66% ownership stake would allow you to seek reimbursement for the 33% of the $100,000 from your co-partner(s), but if your partner had no money you still have to make up the difference.

If nothing else, remember this: Any judgment rendered against a bankrupt or cash-poor general partnership can result in the personal assets of the partners being seized to satisfy the judgment. That means your car, house, bank accounts, etc. are subject to seizure to pay the debt. Think about this when you are choosing your partners and making your choice of entity.

*Management and Control*

The law is fairly quiet about management of a partnership, saying only that in the absence of an agreement to the contrary, all co-owners of the partnership have an equal right to manage the affairs of the partnership regardless of the actual ownership percentage. This means that a partner owning 90% of a partnership cannot overrule his two partners who own 5% each. This dispersal of management authority can be avoided by a well-drafted partnership agreement. This is often done when partnerships are formed, and management authority is commonly given to the partner who will be most active in partnership affairs.

Due to the law's lack of guidance on management, there is a great deal of flexibility in structuring a partnership's management. This structuring almost certainly has to be put into written form and will require an attorney's attention. One of the traditional reasons people preferred partnerships is that there was this flexibility of management structure, as compared with the rigidity of the corporation. The development of a hybrid entity, the
Limited Liability Company, has changed this, however. (Limited Liability Companies were discussed above).

_Fiduciary Relationship (the ties that bind!)_

Partners in a partnership are bound together in a peculiar legal relationship: fiduciaries. While the law may forgive a person's transgressions against other legal relationships like marriage, brotherhood, and parent/child, the law actually cares about fiduciary duties, and will not look kindly on those partners who do not honor their fiduciary duties. (Maybe this is because money is at the heart of a fiduciary relationship, rather than love—the law understands money, not love.) As a fiduciary of your partners, you will owe them your complete loyalty, honesty and fairness in all business dealings with one another. Once you enter the partnership, you cannot open a competing business, deprive the partnership of your time or skill, misappropriate partnership property (including intellectual property like computer programs), or take money out of the partnership without proper procedures being followed.

There is another aspect to this fiduciary relationship: no person can become a member of the partnership without the consent of all the partners. The law recognizes that people want to choose people with whom they will share this type of relationship, so there are rules concerning the inclusion of new partners. To illustrate, if one of your partners sells his partnership interest to another person who is not a partner, that new person is NOT a partner with all the rights and obligations that the law grants and imposes, at least not until you agree to have the new person as your partner. Note, however, that the new person would have a right to get the profits or losses that their ownership interest entitles them to (e.g., a 50% interest entitles them to 50% of the profits).

_Dissolution_

Partnerships, unlike corporations, do not have perpetual existence. Partnerships generally end upon the occurrence of the following events: (1) the death, retirement, withdrawal, expulsion, incapacity, or bankruptcy of a partner; (2) court ordered dissolution of the partnership; or (3) the expiration of any date set as the termination date in the partnership agreement. A well-crafted partnership agreement can avoid the operation of the law in this area, but it should be kept in mind that the partnership entity is generally more delicate than a corporation or LLC.

_Limited Partnerships_

A special type of partnership is the limited partnership. This type of partnership is found in almost all of the fifty states. Although it is based on the structure of the general partnership, the limited partnership has some very significant differences. Each of the following subsections will try to point out these differences.

_Formation_

To form a limited partnership, there are strict and inflexible statutory rules which must be followed, otherwise the attempt to form the limited partnership fails and a general partnership usually results instead.
A certificate must usually be filed with the state Secretary of State office or the office of the County Clerk in the county where the limited partnership will operate. This provides a public record of the existence of the limited partnership. The filing certificate must contain whatever information is required by that state's limited partnership act and must be signed by the partners.

Formation and maintenance costs are still present for the same reasons that the general partnership costs are present. (i.e., partnership agreements, etc. See above.)

**Limited Liability**

Limited partnerships have one very large advantage over the general partnership: limited partners do *not* take on personal liability for the obligations of the partnerships, they are only liable to the extent of the money contributed to the partnerships. The general partner in the limited partnership, however, retains *all* of the personal liability for partnership debts.

It is important to know that the limited partner's protection against personal liability can be lost in cases where a limited partner is found to participate in the control of the business beyond the limited role allowed to limited partners. What is the boundary of the limited role allowed to limited partners? How much participation is too much? Good question. This is a legal question which involves fine legal distinctions, so get help from your lawyer to help prevent the unintended loss of limited partnership status.

**Limited Partnership's General Partner**

As mentioned earlier, the limited partnership must have at least one general partner who is personally liable for the debts of the partnership debt. But since this general partner can be a corporation, this requirement does not mean that an actual person needs to accept potentially ruinous liability.

The general partner controls the limited partnership with the same scope of powers as a general partner would have in a standard general partnership. The general partner also owes the limited partnership entity at least the same level of fiduciary loyalty that a general partner in a general partnership owes, perhaps more. Limited partners in a limited partnership, however, generally do not owe fiduciary duties to one another or the entity.

**Continuity of Existence**

The death, retirement, withdrawal, or bankruptcy of a limited partner does not end the existence of the limited partnership, but instead only requires an amendment to the limited partnership's certificate. The limited partnership interest may be transferred to another person without the consent of the other limited or general partners. But the limited partner will still lack some rights unless there is approval by the other partners. The death, retirement, withdrawal, or bankruptcy of the general partner will dissolve the partnership.

**Why use it?**

The limited liability partnership is often attractive to entrepreneurs because they can retain control of the business by acting as the general partner, while still being able to offer limited partner investors the tax benefits of a tax flow-through entity. But with Limited
Liability Companies now offering the same benefits without requiring a general partner, new limited partnerships are becoming rare.

**Tax Aspects of Partnerships, S-Corps, and LLCs**

**Taxation Basics** The good news is that partnerships, S-Corps and LLCs are not subject to federal income tax on the income they earn. The bad news is that the owners of those entities are considered to have earned the income attributable to the partnership. (You don't expect Uncle Sam to let you keep all of that money do you?). What happens is that at the end of the entity’s tax year, the financial “books” for the year are closed out, and all money left over after bills, expenses, etc. are paid is (as far as the IRS is concerned) divided up among the owners according to their ownership percentages. And regardless of whether the money actually gets paid out to the owners, the IRS treats it as though all profits of the entity have been distributed to the partners according to their ownership interests. So a person who owns 35% of an LLC (or partnership or S-Corp) which made a profit of $100,000 in a given year will owe the IRS income tax on 35% ($35,000) of that $100,000.

**“Flow Through” Taxation Process** The owners then pay income tax on the money they received from the entity as though that money was personal income. This means that it gets included in your marginal rate calculation along with your other income as reported on your 1040. Alternatively, if the entity lost money that year, the partners get a deduction equal to the losses attributable to their ownership percentages (limited by the basis of what the partner invested and/or the “passive activity” tax rules).

Like any other business entity, S-Corps, partnerships and LLCs must obtain a federal employer identification number using IRS Form SS-4 and file annual returns even though the entity does not actually pay taxes. Remember, the entity does not actually pay any taxes when it sends in its return—the return is filed only for informational purposes. States almost always have a tax return form which must be filed annually as well.

For partnerships and LLCs, one of the owners must prepare and provide the other owners (if there is more than one) a Schedule K-1, which shows each owner’s share of the entities profits and losses. The K-1 forms are then filed with each individual partner’s personal tax return.

**Distributive Share** Sounds easy so far, right? Good. Now imagine you own a 50% ownership interest in e-Business Press LLC (a fine investment on your part, congratulations). At the end of 2001, e-Business Press has income in the amount of $200,000 (a bad year—it happens). You will have to pay income taxes on $100,000 of that amount. This $100,000 is considered your “distributive share” as a 50% partner.

Unless there is an agreement to the contrary, the law and the IRS considers all owners in an LLC or a partnership as owners of equal shares of the entity. This means that if you have three people in the entity, you each own 33.33% unless you agree otherwise. (Any such agreement should absolutely, positively, with no exceptions be put into writing and signed by each partner!) If you agree to split the partnership/LLC income in an unequal way—maybe to reflect the fact that some people bring more valuable skills or work longer hours to advance the business—the tax code and the law recognize this and will tax you
accordingly. So if you report to the IRS that a person holds a 65% interest in the entity’s income, that owner will owe income taxes on 65% of the partnership's income.

The Bad News

There is a downside to the “flow-through” taxation laws. If LLCs, partnerships and S-Corps generate profits but do not actually distribute those profits to the owners, the partners must still pay income tax on their respective shares of the partnership income. For example, if e-Business Press LLC earned $200,000 in income during 2002 (another bad year!), and rather than being paid out to the partners, this money was used to buy additional computer hardware, then the e-business Press owners would still have to pay taxes on the $200,000 income. If you think that you are going to run a business which will require a lot of retained earnings, you may want to consider a C-corporation. An alternative way to take the sting out of the tax bill owners otherwise face is to have the entity distribute just enough of the profits to cover the increased tax liabilities of the owners, keeping the remainder for the business.

Contributions and Capital Accounts

The money and property “given” or contributed to the business by the partners is called “contributions to capital”. The value of such contributions forms a partner's “capital account”. A capital account is more a financial record of your investment in the entity than an actual “account” like a bank savings account.

After the initial contribution, an owner’s capital account is increased by the value of the property she contributes to the entity and the owner’s pro rata share of any undistributed profits. A capital account is decreased by the distributions made to an owner or the pro rata losses allocated to that owner.

For example, suppose that in return for a 50% interest in e-Business Press LLC you give e-Business Press LLC $10,000 cash and $10,000 worth of computer equipment. This gives you a $20,000 capital account. At the end of 2003, Tanned Feet has made income of $200,000 (maybe we should close up shop?). You now have a capital account of $120,000. ($10,000 + $10,000 + ½ of $200,000)

Now suppose you receive $100,000 from e-Business Press LLC as a distribution. Your capital account is also now reduced to $20,000.

Contributions of Services

If you or another owner is a “skills” person who contributes no money or other property but is instead receiving an ownership interest for bringing a unique (or not so unique) set of skills to the business, you should be aware that the IRS does not recognize this as a “contribution” in the same way that cash or property is a contribution.

As far as the IRS is concerned, a person who receives an ownership interest without making a capital contribution of money or property is getting a valuable asset for nothing. This is a taxable event and the person receiving the partnership interest will have to pay income taxes on the value of the ownership interest received. Keep this in mind if one person is putting in $100,000 for a 50% interest and another is putting in nothing for her 50% interest. The person who put in nothing just received a $100,000 taxable asset and will have to pay taxes on that asset in the year she receives it!
Sole Proprietorship

A sole proprietorship is an individual (or married couple) who owns a business which is not otherwise incorporated or organized as a separate legal entity (i.e., there is no partnership, limited liability company, corporation, etc.). Putting it differently, sole proprietorships are businesses where an individual conducts business and holds title to property in his or her name and is directly and personally liable for the obligations of the business. There is no corporate entity or other legal device employed to hold the business assets or ameliorate the liability of the owner for any debts or obligations of the business.

Despite the personal liability that comes with the sole proprietorship, this form can be preferable where the owner contemplates no complex financing and no co-owner relationships with other parties. In fact, there are 15 to 20 million sole proprietorships in the United States—that is over 80% of the businesses in the United States!

Maintenance costs are very low for the sole proprietorship. Apart from any “doing business as” (a.k.a., d/b/a filings) filings necessary if the sole proprietorship is using a name different from that of its owner, no documentation is needed to organize a sole proprietorship and no special record-keeping or corporate formality is necessary. You would not even need an attorney to form this type of business entity. By hanging out an advertising sign, you have opened up a sole proprietorship.

Unlike other forms of business entities, there are no specific statutes governing the creation and existence of sole proprietorships. Instead, basic rules of contract law, tort law, and property law will apply. In addition to these basic concepts, all regulatory restrictions applied to businesses generally will apply to the sole proprietorship (e.g., environmental laws, civil rights laws, labor laws, etc.).

The existence of the sole proprietorship ends upon the death of the owner and the property of the business will be disposed of according to the terms of the owner's will. All assets of the sole proprietorship are owned by the owner as personal property.

On the whole, if you are planning to have a business of any sophistication, you probably want to avoid this entity.

**Tax Aspects of a Proprietorship**

The tax code treats the sole proprietorship and the owner as one and the same: income earned by the business is seen as income of the owner and must be reported on the owner's IRS Form 1040. Expenses of the business are also claimed by the owner as deductions against income on the owner's year-end tax return.

Another important point to remember about sole proprietorships is that sole proprietorships are taxed on all net income; there is no way for your small business to retain earnings without you being taxed on that money. For instance if your sole proprietorship had income of $50,000 one year, and you wanted to invest that money in new computer equipment, you will first pay income tax on that $50,000.
4. Small Business Accounting

First off, get yourself a program called QuickBooks by Intuit, or something similar, to help keep track of your business's finances. We have found that these programs are an enormous help to young businesses run by people who are not very familiar with standard accounting and management procedures. (We don't get any money for endorsing QuickBooks, so our recommendation is based on prior experience, not financial incentive.)

Second, do not ever make the mistake of saying “I'll take care of the books, taxes, etc. later I've gotta build my business first.” A few simple actions at the beginning and regular bookkeeping will avoid enormous problems later on. People who start a business first and worry about the boring stuff such as tax filings later are sure to run into problems. This may seem like a no-brainer to most of you, but we have seen very bright millionaires who thought they could either outwit the IRS and state revenue departments or simply put off those boring tax rules for awhile. As you can imagine, the legal bills (and possible criminal penalties) associated with these attitudes are debilitating to any business, let alone a small startup.

Please, please take care to file all necessary tax forms (local, state and federal) at the beginning. After that, keep your books and tax records up to date. This will help you avoid that tax-time crunch of trying to run your business while also re-creating a year's worth of financial records from memory. (By the way, it simply can't be done, and you will lose money as a result).

Financial and Bookkeeping Records

By law, you must keep financial records which are reliable and provide an accurate view of your business. Specifically, Internal Revenue Code Section 6001 requires businesses to keep records appropriate to their trade or business. The IRS has the right to view these records in the event they want to audit your business or personal tax return. If they do not like what they find, the penalties can be deadly to your business and ruinous to your personal financial well-being. In addition to the IRS's ability to audit your books, states often have laws requiring such records and employ auditors who show up unannounced insisting on seeing your state tax records.

Common sense demands sound record-keeping practices and up-to-date financial ledgers as well. Without financial records you are probably going to lose deductions and have much less control over how much money you make (or lose). For those of you with no accounting experience or training, record keeping may seem like a daunting and burdensome task, but it does not have to be. In this section we will discuss ways to make it simpler and, hopefully, less expensive.

Do it Yourself or Hire Someone Else?

Many small business owners hire someone to “keep the books” rather than do this work themselves. Bookkeepers can a certified CPA, a sharp secretary or even someone who works part-time keeping track of financial records. The price for such services should be
somewhere between $10 and $100 an hour depending on the level of qualifications and experience. (Clearly, the CPA is going to be the highest-priced bookkeeper.)

Whomever you select, always, always, always check into the background of your bookkeeper. You do this for two reasons. First, you must make sure that the know exactly what they are doing. To perform his or her duties, your bookkeeper must know about payroll deduction, income taxes, state and local taxes, filing deadlines, etc. Second, you must determine that your bookkeeper is so ridiculously honest that you can actually trust that person to watch your money. Giving someone control over your money is a very, very serious matter, as you well know. It is made even more serious because if your bookkeeper does not pay the taxes on time, your business (and you, personally!) could be liable to the IRS and your state and local tax authorities. In such a case, there would be fines and penalties in addition to the underlying tax bill.

While we understand that you have no desire to engage in routine record-keeping and tax work, you should take time to master your own record-keeping system. Consult a tax professional who can provide you a model record-keeping system, preferably a CPA who specializes in helping small businesses in your industry. Once you have the model system in place and know exactly how it works, hire someone to look after it for you and teach them to use your system for your books. Then you are not dependent on your bookkeeper. If he leaves, you can do your own books until you hire a replacement. Or if your bookkeeper seems untrustworthy or incompetent after you hire him, you can perform your own checks of your records to make sure everything is okay.

Doing it Yourself

Using computer programs to keep track of business affairs is probably the best record keeping advance since the development of the double-entry accounting system. So there is no point in not taking advantage of this, right? You will no longer have to worry about sloppy handwriting, computational errors, and data reorganization. If your business holds inventory QuickBooks is more complicated, but it is still far better than keeping records on paper. The biggest payoff to using QuickBooks is at tax time. With a few clicks of the mouse, you are nearly done gathering all financial information necessary for tax filings. QuickBooks accounts can be set up in about an hour. Although you may want to spend an afternoon reading through the manuals and information they send along with the program it is very helpful. We really cannot emphasize enough how much a computer system will help the neophyte business person organize and maintain their business records, so even if you do not like QuickBooks, try another program such as Peachtree Accounting.

For those of you who insist on keeping your records on paper (can you tell we are really trying to persuade you not to do this?), the method of organizing your records of expenses and income is fairly simple. You record all money paid to you, paid out to another, owed to you, or owed to another in your “ledger”. Any office supply store will carry a selection of lined paper set out in ledger format. Use this ledger to set up a list of your business expenses as they are incurred (money paid out), another list of money which is paid to you (business revenue).
Good record keeping is essential for any business. From the beginning, there are three types of records your business should absolutely maintain: a record of expenses, a record or income, and a record of assets. We briefly discuss each of these below. We do not delve very deeply into exactly why you need to keep these records, but as you read other sections in the Taxation section of this book, it may become clear. If it does not become clear, no big deal, just believe us when we say that your tax and account’s bills will be far smaller if you keep these records in order.

**Receipts and Record of Expenses** Like any business, you will incur expenses. Most of these expenses are deductible when tax time comes. All receipts, invoices, canceled checks, and contracts requiring payments by your business should be stored in a folder. (Preferably a folder ordering them by type rather than date.) Credit card statements should be kept even if you have the underlying receipts from the transaction.

You should jot down a quick note on all canceled checks and copies of receipts reminding you of what the expense involved. For instance, if you take a client out to dinner, write the client's name on the receipt, why you were having lunch (i.e., what business matter you discussed), the amount of the bill, and the restaurant. Or if you buy office supplies and the receipt does not list the items purchased and their respective cost, write them down yourself.

In addition to such records, you should keep a journal or “record of expenses” recording, at the least, the following information:

- How the expense was paid (credit card, cash, check number)
- Date of the transaction
- The party to whom the money was paid.
- The particular type of expense involved (e.g., office supplies, equipment, utilities, rent, etc.)

**Income/Revenue Records**

Hopefully, your business will make money as well as spend it. Just like expenses, you need to record all income (revenue) of your business. Your business's income, or “gross receipts”, needs to be carefully tracked because not all money your business receives will be taxable income. Money you receive from clients in return for your business's goods or services is taxable income. Money you receive from the bank as a loan is NOT. At the end of the year when you are figuring out your tax bill, it is vitally important for you to be able to separate the two and pay tax only on the former.

Different businesses use different methods of recording business income. Your local grocery store probably uses electronic cash registers which feed their totals into a central system. A local government one of the authors worked for during college simply deposited its revenues in a bank account and recorded the amounts deposited. You, a savvy entrepreneur of the computer age, will track business income on an accounting program, right? Right?!

It is absolutely vital that your records of income received (or other moneys received, such as loans) indicate precisely where the money came from and why you received it. If the IRS
audits you and it finds that your business's bank records show deposits totaling $200,000 but your tax return shows reported income of $150,000, a stern IRS auditor is going to ask you how your business came to possess that unreported $50,000. An inability to precisely say what it was (e.g., money lent by your bank, return of money lent to a relative, money inherited by you and put into your business, etc.), the IRS will label it “unreported income” and you will have to pay taxes on it as if this was business income.

Your record of revenues received should, at the least, record similar information:
- The type and amount of payment
- Date of the transaction
- The party who paid the money
- The work performed or good provided

**Asset Records**

All equipment (e.g., computers, fax machine, copiers, etc.) and other assets which have a life span of more than a year must be recorded and the cost amortized (i.e., deducted) over the life span of the asset. Thus, you need to keep records concerning your business's asset. You must keep asset records providing the following information:

- Description of the asset
- Date of acquisition
- What month you started using the asset (usually the same as purchase)
- Total amount paid for the item, including taxes, delivery charges and fees
- Sales price of any asset sold
- Date of sale of any asset
- Cost of selling the asset (advertisement, broker's fees, etc.)
- Whether you use the assets for personal use and, if so, how much time the asset is employed for such uses

Again, there are excellent computer programs which will help you maintain these records!
5. Federal, State and Local Taxation

Federal Taxes

Here are the basic federal taxes that your business may have to pay, depending on the type of business you operate.

Income Taxes on the Business and the Owner and How to Pay Them

Once a year, businesses will have to report to the IRS and (probably) the state tax agency the amount of money earned by the business in the prior year. The actual amount of federal income tax that your business pays each year is determined partly by the type of legal entity you have created. Therefore, the different legal entities file different forms with the IRS.

Sole proprietors file IRS Form Schedule C along with the owner's regular IRS Form 1040. If your sole proprietorship business has net income, then you must also file IRS Form Schedule SE along with the regular IRS Form 1040 to determine the Social Security and FICA taxes you must pay.

Partnerships, limited partnerships and limited liability companies file IRS Form 1065 to report income (but remember that you will have to report your share of the partnership's income on your IRS Form 1040 return as well). Just like for a sole proprietorship, please note that as a partner in a general partnership you are required to file IRS Form Schedule SE. (See discussion immediately above)

C-Corps file IRS Form 1120 or 1120-A. Remember that the C-Corp must pay income taxes on its profits, and the stockholders must also pay taxes on the dividends they receive (this is the infamous “double taxation of C-Corporations). So the corporation's profits will be taxed as it receives income, and then taxed again when those profits are distributed to the shareholders. Moreover, if you are an employee of the corporation as well as an owner, you need to pay income taxes on the salary paid to you.

S-Corporations file IRS Form 1120-S.

Note that as far as the IRS is concerned, you and your business are two separate entities, and both had better have their taxes in order!

Reminder: Get an Federal Employer Identification Number (“FEIN”) from the IRS using IRS Form SS-4. Do this just after you create your business entity. (Banks, customers, suppliers, etc. may ask you for this number so you really should get one as soon as possible.) Unless you are planning on operating a sole proprietorship without employees, you need an FEIN.

Income Taxes on Employees and How to Pay Them:

Withholding (Income) Tax

© e-Business Press, L.L.C.

Entrepreneur's Crash Course
If you have employees, you have the headache of withholding taxes from their paychecks and periodically sending that money to the federal government. Each time you hire an employee, that new employee needs to fill out an IRS Form W-4, listing the exemptions and additional allowances claimed by the employee. You then use this form to withhold the proper amount from the employees' paychecks, and send that money on to the federal government. At the end of the year, you must give each employee an IRS Form W-2. The W-2 will simply list the amounts withheld from the employees' paychecks and sent to the federal government. There must be a separate copy of the W-2 for each of the taxing jurisdictions (federal, state, and local governments) plus one more for the employees' records. You will also have to send a copy of the employees' W-2s to the IRS yourself. Also, if your business involves more than $20/month in “tips” to employees, your employees must report such tips to *your business*. *Your business* then has to withhold the appropriate amounts from the employees' wages.

**Social Security/Medicare/Unemployment Taxes**

Social Security, Medicare, and Federal Unemployment taxes will all have to be paid if you have employees. Social Security and Medicare taxes must be withheld from the employees wages and your business will have to match the employees' “contributions” to these federal programs. These taxes are paid together and appear on the annual tax return for the business. And just like the income tax, if your business involves more than $20/month in “tips” to employees, you need to account for these tips as part of these payroll taxes.

If you have employees during the course of 20 weeks of the year, or if you paid your employees a total of more than $1,500 in a year, you probably have to pay the federal unemployment tax. The federal unemployment tax, unlike Social Security and Medicare, comes solely out of your business’s pocket, with no contribution from the employee. Note that if your business's federal unemployment tax burden exceeds $100 per quarter for two quarters, then you need to make monthly deposits of the money owed. IRS Form 940 is used annually for a business to report the Federal Unemployment Tax due. Please note that IRS form 940EZ can be used by a business if your business (i) has employees in only one state, (ii) pays all state taxes sums due by the 940EZ date, (iii) the Federal Unemployment Taxes paid are also taxable by the state governments.

**To Pay Federal Taxes on Employees:**

Paying federal business taxes requires two actions: (1) EACH QUARTER, using IRS Form 941, report the income and payroll taxes withheld from the employees' paychecks and, (2) EITHER MONTHLY OR SEMI-WEEKLY, deposit the funds you have withheld by sending a check to a bank authorized to receive money on behalf of the IRS.

Reporting must be done every financial quarter. Money deposits of payroll taxes must be done every month or every other week, depending on the size of your payroll contributions. For the first year of your business, deposits will be monthly. After that, the IRS will tell you how often you must deposit the withheld payroll taxes.
Excise Taxes on Businesses and How to Pay Them

Federal excise taxes are imposed on the sale or use of certain items of property or certain transactions and on certain occupations. If your business involves selling firearms, alcohol, motor fuel, trucks, or gambling, you really need to look into the excise taxes. Depending on the type of business you operate, your business may have to pay excise taxes. IRS Form 720 lists the broad categories that this tax applies to. IRS Form 720 needs to be filed every fiscal quarter. If your business uses heavy trucks, buses, or trailers, on public highways, then your business may have to pay a special excise tax levied on such vehicles and IRS Form 2290 would have to be filed.

State Taxes

Depending on your home state's laws, you will need to file sales tax, employee withholding tax, income tax, and possibly others. The best way to find out exactly what you will need to file is to either contact a local accountant, or if you want to save some money, contact the state yourself. State tax departments often have guide books to help small businesses (and large businesses) comply with the tax code.

Your state will almost certainly require your business to have an employer identification number issued by the state. Your state employment development office can provide you with more information and the proper forms. (Do not confuse the number assigned to your corporation, partnership, or LLC by the Secretary of State with the Employer Identification Number. These are two different numbers, issued by two different state agencies.)

Again, just like federal taxes, there are legal penalties for not paying state taxes, and these penalties include criminal penalties.

Local Taxes

Now you definitely need to consult your local authorities. There really is no way to guess what possible local taxes, fees, etc. you may be subject to, so we can only tell you to contact your local government office in charge of revenue.

But remember that there are multiple levels of local taxation. There may be a county assessment on assets and a city or municipal tax on income.

Small Business Deductions

As a business person you are interested in keeping the amount of money you must pay in income tax to an absolute minimum. One of the best ways to do this is to deduct your business expenses from your reportable income. In the United States, businesses are taxed on their net income (profit). Net income is a business's gross receipts (all the money taken in over the course of a year) minus the business's cost of goods sold and total business expenses. On this page we try to explain what business deduction are and how deductions are a part of running a profitable businesses.

Deductions are the costs associated with running a business which can be “deducted” (hence the name) from the income your business reports to the IRS and state tax officials.
When you fill out your business's annual tax forms, there will be a line for this, so do not spend months learning tax theory to find out how to claim deductions. All you really need to know is one rule:

**ALWAYS KEEP RECEIPTS FROM EVERY SINGLE PURCHASE OF ANY AND ALL GOODS OR SERVICES USED TO RUN OR IMPROVE YOUR BUSINESS.**

If you do this simple thing, you are 99% of the way to mastering deductions. With a stack of good receipts showing times, dates, dollar amounts, and types of purchases, you can easily total up your deductible expenses at year's end and, if challenged by the IRS, produce the receipts to support your figures. If you do not keep good records, and you do not have any receipts at year's end, do NOT try to take deductions for items which do not have an accompanying receipt. You blew it. Jack, and your inability to document the deductible expenses makes it very risky to go ahead and try to claim them anyway. (The IRS gets nasty when people claim deductions without a receipt. And courts back up the IRS in such cases.) But if you are a good business person, and you keep your receipts, then deductions will become part of your life.

First off, remember that almost anything can be deductible. When deciding what to claim as a deduction, the question is not what was bought. The question that needs to be answered when deciding whether to deduct the cost of an item is why you bought the item. There are four general criteria you must satisfy before you can deduct the purchase price of an item as a business expense. To be deductible, an item must be:

- **An ordinary business expense:** an item is ordinary if it is normal, usual or customary and the kind of expense commonly incurred in a particular business.
- **A necessary business expense:** “necessary” in this instance simply means “helpful”. If the item is reasonably helpful to your business, then it is considered “necessary.”
- **Directly connected with your business** (in other words, hot tubs will not be deductible!)
- **Reasonable in amount:** basically, do not try to claim that a single ream of paper was $100 or anything silly like that. Deduct what the items costs, no more, no less.

Second, here is a list of typical expenses that are deducted by businesses:

- **Costs associated with accounting:** That's right, you can deduct those pesky accounting fees.
- **Advertising:** You know those flyers you made? Deduct the price. Business cards? Deduct that cost too. In fact, costs associated with your yellow pages, newspaper, magazine, and radio ads are all deductible, as are signs, billboards, and brochures. You can also deduct the cost of promotion items like refrigerator magnets and keychains.
- **Bank charges for business account:** Safe deposit boxes, bank overdraft fees, and other incidental bank charges are all deductible.
- **Bookkeeping costs:** Costs associated with payroll services, which will do the payroll for your business for a fee, are deductible.
- **Internet access charges/on-line charges:** If your business has a reason to be on the web, or if you need access to the web as part of your business, then deduct away!
- **Computer supplies:** Printer ink cartridges, RAM upgrades, etc.
✓ **Continuing education costs/seminars**: Note that if you incur education expenses as part of your existing business, these are deductible, but if you incur them as part of starting out on a new business or career, then you cannot.

✓ **Delivery costs**: The costs associated with shipping your product or delivering your service is deductible.

✓ **Entertainment costs**: A very tricky deduction! Talk to your accountant.

✓ **Equipment**: The cost of maintaining equipment used in your business, whether rented or purchased, may be deductible. (You should consult your accountant on this deduction, this gets into the capital improvement vs. business expense issue.)

✓ **Facsimile costs**: Yes, the cost of faxing is an expense.

✓ **Insurance premiums**: Insurance premiums for casualty, inventory, credit, business interruption, overhead payment, vehicle, employee medical, workers' compensation, state unemployment, liability (all different types), and even some types of life insurance on key employees (so long as you are not the beneficiary) are all possible deductions.

✓ **Interest expenses**: You know that money you owe the bank? The interest you pay can be deducted, so long as the proceeds from the bank loan were used for business purposes.

✓ **Legal fees**: Yes, legal fees arising from managing your business or producing or collecting income are all deductible.

✓ **Licenses**: Any license or regulatory fees paid to governments as part of your business are deductible.

✓ **Office supplies**: Those staplers, calendars, letter trays, paper reams, etc. are all deductible.

✓ **Postage**: Stamps are deductible.

✓ **Rent**: Yup, rental payments on your business site are deductible.

✓ **Repairs and simple maintenance of business**: Again, this is an area where you need to talk to an accountant to make sure you are not deducting a capital expense.

✓ **Subscriptions**: just like educational expenses, subscriptions to informative magazines are deductible.

✓ **Travel**: Now there are some very particular rules you must follow to get a deduction for travel expenses. Don’t think that you are going to convince the IRS that three weeks in the Caribbean was a business trip unless you can prove it. Your accountant can help you sort through the rules, but generally speaking, if you have hotel receipts and car rental receipts from true business trips, you have a deduction. There are also many nondeductible expenses which become deductible when you are on the road (e.g., dry-cleaning), so talk to your accountant about what else you might be able to deduct besides meals, transportation costs, and hotel charges.

✓ **Utilities**: Let there be light! And deductions on its cost!

✓ **Wages**: Wages paid to employees are deductible.
6. The Home Based Business

There is a very good chance that you are one of those people who is already in business, running your own home-based or micro business already to supplement income. It is also very likely that you are operating as a sole proprietorship, you have not incorporated a business entity, and you have no partners to speak of (except maybe a grumpy spouse or cat who doesn't like the hours you spend on your “project” instead of them). The good news is that you have business expenses just like everyone else, and you had better be deducting them! Please see our section on common business deductions to make sure you are not missing out on any deductions.

We will, however, discuss some particular tax issues related to home-based businesses. As you probably know, most expenses related to your business are deductible, whether those expenses are incurred at home, on the rode or wherever. But there is one deduction only home-based businesses can claim: deduction of part of the cost of a home.

Home Office Deduction

If you run your business out of your home, you might be eligible for the “home office” deduction.

You do not have to own your abode to deduct a portion of the cost! Moreover, it does not have to be a house. Apartments, condominiums, boats, or anywhere else where you can sleep and eat can qualify for the home office deduction.

In order to claim the home office deduction, your business, a part of your home must be used regularly and exclusively:

✓ As the principal place of business for any trade or business in which you engage,
✓ As the place where you meet and deal with your patients, clients, or customers in the normal course of your trade or business, or
✓ In connection with your trade or business, if you use a separate structure that is not attached to your home.

Regular and Exclusive Use

Please note that to claim the home office deduction, the home office space must be used regularly and exclusively for the home business. This means that your home office space cannot also be the kid's playroom or the TV room, nor can you only use the space for an office once in a while if you want to qualify for the home office deduction. But this does not mean that your home office must be separated or partitioned from other areas of your home, the office space merely has to be identifiable as a place regularly and exclusively used for business purposes. The only exceptions to the exclusive-business-use rule are for qualified daycare providers and for persons storing inventory or product samples used in their business.

Principal Place of Business
If you use both your home and other locations regularly in the same trade or business, you must determine which location is your principal place of business. The two primary factors used to determine your principal place of business are the amount of time spent in each business location, and the relative importance of the activities performed at each location. After 1998, where you perform substantial administrative and management activities will also be considered in determining whether your home is your principal place of business.

*If You Passed the Test.....*

Obtain Form 8829 from the IRS and the instructions for Form 8829. Form 8829 is filed with your individual income tax return. Form 8829 is long and it does require some effort but if you plan on taking the home office deduction, you really should file it and declare the home office deduction on Schedule C to IRS Form 1040. You risk attracting the IRS's reptilian attention if you try and take the home office deduction without filling it out. Some of the deductible business use of the home expenses may include the business portion of real estate taxes, mortgage interest, casualty losses, rent, utilities, insurance, depreciation, painting and repairs.

To calculate the home office deduction, follow these steps:

The amount you can deduct depends on the percentage of your home used for business. To figure this percentage, divide the number of square feet used for business by the total square feet in your home. (Or, if the rooms are approximately the same size, divide the number of rooms used for business by the total number of rooms in your home.) You figure the business portion of your expenses by applying this percentage to the total of each expense. (Qualified day care providers must reduce their percentage to take into account the time available for personal use of any area not used exclusively for business.)

If your gross income from the business use of your home is less than your total business expenses, your deduction for certain expenses for the business use of your home is limited. However, those business expenses that are not deducted because of the limit can be carried forward as part of next year's business-use-of-the-home expenses.

For renters, you add your total annual rent payments to your total annual utility payments and multiply this number by the percentage derived in step 1. The resulting number is your home office deduction.

For Homeowners, first find out from the local property tax assessor the value of your home versus the value of your property lot. (If you cannot get these numbers anywhere, a 20/80 split for the land and home, respectively will probably be the best bet.) Take the amount of you home's value allocated to the actual structure and multiply it by the number of years over which you must deduct the depreciation of your home. (Note there are specific rules concerning how you must depreciate your home. Depending on when you bought your home, you may be able to use a shorter period than the now-standard 39 years. Your accountant can tell you the number of years over which you must depreciate your home. Or check back here in a little while, we are putting together a chart.) Then multiply this result by the number derived in step 1. This will be your home office deduction.
Remember that, just like any other depreciable business asset, you can only deduct up to the amount of your basis in your home! There is also a downside to the home office deduction: tax recapture.

**Home Office Deduction Recapture**

Starting in May 1997, if you sell your home after deducting a portion of its cost under the home office deduction, you will have to repay any amount of the deduction “recaptured” in the course of a sale of the home. This means that if you deducted $15,000 of your home's cost, when you sell it, you will owe $15,000 to the tax man since you recaptured your depreciated amounts. NOTE: The standard $250,000 “exclusion of profits” typically available to homeowners who sell their home does not apply in this instance! In light of this recapture rule, many homeowners elect not to deduct their home office space—it simply becomes too much of a pain. But think about this, if you get ten years of deductions and then have to repay that amount, the government gave you a “loan” for ten years, right? So it may be worth it, it's up to you.

Renters should always take the deduction, however, they do not have to worry about recapture issues.

**Using “Losses” from Your Micro business to Offset Other Income**

Of course every small business is going to make its owners rich, but there may be some losses on the way to fortune. Losses from your home-based business can be used to offset your taxable income from your day job or your spouse's. You should also remember that your “losses” do not have to consist of only actual cash losses, the losses can be depreciation deductions for your equipment, home office, etc.

Think about this when you are buying a (new) computer, furniture, or paying your utility bills, all of these are potential tax deductions or “losses” stemming from your home-based business. But to get these deductions the IRS requires a few things. Your home-based business must be a for-profit enterprise—it cannot be just a hobby. (Of course there is no reason why your hobby cannot be turned into a profit-making enterprise, right?)

The IRS has a few simple tests to distinguish a for-profit business from a hobby. One is the “three of five” test. If your business shows a profit for any three years out of five, your enterprise is a for-profit enterprise. It does not matter how much profit you show in those three years, only that there is some profit. So you could have $25 in profit for three years and then claim $20,000 in losses for two of the years! Think about it! Even if you cannot satisfy the three-of-five test, you still may be able to claim deductions on your home-based business, it just gets a little more difficult. If you fail the three-of-five test, you can show a business enterprise by producing receipts, business records, advertising material, day planners, corporate records, state or local licenses and permits and other such indicia of business activity.
Taxes on Home-Based Businesses

Small businesses must make income tax payments on a regular schedule just like any other business. The two taxes you should be most concerned about are the quarterly estimated income tax payments and the self employment taxes.

Quarterly Estimated Taxes If (1) you are going to owe more than $1000 in income taxes AND (2) at the end of the year your tax bill will be less than either 100% of your tax bill for the previous year or 90% of the tax you will owe, then you must make quarterly estimated tax payments. You must make these payments using Form 1040-ES. This form and your payments must be made on April 15, June 15, September 15, and January 15. (These estimated tax payments will include the money you owe for payroll taxes such as Medicare and Social Security. See below!) Please note that most states are also addicted to prepayment of taxes, so you will probably have to send the state some estimated tax payments as well.

When you estimate the quarterly tax payment, what you should do is figure out how much you will probably owe in income taxes at the end of the year. Then plan on sending in one quarter of that amount with each tax payment. Using the previous year's income tax bill is a very good way to estimate the current year's tax payments. So long as you pay about 90% of your tax bill over the course of the four quarterly installments, you will not incur the 9% penalty for failure to comply. But if your adjusted gross income exceeds $150,000, you will need to pay no less than 105% of the previous year's tax to avoid the penalty. (And if your adjusted gross is this high, you probably should have an accountant who is helping you manage your tax affairs.)

You must pay a “self-employment” tax of 15.3% on all of the net income earned by your business. The self employment tax is made up of two different taxes, the Medicare tax and the Social Security Tax. NOTE: You stop paying the Social Security tax on any additional net income beyond the first $65,400. So if you made $100,000 in net income last year, you would only pay 15.3% on the first $65,400. For the remaining $44,600, you would only have to pay the 2.9% Medicare tax. (All other income taxes still apply as well, of course.) One half of the amount paid as self-employment taxes is deductible.
7. Contracts for the Small business

All sensible people are selfish, and nature is tugging at every contract to make the terms of it fair. -- Ralph Waldo Emerson (1803-1882)

Contracts can be divided into two basic types: contracts for the sale of goods (i.e., physical items) and contracts for the performance of services. If your business is selling knowledge or time (for example, a consulting businesses, day care providers, etc.) you will be selling services, not goods. If your business is selling a physical item, or selling an item along with services, you will be selling goods.

Regardless of whether or not your business will be selling goods or services, as a business person, at some point you will be purchasing both goods and services from others, so you should be aware of the laws governing both service contracts and contracts for the sales of goods. This section looks at contracts of both types.

Overview of Contracts

Contracts are written to help parties understand exactly what they are agreeing to at the time the contract is signed. The purpose of contract is not to obtain subsequent advantage if the parties to the contract sue each other. (If that is your purpose when writing a contract, you are unlikely to find many people willing to sign a contract with you.) Contracts are also supposed to help people remember what they agreed to as time goes by and memories of the deal terms fade. Given these two purposes, contracts should be written in as plain a language as possible and clearly set out the terms in an easily understood format.

For any contract, the essential elements are:

- **Identification** of the parties to the contract: this should include full legal names of people or legal entities, addresses, and any other information needed to positively identify a party.
- **Consideration** being given to each party to the contract: what each party will "gain" from the contract being signed.
- **Terms**: this refers to the "who? what? where? when? and how?" questions that must be answered by the contract for people to understand what the deal is all about.
- **Execution**: at some point, the parties need to agree that a contract, as it is then written (i.e., the same document), properly describes their mutual understanding.

A contract does **NOT** have to be written to be enforceable. If two parties come to an agreement that satisfies the legal requirements of a contract, an enforceable contract exists just as though it were written down. Of course it is often difficult to remember the terms of such agreements, so in practice business people avoid oral contracts.
Despite the ease with which a contract can be created, contracts are typically long documents with many, many clauses. This is not done solely to allow lawyers to charge more for writing them (although we suspect that is part of the reason). Saying something clearly in conversation and saying it clearly in a legal sense are two very different things, and the latter usually takes some additional words. But any reasonably intelligent business person should be able to read a finished contract and understand the terms contained in the agreement. If you cannot understand a finished contract, rest assured that it is the fault of whoever drafted the contract, not you—and for heaven’s sake do not sign the agreement until the words are written more clearly.

**Contracts for the Sale of Goods/UCC**

The laws covering the sales of goods may be summarized in one inverted cliche: let the **seller** beware!

If parties to a transaction for the sale of goods do not commit their understanding to writing, or if they engage in a “battle of forms”—i.e., goods sold despite neither party assenting to the contract sent by the other (see below)—the law will imply a contract with terms that are very much to the advantage of the buyer and the disadvantage of the seller including:

- 4 year warranties
- Implied warranties of fitness for a particular purpose and merchantability
- Recovery of consequential damages (lost profits) in the event of a breach of warranty or contract
- No force majeure

So a seller must be prudent when concluding a sales transaction, especially since a seller’s obligations are far more complex than those of the buyer, whose principal obligation is merely to pay the price. Before you relegate formal documentation of an agreement to the level of a handshake or otherwise minimize the importance of the paperwork, you should have an understanding of the consequences. Your understanding the law of commercial transactions could save your business thousands of dollars annually.

**Uniform Commercial Code**

Forty-nine states—all except Louisiana—have adopted the Uniform Commercial Code (“UCC”), which sets forth the basic guidelines for certain commercial transactions. Article 2 of the UCC establishes rules governing the formation, performance, and enforcement of contracts concerning the purchase and sale of goods.

Under the UCC, a contract will be found to exist if the parties, through their conduct, act as though they are contractually bound—e.g., by shipping and receiving the goods. This “contract by conduct” may exist even if the forms exchanged do not evidence an agreement on terms. The seller in such a situation may be bound by provisions he never even considered let alone discussed with the buyer.

**The Battle of the Forms**

The exchange of purchase orders and sales acknowledgment forms often creates just such a “contract by conduct” and is referred to as the “battle of the forms.” This legal “battle” is
too often lost because a selling business has inadvertently been committed to the buyer's terms (or, alternatively, the default rules supplied by the UCC) while at the same time assuming that the provisions of its own sales order form govern. The rules governing the "battle of forms" support the admonition: LET THE SELLER BEWARE.

A typical "battle of the forms" occurs when the buyer submits a purchase order, be it written or electronic. The purchase order will typically state that the purchase order is the offer to buy and is "expressly subject to the terms and conditions on the reverse side hereof." On the other side of the purchase order are probably some 20 odd terms and conditions. A seller, if it is like most businesses, responds with a sales order acknowledgment which contains its own terms and conditions.

Both seller and the buyer retain one another's forms but neither indicates in writing its acceptance of the other's terms. The goods are then shipped and (hopefully) accepted.

Eighteen months later defects in the goods appear. Seller contends that the warranty in its sales acknowledgment controls. But the buyer will contend that the actual warranty is contained in the buyer's purchase order form.

The two questions which arise are:

- Is there a contract?
- If so, what are its terms?

In other words, what are the parties' legal obligations?

In such a case, the UCC recognizes the existence of a contract: “Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract.”

**Terms of the Contract**

The question then becomes, what are the terms of the contract? The UCC answers as follows:

“In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of [the UCC].”

Thus, there is a contract. Not on seller’s terms. Not on the buyer's terms. But on the terms common to their respective forms plus such additional terms as the UCC may imply.

What terms are common to the buyer and seller’s forms? Most likely, only the description of the goods and the price. In any event, seller's warranty terms do not apply. Nor do the buyer's. If there is a warranty, it is by virtue of the warranties supplied by the UCC. The same is true of patent indemnification, damages for breach of contract or breach of warranties, force majeure, etc.

Please note, however, that in 99 cases out of 100, even if there is not a contract on the terms set forth in either party's form, no one ever knows the difference. The parties go through with the deal, the seller is paid the purchase price, and the buyer is completely satisfied with the quality and performance of the goods. Even if there is a problem, it is solved informally without the involvement by attorneys.
However, it is that 1 case in 100 where an informal adjustment cannot be made which may result in substantial losses to a business, losses which are not covered by insurance but which come directly off the “bottom line.” It is not even necessary that any such claims go before a court. For instance, a buyer's threat to enforce its rights to substantial consequential damages under the UCC would seriously undermine a seller's ability to negotiate a fair and reasonable settlement of any claims by buyer.

The Moral of the Battle

The moral of the battle of the forms is that for your business's protection, a basic agreement between the parties as to the major provisions—such as those governing warranty protection and damages in the event of breach—should be negotiated at the outset and the parties’ written agreement obtained before commencing any work on the purchase order. No amount of legal draftsmanship that can assure winning the battle of the forms. The only way to be sure that terms and conditions acceptable to your business are included in the agreement is to negotiate those terms and get those terms in writing signed by both parties. At the very least, those fundamental terms of the contract, such as warranty, damages, patent indemnification, etc., should be negotiated and agreed upon.

Specific Items to Include in Contracts for the Sale of Goods

Even if you have a written agreement accepted by both parties, unless that written agreement expressly covers—or in some cases excludes—the following topics, the UCC will supply these critical terms:

Express Warranties. The contract will include any representation or promise made with regard to the goods, whether those promises were made orally or in writing. No special language is needed to create an express warranty i.e., portions of your “sales pitch” or presentation may very well be held to create an express warranty which will bind your business. Expressly include whatever warranties you wish to have in the contract and then expressly exclude all others.

Implied Warranties. Warranties of merchantability, fitness for a particular purpose and other implied warranties are part of any contract for the sale of goods unless expressly excluded.

The warranty of merchantability will include warranties that the goods: (a) pass without objection in the trade, (b) are of fair average quality, (c) are fit for ordinary purposes. (d) are of even kind, quality and quantity. (e) are adequately contained, packaged and labeled, and (f) conform to any promises or affirmations of fact.

Warranties for a particular purpose arise when the seller knows the purpose for which the buyer is purchasing the goods and that the buyer is relying on the seller's skill and knowledge with regard to the goods. The goods are warranted as fit for such purpose. Salesmen for the seller can create warranties of fitness for a particular purpose, if for instance, they know what the end-use of the product will be.

Other implied warranties may arise from course of dealing or usage in the trade.

There are good reasons for excluding implied warranties: (1) Contractual certainty is desirable. (2) The contents of implied warranties are not well-defined.
Limited remedies (i.e., repair or replacement for breach of an express warranty) has no application to breach of an implied warranty.

Sellers should avoid any implication that the buyer is relying upon seller’s skill or judgment to furnish suitable goods. (Implied warranties can have serious product liability implications for your business.)

**Remedies.** The UCC provides that a warranty may be enforced for 4 years, and allows for broad remedies for the buyer including recovery of the purchase price, and damages in what could be substantial amounts. (See also the discussion on consequential damages).

**Consequential Damages.** The UCC allows a buyer to recover damages for any breach of the contract by seller. Consequential damages could include such losses as lost profits on resales, both present and future, loss of revenues, costs involved in system shutdowns, costs of retrieval and reinstallation, purchase of replacement products, damage to property, injury to persons, etc. The type and amount of such damages may be limited only by the buyer's imagination and the conscience of a court or jury. These damages could easily amount to 5, 6 or 7 times the total mount of the sale, if not more!

**Delays in /Delivery.** Under the UCC, failure to make timely delivery is a breach of contract except in very limited circumstances. The UCC excuses timely performance by the seller only upon “the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made.”

This provision has been strictly construed and would most likely not include difficulties in obtaining materials, delays by suppliers, strikes, etc., and may or may not even include so-called “acts of god” under certain circumstances. These questions are frequent subject of litigation.

**Patent Indemnification.** The UCC implies a warranty against infringement of any kind anywhere in the world, and allows a buyer remedies, including recovery of the purchase price, damages including lost profits, etc.

**What the UCC Leaves Out**

You should also note that the UCC will not provide some very basic terms. Unless you expressly include the following topics in the text of your contracts, the UCC will not provide you any of the protections given by these rules of law:

**Interest.** In absence of an agreement, the UCC does not allow your business to collect interest on overdue invoices, nor would it allow your business to charge for rescheduling (delays) of delivery.

**Confidentiality.** The UCC does not protect your business from misappropriation or wrongful disclosure of your business's confidential information.

**Entire Agreement.** Buyers often read into contract—even written contracts—more than you intended. They listen to and rely on your sales presentation, perhaps even the glowing recommendations and promises regarding that contract. The cases are legion in which a dissatisfied buyer has claimed misrepresentation outside of the written contract. Make sure
you expressly exclude all previous conversations and understandings by including an “entire agreement” clause.

**Purchase Orders and Sales Contracts**

A typical contract for the sale of goods (e.g., a purchase order or sales acknowledgment) contains many of the provisions noted below. Any purchase order or contract for the sale of goods should be reviewed for the following items. The recommended position for each clause assumes that your business is a seller of goods. But if you are a buyer of goods rather than a seller, taking the opposite position to the one recommended is the usual stance of a buyer.

**Warranties**

- Sellers often (and will probably be expected to) warrant that the products meet certain defined specifications and are free from defects in material and workmanship.

- Is the buyer's remedy for breach of warranty expressly limited to repair or replacement of defective parts, or refund of the purchase price, at your business's option? A provision specifying repair, replacement or refund as the remedy for breach of warranty will not be deemed to preclude the buyer from resorting to any other remedies not enumerated unless it is stated to be the sole or exclusive remedy.

- What is the warranty period? If the contract doesn't say what it is, it will be limited only by the applicable state statute of limitations, which is typically four years.

- Are implied warranties excluded? Sellers should limit the warranty to what is expressly stated and all implied warranties should be expressly excluded. Such exclusion should be conspicuous and specifically exclude the implied warranties of “merchantability” and “fitness for a particular purpose” if that is so desired.

**Consequential Damages**

Does the contract disclaim liability on the part of seller for consequential damages? Sellers should not agree to a provision permitting the buyer to recover consequential damages. Furthermore such a right must be expressly disclaimed or buyer's right to recover consequential damages will be implied under the UCC. Special, indirect, incidental and exemplary (punitive) damages should also be excluded.

**Delivery**

Does the contract contain a “force majeure clause” which excuses delay in delivery attributable to causes beyond seller’s reasonable control? Make sure that it does and covers principal uncertainties, especially seller’s ability to obtain material and parts in the ordinary course of business. This is especially important to protect sellers against shortages which can only be remedied by paying premium prices for materials.

Does the contract contain a “time is of the essence” clause? If so, delete it. This clause will have the opposite effect of a force majeure clause. This clause allows the buyer to terminate and/or collect damages if seller is even one day late in delivery. Note that a “rate of deliveries is of the essence” does the same thing and should be deleted as well.
Patent/IP Indemnification

Does the contract provide protection of seller from broad patent, copyright and intellectual property indemnification? The patent indemnification should be limited to indemnifying buyer for alleged infringement of U.S. Patents only, upon 10 days written notice, and provide that seller may undertake the defense of any such action.

Seller should also have the right at its option to (a) procure for the buyer the right to continue using the goods, (b) modify the goods so that they become non-infringing, or (c) refund the purchase price (preferably less depreciation). Your business will not indemnify buyer, and the buyer should indemnify your business, if the claimed infringement is a result of (w) buyer's detailed specifications, (x) parts supplied or designated by buyer, (y) modification of the goods, by someone other than seller, or (z) combination of seller's products with other products, the combination of which is alleged to be infringing.

Termination

Does the contract permit termination at buyer's convenience? If so, what payment is the buyer to make to seller? In the absence of anything to the contrary in the contract, when a buyer terminates without any fault of seller, seller would be entitled to money damages which take into account lost profits and reasonable overhead as well. Watch for provisions which would limit the payment to the cost of work in process and raw materials allocable to the terminated work. There could be significant costs (overhead, department allocations) associated with termination which would not be covered simply by payment for the cost of the materials. Other termination provisions to watch for are:

- Buyer demanding broad audit rights
- No time limit for payment of termination charges

Does the contract permit buyer to terminate for seller's failure to comply with any term of the contract? This should not be allowed. Buyer's right to terminate should occur only for a material default and upon 30 days written notice with an opportunity to cure the default during such 30 days.

Does the contract permit seller to terminate the contract on buyer's material default? If it is the buyer's form, this probably will not be in the agreement, but sellers should request that it be placed in there.

Acceptance

Does the contract contain any provisions which purport to defer the time of acceptance of the goods or permit the buyer to reject the goods well after the time of delivery? After the buyer has accepted the goods, its remedies generally are limited to those specified in the warranty clause—which hopefully have been expressly limited to repair, replacement or refund. Before the time of acceptance, the buyer's remedies are much broader—e.g., it may reject non conforming goods and recover money damages.

Most Favored Customers Clause

Does the contract contain a “most favored nations” or “most favored customer” clause? These should be refused, or, at the very least substantially restricted as such a clause will
impede seller’s ability to extend or negotiate certain benefits to large volume, long term customers without extending those same benefits to every other “most favored customer” both past and future.

If seller must agree, certain minimum restrictions on the applicability should be included:

- The same or substantially identical product
- Sold in the same volumes
- To similar customers
- On substantially similar terms
- Should NOT apply to promotional pricing
- Should apply only for so long as extended to a third party

**Indemnity**

Does the contract require seller to defend and indemnify buyer against all claims, liabilities, losses and damages arising out of actual or alleged defects in material or workmanship, or anything else? If it does, seller may be assuming significant contingent liabilities. It is commercially reasonable to limit the seller's responsibility to repair, replacement, or refund at your business' option. This should be covered in the warranty clause.

Other indemnification provisions should be reviewed carefully by your lawyer. In no event should your business indemnify the buyer for the buyer's negligent or willful acts.

**Entire Agreement**

Does the contract contain a provision to the effect that it embodies the entire agreement of the parties and supersedes all other agreements, oral or written, with respect to the subject matter?

If it does not, the buyer may later claim that certain materials extraneous to the written contract are part of the agreement of the parties—e.g., representations in sales presentations.

**Modifications**

Is the procedure of making modifications to the contract clear?

The contract should provide that no changes will be deemed binding upon a party without its written consent. Care should be taken not to proceed with substantial changes, or changes which might alter the delivery schedule, without getting buyer's commitment in writing.

**Confidentiality**

Does the contract contain a clause requiring both parties to retain in confidence proprietary information obtained from the other?

Or, is an adequate nondisclosure agreement in place?

**Product Licensees**

Does the contract purport to give buyer ownership of seller's source code, patents, technology or know-how?
Does the contract purport to grant buyer a license to seller's source code, patents, technology or know-how? Sellers should not agree to either clause.

Sellers should not consider escrowing its source code, except in the most exceptional situations. (Unless you really need or want a customer, source code escrow clauses are usually more headache than they are worth, but they are becoming more common.)

**Compliance with Governmental Rules and Regulations**

Buyers will insist that the goods meet certain standards such as UL, CSA, VDE, FCC. These requirements should be set out specifically in the specifications for the goods. If not, these requirements may be added to the warranty provision, thereby limiting the buyer's remedies to repair, replacement or refund. Additionally, the warranty should be limited to those regulations or standards in effect on the date of the contract.

Buyer may insist on compliance with OSHA or other government regulations. This clause should be resisted, if possible, as the regulations are complicated and confusing.

If such provision is to be included, it should be treated in the same manner as UL or FCC, thereby limiting buyer's remedies.

**Choice of law**

What law, if any, is specified as the governing law of the contract?

Preferably it will be the seller’s home state law, however, the importance of this is diminished since all states but Louisiana have adopted the UCC. The state chosen must have some connection to the transaction. Do not agree to foreign law.

Do not agree to provisions which confer jurisdiction in the courts of a particular state or require that any action be brought in a particular state.

**F.O.B. Point**

At what point does risk of loss pass? (In other words, when the goods are shipped, does the buyer take on the risk of the goods being lost at the time of shipment, delivery or some other point?)

When does title pass?

Who is to bear the expenses of transportation?

In the absence of anything to the contrary set forth elsewhere in the contract, the F.O.B. point will determine the point at which risk of loss, title and transportation expenses shift from your business to buyer. Make sure that there is no confusion on these points.

**Taxes**

Does the contract have a clause which requires the buyer to pay all taxes, duties and other governmental charges in connection with the sale, purchase, transportation, delivery or use of any of the goods (except for taxes based upon your business’ net income)?

Make sure that the contract does not limit the buyer’s responsibility to sales and use taxes. Many states have gross receipts taxes in lieu of sales taxes, and these should normally be for the account of the buyer.
Service Contracts

If your business is not selling a good or a product (can you touch it?), but rather a service (such as computer consulting, electronic repair, computer program writing, cleaning services, accounting services, etc.), then the contracts that your business will enter into with customers will generally be service contracts, not sales contracts. This section lays out the most common issues involved in service contracts (although certainly not all). This advice is general and not detailed enough to cover all of the legal issues involved in your business, so please use the given information as a starting point for educating yourself about the legal aspects of your business, not as a substitute for a lawyer.

Form Agreements

If your business is going to provide the same type of service to a number of different customers, and most service businesses do just this, or if you are going to hire independent service-providers on a contract basis, then your business needs to develop a standard agreement or “form”.

Your form should cover many topics. Of course, the form must contain everything your business absolutely requires before it will enter into a contract with a customer, such as fees to be paid, description of work to be done, dates for completion and payment, and other money and time issues, along with whatever unique terms that your particular industry requires. To the untrained eye, these parts of the contract are usually fairly straightforward. So you are probably assuming that you can put together the time, place and money portions of your form. Well, you are fairly correct, but here is a list of things that should be included in any service contract:

- Identification of the parties (duh!)
- Precise definition of what services will be provided and when, including a measure of what will constitute failure or success in providing services.
- How the fees are to be determined (i.e., set figure versus hourly fee versus combination).
- Warranties/guarantees/liability for negligence/etc.
- Ownership of any intellectual property created or disclosed during the course of the service contract (very important!).
- Non-competition agreements between customer and service-provider.

Items 1 and 2 are fairly easy to understand. A simple, well-drafted contract should cover these topics in a few paragraphs. The issue of fees (item 3) and how to pay them is, again, not a particularly difficult item, and your attorney should have some standard contract language he can use for any one of the different payment options.

The warranties, guarantees, and liability apportionment section of the contract is very important, and this is where your lawyer earns her money. You see, the warranties and guarantees section is one of the areas where the parties decide who takes on the risk of something going awry during or after the life of the contract. For instance, suppose an independent computer engineer is hired to retool a corporation’s web site. The web site is making a lot of money for the corporation already, but the corporation wants to jazz it up a
little and increase the amount of traffic the site can handle. Instead of making the site better, the independent computer engineer crashes the very-busy server. (We will assume that negligence by the engineer is an open issue.) Who pays for the lost revenue due to the crash? Who pays for a new engineer to come in and fix the problems? (Because the old one is not going to be allowed to touch the web site again!) A few quick clauses can take care of such headaches.

Quick tip: Make sure that your largest fears are covered by the contract language. For example, if you are concerned about someone stealing your intellectual property, have your lawyer focus on drafting ironclad protections against theft or inadvertent transfer of your intellectual property rights.

The sections dealing with the ownership of intellectual property rights are also crucial, especially if you are operating in an industry where all your company really owns is the copyright to a program or a patent on a product. If you are a company hiring service-providers who have access to your company’s intellectual property, then your company's service contracts should contain large chunks of language concerning the true ownership of any intellectual property to which the service-providers may have access. Also, your contracts should reserve the rights to any intellectual property created during the course of the service contract. If you are a service-provider, on the other hand, you will want the same provisions, except you will want the terms to grant you rights to use any intellectual property you help create or to which you have access. We doubt that the latter will be granted, but you may get the former. In any event, make sure that your lawyer is well-versed in work-for-hire agreements and intellectual property law.

The sections covering a service-provider's “agreement not to compete” is, yet again, crucial. When a service-provider is brought in, the service-provider is often given access, intentionally or not, to customer lists, pricing and cost information, product ideas, and other important information concerning a company's business. Assuming that the service contract contains language forbidding the disclosure of such information to third parties (language which should appear in the section governing intellectual property rights), companies must still worry about the service-provider using such information to start up a competing venture. The non-competition section should cover this problem.
8. Employees

Interviewing prospective employees

Before you interview any job applicants, or even take applications from job applicants, please read our section on Equal Employment Opportunity Laws which appears below. It may help you avoid a ruinous lawsuit. When you do get applications (and if you advertise a job opening, you will get plenty of them), select four or five from the multitude. Contact these people and ask them to stop by for an interview. If possible, send the rest of the applicants a polite form letter thanking them for their interest.

The authors of this book have been through too many interviews in their lives, so if we can offer you one bit of advice, avoid “pressure” interviews (i.e., act tough and see how the applicant performs under pressure) unless this is the kind of situation the applicant will face in the workplace. Pressure interviews turn off most applicants and fail to tell you if the person would be a good employee. That being said, there are some other “rules of conduct” to follow when interviewing prospective employees:

✔ NEVER CONTACT THE CURRENT EMPLOYER OF THE APPLICANT. That is a sure way to get the applicant in trouble with their current employer. (We know it is a no-brainer, but you would be surprised at how often this happens, even in supposedly “smart” professions like law and banking.)

✔ Have a list of interview questions to refer to during the interview. This prevents uncomfortable lags in the conversation. Remember that you are in charge of moving the interview along—the applicant is there to answer your questions, so you need to be ready.

✔ Be frank with the applicant and do not try to “sell” the job, a disappointed employee will not stay any longer than is necessary to find something better.

✔ You need to control the course of the conversation, but try and let the applicant do the talking. Ask them questions that require some explanation and thought. Although the authors always hated this particular question, many interviews start off with something like, “Tell me about yourself.” Other standard questions include (a) Why are you applying here? (b) Why are you leaving your current job? (c) Tell me about your experience in the area of ________. (d) Do you like your current job? Why or why not? (e) List the strengths (weaknesses) you would bring to your job here. (f) Describe your goals for the next ten years. (g) What goals have you attained recently?

✔ Take notes during the interview.

✔ Midway through the interview, thoroughly explain the job you are interviewing for and ask the applicant if they would be interested in such a position. Expect them to ask some questions at this point.

✔ Provide the applicant with an opportunity to ask you questions about the job, the business, yourself, etc. Answer fully and honestly.
Wind up the interview with a statement that you enjoyed talking to the applicant and you will contact them with your decision shortly. An interview should not be less than ten minutes nor more than forty-five minutes.

**Equal Employment Opportunity Laws (know them!)**

The Equal Employment Opportunity laws generally require that you not discriminate against an applicant on the basis of the applicant's race, religion, sex, national origin, or age, and you should be familiar enough with them to avoid breaking these laws. So we provide this short description of a few of the more important federal employment/labor laws. Please note that your state and/or city may have additional requirements and laws. Such state and city laws will have their own separate requirements which must be complied with and a different set of penalties. So you should contact an attorney to find out if there are additional requirements you must comply with in addition to the federal laws outlined below.

**Title VII (Civil rights Act of 1964):** Title VII states that an employer may not fail or refuse to hire or discharge any individual or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex or national origin. Nor can an employer limit, segregate or classify employees (or applicants) in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex or national origin.

In more prosaic language, this is how it works. Title VII covers any business which employs more than fourteen employees. (But private clubs exempt from taxation and churches employing people of a particular religion may not be covered in some instances.) What you cannot do is treat “similarly-situated” people (i.e., same experience level, educational status, etc.) differently because of a person's race, religion, sex, national origin, or age. A stark example is a business that prefers to not hire blacks. This is a plainly illegal. So at the most basic level, Title VII forbids a business from consciously deciding not to hire, promote or retain people based on the race, religion, sex, national origin, or age of the person.

But it is also a little more complicated than just that. You see, Title VII also prohibits businesses from using “neutral” selection criteria having the effect of disproportionately screening out members of certain minority groups. For instance, a business may have a policy that it will not hire anyone lacking a college degree. Since the ratio of black and Hispanic workers with a college degree as compared to their number in society is low, this requirement will have the effect of reducing the number of blacks and Hispanics who can qualify for the job. Therefore the requirement of a college degree disproportionately screens out blacks and Hispanics who could otherwise qualify for the job. When this is the case, the business has to be able to show that the use of the discriminatory criteria is related to the job and is a business necessity. The fact that the business does not intend to discriminate when it implements the college degree requirement is irrelevant; the criteria must be justified nonetheless.
So when you are drawing up hiring criteria, make very sure that any and all qualifications and prerequisites for employment are necessary and easily justifiable. (When we say easily justifiable, we mean that you could explain it to a group of 100 people selected from society at random, and 90% of them would readily agree with your explanation.)

Examples of criteria that may break Title VII's rules against discriminatory criteria are:

- Having height and weight requirements which rule out most women for a job where the height and weight of the applicant is not necessarily an important characteristic.
- Requiring a college degree for a job where one is not needed (i.e. a waiter in a posh restaurant).
- Employing IQ tests or other tests to determine whether applicants will be hired.
- Using health or fitness tests (unrelated to the job requirements) that will reject minorities more often than other groups.

This is hardly an exhaustive list. In fact, the list is endless because any criteria, in the right circumstances, could be illegal. Confused? Talk to your lawyer, she should be able to help.

We know all of this seems a little odd. But it can be boiled down to a couple simple rules of thumb: (1) Never use age, sex, religion national origin, etc. as a criteria for anything. (2) Never use any criteria that may tend to discriminate against a minority group (ethnic, age groups, gender groups, religions, etc.) to select among applicants unless you can show others how the criteria is important to the job.

*Equal Pay Act of 1963:* Because of this act, it is illegal for employers to pay lower wages to an employee involved in the production, buying or selling goods because of the sex of the employee. Basically, if you have employees who work under similar conditions and do the same thing or do something requiring the same degree of skill, effort and responsibility, then you cannot pay them different amounts unless the pay difference is due to (1) seniority, (2) a merit-based system, (3) a system measuring and offering earnings based on quantity or quality of work performed, (4) some other differential based on some factor other than sex. Also, remember that offering fringe benefits based on sex will get you into trouble as well (e.g., offering women something, like free mammogram testing, that men cannot use.) The same is true for requiring women to pay more into retirement systems than men.

*Age Discrimination in Employment Act:* Under this federal law, private employers with 20 or more employees cannot discriminate against workers aged 40 or more unless there is a bona fide occupation requirement. You need to remember this law when advertising the position since you would never want to state that you are looking for a teenager or twenty-something for a job unless it is a necessary and required part of the job that they be a certain age (e.g., young model for cosmetics).

Employment law is not the most difficult area of law, but to a layman it can be a little strange in appearance. But recognize that just like computer code, business spread sheets, marketing surveys, or any other technical and/or professional work causes puzzlement to the uninitiated, the law and its processes can confuse the uninitiated as well. To help you avoid problems we have included Appendix D, a checklist of things to remember in dealing
with employees. This checklist should help you avoid some of the more common and clearly illegal actions employers often (unintentionally) take.

**Termination of employees**

You will find a few tips concerning the investigation of employee misconduct in Appendix D. So if you are confronted with a situation where you have a dishonest employee, you may want to go there first.

But for those situations where you are letting an employee go because the employee is just not working out, or because the business no longer needs the employee, you should follow a set of clear guidelines and standard practices for terminating employees. That way there is less chance of getting accused of discriminating against your employees. Those guidelines should included the following.

*Performance Firings:* Before you get to the point of letting people go for poor performance, let them know that you are displeased with their performance. There are a couple of reasons, for this. First, if the contemplated firing does not come as a complete surprise, it may not provoke as strong an emotional reaction in the employee when the end finally comes. And having an employee leave angry is never a good thing. Second, the employee may turn it around and get his or her act together, thus saving you the headache of getting a new employee.

When telling the employee you are displeased with their performance, explain what they need to do to avoid being fired. Give them a chance to improve. It does not have to be a long time, but some reasonable length of time that most people would agree is long enough to improve their performance.

But once you do decide to get rid of an employee for poor performance, fire them without delay. You should also do the following:

✔ Do not discuss your decision to fire the poorly performing employee with any other employees beforehand (except maybe a trusted supervisor of the employee).
✔ Conduct an exit interview with the employee to politely explain why they are being let go.
✔ Give the employee all wages they earned up to that date at the exit interview, including any severance pay.
✔ Save the paperwork you have concerning the employee in a file and put a memo into the file describing (1) why the person was let go and (2) the conversation you had with them at the exit interview.
✔ If you subsequently receive any information requests concerning the employee from an unemployment agency, respond promptly.

*Economic Firings:* Every business has its setbacks. Some of the authors of these pages were let go from jobs due to business downturns and economic difficulties (we think that was the reason anyway!), so we know that businesses must occasionally let people go even when the employees are good employees. The list of “to dos” when letting go employees for economic reasons is roughly the same as that for poorly performing employees. (And remember to keep the employment discrimination laws in mind when cutting back on
employees; you do not want to be accused of discriminating against a minority group or other protected class of worker when pruning staff.) We suggest one additional thing when letting go employees due to economic circumstances: make some calls and see if you can help them find other work. Don’t go overboard, but a few simple phone calls to other businesses to see if they need a good employee you have to let go of is the act of a good person. It also may also dull an employee's anger at being let go.
9. Business Insurance

Down went the owners—greedy men
whom hope of gain allured: Oh, dry the
starting tear, for they were heavily
insured. -- W.S. Gilbert (1836-1911)

Business insurance is crucial to protecting your business. A simple, obvious statement, we know, but when people are trying to save a few bucks, they sometimes make the very large mistake of foregoing business insurance. To put it plainly, business insurance may save your company someday. Buy it. We strongly discourage business owners from taking the attitude that they can just be extra careful about providing customers a safe environment or making their products safer, and thus avoid the need for liability insurance. You cannot cover every possible risk; it would be too time-consuming and too expensive. Buy insurance instead and focus on your business.

Types of Insurance

Some common types of insurance policies that smaller companies should purchase are:

- Liability Insurance
- Worker's Compensation Insurance
- Property Insurance
- Business Interruption Insurance
- “Key-Person” Insurance
- Surety Bonds

Liability Insurance: We do not need to explain to any American why you need liability insurance against the standard “slip-and-fall” lawsuit—in America, lawsuits are as ubiquitous as lawyers and hamburgers. So you need to protect your business from the legal expenses and settlement or judgement expenses of a lawsuit. Liability policies typically cover business losses for (1) payments to victims of bodily injury or property damage caused by your business, (2) medical expenses of victims, and (3) attorney fees and investigation expenses associated with legal proceedings. General liability insurance is a “must have” when operating a business.

Besides general liability insurance, business insurance comes in more narrowly-defined versions so businesses can get coverage for specific risks. For instance, automobile insurance is required for all trucks or other vehicles operated by a business. Automobile liability insurance will cover losses and liability arising from theft, collision, fire, etc. The cost of such insurance depends, of course, on the value of the vehicle, where your business is (i.e., the local crime rate), the driving records of your drivers, and the other statistical proxies for the risk of something untoward happening to your vehicles. Product liability insurance is another especially important type of insurance if a business is going to sell manufactured or assembled products. But note that service-providers can also be subject to product-liability. For example, architects who draft injury-causing designs, electricians, mechanics and others are all subject to a sort of product liability. The cost of product
liability insurance depends on the type of product you are producing. Obviously, product liability for a lawn-mower (which is inherently dangerous and thus at high risk for product liability) is different from large, soft rubber balls (which are not as dangerous). Even if product liability insurance is expensive, businesses should have it. In fact, the more expensive products liability insurance is, the more you probably need it since this is an indication that your product will probably cause a lawsuit. It is not uncommon, however, for a general liability insurance policy to cover products liability as well, so you should check into whether your general liability policy covers products liability as well.

Workers' Compensation Insurance: Typically, workers' compensation insurance is required by state, local or federal law, so you have no choice but to buy it. The fact of the matter is that if one of your employees gets hurt on the job, you can expect a lawsuit and the employee will probably win. Even if one of your workers was injured due to the stupidity of a co-worker, you can expect to pay the bill. Hospital bills, attorney fees, lawsuit awards, lost wages, etc. are all collectible from an employer when an employee is injured. This is not even including punitive damages! Avoid the misery, buy workers' compensation insurance.

Property Insurance: Property insurance protects the building, office machines, office furniture, inventory (maybe) and other property owned by a business. Losses arising from flood, fire, theft, vandalism, storms, and other causes of damage will be covered by this type of policy. Your best bet is to get some sort of comprehensive property insurance covering as much as possible (including automobiles) and then supplement it with some of the other types of insurance discussed on this page.

Business Interruption Insurance: Natural disasters such as earthquakes, fires, floods, and severe weather can cause a business to close temporarily. But just because your business cannot make deliveries, take orders, or perform its other basic functions does not mean that the business will not have to pay taxes, salaries, and other expenses. Business interruption insurance can help a business avoid financial disaster at such times.

Key Person Insurance: Most small business, and almost all start-up businesses, depend on the talents or abilities of a few people. If one of those “key people” shuffle off this mortal coil, the business probably fails as a result. “Key person” insurance is a way for businesses to insure against this kind of loss. A type of life insurance, these policies can also provide the surviving partners or owners the money to buy the dead partner's stake from the dead partner's spouse or children (who are usually happy to cash out).

Surety Bonds: Surety bonds guarantee to other businesses that your business will fulfill the contracts you sign with those other businesses. This is a way for your small business to get other businesses to take a chance and go with your small, unknown company, a company which would otherwise be too unproven for other businesses to rely on. These types of bonds are commonly found in the construction industry, but they are used elsewhere. If you apply for a surety bond, be prepared for a thorough background check by the insurance underwriter (think full body-cavity search).
Buying Insurance

Step one: Swing a dead lawyer. Step two: Ask the five insurance agents you hit to beat the prices and insurance terms offered by other four. Seriously though, finding a person to sell you insurance is not too hard. Making sure that you get the best coverage is more tricky. There are some standard rules to buying insurance. First of all, insurance policies are notoriously difficult to read. In fact, judges with decades of legal experience have been known to throw up their hands in frustration when reading insurance contracts. (This is usually followed by the insurance company getting hammered by an angry judge.) So do not feel bad if you have a hard time reading the insurance contract offered to you. What you should do, however, is ask the insurance agent to slowly explain the contract’s terms to you and take notes on what he says. Then file those notes with the contract in your records. (General Tip: Note-taking is always a good idea when having business discussions.)

There are five variables to consider when purchasing insurance: (1) price, (2) coverage offered, (3) specialization of insurance company, (4) reputation of the insurance underwriter, and (5) size of the deductible.

Price: Going after the lowest price is almost never the smartest way to buy insurance. Insurance is a competitive business, and companies that can offer to beat their competitors can often do so only because they offer less extensive coverage or they are reluctant to pay claims. Also, low premiums at first may be offset by higher premiums later in the life of the insurance contract. Try to find a policy with a relatively simple price structure rather than one that bills itself as an “investment” paying dividends. You are starting a business which needs insurance, the business is your investment, not the insurance policy covering the business. Also, keep in mind that the insurance salesman usually earns a commission for selling the policy, so there is an incentive on his part to get you into those policies that garner the salesman the highest commission. That policy may not be the best one for your business.

Coverage Offered: Beyond the basic terms that insurers offer, you should negotiate for them to cover more in most categories and include other risks not mentioned in the policy. Insurers are pretty reluctant to include additional provisions or extend the coverage of the ones already included in a policy unless the insurer can quantify the risk (and thus charge an appropriate price for the additional coverage).

Specialization of the Company: Each business and industry has its own risks. Bars need different types of coverage than software manufacturers. That much is obvious. And if you can find an insurance company specializing in offering policies to your industry or type of business, you are likely to have an easier time when negotiating its terms. It may also be cheaper because the insurance company is better at quantifying the risks involved.

Reputation of the Insurance Company: First off, NEVER sign a policy that is assessable unless nonassessable policies are not available. Assessable policies are ones that allow an insurance company to charge its customers additional policies if the insurance company (yes, the insurance company) gets a little short on cash. This is a tip-off that the insurance company may not have much financial resources. And you do not want to buy insurance from a firm that may not have enough money to pay claims, right? A good way to check on
the financial stability is to find out the rating given to it by a publication called Best's Insurance Reports. If the company is not rated as a A+, A, or B+, you may want to look elsewhere for your insurance.

**Deductible:** Remember to pay attention to the deductible. Higher deductibles will increase the amount you will have to pay for insured losses, but they also reduce the amount of the premiums paid. Basically, when haggling over the premium, you need to keep in mind how often you think that you will suffer the loss or injury being insured against, and then you must estimate how much of that loss you could afford. Your deductible cannot be above that number (and probably should be below it).

Overlapping Coverage is when you have one or more policies covering the same risk. This is a bad thing because you are paying for the same thing twice. You will not collect the full amount of your loss from both insurers, so they are getting a windfall everytime you pay your premiums. Avoiding overlapping coverage is one argument for finding one honest, skilled insurance agent and buying all of your insurance from him or her.

**Direct Writers or Agents?** Direct writers are people who work for insurance companies. Agents represent these companies and write policies on behalf of the companies, but they are independent business owners who may represent more than one company. Which one is the better choice? Who knows. The direct writers may be specialists in a specific type of business, so he can fine-tune the policy he offers you to meet some specific needs. Policies written by direct writers are also usually cheaper than those written by agents. But direct writers work for the company, so they may not provide you with the best service. Agents, on the other hand, are more apt to provide you with the best possible service and since they write out many different types of policies, they can offer a broader range of policies, making them a one-stop-shopping insurance provider. But they are generally more expensive.

Whatever you do, remember that whoever is writing your insurance policies is doing so because he or she earns commissions on those policies. So your interests and theirs may not always agree. This means that you should shop around, negotiate and always be on the look-out for a better deal—just like you would in your business.
10. Purchasing an Existing Business

It always sounds like the perfect way to get started in business. You simply buy somebody else's business. This may or not be a good way to go. To help you decide, we will talk briefly about some of the important issues involved.

List of Pros and Cons

There are numerous good reasons for buying an existing business, and you can probably think of most of them:

- Fewer headaches trying to organize and supply the business for an opening.
- Established customer base.
- Established supplier network.
- Goodwill exists already.
- All or most of the equipment will come with the business.
- Former owner may be willing to give you free advice (or for a small fee) on how to run the business, especially if he gets his payments over time. (Think about that when negotiating the terms of purchase!)
- No need to scout business locations, haggle with realtors or landlords over lease terms, etc.
- Experienced employees may come with the deal.
- Business may be profitable sooner than a start-up would be.
- Banks are more willing to lend to a purchaser who can show financial records of a successful business.
- Inventory needed for operation may come with the business, thus the purchasers can avoid the hassle of ordering everything they need (also, the inventory records may provide you with information about quantity and price that may be difficult to otherwise come by).
- Former owner may be willing to sell the business in exchange for a promissory note rather than cash up front (be careful!)

And there are some pretty obvious downsides to buying an existing business, and you can probably think of many of them as well:

- If the business has a bad reputation, it is now your business's bad reputation.
- Equipment may be outdated or useless.
- Former owner may misrepresent the business and get a higher price than what the business is worth. (And try suing a guy who moves to Tahiti!)
- Location may not be ideal, requiring a move.
- Contractual relationships of the business may be unfavorable and difficult to escape.
- Poor employees will come with the business unless you fire them.
- The industry or products offered by the business may be dying or obsolete.

This list gets you thinking about the issues involved, but the actual determination of whether to buy a business is much more arduous and requires considerable thought and investigation by the potential buyer. Since even businesses in the same industry are often
not equal, you need to know every possible thing about a business before buying it. Here are some factors you should consider when deciding whether to buy a business and how much to pay for it.

Visit the business

If the business is generally open to the public, use your anonymity as an investigatory tool. Before expressing an interest in the business to its current owner, check out the physical state of the business and gauge whether the owners have been taking care of the building and other property. Scrutinize the customers of the place when you visit and see if they are the kind of customers you want to deal with. If possible, in a nonchalant manner, talk to the owner about the business and see if (s)he is enthusiastic about the industry. Obviously, if (s)he talks about grinding poverty and coming financial ruin, this should be a big warning sign (but not necessarily the end of your interest since businesses can be turned around). Try to get a measure of the owner as a person. The more honest the owner, the easier it will be to determine whether the business should be bought since the information you receive is more likely to be accurate and complete.

If the public cannot visit the business site, or your initial contact with a business left you with some interest in purchasing, call the owner and, assuming he is interested in selling to you, ask to visit the business for a look at the premises. Inform him that this is a very preliminary examination of the possibility of purchasing the business, not an offer to buy it. (Note: Some people like to retain their anonymity during this initial phase and use a third party to contact the business owner. We believe in face-to-face dealings, but do whatever you feel is best.)

Find out why owner may sell

An owner looking to unload a profitable business may say the exact same things as one selling an unprofitable one. “I’m selling it because I’m getting old.” “I’m selling it because I want to explore another opportunity.” “My health is failing.” Etc. Do not believe it. It may be true, but people rarely sell a really successful business to a stranger. The real reason could be, and probably is, a reason which would cause you to think twice about buying the business.

Typically, the reason people sell businesses is because they are losing money, or they are going to lose money. Businesses lose money are countless ways. Standard ones tend to be a change in the industry (e.g., Walmart gobbling up the retail trade), technological change (try to find a buggy whip manufacturer these days), increased competition, crucial personnel have left, or credit necessary to run the operations is no longer available.

Find out everything about the business

Start by asking other business people in the same industry what they think about the industry and about the particular business in question. They will give you some good information. If possible, make sure that you talk to competitors of the business. Business owners are often surprisingly frank even with competitors. (But you may still want to listen to competitors with a dash of sodium.) Employees (past and present), suppliers, creditors, customers, banks, local government officials, and neighbors of the business are all useful
sources of information capable of offering valuable information. You should also contact Dunn & Bradstreet to see if they have information about the business.

**Preliminary Valuation**

The most crucial component in gauging the business's worth is determining its future profitability. Of course, future profits can never be measured precisely, but a rough estimate of what to expect is possible. Past profits of the business are a starting point. To get a sense of past profits, obtain the tax records of the business for the last five to seven years. You should also look at the bank records and any available auditor's reports. Compare the performance of the business against industry performance. If the business being sold is behind the rest of the industry, you need to find out why. The “why” is crucial since you will often make money, break even or lose money depending on your improvement of a business's performance.

Also look closely at the business' expenses and capital improvements at the same time. Low expenses and/or negligible capital investment may mean that the owner has not been putting money back into the business, a sign that the owner saw it as a bad investment. High expenses may indicate poor management or that the business is expensive to run.

Financial information like this tells you what happened in the past. The future profits, however, are what you are primarily interested in, but you should use the past as a foundation for developing your projections about how well the business will do in the future. Judge how much value you could add to the business with your ideas. This is where you find out whether you are a good business person. A good business person is judicious and level-headed; their predictions will be a good estimate of the business' future performance, not pipe dreams. Have an accountant, lawyer or other serious-minded professional you trust look at your final projections. They may help you find flaws in your thinking if any exist.

The projection of future profitability will form a large part of not only your decision about buying the place, but it will also help you determine an acceptable price. Depending on the industry there are numerous other items that must be investigated. Some common items on business balance sheets and other assets of a business are listed below in “Items to Investigate” as a sort of checklist of things to consider when investigating a business. We have included a more detailed checklist of items to investigate as Appendix A, which could be used as a checklist if your interest continues to grow.

**Determining Price**

There are many methods for determining the price of a business. No one method works best in all situations, but some industries have formulas they typically rely on to value businesses, so you may want to check into whether this is true for the industry you are considering.

**Asset Appraisal:** An appraiser comes in and places a value on the business' assets, usually using book value rather than replacement value. Book value is the original value (typically the cost) of the asset minus the depreciation. Obsolete, non-useful or nearly useless assets are not counted as being worth anything. Intangible items such as goodwill and are added to the total (but they should only be 10-20% of the total, and certainly not more than 50%) at
the end. Liabilities are then subtracted from the total asset value. Then you have a reasonable approximation of the business' worth.

**Future Earning Capitalization:** Future profits for an agreed upon period (e.g. four years from date of sale) are estimated by the parties. Then, using an estimate of the risks involved, you discount the future profits for the agreed-upon period. There is no reduction of the profits for taxes before the discounting for risk. Clearly the two variables are open to a lot of guesswork. The owner will try to get a high estimate of future profits and a low estimate of the risk. The buyer seeks the opposite. When determining the risk-factor discount, think about the alternative uses for your money and how risky they are. Judge that risk against the risk of losing money in the business. This should give you a rough estimate of the risk (assuming that your business judgement is sound).

**Excess Earnings Method:** The assets of the business are valued and the annual future profits are estimated. Then the number of **years** required to establish a similar business is estimated. Next a return on investment is calculated (ROI). (A return on investment is the money a person earns from their investment, for instance a share of stock purchased for $100 dollars and sold for $200 offers a 100% ($100) ROI.) The ROI you use can be the one you expect from the business or one from another investment you may pursue in lieu of the business.

Multiply the ROI by the value of the assets of the business. Add this product to the amount of money you expect to draw as salary This final sum will give you the expected pre-tax profits from the business. (PTP)

Next, subtract the PTP from the annual profit forecast, and then multiply that number times the number of years required to start a similar business. This product is the value of the goodwill.

Add the goodwill to the tangible asset value and this offers a rough estimate of the business' value.

Note that you may get a negative number when you subtract the PTP from the annual profit forecast. This means that the goodwill value is a negative number, and the goodwill value must then be deducted from the tangible value of the assets.

Each of these three methods is just a way of determining what a business person would pay for the business. If you think you are smarter than other people and can run the business in a better way than anyone else, it may be worth slightly more to you.

**Tax Aspects of Purchasing an Existing Business**

**Asset Purchase and Stock Purchase**

There is no federal tax directly imposed on the purchase of a business but there may be state or local taxes imposed. Therefore, before purchasing a business you should contact a local tax professional to determine what local and states taxes may need to be paid. You could also contact the local and state governments yourself and try to determine whether there any taxes owed; it is not that difficult to obtain such information.

Before we otherwise begin, some important points to remember are:
1. The buyer and seller must jointly assign a value to all the business assets transferred and then report this value to the IRS on their respective tax returns. Note that if the buyer and/or seller is an entity rather than an individual, then the entity, must report the value on its return.

2. You absolutely must perform a search of the public lien filings to make sure that there are no outstanding liens on the business and its assets. And regardless of whether there are any liens, the seller should indemnify the buyer for any liens attached to the assets as a result of the seller's ownership, whether existing at the time of sale or not.

There are two ways to purchase an existing business. First, you can buy all or nearly all of the assets of the business. This is referred to as an asset purchase transaction. Second, you can buy the outstanding capital ownership interests (i.e., stock). This is known as a stock purchase transaction.

When you engage in an asset purchase transaction, you generally will not take on the liabilities of the prior owner of those assets. This generally holds true for tax debts of the former owner as well. But if a tax agency such as the IRS or a state tax agency has filed a notice of tax lien against that business in the public records, then any assets you purchase are still subject to that lien. So make sure that the seller has paid all tax liabilities and/or obtained a release of all tax liens before you purchase the assets. Part of making sure is performing the search of the public records concerning liens mentioned above. This search is described in our section describing the “due diligence inquiry” into a business.

Unlike in the case of asset purchase transactions, tax liabilities will pass to the new owner of the business when you engage in a stock purchase transaction. (Additionally, any other debts of the business will pass on to the new owners.) In a worst case scenario, you could buy the shares of an incorporated business but after the sale, the business undergoes an IRS audit, an audit that uncovers significant, and previously unknown, tax liabilities. (For example, the former owner could have erroneously calculated his net income and underpaid his tax bills for several years prior to your purchase of the business.) As the current owner of the business, these pre-sale tax liabilities are now your problem, even though you had no control over the business at the time such liabilities were created. (Please note that this is a general statement. There are complex rules governing tax liability and not all taxes are treated the same. For instance, failure to deposit federal payroll deductions can result in personal liability for corporate officers, liability which remains in effect even after a business is sold.)

Since there is this greater risk of undiscovered tax liability involved in stock purchase transactions, buyers of stock almost always demand, and receive, from the seller a promise to pay any tax liability or other debt of the business incurred prior to the sale of the stock to the buyer. While these promises, known as “indemnities”, are legally binding, as a practical matter an indemnity is only as good as the willingness and ability of the seller to pay it. If the seller moves to Tahiti after the sale and spends all of his money, you obviously cannot expect to get repaid for any tax liabilities discovered after the stock sale. In such a case the corporation you just purchased will have to pay the tax liability.

The unpredictability of tax indemnities typically make buyers of corporate stock insist on an additional clause in stock purchase contracts: a “holdback and setoff” provision. Typically, these clauses will funnel a certain amount of the purchase price (30-50%) to a
special escrowed account controlled by a neutral third party. This escrow account will then be used to pay any tax liability which is discovered after the sale. As you can imagine, sellers typically dislike these provisions. But if the “holdback and setoff” escrow account pays market interest to the seller on the escrowed money, sellers may be more inclined to accept the arrangement.

If you are paying the purchase price for the stock over time, or have some earn-out provision where the actual price paid depends on the future performance of the purchased business, you will not need an escrow account to hold the money, it will still be in your hands. You will still need, however, some specific contractual language describing your right to deduct any tax liability (or any other previously unknown liability) from the purchase price. Please remember also that all costs associated with such liabilities should be included in the amount you can deduct from the purchase price (e.g., attorney and accountant fees, litigation costs, etc.).

**Valuation of Assets**

As we stated earlier, the buyers and sellers of a business need to mutually assign values to the assets of a business as part of the sale. These assigned or “allocated” values will then be reported to the IRS by both sides, the seller and buyer. These allocated values are then written in the indelible records of the IRS. Then, when you subsequently go to depreciate the assets, determine taxable gain or loss, or perform any other taxation calculation, the asset values reported at the time of the sale will impact your calculations. Thus, you and your accountant must approach this initial allocation of value with some measure of care. You should know that the buyer will probably have some strong opinions on the allocation issue because his personal tax liability will almost certainly be impacted by the allocations. But what is good for the seller is not always good for the buyer, so you should always consult a tax professional before agreeing to asset allocations. The allocation of the business purchase price is done on IRS Form 8594, the “Asset Allocation Statement”. You will file this form with your personal tax return for the year in which the transaction occurs.

There are two steps to the allocation of asset value. First, you and the seller will decide which of three categories the purchased assets fall into. Second, dollar values will be assigned to the individual assets.

**The Three Asset Categories**

**Cash and Cash Equivalents**: Money, bank balances, promissory notes owing to the business from other parties, accounts receivable, easily liquidated securities.

**Tangible Property**: This is the “things you can grab a hold of” category. Inventory, land, leased buildings, equipment, office furniture, etc. are all examples of tangible property.

**Intangible Property**: These assets, unlike tangible property, are things which you cannot grab a hold of. Patents, copyrights, trademarks, customer lists and other trade secrets, contractual rights, and goodwill are all examples of this. (Please note that the seller's “covenant not to compete” is intangible property.) Usually a professional will have to help you determine the value of intangible assets, and even a professional's valuation is more guesswork than calculation. Intangible property is amortized over a fifteen-year period, so
buyers generally try to avoid allocating purchase price to intangibles in favor of property which depreciates more quickly.

**Allocations after categorization**

After the buyer and seller categorize the assets of the purchased business into the three groups, they must jointly assign a dollar value to each of the assets. These values will then form the tax “basis” for the assets. The tax basis is the value the IRS will look at when you depreciate the assets and offset those depreciation amounts against your income. These numbers are important! Again, consult your accountant or a tax lawyer.

Once you have agreed on the allocations to each of the assets, you must complete the Asset Acquisition Statement IRS Form 8594. Here is the quick and dirty way to complete Form 8594:

- Subtract the total value of the cash and cash equivalents transferred as part of the sale from the total amount of the purchase price.
- Subtract the fair market value of the tangible assets from the figure obtained in step one.
- Allocate the remaining amount of the purchase price left after calculations 1 and 2 to specific items of intangible property (i.e., patents, trademarks, etc.) according to your best estimate of those items' fair market value. Professional valuations would be a good idea and would aid you in any subsequent fight with the IRS.
- Anything left over after the allocations in 1, 2 and 3 is goodwill.

As we mentioned earlier, the intangible asset categories in 3 and 4 have an amortization period of fifteen (15) years. This is a relatively long time when compared to the standard periods of three, five, seven or ten years for tangible property. You are better off allocating as much as possible to the tangible property so you can get the depreciation deductions more quickly. (NOTE: commercial real estate is amortized over 39 years, so it is not the same as other “tangible” property.) Also, if the business has been suffering losses for quite some time, it is likely that there is no “goodwill” since this is the going concern value of the business above the value of the business's assets.

**State and Local Taxes**

Again, there may also be state and local transfer taxes on the sale of a business. Even if the seller is supposed to pay these amounts, the state or local authority may be able to hold you liable for any amounts the seller fails to pay, so make sure that these amounts are fully paid at the time of the closing or actual payment.

**Some Items to Investigate Before Purchasing a Business**

**Capital Equipment, furniture, buildings**

Two things need to be determined. First, what is the market value of these items. (Note that market value as used here means the price others would pay for these items, not what it would cost you to replace them.) There may be a large difference in these two prices. The second thing to be determined is whether these items are in good repair, capable of being
fixed, or in need of replacement. Always get an independent appraisal of these goods. Never take the owner's word when it comes to the value, even if you personally know the owner to be an honest person. (The owner could be very, very wrong.) Moreover all machinery and other equipment should be carefully checked by a mechanic or other skilled tradesman to make sure that it is in good operating order.

**Accounts Receivable**

The most important thing to look for is how old are the accounts. A business with a large amount of its sales in accounts that are past due by is a business that is not being paid by its customers. This is obviously not a good thing. If the business does have a large number of accounts receivable that are over thirty days past due, you need to dig into its financial records to see what the collection rate is on those past due accounts. You might be able to implement better credit/collection practices or choose better customers and improve those numbers, but you need to find out why the owner is not able to avoid these problems. Ask the customers with past due accounts and other businesses with similar operations for their views on why the business may have so many accounts receivable in arrears.

**Contracts**

Every contract that the business has entered into must be closely examined for a number of things. First, are the material terms of the contract currently being fulfilled? Second, can the contract be assigned (transferred) to a purchaser of the business? Third, is the contract a profitable one for the business? Fourth, can the contract be renewed, and if so, by whom, either party or only one? Remember that leases, rental agreements, and service contracts all fall into this category, not just supplier and customer contracts.

**Customer Lists**

These lists are more important in some businesses than they are in others, but you should have a customer list for any business where you count on or expect any sort of repeat business. Look into the records used to develop these lists. Topics of interest include the activity level of customers, length of relationship with the business, size of orders, attrition rates, etc. Customer lists are important for three reasons. First, this will help you carve out an area that the former owner must not intrude into by resuming his business after he sells it, thus ending the threat of the owner immediately resuming business as a competitor against you. Second, it provides you with an instant customer base. Third, finding out who the customers are tells you something about the future of the business. (If the business depends on an expanding customer base, the business is worth more than it would be if the particular customer base is shrinking!) Specify in any agreement to buy a business that you (the purchaser) will get ownership of all records relating to the customers.

**Employees**

More than just meeting the people who work there, you need to find out something about the employees you may inherit. Do they intend to stay? Are they long-term employees with a history or does the business have a revolving door? (Note that some industries, like food service, rarely have long-term employees.) If possible, before negotiations concerning the business are concluded, take the employees out to lunch and talk to them away from the owner. Assure them that nothing will get back to the owner and ask them what they think
about operations at the business. You may get some interesting information about the business. Try to find out how easy it is to replace workers who leave, and how expensive.

**Economic Forecasts**

Although economists and local government officials who predict economic trends are hardly the best source for business information, you should pay close attention to what they say. Sometimes they do provide useful information about trends and occurrences that impact a business negatively or positively.

**Intellectual Property**

Copyrights, patents, trademarks, tradenames, and trade secrets all fall into this category. For most small businesses being purchased, the only real intellectual property will be the business's name, but this may be quite important if it is a well-established local name (e.g., Pizzeria Uno's in Chicago). If you are considering another type of business, however, there may be significant intellectual property involved, requiring significant investigation and documentation of the transfer. Anything essential to the business clearly needs a great deal of legal attention before the business is purchased to insure that the intellectual property rights are transferable.

**Liabilities**

*Every single liability must be uncovered when investigating a business.* Lawsuits, unpaid creditors, unpaid taxes, possible claims not yet pursued against the business, etc. all must be found before a proper valuation can be done. Get help from an accountant and your lawyer for this. (Looking ahead a little bit, if you do end up buying the business, make sure that a list of all known liabilities and possible liabilities are listed and attached to the purchase contract. Then include a clause stating that any liability which was incurred prior to the sale and not on that list is a liability that the SELLER will pay off. This gives the owner an incentive to help you uncover all possible liabilities.)

**Licensing**

Find out what permits are required by the local, state and federal authorities for the business. There may be onerous regulation of the business involving a great deal of expense, and this needs to be taken into account as an expense when valuing the business.

**History**

Both the history of the particular business (bankruptcies? relocations?) as well as the history of businesses generally in the same industry should to be well-known by the buyer before the purchase.

To help you investigate these items thoroughly, Appendix A contains a due diligence checklist commonly used by attorneys when they are hired to investigate a business that may be acquired by their client.
11. Buying a Franchise Operation

There are thousands of franchisers who would be happy to sell you a franchise, provided you can pay the franchise and you have the personal net worth they require in a franchise-owner. Franchise operations are a common way for American business people to get started. This is mainly because franchisers (think of McDonalds, Kinko's, and Subway) help reduce the entrepreneur's risk of losing his or her investment in a new business. Franchisers provide market research, advertising schemes, employee training, site selection, basic business training for owners, etc. The owner can then focus on the operation of the franchise business rather than going through all of the painful “trial and error” experiences of getting a small business up and running. This reduction of risk is perhaps the main reason franchising is so popular.

The cost of starting-up a franchise operation is almost always documented very well by the franchiser, as are the projected revenues and ongoing costs after the start-up phase is over. This is often the source for all of those “big profits” and “high income-low investment” ads you see in so many newspapers and small business publications.

Franchising is an American passion. Some estimates say that fully one-third of all retail sales are performed at franchise operations, and what is being sold, along with whatever product is actually for sale, is the brand name or goodwill of the franchisor. At any McDonald's across the country, you pretty much know what you are going to get on the food menu. Likewise, you know what services Kinko's will provide before you go into a Kinko's store. The franchisor spends a lot of money on advertising and market research to maintain the name recognition and commercial viability of the franchise operation's products and services. When you buy a franchise, you are buying a portion of this name recognition and market knowledge for yourself.

Types of Franchise Operations

There are two types of franchise operations. The first is the entire business format (EBF). In the EBF, the franchisor (company selling the franchise operation) grants the franchisee (person buying the franchise operation) a license to use the trademarks, logos, business know-how, copyrights, trade secrets, purchasing power, etc. of the franchisor. In return the franchisor usually gets a slice of the franchisee's profits and/or a flat fee for use of the franchisor's intellectual property and services. The second type of franchise is the product distribution arrangement, in which there is a distribution system for a specific product under the manufacturer's name and trademark.

State and Federal Regulation of Franchisors

Franchise arrangements and the sale of franchise operations are governed by both state and federal laws. State laws usually require a franchisor to register its sales of franchise operations and provide a “prospectus” or some sort of document disclosing the risks and other material information concerning the franchise operation. In this prospectus you will find the franchisor's financial statements, advertising materials, franchise agreement, and
disclosures of material information concerning the franchise operation. The state then reviews these materials to make sure that they are understandable, relatively complete, and truthful, and to determine whether the franchisor is able to keep the promises they make to franchisees. States then grant or deny a franchisor the right to franchise its operations in that state. Do not assume, however, that just because the state allowed the franchisor to register and sell its franchise operations that this means the franchise operation has some sort of seal of approval! All it means is that the state did not find a reason to refuse the franchisor's application to sell franchise operations within that state. You still need to do a lot of homework about the franchisor, and an investment into a franchise operation will involve considerable risk on your part.

The Federal Trade Commission (FTC) also regulates franchise operations. The FTC rules governing franchise operations will be involved if the franchisor: (i) is granting the right to distribute products or services using the franchisor's tradename, (ii) will exercise significant control over the franchisee's operations, (iii) requires franchisees to buy products and services from the franchisor or its affiliates, (iii) requires the franchisee to invest at least $500 within the first six months of operation. You do not need to worry about these threshold tests, however, since if the franchisor needs to be registered with the FTC, it almost certainly is registered with the FTC. (This is just some background information for you to have on the state and federal regulation of franchise operations.)

**What should a buyer look for in a Franchisor**

This is not an easy question to answer. With one-third of the country's retail sales occurring at franchise operations, the scope of business activities is quite large. Franchise operations sell everything from hamburgers to cars to software. This makes it difficult to say what qualities a good franchisor will have since each industry has specific concerns the franchisor must cater to.

But there are some general qualities in a franchisor that you should look for.

**Market**

- Does the product or service being sold by the franchisor have a stable, growing or declining market?
- Within the particular market for the franchisor's product or service, is the franchisor's product or service well-recognized? Within the industry, is the market share of that product or service stable, growing or declining?
- What kind of reputation does the franchisor's products have in the market?

**Franchisor**

- How long has the franchisor been in the business? (Longer is usually better, but not always.)
- What are the backgrounds of the executives in charge of the franchisor? Are they new to the franchise game but old hands in the particular industry (or vice versa)?
- How many lawsuits between the franchisor and its franchisees are currently pending? How many have there been in the past? (People making a lot of money and getting along well do not usually sue one another!)
What are the franchise fees used for, promotion of the franchisee's operations or profit-taking by franchisor?

Is the franchisee a publicly-traded company or a subsidiary of a publicly-traded company?

**Franchise Arrangement**

What goods and services are offered by the franchisor? Do you have to buy those goods and services or are they optional? If you must purchase them from the franchisor, what is the going market price for such goods and services? How does it compare to franchisor's price? (Making franchisees buy additional goods and services is a way franchisors can increase franchise fees without seeming to.)

Does the franchisor offer training for franchisees and the franchisee's employees? If so, what are the costs associated with the training? Are there continuing training programs?

Will the franchisor provide on-site management help? If so, at what cost, if any? Will the franchisee be required to follow the advice of the franchisor representative, or can she make her own decision about whether to follow the advice?

What is the franchise fee? Is it set in stone or a floating number? Are installment payments over time allowed?

What are the royalty payments? How are they determined?

What are the ongoing charges for advertising and promotion?

What other fees are found in the franchise agreement? (E.g., accounting fees, site location fees, building rehabilitation or upgrade fees, etc.)

What fees are refundable if you should opt out of the franchise agreement?

What is the bottom line, total, “no-more-salesman-bullshit” cost of starting the business and running it for a year? (You might have to ask other franchisees for this number.)

Are there certain goods and services that you can sell and no others?

Does the franchisor provide franchisees with financing for the purchase of a franchise operation?

**Questions to ask the franchisor concerning other franchisees already in operation**

How many are there?

Where are they located (cities, states, countries)

What is their profitability on average? (Note that averages can be deceptive if the franchises either succeed wildly or fail utterly, thus creating a nice sounding average.)

What is the failure rate for franchise operations?

How many franchises are going to be sold in the next few years? Where are they going to be located?

Are franchisees given their own guaranteed territory?

**Questions to ask other franchisees**

Is it a good deal? Why or why not?

What is the “real” rate of return on investment, in their experience?

How is your relationship with the franchisor?
Are you happy with the support you get from the franchisor?
What more could the franchisor do to help?
What sort of competition do you face from other franchise operations? From other franchisees of the same franchise?
Is the business seasonal or steady?

What you should investigate on your own

Local population concentrations and demographic changes that may affect the franchise operation. (This will require that you know something about the customer base of the business.) Information concerning such demographic changes may be available from a variety of sources, including local real estate agents, chambers of commerce, advocacy groups, and government offices (Census Bureau, local planning commissions, etc.)

If your business depends on pedestrian traffic or vehicle traffic, make sure you investigate local plans for directing such traffic patterns towards or away from the planned site of your business operation.

Looking in small business publications such as magazines and books, how does the franchisor rate against other similar operations?

If the franchisor is not a large, well-known operation, you should have an attorney or specialist carefully investigate the intellectual property right being offered by the franchisor. Specifically, the copyrights, patents, trademarks, and trade dress rights of the franchisor must be verified, and the franchisor should guarantee these rights to you and indemnify you for any loss as a result of the franchisor losing their rights to the same.

Getting out/Staying in

What happens if you want to sell your franchise operation? Is the franchisor willing to repurchase it?
What renewal rights do franchisees have when the franchise agreement expires?
What option rights are franchisees granted on new franchise operations being offered in the local area or around the country?
Can the franchise operation be passed on to children in the event of death, disability or retirement of current franchisee?
What restrictions are there on franchisees who sell franchise operations and then open up competing businesses?

If you have not done so already, you should also consult our master checklist for starting a business for additional considerations on purchasing a franchise operation. One last bit of advice: find yourself an attorney and an accountant with experience in representing franchisees.
12. Extending Credit to Another Business

Given that this nation was founded on debt, and that debt has become a national way of life, it is no surprise that extending credit to customers is a fact of small-business life. It thus becomes very important to decide who will get credit from your business and who will not. This page focuses on how to approach the problem of extending credit to other businesses. There are some additional pages concerning the Equal Credit Opportunity Act (a law which your business will probably have to comply with).

If you are going to extend credit to another business, including customers, you first need to get the following information.

- Business/applicant's name
- Type of entity (i.e., partnership, sole proprietorship, S-corp, etc.)
- Address of business and length of time at that address
- Former addresses and length of time at those addresses.
- Phone number of business.
- First, middle and last name of owner(s) and/or officers of the business.
- Banks where business accounts are kept, including phone number and address.
- Credit references (can be other businesses offering applicant credit, business credit cards, personal credit cards, banks, or any other credit-offering institution which will vouch for the business or its owners).
- Applicant's accountant. If there is no accountant, this should make you a little wary—it indicates that either the business cannot afford one or that they do not want one.

Since most of the businesses you deal with will probably be operated by the owners of that business, you should obtain the following information about the owner.

- Owner's name.
- Owner's address and length of time at that address, former addresses and length of time at those addresses.
- Balance sheets describing the owner's net worth.
- Phone number of owners.
- Banks where personal bank accounts are kept, including phone number and address.
- Credit references (i.e., personal credit cards, banks, etc.).
- Employers (both current and former), along with the employer's address and the length of time employed.
- Marital status, along with the name and address of spouse's employer.
- Monthly household income (total).

All of this information, once collected, will form the basis for your investigation of the applicant and your analysis of whether to offer credit. You need to verify the accuracy of the information given by the applicant. This can be done in a number of ways. There are firms specializing in collecting information on the credit ratings of businesses, Dunn & Bradstreet is one of the better known ones. Other businesses which have dealt with the applicant-business in the past, particularly other suppliers, is another good source of information. And for overseas businesses, the United States Department of Commerce can
help obtain credit information on the applicant-business. Also, if the business is one where the owner(s) actually operates the business (as will be the case in most small businesses), then you can check into the credit history of the owner(s) with a credit bureau such as Trans Union, Experian, or Equifax.

After you verify all of the information given by the credit applicant, now comes the business judgment decision. (Note that if some of the information did not check out, you probably need to decline credit.) You need to look at the business opportunity offered by extending credit and measure it against the risk that you will not get paid in the future. Arguing for offering credit will be the possibility of repeat business, increased sales, etc. But do not mistake an increase in sales for an increase in profits, so be judicious in offering credit and only take risks on people and businesses where you believe that the reward justifies the risk. It is decisions like this that make the difference between successful business people and business failures, so think about it carefully.

**Before giving credit**

Make sure that both you and the other side are perfectly clear on the terms of the deal. And then put it in writing! The credit terms can be fairly simple and, in fact, should be simple. The credit terms can be placed on the invoice for the goods or services provided to another business on credit. In Appendix E, we list some standard abbreviations used as a shorthand by businesses offering credit via invoice billing. Use those abbreviations on your invoices as well as having some short written arrangement detailing the credit terms in plain English. Invoices should be clear, correct and timely. This establishes the proper billing cycle. Any delays or nonpayment due to invoicing error or misunderstanding are probably going to ultimately come out of your pocket!

Obviously, the credit terms you offer other businesses effect your sales. If other businesses perceive your terms as better or worse than your competitors, you may increase or decrease your sales accordingly. So you should know what are the standard credit terms for the industry. Whether you hew to these standards or not is a business decision.

Regardless of the terms you offer, you should ask for a portion of the money up front. This both insures that the buyer is serious (and shows that the other business actually has some money). You may also want to get a credit card number and signed sales slip for the full amount of the order so that if the business fails to pay up by a specified date, you can put the sale receipt through and try to get payment that way.

Once credit is given to another business, eternal vigilance becomes the price of your solvency. You must watch your accounts receivable closely. Start by keeping track of your average collection period. Average collection periods are calculated by dividing the total accounts receivable (what people owe you for previous sales) by the average daily credit sales. (Average daily credit sales can be calculated by merely taking your business's total sales on credit and dividing them by 30.) In formular form, it looks like this:

\[
\text{Monthly sales on credit}/30 = X \\
\text{Accounts receivable} = Y \\
Y/X = \text{collection period}
\]
Your average collection period needs to be compared against the average for your industry. If you are higher than the industry, it is time to reevaluate who you offer credit to and on what terms. If you are lower than the industry, good work, but you should consider whether “looser” terms (i.e., more favorable to your customer) might help your sales figures.

Collecting on bad debt

So people will not pay their bills, huh? Maybe it is time for the brass knuckles and late-night phone calls threatening harm and horror!? We would recommend a different, less criminal alternative. First off, have some sort of penalty for debts that are over thirty days past due. Interest charges of 1-2% a month is one common method of doing this. Another technique is calling the debtor-business and asking them when you can expect payment. This must be done very diplomatically since they are a customer, after all, and you do not want to alienate a customers who may have just overlooked your bill. (On the other hand, if your customers do pay for your sales/services, you go out of business, so your diplomacy must be firm diplomacy.)

Telephone calls are even more useful since you may be able to get some information about the business and the likelihood of payment. Note that you are more likely to get somewhere with a debtor if you come across as a creditor expecting full and complete payment, while still understanding any present financial difficulties the debtor may be experiencing. Your goal should be, however, to get some sort of payment every time you call. Each time you speak with a “past due” debtor ask how much they can send, even if it is not the full amount. BUT NEVER AGREE TO ACCEPT A REDUCED AMOUNT IN FULL SATISFACTION OF THE ENTIRE DEBT UNLESS YOU ARE ABSOLUTELY SURE THAT THERE IS NO WAY TO COLLECT THE FULL AMOUNT.

If the letters and phone calls fail, it is time to resort to either a collection agency or the courts. Collection agencies will take a 25-50% cut of any debt collected after they become involved. If the debt amount is large, an attorney may be able to help you get a settlement payment or a judgment against the debtor. If the debt is too small to justify the expense of an attorney, go to the collection agency. You should stay on top of late accounts because as the overdue account ages, the likelihood of payment decreases. Initial collection procedures of sending a polite letter should occur within fifteen days of the debt being overdue. Phone calls should start a week later.

Debt Collection

Problems with Debt Collection

Problems with debt collection can often be traced to some of the following problems:

- Poor oversight of office personnel in charge of debt collection.
- Insufficient information about debtors, which makes it difficult to find the debtor later.
- Insufficient procedures for pursing debtors who are tardy in making payments (frequent and regular contact is crucial).
Insufficient knowledge about what the law allows creditors to do in pursuing deadbeat debtors.

Let us suggest that you implement the following procedures and policies to deal with delinquent or deadbeat debtors.

**Collect Information:** Obtain all legal and useful information about the debtor before you extend credit. Earlier we provided a checklist of data items you can and should ask for when considering extending credit. This information should be updated about twice a year.

**Credit Agreements:** Since attorney's fees, court costs and lost interest are all costs associated with collection of bad debt, you need to recover these costs whenever possible. And you can only recover them from the debtor if he or she agreed in writing to pay such costs. Your standard credit agreement should have provisions stating that the debtor will pay any and all costs associated with collection of the debt, including but not limited to attorney's fees, court costs, and a stipulated interest rate (usually not less than ten (10%), but higher in times of inflation). There should also be an agreement with the owners of any debtor-business that they are personally liable for the business' debts.

**Skip-Trace Bad Debtors:** Often, debtors move or change their phone number and/or address. To locate a customer who is no longer paying on his/her/its debt, contact the following sources of information:

- Post office (for forwarding addresses).
- Former or present employers of owners of business.
- Department of motor vehicles.
- Web sites offering free locator services.
- Credit reports (there may be additional addresses listed for the businesses or owners).
- Your search should focus on both the business and the owners.

**Illegal Collection Practices:** NEVER engage in the following practices when you are trying to collect a debt or find out information about a debtor:

- Never impersonate a police officer, other law enforcement official, court official, attorney, governmental agency, etc. or mislead others into thinking that you are any of these things (e.g., do not use any sort of letterhead, language or other communication suggesting any of the foregoing or affiliation with same).
- Never threaten to disclose untrue information or information that may or may not be true about the debtor's creditworthiness if the debtor does not pay you.
- Never disclose any information to credit reporting bureaus concerning a debtor's creditworthiness unless you *know* it to be true.
- Never inform a debtor's employer about the bad debt and the collection efforts you are engaging in, and never threaten to contact a debtor's employer with such information. The only exception to this is that if you have a judgment against the debtor and the court has authorized a wage garnishment (or the debtor has agreed to a wage assignment), then you can contact an employer with such information.
Never call the debtor, his family or any other person known to the debtor so often or so late at night or early in the morning that it is more like harassment than debt collection.

Never threaten to take an action that you know you will not take.

Never threaten to take an action that you cannot take.

**Twin Sins of Small Business Creditors**

Small business creditors often do two awful sins when faced with a “bad” debt. First, they fail to aggressively pursue it immediately. Anything that is late by over thirty days is “bad” debt, and you should start your phone calls and letters no later than that point. If the bad debt extends to ninety days past due, either institute collection proceedings or turn the debt over to a collection agency. Second, you should pursue any shareholders or owners who guaranteed the debt at the same time that you pursue the debtor. Let them know that you intend to pursue the matter fairly but aggressively, and that they will stand next to the debtor in any legal proceedings on the debt.
13. Obtaining Capital for a Small Business

First, a sober warning: Getting money for a small business is difficult, and it really is the first test of your business acumen. You are competing against every other small business and start-up for a limited pool of capital, and your competition is very, very hungry for that money, just like you. In this financial section, we will briefly describe different sources of money that you should consider. Some sources are more likely to pan out than others, and some sources are probably entirely inappropriate for what you want to do (i.e., expecting a venture capital firm to help you open a local sports bar).

Banks

When starting a business, most people (rightly or wrongly) go to a bank first. This section, therefore, has its own chapter later in the book.

Friends and Family

If you are like many small start-up business ventures, you will look to friends and family for some of your money to get the business started. This money allows you to buy whatever you needed to get started, hire professionals, etc. Whether you have already done this or are contemplating it, please keep two important ideas in mind as you look for this type of funding:

**Do not sell stock at this point!** Debt can and should be given whenever possible at the initial stages if that debt is not co-signed by you. (But that is unlikely to happen. In the beginning, you will probably have to co-sign on any loan to your business, even if the person giving you money is a friend or relative.) If you give stock or a partnership interest, there is another person who now has rights and powers to affect company decisions, even if the person holds only a minority interest (trust me on that one, okay?). Besides, giving Uncle Herman 20% in exchange for $20,000 seems like a steal when your company is worth nothing, but after seven years of your hard work and Uncle Herman's non-involvement, how are you going to feel when you hand over one-fifth whatever you sell your company for? You will hate it. If you absolutely have to give up stock, try to get some sort of option to buy it back in the future in the Shareholder's Agreement.

Second, if you do get the money in the form of debt, **treat such money like it was from a bank or some other outside lender!** This means that you need to thoroughly document the terms of the loan (or stock purchase if it comes in that form) and spell out the rights, duties and powers of the parties involved. Do not attempt to finance your business on a handshake or on the back of a cocktail napkin. Every lawyer knows at least one horror story of clients who failed to properly document their financial relationships during the initial stages of their businesses. Again, treat the debt as real debt. That means you pay the payments on time or, if you can't, you agree to new payment terms with the lender. You may need Uncle Herman for a credit reference someday! Also, not paying someone money you owe them is a sure way to them like you less.
Other Businesses with a Connection to Your Business

Often, there will be businesses in related industries which are not in competition with your business, but instead dependent on or interested in the area in which your start-up is operating. These businesses could be potential customers or clients for your start-up. Such businesses may be willing to help your start-up get equipment and capital needed to “take flight”. Again, try to avoid giving equity to such angels-of-the-marketplace and thoroughly document the transaction (today's angel is tomorrow's villain!)

Finder

Another source of finding money may be “finders”, who inhabit the twilight realm of law and money where the federal securities laws do not reach and even investment bankers fear to tread. These guys cannot negotiate any part of the financing terms, instead their only job is to introduce you to people with money who are willing to invest it. Naturally, the finders take a large chunk of the money they find for you, and they may request a piece of the company as well. The fees can range from 5%-15% of the money they find for you, and this fee might have to be paid up front, regardless of whether they can get you the money. Obviously, most start-ups will not choose finders as their first financing option. When dealing with this type of “professional”, make sure that you have everything in writing before agreeing to anything. A sample finder's agreement is included in our Legal Forms Library.

Invention Promotion Firms

If you are an inventor or your small business centers around a new invention, there are businesses out there which are willing to help fund the further development and promotion of invention which have the promise of paying off in the future. These promotion businesses will do it all: from patent filings and prosecutions to raising capital when needed and marketing the product. The downside is that they will take a very good-sized chunk of your business and its profits. If you go this route, you must be prepared to watch while others pretty much run the show. This may appeal to many inventors, and thus they should look into these promotions businesses. Some inventors, however, feel that in this case, the deal is just too tough, and they look elsewhere for the money and expertise they need.

Buy out Funds/Mezzanine Funds

This is the what people refer to when they talk about “cashing in.” Buy-out funds purchase existing businesses with a steady, proven history of profits. Often the buy-out funds are purchasing an entrepreneur's company built over a lifetime. Management shake-ups are common when a buy-out fund comes in (but by no means are such changes a certainty). Buy-out funds do not take on the risk of a venture capital fund, so they don't expect the same sort of return, but they do look for about thirty to thirty-five percent on their money.

Mezzanine funds operate in much the same way as buy-out funds, and often operate right alongside them. The difference is, mezzanine funds do not take equity for their investment, instead they tend to take subordinated debt and preferred stock, which gives some greater measure of certainty.
Plainly, it is difficult for many reasons to find investors in smaller companies. Enter the Internet. In 1995 Spring Street Brewing Company, a New York City microbrewery, raised $1.6 million under regulation A of the United States securities laws. The Securities and Exchange Commission, not surprisingly, responded by issuing new regulations to cover this development.

There are now firms that specialize in Internet Offerings and maintain bulletin boards for direct stock trading. But this doesn’t mean that selling securities and raising money over the internet is going to be easy or the answer to your monetary needs; you will need lawyers and financial advisors to help you just as if you were doing a non-internet offering. But it is something to explore.

Venture Capital Funding

There are people who raise money from other sources like banks, rich people with extra money, pension funds, mutual funds, etc., to create a “venture capital fund”. Once the venture capital fund is created, the venture capital fund managers who created it scour the planet for young companies which currently lack money but have the potential to generate large profits in the future. When such companies are found (or, more likely, knock on the door of the fund), money is then poured into the young companies in return for part-ownership of the company. What the venture capital fund managers are looking for is a very high return on the investment in the young company. This high return is what is promised to investors in the venture capital fund and is what prompts them to give money to the venture capital fund in the first place. In essence, the venture capitalists are making long shot bets on companies that show a promise of future payoff.

This does not mean that venture capital (VC) funds are loose-fisted gamblers or injudicious in their investment decisions. Hardly. Thousands of applicants for VC funding present themselves to VC fund managers each year. About two-thirds of these applicants are thrown directly into the trashcan without anything more than a cursory review. Of the hundreds that actually get reviewed, only a dozen will be selected for funding in any given year. VC fund managers are careful with the money that they put into risky investments, and your idea had better be a good one if you want to get their attention.

The amount of money invested by venture capital funds dropped steadily after tax code changes that took effect in 1987, but it has been rising again in recent years. There are roughly 950 venture capital funds located in the United States and Canada, with more appearing every day. A large number of these funds are located in California’s Silicon Valley area and the East Coast pockets of high-tech industry.

VC funds almost always take a large portion of a firm’s equity when they invest their money. But entrepreneurs are giving up more than just stock when they take VC money. Entrepreneurs often see their company as something akin to a child which they have raised and nurtured, and selling a portion of this “child” seems wrong and upsetting. Moreover, once a VC fund puts money into a company it wants a large say in how that company is run. So entrepreneurs used to making decisions on their own suddenly have to call the VC
fund managers whenever important company decisions are being made. In addition, the interests of the entrepreneur and the VC fund sometimes diverge (e.g., the VC people want to expand sales of existing company products because it will quickly drive up the market value of the company while the entrepreneur wants to focus on developing a new and exciting product which will shock the industry with its innovative design). In such cases, the relationship between the VC fund managers and the entrepreneurs can be strained. Nonetheless, the entrepreneur usually cuts the deal because the money is often necessary for the company to grow.

But VC fund managers can relate to entrepreneurs. In fact, VC fund managers often say that the business of venture capital is the “business of building business.” This is true to some extent. With the extremely high risk involved and hit or miss nature of the business, venture capitalists sometimes resemble entrepreneurs, albeit financially-focused rather than product or service-focused. The most common way that the VC fund sees a payoff is if the company does very well and the VC fund’s equity position can eventually be sold to another party or to the public at a higher price. This, then, is the basic goal of the VC fund managers.

**Venture Capital Investment Criteria**

VC investment decisions are art, not science. The decision by VC fund managers almost always involves a good portion of personal and subjective decision-making on the part of the VC fund managers. But the general outlines of the decision about whether or not to invest are easily listed, much like you can list the basic elements to a beautiful painting or well-choreographed dance.

In their search for higher-than-average returns through equity ownership of startup companies, VC fund managers look for some basic qualities in a young company: experienced management, innovative or unique products/services which are not readily duplicable by competitors (due to cost of entry into the field or intellectual property protection), and a growing market for the products or services offered by the young company. We will look at these factors more closely.

**Management** This is the most important variable considered by VC fund managers when deciding whether they will invest in a company. The type of management that these people seek, however, is not fortune 500 CEOs, rather the VC fund managers seek good entrepreneurs who can fight tough against failure when the odds are overwhelming. In other words, VC fund managers are looking for people who do not know when it is long past the time to quit and who are fanatically opposed to losing.

But the entrepreneur has to be more than that. They have to show self-confidence, high energy-levels, long-term involvement, high-level problem solving skills, goal-orientation, ability to learn from failure, personal responsibility, and the desire to make money. Having these qualities and being an entrepreneur is, therefore, necessary to getting the VC fund manager's fickle, fleeting attention, but it is not enough by itself. It is also important to have a good management team which possess complementary skills and functions well as a group; VC fund managers generally prefer to give money to teams of entrepreneurial people rather than just one person.
After the VC fund managers are convinced that you have a steady, focused and capable management team, they will look at the next most important area of the business: the market for its products or services.

**Market for Services or Products sold by the Company**  
Not as important as the management of the company, but more important than the other variables, the market in which the startup company operates is very important to the decision made by the VC fund managers.

There are some crucial questions asked by the VC fund managers: How large is the market or the potential market? How fast is the market growing and how sustainable is that growth? Is the company in a position to develop and maintain a strong presence in the market?

The first two questions are answered by information that does not involve the startup venture at all. Using basic research techniques taught in business schools all across the country, the VC fund managers will estimate the potential market demand for the startup company's product. Market forecasts by industry experts and their own subjective analysis informs the VC fund managers about the market in which the startup business operates.

Essential to the art of market forecasting is defining the market as narrowly as possible. Your company is going to build computers? Well, the VC fund managers need to know exactly what kind of computers. There are many sub-markets in the computer market, and knowing what the trends will be for the computer market at-large tells you nothing about the sub-market in which the startup operates. All kinds of variables come into play: end applications for the services or product, customers and potential customers and the amount of value added by the startup's offerings, channels of distribution, and, of course, the direct and indirect competition the startup faces in its market.

Competition in the marketplace will depend in large part on industry structure. Industry structure determines how much competition is possible or probable.

Not surprisingly, VC fund managers prefer startups which operate in markets where the market is either growing or highly fragmented (and thus requires a keen sense of how best to service that market through better products or services than are currently offered). “Growth markets”, as such markets are called, have some common characteristics: technological change and uncertainty, short time horizons, products with high initial costs to produce but which will lower quickly as the number produced increases, and competitors who are also in the startup phase.

“Fragmented markets” possess different characteristics. The cost of entry into the market is low, numerous potential sub-markets with individual needs that can be catered to, easy to differentiate products, lack of economies of scale (often associated with short life spans for products, low overhead costs, creative content required for product or service to be effective, need for proximity to customers or suppliers, or customers who need customized products)

**Proprietary Rights or Innovative Products**  
Of course, another important factor in the VC funding decision is whether the company owns proprietary rights to some technological innovation or a really good product or service that is not readily copied by competitors. But
remember two things: First, the technology cannot be so innovative that there is no ready market for it. (Imagine trying to sell artificial heart valves before the development of heart surgery!) Second, the innovation generally has to be already developed when you go to the VC fund managers. They may invest in an idea that still has to be developed, but you cannot expect investors to fund your plans for developing cold fusion. VC fund managers are not the government, after all, they need to see some return on their investment.

**Company Strategy**  Let's face it, you probably cannot expect a startup company to compete with larger, more established companies on the basis of price, so you are going to have to have a different type of focus. Efficient product development, creativity, special technological or engineering skills, the ability to service customer needs more quickly, these are the hallmarks of the successful startup company. Leave the reliance on financial resources, large manufacturing facilities and distribution networks to the pachyderms who depend on such things for their survival. Startups need to be the hungry wolf: nimble, sly and running with their own kind. To paraphrase Thoreau, a startup should simplify and keep its focus narrow, at least at first. Find a profitable niche and work the hell out of it. VC investors want to be sure that the people who run the business know that business better than the next guy, otherwise the next guy gets the money.

**Valuation**

After sizing up the company and its markets, the VC fund managers start taking a closer look at a company. And one of the first things they do is value the company. (Obviously.) They're asking, “Before we put our money into this business, what is worth?” This gives them an idea as to how much of the company they get for their money.

The cliché among VC fund managers goes something like this: The VC fund has to take enough ownership interest so that if things work out and the company is a success, the fund gets a very good return on their investment. But at the same time the VC fund managers recognize that the people who built the business up to this point are the ones who will make it grow further, so those people need to retain enough of the company to motivate them to work towards its eventual success.

VC fund managers will be sedulously saying this even as they accidentally load your children into the truck they're using to take their “cut” of your company for the money they invested. But don't blame them, after all, that is what they are hired to do.

The typical amount that a VC fund will take is 50-60% upon their initial investment of money, the rest is left to the builders of the company. The best way to make sure you are getting the best deal from a VC fund is to shop around, and don't be shy about letting them bid for a stake in the company. If they're professionals, they will understand that this is part of business, so don't let them con you with talk about how “the two of us had a relationship”this is money we're talking about, and money is a hell of a lot more fickle than love! If you are a one in a thousand company, you may even get more than one VC fund interested in you. So talk to a few VC funds.

If you get an offer from a VC fund, you may think that your company is worth more, and it may very well be. But remember, what you can get others to pay is entirely different from what you think the company is worth. Don't let the amount of money invested and the
percentage of the company given in return become a bigger issue than it already is (and it is a big issue!). VC investment is usually a good thing for a company even if it is painful to let someone else walk away with half of your “child”.

Subjective Factors

As mentioned earlier, the vast majority of ideas and companies presented to a venture capital fund manager will not even be seriously reviewed, let alone scrutinized and poured over by the VC fund managers. Where the people are clearly unsuited to build a business or the idea is crackpot rather than crackerjack, the VC fund managers will (at most) send a polite letter informing the applicant of the decision not to fund them.

At the other end of the spectrum, a few ideas or businesses will come to the VC with a superb blend of management personnel and potential for growth that makes them irresistible to the VC fund managers. If a Microsoft vice-president comes to a VC fund and tells them that he is quitting his $500,000/year job in one of the world's most successful companies because he and this brilliant software developer have an idea that will make them “rich”, you can bet that the VC fund is going to listen to this guy, and probably fund him without as much scrutiny as they would give other applicants. (We have seen it happen!) But very few people in the world have this kind of credibility with VC fund managers.

In truth, only about a 10-15% of ideas actually get a serious review from the fund. These are the risky plans that may pay off, but they may not. This is where the VC fund managers earn their money rather than just make it. Many of the companies reviewed may fit all of the criteria given above, and they may all look very attractive, but the VC fund manager knows they will not all pay off. Which ones, then, are to be chosen? This is where VC becomes an art. This is where the brushstrokes of business acumen lick the canvas with beauty or clumsily smear the fiscal paint. (Yes, yes, that last analogy is over the top, we know, but this is neat stuff nonetheless!)

After the Marriage

Entrepreneurs should recognize that they are getting more than money from a VC fund, they are also getting “partners” who will do everything to help their company become successful. The VC fund managers will help a company develop long and short-range business plans, obtain proper management consulting, aid in the recruitment of key personnel, give referrals to specialized technical support, and other problems that often plague young companies. Of course, the amount of involvement and the depth of it vary according the industry, the company and the VC firm.

For instance, if a startup business is being run by a proven executive from the industry in which the startup is operating, a person with his own contacts and skills to rely on, then the VC fund may try to stay out of his or her way and let the professional do the work. If, on the other hand, the company consists of a brilliant 21 year-old computer program designer who has created the best accounting program ever seen, and the 21 year-old is wondering what do to next with it, the VC people will be very involved in the investment, up to the point of running it if need be. The VC fund managers look at the companies in which they invest and determine what skills the entrepreneur probably lacks, they then work to provide
that expertise, thus decreasing the likelihood that the company will tank because of the perceived weakness.

This is the proper time to point out the downside of this help: it may come even when it is not desired. When a company takes on a VC fund as a “partner,” it must be understood that the fund managers will play a role in every significant business decision made after the investment. Entrepreneurs who are used to operating on their own, or as part of a small group of people whose friendship was forged by the trial of starting a business, must be prepared to have another group of people actively involved in business. But recognize, the VC managers are only useful insofar as they can add value to the company, and they cannot do that without being actively involved in the company. Moreover, the idea of actually running a company is usually anathema to most VC fund managers; they know where their area of expertise is and it isn't running a business.
14. Introduction to Commercial Banking

Common Terms Used in the Banking Industry

The banking industry, like most professions, has its own “lingo”, and if you are going to have to ask a bank for money, it is better that you know some of the more common terms associated with bank loans.

Bank Loan Instruments

A bank instrument is simply the document or contract evidencing a debt. In other words, a bank instrument is the contract you sign when you get your loan from the bank. Examples of bank instruments used when small businesses are being financed include:

Demand Note: This is a promissory note from a company to a bank. A demand note may or may not identify specific due date for the loan, but it will always have to be paid back on demand by the bank. This means that whenever the bank decides that it wants its money, it simply says so and you will have to pay up ... or else. (See Bankruptcy section)

Letter of Credit (L/C): This document is used when the bank grants the holder an amount of credit equal to the face amount of the letter of credit. (Notice that you hold onto this document.) These documents are used as guarantees that even if the company cannot pay for services or products bought on credit, a bank will. These letters are also often used in overseas transactions.

Loan Types

Revolving Loan: These are short-term (a year or two) loans typically secured by a company's account receivables and inventory. The money received from paid accounts receivables and sold inventory is then used to pay off the revolving debt. Of course, the next round of orders for services and products purchased by your company usually draws on this revolving loan so the balance goes back up, and the process starts over again. Now you can see why it is called a revolving loan.

Term Loan: These are loans that usually last for over one year. Revolving loans are often refinanced into terms loans. These loans resemble the car loans and student loans you may be familiar with. Monthly or quarterly payments have to be made by the company and the interest rate will be a little higher than a revolving loan. These loans are almost always secured, typically by assets of the company.

Loan Security

Liquid Assets: These are assets that can be easily sold or taken by a bank or creditor in the event a loan goes into default. Examples of liquid assets are: current account receivables, finished goods inventory, cash, tradable securities.

Hard Assets: These are assets that are not as easily sold but are still valuable. Examples include: machinery, equipment, buildings, land, automobiles, furniture, etc. These assets usually depreciate in value over time, thus banks will typically require that a loan secured by hard assets be over-secured (i.e., the assets' value exceeds the amount of the loan).
Guarantees: These are third-party promises to pay the loan if the company cannot. Company owners and their spouses, relatives, friends and other parties having a connection to the company are often asked to personally guarantee a loan. Also, if the company is owned by a person who owns another business, the other business may also be asked to sign as a guarantor.

**Interest Rates**

**Prime Rate:** Prime Rate is the rate of interest a bank charges their very best commercial loan customers. This rate is basically set by large banks in large cities. Banks all across the country then follow suit.

**Basis Points:** This is a fancy way of referring to the interest percentage rate. One hundred basis points equals one percentage point of interest (e.g., 100 basis points equals 1%, 250 basis points equals 2.5%).

**Accounting and Business Terms**

**Working Capital:** This is simply the dollar value of a company's current assets minus the company's current liabilities (e.g., loans, unpaid purchase orders, etc.) A working capital loan helps create the sales necessary to generate account receivables and inventory (assets!).

**Debt to Equity:** This is a ratio used to measure how “safe” it is for a bank to loan to a company (something which, in reality, is difficult to measure). The higher the debt to equity ratio, the less likely a bank is to approve a loan. Small companies should be in the 3:1 range. That means there should be one dollar of company worth for every three dollars of debt owed by the company. So if the business is worth $100,000, a debt load of $300,000 is about as high as it should go. (This is only a rule of thumb, of course, if a small company shows enormous potential, this measure goes out the window. And if the small business is in a dying industry, no one will want to loan it money, regardless of this ratio.)

**How Bankers See the World**

Bankers are business people too, and they seek a profit, just like you. With that in mind, you should realize that when asked for a loan, bankers perform the same kind of analysis that you perform when you are presented with a business opportunity: How much money can I make off of the opportunity? How likely is it that the opportunity will pan out, and what are the chances of failure? Do I trust the people I'm getting involved with? etc.

The difference between you and the bankers, however, is that you probably do not have a large, imposing building on main street and a lot of obfuscating terminology describing simple concepts. (Bankers are a lot like lawyers in that way.) But behind all of the terminology, there is a relatively short list of things bankers require in a business when they are going to make a loan.

*A relatively close relationship between the borrower and the bank* This is first and foremost to most bankers that you will deal with. Bankers want to know who it is exactly that they are loaning money to, they want to know who to call when problems arise, and who to stay in touch with to find out how things are going. Obviously, bankers never give money to strangers, so get to know them personally through lunches and frequent contact.
Also, build up a history of sound financial management with the banker. Take out a small loan for a vacation or car when you do not need money for it, then pay back the loan very quickly. After you start your business, do the same thing with a small loan. You should also be quick to offer balance sheets and other financial records to the banker. Apart from demonstrating that you know how to keep financial records, it will show that you have nothing to hide. Another smaller action you can do is always pay attention to your checking balances and never overdraw it.

**Managerial ability of the owner** Just as a bankers want to know the person who is borrowing the money, the bankers must make sure that the people who are getting the money are capable of handling the money and putting it to work properly. To put it another way, the last thing in the world that bankers want to do (besides lose money) is foreclose on a loan and take the collateral. So they make loans to businesses they think will survive.

Bankers will often spend some time investigating your background and experience to determine whether you have business acumen. Past employers, suppliers, customers, and other business associates are often contacted as part of this investigation. Hopefully, you did not burn bridges in the past.

**References from other businesses and banks** Bankers want to know that other people, especially other bankers, are willing to vouch for your honesty and reputation. But bankers also get concerned when you are moving from one bank to another. People generally stay with the bankers they already know, so if you are changing banks, there had better be a good reason (and personality conflicts or a refusal to offer a loan are not good reasons as far as a banker is concerned).

**Credit history of owner and business** In both cases, the credit history had better be fairly clean. Bankers do not loan money to former bankrupts, regardless of how good their current business may be. And if you have defaulted on a loan or credit card in the past, forget it.

**Collateral offered as security for the loan** Collateral calms the minds of bankers the way homeowner's insurance offers homeowners peace of mind: if the worst should happen, it will not be as bad as it could have been without it. As a result, bankers go without collateral on a loan about as often as a sane homeowner goes without insurance: never. Collateral usually determines how much loan money you will get. (Bankers are typically willing to loan a business about 80% of the face value of accounts receivables and 20-40% of the value of inventory.)

**Amount of money put into the business by the owner** Bankers are more comfortable loaning to a business person who invests significant amounts of their own money in their business, and many bankers require it before they will give a loan. This sort of investment assures the bankers that owners are committed to the business and will do whatever it takes to keep it healthy. After all, if you will not put your own money into it, why should anyone else?

**Ability to repay the loan with cash from the business** Simply put, the company needs to be bringing in enough money to repay the loan. Collateral and personal guarantees are seen as backstops against a loss due to loan default, they are not seen as substitutes for a source of revenue to repay the loan. Banks will ask you for projections of your business's future cash flow. This projected cash flow will then be compared against the expenses and outstanding
financial obligations of the business. If there is enough money “left over” to make loan payments, you will get a loan. But be aware that your cash flow projections are going to be discounted by the bank to a lesser number. So if you claim cash flow of $10,000 a month, the bank may give it a value of between $6,000 to $8,000. Banks like to build in a margin of “cushion” for any temporary downturns.

Larger economic trends This is the “finger-in-the-wind” analysis of bankers. The look at your business and compare this against what they know about the state of the economy and industry trends. Obviously, during bad economic times bankers will be much less willing to make loans. And if your industry is commonly regarded as one which is dying out, forget it.

Dealing with Bankers

If at all possible, try to talk with the senior vice-president or branch manager who will make the decision about whether to give you a loan. All of the time you spend talking to someone other than the decision-maker is wasted time because a lower-rung person will report to the actual decision-maker, who will then ask you to go through it all over again with them (or worse, they will simply look at the numbers given in the loan application without looking any further).

When you first approach a bank, ask who makes this decision, then ask to meet with that person. Remember, however, that you need to be diplomatic in asking to speak with the Boss, the lower level bank employees do not like to be reminded that they are lower level.

But regardless of who you talk to, there are some documents that you will have to give to the bank.

- Letters of reference
- Personal and business financial statements
- Credit reports
- Business plan for the company
- Legal documentation (corporate resolutions, articles of incorporation, partnership agreements, etc.)
- Documentation of all other outstanding loans

Then you can expect the equivalent of a strip search of your financial past. The bankers will invariably ask for more information and probe further into whatever information you provide them. So prepare yourself for an exasperating series of questions and requests.

But be reasonable and polite when replying and complying with the requests. Just like you, bankers do not like short-tempered people, and after all, if they give you the money, they are doing you something very much akin to a favor.

Collateral

When asking for money from a bank in any amount above, say, $10,000 (depending on you income and the bank), you are going to have to provide the bank with collateral for the debt. If you have no collateral equal in value to the amount of the loan you seek, you can forget it. It really is that simple in most cases. (This is why so many start-up companies avoid using banks.) Assignable leases, warehouse receipts, trust receipts, chattel mortgages,
real estate (including your home), accounts receivable, savings accounts, proceeds from life insurance policies, stocks and bonds, cars, boats, valuable jewelry, or any other asset of value which a bank can sell can be used for collateral.

**After the Loan Approval**

Once you get a loan, you can expect the bankers to be looking over your shoulder at all times. Do not try to fight it, do not try to enjoy it, just politely deal with it. And keep in mind that your bankers have the ability to shut you down by calling your loans. After making a loan to a company or business, banks generally keep an eye on the following list of formal and informal factors to gauge how well the lender is doing:

- Payments made on time
- Willingness to provide quarterly financial statements and allow bank personnel to audit company records
- Bank balances
- Management turnover
- Personal finances of owners
- Inventory turnover and sales
- Availability of owners to meet with bank personnel
- Lawsuits involving company
- Amounts reported as accounts receivable and accounts payable
- Significant business decisions made without bank approval or notification
- Debt to equity ratio

The only other advice we would give you that your attorney and accountant need to be involved from the start. Also, documents every term of the deal, and commit any and all oral agreements to writing as soon as possible.
15. Intellectual Property Laws

There are three primary types of intellectual property that your business is likely to encounter and own: Patents, copyrights and trademarks/servicemarks. We discuss each of these types of intellectual property in turn.

**Patent Law**

Under the United States Constitution and federal law, patent rights are granted to inventors so that they might have exclusive rights to their discoveries. This exclusivity allows the patent holder to prevent others from making, using, selling, offering to sell, or importing the patented item. Once the patent expires, the public can then produce, sell and use the patented item at will.

There are two types of patents (actually three but one type is limited in its relevancy to small groups.)

**Utility Patents:** These are granted to inventors who develop a new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement of any such items already existing. Utility patents remain in force for 20 years from the date on which the application for the patent was filed with the United States Patent and Trademark office.

**Design Patents:** Design patents involve the appearance of created or manufactured items. Design patents in the United States can be obtained on any new, original and ornamental design. Design patents remain in force for 20 years from the date on which the application for the patent was filed with the United States Patent and Trademark office.

Patent applications are accompanied by a description of the item to be patented. This description must be in a form that allows the production of the item by the average practitioner of the relevant trade or skill necessary to produce the item. In other words, other people with the same background and skills as the inventor(s) need to be able to figure out how to create the item from the description given in the patent.

**Patent Scope**

The patent application is also accompanied by the claims of the inventor, which state the scope of the patent and “stakes out” the patent's turf. If anyone engages in the production of an item falling in the claims of a patent, the patent-holder can bring an action against them. An infringement on a patent claim can be either literal or equivalent. Literal infringement occurs when the infringing item possesses each of the features listed in the patent claim. But an infringement can also occur if the infringing item does not possess each item found in the patent claim, this is an equivalent infringement. Both types of infringement allow a patent-holder to exercise his rights and sue the alleged infringer.

**Patent-Holder Rights**

A United States patent allows the owner of the patent to exclude others from making, using or selling the patented invention anywhere in the united states or any of its territories. Note
that it does not automatically give the inventor the power to produce or market an invention, it only allows the patent-holder to prevent others from producing or marketing the item. What's the difference, you ask?

The difference can be illustrated by an example. Suppose you invented windshield wipers, and in your patent claims, you stated that your patent was for any device which oscillated across the windshield and cleaned off the accumulated rain. Then we come along a year after the patent is granted and invent timed windshield wipers (you know, the kind with a built-in delay feature), and I get a patent on timed wipers. Your patent claim would be broad enough that it would prevent me from producing the timed wipers, but you could not produce timed wipers either without my permission. Your patent blocks me from any use of my patent without your permission, and my patent blocks some uses of your patent. This is what is meant when we say that patents give you the right to exclude others, while not necessarily giving you the right to produce what is patented.

**Patent Requirements:**

For the United States Patent Office to grant a patent, an invention must meet the following requirements:

- **Novelty** The invention must be new. The person requesting the patent must be the inventor (or someone who holds the inventor's rights). Also, the inventor must apply for a patent within one year after the invention is sold to the public or offered for sale.
- **Utility** The invention must have some purpose or usefulness.
- **Non-obviousness** The invention cannot be something that was obvious to the average person who worked in the field or discipline out of which the invention arose. (For those of you who care to know, obviousness is measured by what people of “ordinary skill in the art” would find obvious. Clearly, what a genetic scientist finds obvious is not the same as an auto-mechanic.)
- **Disclosure** The Inventor must disclose to the Federal Government the best way known to the inventor of making and using the invention. The inventor must also provide detailed descriptions of the invention that would enable others in the same field to replicate and use the invention.

The US Patent Office then puts its patent examiners to work. Examiners have technical expertise in the relevant field and training in the legal aspects of patentibility. The length of time necessary to get through the patent application process varies according to the technology involved, but the average time is eighteen months. Applications for patents are often rejected, and the inventor must then pursue it by having his or her patent attorneys amend the application and argue with the US Patent Office.

**After the Grant--Validity and Unenforceability of a Patent**

A patent can be challenged and the US Patent Office can review the patent if the patent becomes the subject of litigation. Also, third parties can ask the Patent Office to reexamine the award of a granted patent to determine if the grant was proper in the circumstances. Invalidity of the underlying patent is a common defense to patent infringement.
Unenforceability is a different matter. Fraud on the Patent Office, inequitable conduct, lack of candor when dealing with the Patent Office, can all result in the patent being unenforceable. Similarly, attempts to extend the life of a patent monopoly through the use of restrictive licensing agreements extending beyond the terms of the patent or tying the sale of other unrelated goods to the sale of patented goods are all reasons a patent could become unenforceable.

**Enforcement**

The owner of a valid enforceable patent may sue another party (person, corporation, etc.) infringing on the patent and obtain an order from a court which performs one or all of the following:

- An injunction (a legal order) ordering the infringer to stop making and/or selling the product
- Money for the lost profits or other damages suffered due to the infringer's activity
- Attorney fees (rare)
- Damages for Infringement

If you have actual knowledge that you are infringing on a patent, you are liable for treble damages to the patent-holder. That means that you have to pay three times whatever the patent-holder lost due to your infringement. And if you are really nasty when infringing and/or during the subsequent litigation, you may have to pay the other side's legal fees too.

**Licensing**

The patent monopoly can be used to exclude others from producing your product, or you can make money by licensing your monopoly rights to others. Patent rights and the limited monopoly granted by the patent can be carved up in three different ways by a license. First, the license can divide the patent monopoly temporally by licensing patent rights to another party for some or all of the duration of the patent. For instance, you might grant the initial five-year period of the patent to someone else through a license, keeping the rest of the patent to yourself for future licensing or for your own benefit. Second, the patent monopoly can be carved up geographically, with patent rights being licensed to different parties, who are then limited to selling the patented items to certain parts of the country or world. Last, the patent rights can be divided according to activity. For example, one party may be licensed to only make the product, another party may hold a license to only sell the product, and a third may hold the right to import the product.

An important consideration in any licensing arrangement is which party to the licensing agreement—the patent-holder or the person getting the license—holds the legal right and/or duty to prevent other businesses from infringing on the patent rights. Patent litigation is expensive and complex, so this issue needs to be addressed in any licensing arrangement.

**Trademarks/Servicemarks**

A trademark is any word, slogan (“It's the Real Thing!”), name (Microsoft), or symbol (think of Apple Computer's logo) or device (things like the animated Pillsbury Doughboy) adopted and used by a manufacturer or merchant to identify his goods and to distinguish them from those manufactured or sold by others. Service marks are generally the same
thing except they are employed by service providers rather than manufacturers or merchants.

Trademark law is a sub-part of the larger body of law called unfair competition. Trademark law is designed to protect businesses from others who would misappropriate the business's reputation or identity. (Please note that there are two uses of the word “trademark”. The broadest use of “Trademark” refers to the area of law and practice of trademarks and protection of trademarks. The more narrow term is used to denote a particular trademark. We'll try to make it clear which use we are referring to when we use the term “trademark” by capitalizing the former.)

When you are going to select a trademark and/or name for your business, remember that if your chosen name or trademark is being used by someone else, it could lead to a legal fight over who is entitled to the name or trademark. Also, you do not want to chose a name that is not unique in some way because you might not be able to keep others from using it once you have established your business (example: Good Computers). Go to an attorney or professional service and ask for a search of the public records to ensure that no other businesses are using the trademark or tradename you wish to use. This search should be done before you start investing time and money into advertising or building business contacts.

**Types of trademarks:**
- **trademarks:** a word, symbol or design used to identify and distinguish goods
- **service marks:** a word or design used in association with the sale or advertising of services (not goods!) identifying those services and distinguishing them from the service of others
- **certification mark:** a mark used to certify that goods or services meet certain standards of quality or regulatory compliance
- **collective mark:** a mark used to identify members of an organization

*Purpose of Trademark:*

Trademark protection is supposed to do two things:

- **Prevent Deception** By allowing businesses to reserve names and trademarks, this is supposed to protect consumers from mistake, confusion, or deception as to the origin of goods or services. (For example, if there were no trademark or tradename protection there would be about 50,000 companies called Microsoft all hawking word processing software, 49,999 of which would be terrible programs.)

- **Goodwill** The other reason the law allows businesses to reserve names and identifying marks is to allow businesses owners to make investment into their business's goodwill without fear of others profiting from it.

*Basic Trademark Rights*

In the United States, unlike most of the rest of the world, Trademark rights come into being upon use of the trademark. The first business to use a trademark or a tradename obtains protection against others who want to use that same name or logo in geographical areas where the first business operates. So regardless of whether or not you register your
trademarks and tradenames, a business can obtain certain rights to exclusive use of a trademark or tradename solely from use. (Innocent mistake is no excuse in cases of infringement, so there is no “oops” defense for businesses infringing.) But please note that once you start using a trademark, the Trademark rights that you acquire by using it are yours only so long as you continue to use the trademark--if you quit using the trademark, you may lose your rights. Trademark rights continue indefinitely so long as the trademark is used.

Once you have used a tradename or trademark and it becomes recognizable to others, you must be vigilant about protecting it. If you do not defend your trademarks and tradenames immediately when others infringe on them, do not expect the court system to be very concerned about protecting your rights either. In general, if the courts help anyone, it is fools and saints; squabbling businesses get a decidedly unsympathetic hearing in courts, and inattentive businesses usually get even less. So be vigilant and be aggressive when protecting your trademarks and tradename.

But the rights that your business obtains through mere use can (and should!) be augmented by the rights obtained through federal registration of your business' tradename and trademark. Federal registration of a trademark extends the protection you automatically get due to your use of a name or logo across the country rather than limiting it to the particular geographical area in which you operate. Federal registration also provides significant advantages to you when it comes time to enforce your rights against others seeking to infringe upon your tradename or trademark.

**Federal Registration**

In brief, the federal registration system works this way: The business owning the trademark files an application for federal registration of a mark based on the prior actual use of the trademark or based on a “bona fide” (true) intent to use the mark in interstate or foreign commerce. The filing date of the application becomes the date that the mark or name is first “used” by the business (remember that trademark and tradename rights depend upon who used them first! Whoever used the trademark or tradename first, gets priority). The mark or name applied for by the business is not registered until the applying business submits proof of actual use of the tradename or trademark. This may seem strange to have two steps, but it is done for a reason. This way, businesses can “reserve” a name or logo by filing an application before they spend a lot of money advertising that name or logo. Once all of the marketing research is over and the business decides to go with the logo or name, it can simply show that it is using the name and it has all of the rights to the logo or trademark. (There are also state registration systems which operate in a similar way, except that the application is based upon actual use, not an intent to use of the logo or name. Thus there is only one step in the procedure, unlike federal law.

Federal registrations last ten years, with extensions granted for successive ten-year terms if the trademark is still in use. But please note that during the first ten-year term, trademarks holders need to file evidence between the fifth and sixth years to show that the trademark is still in use.

**Licensing**
In the US, a trademark may be licensed to others, but the owner of the trademark has to control the nature and quality of the trademarked goods and/or services. Licensing without proper control over the product and services can result in the public buying goods which are not up to the standards expected by consumers, and this, in turn, is seen as a misleading of the public. In some cases, this is cause for the trademark owner to lose rights to the trademark.

Licensing a trademark can result in income from the licensee's use of the trademark (royalties). It can also make the trademark more widely known and recognized (and hence more valuable) if more people come to recognize the trademark and identify it with quality services or products. In general, the more a trademark is used, the better for the trademark’s owner.

Any licensing agreement should include provisions covering:

- The license's exclusivity and term
- The procedures for quality control
- Indemnification
- Defined commercial markets
- Accounting procedures for calculation for royalties
- Termination options of licensee and licensor
- Assignment of rights under license

As we noted earlier, both state laws and federal laws govern the use (and therefore) the licensing of trademarks. The federal law governing licensing is commonly called the Lanham Act.

**Giving Notice of Trademark**

You know those little symbols, ®? That represents that the symbol, word, character, etc. appearing right before the ® is a trademark and that Trademark rights are reserved to the owning party.

**Enforcement and Legal Remedies for infringement**

A trademark is infringed (whether or not the trademark is registered), if a party not entitled to use the trademark uses (i) the same or a confusingly similar trademark; (ii) on the same or closely related products; (iii) in the same geographical area as that in which the trademark is used (or within an area of possible expansion).

Just like in patent suits, courts can offer trademark holders or owners relief from infringement. A court may order an infringer to stop using the trademark, destruction of the infringing products, or even award monetary damages suffered by the trademark owner (after a trial on the merits). But don't expect to make any money off of a suit like this; these cases usually only prevent your business from losing any more money due to infringement, they rarely produce revenue for a business suffering from infringement.

**Copyright**

Unlike patent law, copyright law does not protect the underlying invention or idea, rather it protects only the method or manner of expressing the idea. A copyright arises when ideas or
thoughts are put into the form of sentences, words, paragraphs, computer programs, sketches, pictures, graphs, or any other method of conveying thoughts or ideas, commonly referred to as “writings” or “works of authorship”.

What can be copyrighted:

Some examples of what can be copyrighted are:
- Literary works
- Musical works
- Dramatic works
- Choreography or pantomime
- Pictures, sculptures, or paintings
- Motion pictures, videos, or other audiovisual works
- Sound recordings
- Computer programs
- Architectural designs

Rights Granted by Copyrights

A holder of a copyright has the exclusive right to do (and to authorize others to do) the following:
- reproduce the copyrighted work
- create derivative works based on the copyrighted works (e.g., new computer program versions or sequels to stories)
- distribute any copies produced
- perform or disseminate the copyrighted material in public
- display the copyrighted material publicly

It is illegal for anyone to violate these rights. But there are exceptions to these general rights (e.g., “fair use”), so remember that this only gives you a basic idea about what a copyright does and what it does not do.

Creation of Copyrights

Copyright protection exists as soon as the author or creator of copyrightable material creates the work (“renders it in fixed form”). If an employee creates a copyrightable work as part of his employment, the employer, not the employee, is presumed to be the author and all copyright rights flow to the employer. Note that it is not necessary to give notice or register the work to create copyright protection, although it is recommended because it gives the creator additional rights and protections.

Copyright protection is available for unpublished as well as published works. Moreover, protection is given to works created by non-United States authors if certain conditions are satisfied.

Copyright Notice

For works created after March 1, 1989, the use of a copyright notice is optional. However, using the word copyright or the familiar symbol “©” along with the author's name and the year of publication in a place where it can be found upon reasonable inspection is highly recommended. (Example: © John Ulrich 1997) This will reduce the likelihood of “innocent
Copyright registration

Copyright registration is important because such registration is a prerequisite for a party to file suit under the Berne Convention (See International Transfers of Intellectual Property) if there is even a remote chance that your copyrightable material could end up in foreign commerce, please register it. Registration of copyrights also affects licensing, establishment or priority in an infringement action, perfection of security interests, and other important legal issues involving any subsequent litigation.

The procedures for registration are fairly simple. First, send these three items in one envelope to Register of Copyrights, Copyrights Office, Library of Congress, Washington DC, 20559:

- a completed application form;
- filing fee for each application;
- A copy or sample of the work being copyrighted.

Note that if the work is currently unpublished, one complete copy or recording needs to be sent. If the work was first published after January 1, 1978, send two complete copies or recordings of the best edition of the work. If the work was first published before January 1, 1978, then send two copies of the work as it was originally published. Please note that for computer programs and CD-ROMS, there are special requirements for the work sample.

Enforcement

Just like patent suits and Trademark and Tradename suits, courts can offer copyright holders relief from infringement. A court may order an infringer to stop using the trademark or tradename, destruction of the infringing materials or reproductions, impounding and prohibition of imported infringing materials, or even award monetary damages after a trial on the merits. But again, don't expect to make any money off of a suit like this.

License/Transfer of Copyright:

As with any other intellectual property right, the owner of the right may transfer or license copyright powers. But it should be kept in mind that the transfer of exclusive use of rights can only be done in writing. So if you are seeking to obtain a license to software or other copyrightable material, you need to get it down on paper signed by the owner of the copyright. Nonexclusive licensing does not require a written agreement to be effective. Any transfer of a copyright between parties should be registered with the Copyright Office. It is not required by law, but it is a very good idea nonetheless.

International Transfers of Intellectual Property

The protection of intellectual property (“IP”) is not uniform throughout the world, as you might expect. Businesses in third world nations and developing countries, like Brazil, the Asian tigers, and India, often ignore the existence of patents, copyrights, and other
proprietary information, sometimes with the knowledge and even the aid of their governments. Given that the true export of these nations is usually not the actual product being produced and sold (which can be made many other places), but rather the cheap labor used to produce those products, it is not surprising that these nations are uninterested in protecting IP. The developing nations have all of the labor and materials necessary to produce a valuable good at a cheaper price, they simply lack some patent or other exclusionary legal device that is effective in a nation halfway around the world. Enforcement is negligible, if possible at all, and the profits can be enormous. If you were them, would you forbear from producing the product? Probably not.

The governments are really not blameworthy either, since their primary interest is to help their own people, and if the only bad result is that some rich industrial nation's businesses end up making less money than they otherwise would, what real harm is there? (Many unemployed and underemployed citizens in the developed nations could probably answer that, but that is another topic entirely.)

Even among the more developed countries and the G-7, there is a high amount of IP infringement and outright theft. Again, the governments involved often do not even bother to mask their support of their “hometown” malefactors. No nation, including America's own apple pie-fed businesses, can claim purity in the area of IP theft.

Even among the more developed countries and the G-7, there is a high amount of IP infringement and outright theft. Again, the governments involved often do not even bother to mask their support of their “hometown” malefactors. No nation, including America's own apple pie-fed businesses, can claim purity in the area of IP theft.

Given that any valuable idea that you put into the international marketplace is likely to be stolen, what can you do to limit the losses?

The most common method of protecting technology transfers across international borders is a licensing agreement or franchise contract. To enter into such an agreement, the developer or holder of the IP rights in one country must first obtain the legal right to “own” that same information in another country by filing with the foreign jurisdiction. Of course, this is not as simple as filling out a form, and it almost always requires obtaining local legal help with the foreign nation's IP laws. Once the IP protection is obtained, the holder then licenses the business in the foreign country to use the information or technology in the other country.

The person who is licensing the information to a foreign business needs to be aware that they have lost some measure of control over their IP information at this point. Once you give someone your valuable information, there is the chance that they may give it to to others or simply ignore the licensing agreements terms concerning payment for that information. After all, what are you going to do, sue them? In many parts of the world this would be a laughable threat. So after you give up your valuable IP information to a foreign business, be aware that you have increased the risk of that information being spread to unauthorized parties or used in ways you would not otherwise allow. Spend a fair amount of time and money investigating potential foreign businesses to whom you are considering licensing your IP information.

Patent Protection

Well over one hundred nations have laws governing what we recognize as patents, so the idea of a patent is one that is widely shared throughout the world. The problem is that not every nation treats patents the same way. Some nations have very strict and established
guidelines, such as the U.S., Canada, etc., while others give only nominal protection to patent holders without really providing any protection against infringement.

But most patent laws around the world can be grouped into two basic types. “Registration systems” require people applying for patents to submit the appropriate documents and fees to the government. The government then issues the patent without any inquiry into whether the patent should be granted. The patent thus granted is then open to challenge by anyone who may infringe upon it later, and the validity of the patent has to be proven before a tribunal who decides whether the patent will be respected by the government.

The second type of patent system is the “Inquiry and Examination system”, which is like the one the United States currently has. In this system, the business seeking a patent applies to the government from whom the business wants a patent. The government then investigates the state of the art involving the patent application, or a public disclosure of the application is made to allow others to challenge the application. Following this period of investigation or public notice, a patent is either granted or denied based on what was uncovered during the examination period. Once a patent is issued in an Inquiry and Examination system, the courts of that nation usually take it as valid and give it all the legal protections due patents unless it is shown that the patent should not have been issued in the first instance.

There are many agreements between nations concerning reciprocity or mutual recognition of patents, and this may make it easier to obtain a patent in particular countries once one is obtained from your home nation.

The major international agreement concerning the international recognition of patents are the 1970 Patent Cooperation Treaty and the 1883 Convention Union of Paris (which also dealt with trademarks, service marks, trade names, industrial designs, and unfair competition). The European Community has, of course, entered into the EC Patent Convention, under which a single patent is issued and enforceable throughout the EC.

The 1883 Paris agreement gives the basic rules for how the roughly ninety countries who signed the agreement will treat foreigners applying for patents. Under the 1883 agreement, the “right of national treatment”, found in Article 2 of the 1883 agreement, forbids nations from treating foreigners differently than they would treat their own citizens who apply for or own patents. So an American who applies for a patent in France must be treated just as any French applicant would. Similarly, an American who holds a French patent, for whatever it is worth, must be treated by the judicial system just like a French patent holder would. Just as importantly, the 1883 agreement gives patent applicants in their home country “rights of priority” when filing in another, foreign jurisdiction if the files for a foreign patent within twelve months of filing in its home country. Patent applications in the foreign country are not dependent upon the outcome of their home nation’s application. So you could fail to get the American patent but possibly still receive the German and French one. This avoids the need to file a patent in every country at the same time. Of course, you will want to file in all potential markets as soon as possible.

It is important to note, however, that the 1883 Agreement did not alter the rules concerning what is or is not patentable. Those laws are still up the national governments.
The Patent Cooperation Treaty is an agreement designed to reduce the cost of obtaining international patents by implementing more uniform procedures. Rather than submitting an application for each nation, the roughly forty nations which signed the PCT allow inventors or holders of IP to file in certain countries. The patent offices of the United States, Japan, Sweden, the European Patent Office, and Russia are designated as “International Searching Authorities.” An application for a patent in more than one country can be submitted to one of these countries. This triggers a search for any similar devices by the ISA for any previous patents that may cover the relevant area. The ISA then forwards the application along with its search results to any PCT nation where patent protection is sought. Note, however, that each PCT nation still determines whether or not the patent should be granted according to its own laws.

**International Patent Licensing**

Licensing is often essential to foreign expansion. Any foreign subsidiary or joint venture will need to have its rights and obligations set out prior to its startup, and a licensing agreement of patent technology is often part of this. Also, licensing patented technology to a foreign firm could avoid the need for relatively large initial outlays in foreign jurisdictions, outlays which may be at risk due to local laws or local political conditions. But licensing still leaves the patent-holder/licensor open to legal risks.

Third-world countries often regulate patent licensing and other forms of intellectual property licensing. Royalty payments may be limited, export restrictions imposed, mandatory grants of technology improvement or other contractual matters are often controlled by foreign law. Clearly, the existence of such laws and their effects must be clearly understood by both the attorneys drafting contracts as well as the business person who seeks licensees overseas.

But the third world nations are not the only ones writing laws that seem intent on prying patent rights away from foreign licensors. The European Community's Court of Justice handed down some regulations which have many of the same effects as some third world statutes. The regulations prohibit production restraints, outlaws retail price-fixing by the licensor, forbids the licensor from limiting to whom the licensee can sell, limits a licensor's right to compel licensees to “grant back” any improvements the licensee makes on the patented product, and preserves a licensee's right to challenge the patent. Moreover, the exclusive licensing agreements, the allocation of “territory” to licensees, trademark rights, duration of the license, protection of “know-how” (trade secrets), quality control, and discrimination among licensees are all covered by European Community regulations. Make sure your lawyer is up on all of this before you start talking to that nice German firm interested in marketing your product.

Legal risks are not limited to the regulations directly affecting the licensing of intellectual property. The royalty payments that are due under the marketing contract can be subject to currency exchange regulations, taxation laws, or other regulations which may have the effect of reducing the money which may be taken out of the country by the licensing business.

A license may be combined with a trade agreement where the licensor supplies needed materials or personnel to the foreign licensee. Sometimes such trade agreements are a way...
to get around limits on royalty payments and other restrictions on the outflow of capital, so again, make sure that your attorney and consultant weave these considerations into your business strategy.

**Copyrights**

Roughly one hundred nations recognize some form of copyright protection. Under the Universal Copyright Convention of 1952, copyright holders receive “national treatment” (see patent discussion above), translation rights and some other benefits. But best of all, the Universal Copyright Convention of 1952 excuses foreigners who are copyright holders in another nation from registration requirements so long as the foreigners give some sort of notice in their publication, such as the “©” or its written equivalent.

Under the Universal Copyright Convention, the minimum term that a nation can give to a copyright is twenty five years after publication, death of the author or prior registration. The downside is that the Convention also authorizes compulsory license schemes for translation rights in all nations and compulsory reprint rights and instructional usage in developing countries. (You get a little, you give a little ...)

Similarly, for most Pan-Am countries, national treatment and a waiving of registration requirements is granted under the terms of the Mexico City Convention of 1902 and the 1911 Buenos Aires Convention.

To make matters more confusing, there is yet another treaty covering copyrights. The Bern Convention of 1886 suspends registration requirements for copyright holders from participating states, and, unlike the Universal Copyright Convention, the Berne Convention allows for foreign copyright protection regardless of whether the country of origin grants the same work copyright protection and does not require notice on published works. The Berne Convention also grants authors exclusive translation rights and does not contemplate compulsory licensing of translation rights.

**Piracy of Intellectual Property**

Unlicensed reproduction of copyrighted material (computer programs, books, music tapes and videos, movies, etc.) is rampant. The story is the same for patented products such as computers, automotive parts, and just about everything else. Quite simply, if your product or idea is a money maker, you will receive the sincerest form of illegal flattery: piracy.

Sadly, a business's legal protection against intellectual property theft is often ineffective. In the United States, trademark and copyright holders can ask the United States Customs Service, which oversees the importation of goods into this country, to block importation of pirated items which are trying to enter the country. Importation of goods infringing on United States patents, trademarks, copyrights, or other intellectual property rights granted by United States intellectual property laws is specifically prohibited by law. But this doesn't mean that all the goods will be kept out. One customs official who works in California says flatly, “If someone wants to get something into this country (the US), it's coming in--usually right under our noses. The volume of imported goods is so large that we only inspect a small fraction of the containers. The rest are moved out of customs without us giving them much of a going over at all.” In defense of U.S. Customs, it's not incompetence, it's a lack of manpower that allows the illegal infringing material to get into
the country. In any event, don't expect the US Customs Service to police the market and protect your patents and other intellectual property.

And what if the infringement is occurring in another country, so there isn't even the US Customs Service to cry to? If your software is being illegally copied, for example, by a Russian computer business, good luck trying to get the Russian government to enforce a US intellectual property right!

You can commence an action in US courts against foreign importers who bring counterfeit goods into the US, but just try to get the counterfeiters to appear! And if their goods are being sold only overseas, and not in the US market, there is usually little that you can do except ask the Federal Government to complain to the counterfeiter's home nation about the infringement and ask the countries where the counterfeit goods are being sold to impound them.

The sad truth is that if someone from another country is selling knockoffs of your stuff, you are in for a huge headache (and possibly losses) even if the goods are being brought into the States. If the goods are being both produced and sold in foreign countries, you headache is even worse--especially if you are in a part of the world that doesn't like American intellectual property rights in the first place.
16. Bankruptcy

This is a very bare-bones description of what bankruptcy is and what you need to know about it. Frankly, if your business is in danger of heading into bankruptcy, you need to speak to a good lawyer who can give you very specific advice based on your particular situation. And if a business that owes your business money has filed for bankruptcy, well, unless it is a lot of money, you should pretty much write off the debt and move on to other matters. This section, then, is a brief introduction to what bankruptcy is in a legal/financial sense, as opposed to the popular notion of "no-clothes-left-except-this-oak-barrel" we all remember from the Warner Brothers cartoons.

When most people use the word “bankruptcy”, they are referring to a financial state of ruin and the end of a business. When legal and financial advisors use the term “bankruptcy”, they are referring to a situation where a business is currently unable to pay its bills as those bills come due or a business whose liabilities exceed its assets.

To a lawyer's mind or a financial advisor's mind, bankruptcy is merely another state of existence for a business entity, albeit a undesirable one. And those professionals see a bankrupt entity as one that might be able to continue despite whatever present problems it may be experiencing. Professionals have this view of bankrupt businesses because of their familiarity of the United States Bankruptcy Code (USBC). The USBC offers debtors, both individuals and business entities (i.e., corporations, partnerships, etc.) legal protection from creditors seeking immediate repayment. Since bankruptcy is a legal state, you should always contact a bankruptcy attorney for advice if you fear that you are sliding towards the abyss.

*What is Bankruptcy*

When a business or a person declares bankruptcy, they file a petition with the local United States Bankruptcy Court. The court then forces all creditors to stop collection efforts and legal proceedings in other venues (i.e., other courts) and instead present all demands for payment to the bankruptcy court. This keeps the bankrupt business from having to fight creditors in multiple courts, some of which may be on the other side of the country. With all of the legal proceedings consolidated into one setting, the court then does one of two things:

**Repayment Plan** The court sets up a payment schedule which is usually based on a plan presented to it by the bankrupt business. Under the plan, the debtor will pay back the creditors over time (usually a longer period than the original credit terms). The plan needs to show that the creditors will get more of their money back by allowing the business to continue than the creditors would if the assets were liquidated and sold. It is interesting to note that if a repayment schedule is presented and the court approves it, the former managers and/or owners of the business will usually continue to run the business throughout the bankruptcy proceedings unless the management was particularly awful or crooked in some way. After the bankruptcy protection period is over, and debts are repaid, the managers/owners can go on their merry way again (possibly ruining the business a second time).
Liquidation If no repayment schedule is put forward, or if the repayment schedule is not approved by the court, the assets of the bankrupt business are sold by a person called a trustee who organizes the sale and disposes of the assets. All proceeds from this sale go to the creditors. All remaining debts are then wiped out and the former debtor (now debt-free) is given a clean slate. None of the creditors involved in the bankruptcy proceedings can pursue any legal action against the debtor for the debts that were discharged through the bankruptcy proceedings. That game is over.

From this short synopsis of the bankruptcy laws, you should be able to see that our nation's bankruptcy laws generally favor debtors. The courts are empowered to force creditors to take what they get from the debtor before the court discharges all remaining debt. The debtor, in effect, gets off “scot free” and does not have to pay back the money he/she/it owes. This idea of giving debtors a clean start is only about one hundred years old, before that people who could not pay their bills went to jail!

But as you probably know, the creditors of the world do not just forgive and forget when a person or business declares bankruptcy. Any business or person who goes through bankruptcy proceedings has little hope of getting credit from any other source for the next ten years or so, unless a painfully high interest rate is paid along with the provision of some sort of collateral.

Who should declare Bankruptcy

Usually, a potentially bankrupt business is one that has been sliding into ruin for some time. Costs are going up, revenues are going down, or the business has just never been able to sustain itself without cash infusions from other sources. Eventually, the business's poor performance catches up to it and the business becomes so cash-poor that it cannot pay its bills and no one will loan the business any more money. At this point, a business should contact its creditors and try to work out a repayment plan. Make an honest effort to come to terms with all of your creditors before opting for Bankruptcy. Bankruptcy is a very serious affair, requiring lawyers, courts and more than a little amount of money.

Also, do not use bankruptcy as a threat against creditors who are trying to collect their bills. Word will quickly get out that you and your business are deadbeats who will not pay their bills. Far better to come across as a cash-poor business trying to repay its debts than a broke business trying to strong-arm concessions out of creditors. Only if all creditors will not agree to a repayment plan without court intervention should you consider filing for bankruptcy.

Things to Know

Bankruptcy courts are not stupid. Do not try to use them for anything except a true bankruptcy proceeding. We are not going to catalogue all of the ways that the bankruptcy court can punish people and businesses who try to use bankruptcy proceedings for improper reasons, but there are more than enough of them.

Also, in the three months before you go into bankruptcy, do not try to favor one creditor over another when it comes to paying your bills. Bankruptcy courts can go back and recover such money from creditors who received payments from debtors before the debtor filed for bankruptcy if those payments were more than the creditor would receive in a
liquidation. And if there is some sort of fraud involved in the payment of one creditor as opposed to another (i.e., payment is made without the debtor having received something of value in return) in the year prior to the filing of a petition for bankruptcy, the court can void the transaction and force the creditor to repay the money.
17. Securities Laws

In the chaotic securities markets of the 1920s, companies often sold stocks and bonds on the basis of glittering promises of fantastic profits - without disclosing any meaningful information to investors. Some feel that these conditions contributed to the disastrous Stock Market Crash of 1929. Consequently, the U.S. Congress passed laws now generically known as the federal securities laws. Congress also created the Securities and Exchange Commission (SEC) to administer these laws. Whether or not you like governmental intervention in markets, it is impossible to deny the SEC's impact since its creation. And the fact that America now has the best system for the allocation of capital anywhere in the world causes more than a few experts to conclude that the SEC played a crucial role in the development of America's superb capital markets. (Editor's comment: We too think that the SEC can be given some credit for America's capital markets.)

The SEC has many functions, but in sum, the SEC makes sure that businesses selling stocks, bonds, or other equity and debt instruments within America's borders provide accurate and timely information to investors and potential investors. This information then allows those investors to make better (i.e., more informed) decisions about investing money in an attempt to maximize returns. As part of its oversight, the SEC examines annual reports, proxy statements, and company press releases to ensure that American investors are getting accurate, useful information. This information is then used by investors, investment managers and other professionals who make investment decisions for others. So if you have a retirement account, mutual fund, pension, or even a bank account, you are a beneficiary of the SEC's actions since all of those investment vehicles are run by managers who depend on the free access to information provided by the SEC and its officials.

There are two primary sets of federal laws that come into play when a company wants to offer and sell its securities to the public. They are:

- the Securities Act of 1933 (Securities Act), and

**Securities Act**

Under the Securities Act, companies wishing to sell securities must give investors “full disclosure” of all “material facts.” Material facts are those facts that investors would find important in making an investment decision. (In other words, all information!) The `33 Act requires companies to file a registration statement with the SEC that includes information for investors. The SEC does not evaluate the merits of offerings, or determine if the securities offered are “good” investments. That means that the very best companies offering securities (Netscape, Microsoft, AT&T, etc.) are reviewed in much the same way that the more speculative and risky ventures are: without the SEC passing any judgment on the worth of the investment. Investors are given the discretion to determine what is a good buy and what is not. The SEC just makes sure that all material information is disclosed. So the SEC staff reviews registration statements and declares them “effective” if companies satisfy the disclosure rules.

**Exchange Act**
The `34 Exchange Act requires publicly held companies (i.e., companies which have previously sold their shares to the public) to continually disclose information about their business operations, financial conditions, and management (officers, directors, etc.). These companies, and in many cases their officers, directors and significant shareholders, must file periodic reports or other disclosure documents with the SEC. In some cases, the company must deliver the information directly to shareholders.

**Exemptions**

Your company is (or would be) almost certainly exempt from these registration and reporting requirements because you are (would be) a small company with only a limited number of potential shareholders. But you are still subject to all of the anti-fraud provisions of the United States Securities Laws, as well as the securities laws of whatever state in which your business operates or sells securities.

**Legal Ways To Offer and Sell Securities Without Registering With the SEC**

**WARNING:** IF YOU INTEND TO SELL STOCK, BONDS, EQUITY INTERESTS OR ANY OTHER SECURITY TO PARTIES BESIDES YOUR ORIGINAL “PARTNERS”, YOU MUST CONSULT AN EXPERIENCED BUSINESS ATTORNEY BEFORE DOING SO! This section is only intended to brief you on methods of offering securities to the public, it cannot be used as a “how-to” guide for doing so. Selling parts of your business to third parties is a very, very significant event. Don’t go it alone.

A company's securities offering may qualify for one of several exemptions from the registration requirements. The most common exemptions are explained below. Note that if all conditions of the exemptions are not met, purchasers may be able to obtain refunds of their purchase price. In addition, offerings that are exempt from provisions of the federal securities laws may still be subject to the notice and filing obligations of various state laws. Make sure you check with the appropriate state securities administrator before proceeding with your offering. And for pity's sake, talk to a securities lawyer and financial advisor before even thinking about using any of this stuff.

Even if your company's securities are exempt, please be aware that even exempt transactions are subject to the anti-fraud provisions of the federal securities laws. This means that you and your company will be responsible for false or misleading statements (whether oral or written). Misleading statements can be statements which are misleading as to a particular fact (i.e., lies) or misleading because important facts are left out of the discussion (e.g., neglecting to mention that the company selling the securities is currently being investigated by police).

The government vigorously enforces the federal securities laws through criminal, civil and administrative proceedings, and people often go to jail for committing securities fraud, so be careful about not violating the securities laws when looking for investors. (Please note
that some enforcement proceedings are brought through private lawsuits as well, one variant of these private suits are those nasty class action suits you may hear about.)

**Intrastate Offering Exemption**

Section 3(a)(11) of the Securities Act is generally known as the “intrastate offering exemption.” This exemption facilitates the financing of smaller, local business operations. To qualify for the intrastate offering exemption, your company must:

- be incorporated in the state where it is offering the securities;
- carry out a significant amount of its business in that state; and
- make offers and sales only to residents of that state.

There is no fixed limit on the size of the offering or the number of purchasers. Your company needs to determine the residence of each purchaser. If any of the securities are offered or sold to even one out-of-state person, the exemption may be lost. And without the exemption, your company could be in violation of the Securities Act registration requirements. Moreover, if one of the instate purchasers of your company resells the securities to an out-state person within a short period of time after the company’s offering is complete (the usual test is nine months), the entire transaction, including the original sales, might violate the Securities Act. So you need to ensure that your purchasers will not resell to out-state persons in a way that causes your company to lose its exemption for the securities sales. This is not that difficult since, typically, companies issuing securities under the intrastate exemption know the purchasers of the securities and directly negotiate the terms of the sale with those purchasers. Moreover, the terms of purchase involve contractual arrangements to help prevent prohibited sales.

Note that if your company holds some of its assets outside the state, or derives a substantial portion of its revenues outside the state where it proposes to offer its securities, it will probably have a difficult time qualifying for the exemption.

You may follow Rule 147, a “safe harbor” rule, to ensure that you meet the requirements for this exemption. It is possible, however, that transactions not meeting all requirements of Rule 147 may still qualify for the exemption.

**Private Offering Exemption**

Section 4(2) of the Securities Act exempts from registration “transactions by an issuer not involving any public offering.” To qualify for this exemption, the purchasers of the securities must:

- have enough knowledge and experience in finance and business matters to evaluate the risks and merits of the investment (the “sophisticated investor”), or be able to bear the investment's economic risk; and
- have access to the type of information normally provided in a prospectus; and agree not to resell or distribute the securities to the public.

In addition, the offering company may not use any form of public solicitation or general advertising in connection with the offering.
The precise limits of this private offering exemption are uncertain. As the number of purchasers increases and their relationship to the company and its management becomes more remote, it is more difficult to show that the transaction qualifies for the exemption. And please remember that if you offer securities to even one person who does not meet the necessary conditions, the entire offering may be in violation of the Securities Act.

Rule 506, another “safe harbor” rule, provides objective standards that you can rely on to meet the requirements of this exemption. Rule 506 is a part of Regulation which we describe more fully down below.

Regulation A

Section 3(b) of the Securities Act authorizes the SEC to exempt from registering small securities offerings, and under this authority the SEC created Regulation A, an exemption for public offerings of $5 million or less in any 12-month period. If you choose to rely on this exemption, your company must file an offering statement (consisting of a notification, offering circular, and exhibits) with the SEC for review.

Regulation A offerings resemble registered offerings in some ways. For example, you must provide purchasers with an offering circular that is similar in content to a prospectus. Like registered offerings, the securities can be offered publicly and are not “restricted,” meaning they are freely tradable in the secondary market after the offering. The principal advantages of Regulation A offerings, as opposed to full registration, are:

- The financial statements are simpler and don’t need to be audited;
- There are no Exchange Act reporting obligations after the offering unless the company has more than $10 million in total assets and more than 500 shareholders;
- Companies may choose among three formats to prepare the offering circular, one of which is a simplified question-and-answer document; and
- You may “test the waters” to determine if there is adequate interest in your securities before going through the expense of filing with the SEC. (This is really important for smaller to medium-sized businesses who want to offer securities publicly but do not know if there is enough interest in them to warrant the legal fees and accounting fees associated with offerings.)

All types of companies which do not report under the Exchange Act may use Regulation A, except “blank check” companies, those with an unspecified business, and investment companies registered or required to be registered under the Investment Company Act of 1940. In most cases, shareholders may use Regulation A to resell up to $1.5 million of securities. If you “test the waters,” you can use general solicitation and advertising prior to filing an offering statement with the SEC, giving you the advantage of determining whether there is enough market interest in your securities before you incur the full range of legal, accounting, and other costs associated with filing an offering statement. You may not, however, solicit or accept money until the SEC staff completes its review of the filed offering statement and you deliver prescribed offering materials to investors.

Regulation D

Regulation D establishes three exemptions from Securities Act registration.
1. Rule 504

Rule 504 provides an exemption for the offer and sale of up to $1,000,000 of securities in a 12-month period. Your company may use this exemption so long as it is not a blank check company and is not subject to Exchange Act reporting requirements. Some of the most important characteristics of a Rule 504 offering are:

- You can sell securities to an unlimited number of persons;
- You can use general solicitation or advertising to market the securities; and
- Purchasers receive securities that are not “restricted.” This means that they may sell their securities in the open market without registration or other sales limits imposed on privately placed securities.

Rule 504 does not require issuers to give disclosure documents to investors. Nonetheless, you should take care to provide sufficient information to investors to avoid violating the anti-fraud provisions of the securities laws. This means that any information you provide to investors must be free from false or misleading statements. Similarly, you should not exclude any information if that omission makes the information provided to investors false or misleading.

2. Rule 505

Rule 505 provides an exemption for offers and sales of securities totaling up to $5 million in any 12-month period. Under this exemption, you may sell to an unlimited number of “accredited investors” and up to 35 other persons (who do not need to satisfy the sophistication or wealth standards associated with other exemptions). Purchasers must buy for investment only, and not for resale. The issued securities are “restricted.” Consequently, you must inform investors that they may not sell for at least a year without registering the transaction. You may not use general solicitation or advertising to sell the securities. An “accredited investor” is:

- a bank, insurance company, registered investment company, business development company, or small business investment company;
- an employee benefit plan (within the meaning of the Employee Retirement Income Security Act) if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of $5 million;
- a charitable organization, corporation or partnership with assets exceeding $5 million;
- a director, executive officer, or general partner of the company selling the securities;
- a business in which all the equity owners are accredited investors;
- a natural person with a net worth of at least $1 million;
- a natural person with income exceeding $200,000 in each of the two most recent years or joint income with a spouse exceeding $300,000 for those years and a reasonable expectation of the same income level in the current year; or a trust with assets of at least $5 million, not formed to acquire the securities offered, and whose purchases are directed by a sophisticated person.

It is up to you to decide what information you give to accredited investors, so long as it does not violate the anti-fraud prohibitions. But you must give non-accredited investors
disclosure documents that generally are the same as those used in registered offerings. If you provide information to accredited investors, you must make this information available to the non-accredited investors as well. You must also be available to answer questions by prospective purchasers.

Here are some specifics about the financial statement requirements applicable to this type of offering:

- Only financial statements for the most recent fiscal year need be certified by an independent public accountant;
- If a company other than a limited partnership cannot obtain audited financial statements without unreasonable effort or expense, only the company’s balance sheet (to be dated within 120 days of the start of the offering) must be audited; and
- Limited partnerships unable to obtain required financial statements without unreasonable effort or expense may furnish audited financial statements prepared under the federal income tax laws.

3. Rule 506

As we discussed earlier, Rule 506 is a “safe harbor” for the private offering exemption. If your company satisfies the following standards, you can be assured that you are within the Section 4(2) exemption:

- You can raise an unlimited amount of capital;
- You cannot use general solicitation or advertising to market the securities;
- You can sell securities to an unlimited number of accredited investors (the same group we identified in the Rule 505 discussion) and up to 35 other purchasers. Unlike Rule 505, all non-accredited investors (either alone or with a purchaser representative) must be sophisticated—is, they must have sufficient knowledge and experience in financial and business matters to make them capable of evaluating the merits and risks of the prospective investment;
- It is up to you to decide what information you give to accredited investors, so long as it does not violate the anti-fraud prohibitions. But you must give non-accredited investors disclosure documents that generally are the same as those used in registered offerings. If you provide information to accredited investors, you must make this information available to the non-accredited investors as well;
- You must be available to answer questions by prospective purchasers;
- Financial statement requirements are the same as for Rule 505; and
- Purchasers receive “restricted” securities. Consequently, purchasers may not freely trade the securities in the secondary market after the offering.

Accredited Investor Exemption - Section 4(6)

Section 4(6) of the Securities Act exempts from registration offers and sales of securities to accredited investors when the total offering price is less than $5 million.

The definition of accredited investors is the same as that used in Regulation D. Like the exemptions in Rule 505 and 506, this exemption does not permit any form of advertising or public solicitation. There are no document delivery requirements. Of course, all transactions are subject to the antifraud provisions of the securities laws.
California's Limited Offering Exemption - Rule 1001

SEC Rule 1001 provides an exemption from the registration requirements of the Securities Act for offers and sales of securities, in amounts of up to $5 million, that satisfy the conditions of §25102(n) of the California Corporations Code. This California law exempts from California state law registration offerings made by California companies to “qualified purchasers” whose characteristics are similar to, but not the same as, accredited investors under Regulation D. This exemption allows some methods of general solicitation prior to sales.

State Law Requirements

The federal government and state governments each have their own securities laws and regulations, so a company selling securities must comply with federal and state securities laws. Thus a particular offering can be exempt under the federal securities laws, but still be subject to individual state laws.

Historically, most state legislatures have followed one of two approaches in regulating public offerings of securities, or a combination of the two approaches. Some states review small business securities offerings to ensure that such companies disclose to investors all information needed to make an informed investment decision. Other states also analyze public offerings using substantive standards to assure that the terms and structure of the offerings are fair to investors, in addition to the focus on disclosure. (In other words, bureaucrats are deciding what a good business deal should look like. Absurd, isn't it? With all due respect to well-intentioned bureaucrats, how would Microsoft, Apple, etc. have initially looked to a risk-averse bureaucrat deciding on the worth of an investment?)

To facilitate small business capital formation, the North American Securities Administrators Association (“NASAA”), in conjunction with the American Bar Association, developed the Small Corporate Offering Registration (“SCOR”). SCOR is a simplified “question and answer” registration form that companies also can use as the disclosure document for investors. SCOR was primarily designed for state registration of small business securities offerings conducted under the SEC's Rule 504, for sale of securities up to $1,000,000. Currently, (about) 44 states recognize SCOR. To assist small business issuers in completing the SCOR Form, NASAA has developed a detailed “Issuer's Manual.” In addition, a small company can use the SCOR Form to satisfy many of the filing requirements of the SEC's Regulation A exemption, for sales of securities of up to $5,000,000, since the company may file it with the SEC as part of the Regulation A offering statement.

To assist small businesses, some states coordinate SCOR or Regulation A filings through a program called “Regional Review.” Regional Reviews are available in the New England states, several western states, and many Midwestern states. Companies seeking additional information on SCOR, Regional Reviews or the “Issuer's Manual” should contact NASAA.
18. Legal Forms Library

Corporate Organizational Forms

Checklist for Organization of a Corporation

1. Reserve name with state.
2. Reserve or check availability of name in appropriate foreign jurisdictions, and file or check availability of name and any trade names, logos or other trade marks in appropriate state and federal copyright or trade mark offices.
3. Determine the following:
   a. Names of incorporators,
   b. Name of registered agent,
   c. Location of registered office (which must be in Illinois),
   d. Capitalization and stock rights, including:
      — the number, classes and par value (if any) of all stock to be authorized and issued,
      — special rights or preferences for any class of stock,
      — any authority to be given to the board of directors to issue stock in series or determine rights and preferences in the future,
      — whether shares will have preemptive rights,
      — whether shares will have cumulative voting rights, and
      — whether to increase or decrease for certain matters the statutory two-thirds shareholder vote requirement,
   e. Consideration to be received for the stock (whether cash, property or services and, in each case, how much or what),
   f. Number and names of initial shareholders and the number of shares each will subscribe for,
   g. Number and names of initial directors, and whether any special provisions (e.g., staggered terms, certain directors to be elected by certain shareholders) will apply to directors,
   h. Offices (e.g., President, Vice President, Secretary, Treasurer to be established) and names of the initial officers,
   i. Extent to which corporate indemnification will be provided to directors, officers, employees and/or others,
j. Estimate of the value of all property to be owned by the corporation in or out of Illinois during the following year and estimate of the value of such property in Illinois during the following year, and

k. Fiscal year of the Corporation.

4. Prepare and execute pre-incorporation subscription agreements.

5. Prepare, execute and file articles of incorporation (setting forth appropriate matters listed in item 3 above) with the Illinois Secretary of State and, when certified by the Secretary of State, with the Recorder of Deeds of the county in which the registered office is located.

6. Prepare by-laws setting forth appropriate matters including those listed in item 4 above.

7. Provide for shareholder meeting or consent action if appropriate to name initial directors, adopt by-laws, etc.

8. Provide for initial board of directors meeting or consent action to take organizational actions including:
   a. ratifying articles of incorporation,
   b. adopting by-laws if appropriate,
   c. electing officers,
   d. adopting stock certificate form,
   e. adopting corporate seal,
   f. issuing stock to initial shareholders and in that connection accepting subscription agreements and issuing a cross-receipt,
   g. adopting banking resolution authorizing bank accounts, etc.,
   h. naming registered agent,
   i. adopting fiscal year,
   j. authorizing payment of incorporation expenses,
   k. authorizing qualification in foreign jurisdictions, and
   l. ratifying previous organization actions.

9. Calculate initial franchise tax using the information referred to in item 3 above.


11. Qualify in any appropriate foreign jurisdictions.

12. Apply for federal income tax employer identification number.

13. Obtain any appropriate state or local tax identification numbers.
Sample Name Reservation Form

To: Secretary of State

As provided for in the Business corporation laws of the State of [state of incorporation (to which the letter is sent)], the undersigned hereby applies for reservation of the name "____
__________________________________________________________" for a period of sixty days.

Dated this ______, of ________, 20__. 

Applicant: ________________________________
Sample Pre-incorporation Agreement (Illinois example)

PREORGANIZATION SUBSCRIPTION AGREEMENT

The undersigned propose to organize a corporation under the Illinois Business Corporation Act of 1983 to be known as ____________________________, or by such other name as the incorporators may select.

The corporation shall authorize ________________ shares, all of which shall be common stock and have ________________ par value:

The corporation shall be organized for the following purposes:

______________________.

The undersigned therefore severally subscribe for the number of shares of the corporation set opposite their respective names on Schedule A hereto, and agree to pay the sum of ____________________________ ($_____________) per share.

All subscriptions shall be payable at such time or times as the board of directors may determine and shall be paid in cash, except as expressly indicated otherwise.

Separate copies of this agreement may be signed with the same force and effect as though all signatures were appended to one original instrument.

Dated: ____________________
SCHEDULE A
(to the Pre-incorporation Subscription Agreement)

<table>
<thead>
<tr>
<th>Name</th>
<th>Number of Shares Subscribed for</th>
<th>Amount Subscribed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shareholder 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shareholder 2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shareholder 3</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total

© e-Business Press, L.L.C.

Entrepreneur's Crash Course
Sample Articles of Incorporation (Delaware example)

STATE of DELAWARE
CERTIFICATE of INCORPORATION
A STOCK CORPORATION

FIRST: The name of this Corporation is ________________________________

SECOND: Its Registered Office in the State of Delaware is to be located at ____________
___________________________ Street, in the City of ________________ County of ____________
Zip Code ____________. The registered agent in charge thereof is ____________________________

THIRD: The purpose of the corporation is to engage in any lawful act or activity for which
corporations may be organized under the General Corporation Law of Delaware.

FOURTH: The amount of the total authorized capital stock of this corporation is
___________________________ Dollars ($ __________) divided into ____________
shares of _____________________________ Dollars ($ __________) each.

FIFTH: The name and mailing address of the incorporator are as follows:
Name: ________________________________
Mailing Address: ________________________________ Zip Code ____________

I, THE UNDERSIGNED, for the purpose of forming a corporation under the laws of the State
of Delaware, do make, file and record this Certificate, and do certify that the facts herein stated
are true, and I have accordingly hereunto set my hand this _______ day of _____, A.D. 19______.

BY: ________________________________
(Incorporator)

NAME: ________________________________
(type or print)
Sample By-Laws of a Corporation (Delaware example)

BY-LAWS

OF

INC.

A CORPORATION ORGANIZED UNDER
THE LAWS OF THE STATE OF DELAWARE
ARTICLE I

STOCKHOLDERS

1. CERTIFICATES REPRESENTING STOCK. Every holder of stock in the corporation shall be entitled to have a certificate signed by, or in the name of, the corporation by the Chairman or Vice Chairman of the Board of Directors, if any, or by the President or a Vice-President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation certifying the number of shares owned by such stockholder in the corporation. Any and all signatures on any such certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Whenever the corporation shall be authorized to issue more than one class of stock or more than one series of any class of stock, and whenever the corporation shall issue any shares of its stock as partly paid stock, the certificates representing shares of any such class or series or any such partly paid stock, shall set forth thereon the statements prescribed by the General Corporation Law. Any restrictions on the transfer or registration of transfer of any shares of stock of any class or series shall be noted conspicuously on the certificate representing such shares.

The corporation may issue a new certificate of stock in place of any certificate theretofore issued by it, alleged to have been lost, stolen, or destroyed, and the Board of Directors may require the owner of any lost, stolen, or destroyed certificate, or the owner's legal representative, to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against it on account of the alleged loss, theft, or destruction of any such certificate or the issuance of any such new certificate.

2. FRACTIONAL SHARE INTERESTS. The corporation may, but shall not be required to, issue fractions of a share. If the corporation does not issue fractions of a share, it shall (1) arrange for the disposition of fractional interests by those entitled thereto, (2) pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or (3) issue script or warrants in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such script or warrants aggregating a full share. A certificate for a fractional share shall, but script or warrants shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The Board of Directors may cause script or warrants to be issued subject
to the conditions that they shall become void if not exchanged for certificates representing full
shares for which script or warrants are exchangeable may be sold by the corporation and the
proceeds thereof distributed to the holders of script or warrants, or subject to any other
conditions which the Board of Directors may impose.

3. STOCK TRANSFERS. Upon compliance with provisions restricting the
transfer or registration of transfer of shares of stock, if any, transfers or registration of transfers
of shares of stock of the corporation shall be made only on the stock ledger of the corporation
by the registered holder thereof, or by such holder's attorney thereunto authorized by power of
attorney duly executed and filed with the Secretary of the corporation or with a transfer agent
or a registrar, if any, and on surrender of the certificate or certificates for such shares of stock
properly endorsed and the payment of all taxes due thereon.

4. RECORD DATE FOR STOCKHOLDERS. For the purpose of determining the
stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment
thereof, or to repress consent to corporate action in writing without a meeting, or entitled to
receive payment of any dividend or other distribution or the allotment of any rights, or entitled
to exercise any rights in respect of any change, conversion, or exchange of stock or for the
purpose of any other lawful action, the directors may fix, in advance, a record date, which shall
not be more than sixty nor less than ten days before the date of such meeting, nor more than
sixty days prior to any other action. If no record date is fixed, the record date for determining
stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of
business on the day next preceding the day on which notice is given, or, if notice is waived, at
the close of business on the day next preceding the day on which the meeting is held; the record
date for determining stockholders entitled to express consent to corporate action in writing
without a meeting, when no prior action by the Board of Directors is necessary, shall be the day
on which the first written consent is expressed; and the record date for determining
stockholders for any other purpose shall be at the close of business on the day on which the
Board of Directors adopts the resolution relating thereto. A determination of stockholders of
record entitled to notice of or to vote at any meeting of stockholders shall apply to any
adjournment of the meeting; provided, however, that the Board of Directors may fix a new
record date for the adjourned meeting.

5. MEANING OF CERTAIN TERMS. As used herein in respect of the right to
notice of a meeting of stockholders or a waiver thereof or to participate or vote thereat or to
consent or dissent in writing in lieu of a meeting, as the case may be, the term “share” or
“shares” or “share of stock” or “shares of stock” or “stockholder” or “stockholders” refers to an
outstanding share or shares of stock and to a holder or holders of record of outstanding shares
of stock when the corporation is authorized to issue only one class of shares of stock, and said
reference is also intended to include any outstanding share or shares of stock of any class upon
which or upon whom the certificate of incorporation confers such rights where there are two or
more classes or series of shares of stock or which or upon whom the General Corporation Law
confers such rights notwithstanding that the certificate of incorporation may provide for more
than one class or series of shares of stock, one or more of which are limited or denied such rights thereunder; provided, however, that no such right shall vest in the event of an increase or a decrease in the authorized number of shares of stock of any class or series which is otherwise denied voting rights under the provisions of the certificate of incorporation, except as any provision of law may otherwise require.

6. STOCKHOLDER MEETINGS.

- TIME. The annual meeting shall be held on the date and at the time fixed, from time to time, by the directors, provided that the first annual meeting shall be held on a date within thirteen months after the organization of the corporation, and each successive annual meeting shall be held on a date within thirteen months after the date of the preceding annual meeting. A special meeting shall be held on the date and at the time fixed by the directors.

- PLACE. Annual meetings and special meetings shall be held at such place, within or without the State of Delaware, as the directors may, from time to time, fix. Whenever the directors shall fail to fix such place, the meeting shall be held at the registered office of the corporation in the State of Delaware.

- CALL. Annual meetings and special meetings may be called by the directors or by any officer instructed by the directors to call the meeting.

- NOTICE OR WAIVER OF NOTICE. Written notice of all meetings shall be given, stating the place, date, and hour of the meeting and stating the place within the city or other municipality or community at which the list of stockholders of the corporation may be examined. The notice of an annual meeting shall state that the meeting is called for the election of directors and for the transaction of other business which may properly come before the meeting, and shall, (if any other action which could be taken at a special meeting is to be taken at such annual meeting) state the purpose or purposes. The notice of a special meeting shall in all instances state the purpose or purposes for which the meeting is called. The notice of any meeting shall also include, or be accompanied by, any additional statements, information, or documents prescribed by the General Corporation Law. Except as otherwise provided by the General Corporation Law, a copy of the notice of any meeting shall be given, personally or by mail, not less than ten days nor more than sixty days before the date of the meeting, unless the lapse of the prescribed period of time shall have been waived, and directed to each stockholder at the stockholder's record address or at such other address which the stockholder may have furnished by request in writing to the Secretary of the corporation. Notice by mail shall be deemed to be given when deposited, with postage thereon prepaid, in the United States Mail. If a meeting is adjourned to another time, not more than thirty days hence, and or to another place, and if an announcement of the adjourned time and or place is made at the meeting, it
shall not be necessary to give notice of the adjourned meeting unless the directors, after adjournment, fix a new record date for the adjourned meeting. Notice need not be given to any stockholder who submits a written waiver of notice signed by such stockholder before or after the time stated therein. Attendance of a stockholder at a meeting of stockholders shall constitute a waiver of notice of such meeting, except when the stockholder attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice.

- STOCKHOLDER LIST. The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city or other municipality or community where the meeting is to be held, which place shall be specified in the notice of the meeting, or if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this section or the books of the corporation, or to vote at any meeting of stockholders.

- CONDUCT OF MEETING. Meetings of the stockholders shall be presided over by one of the following officers in the order of seniority and if present and acting - the Chairman of the Board, if any, the Vice-Chairman of the Board, if any, the President, a Vice-President, or, if none of the foregoing is in office and present and acting, by a chairman to be chosen by the stockholders. The Secretary of the corporation, or in the Secretary's absence, an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present the Chairman of the meeting shall appoint a secretary of the meeting.

- PROXY REPRESENTATION. Every stockholder may authorize another person or persons to act for such stockholder by proxy in all matters in which a stockholder is entitled to participate, whether by waiving notice of any meeting, voting or participating at a meeting, or expressing consent or dissent without a meeting. Every proxy must be signed by the stockholder or by the stockholder's attorney-in-fact. No proxy shall be voted or acted upon after three years from its date unless such proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and, if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.
- INSPECTORS. The directors, in advance of any meeting, may, but need not, appoint one or more inspectors of election to act at the meeting or any adjournment thereof. If an inspector or inspectors are not appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, if any, before entering upon the discharge of his or her duties shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his or her ability. The inspector or inspectors if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, allots or consents, determine election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspector or inspectors, if any, shall make a report in writing of any challenge, question or matter determined by such inspector or inspectors and execute a certificate of any fact found by the inspector(s).

- QUORUM. The holders of a majority of the outstanding shares of stock shall constitute a quorum at a meeting of stockholders for the transaction of any business. The stockholders present may adjourn the meeting despite the absence of quorum.

- VOTING. Each share of stock shall entitle the holder thereof to one vote. In the election of directors, a plurality of the votes cast shall elect. Any other action shall be authorized by a majority of the votes cast except where the General Corporation Law prescribes a different percentage of votes and or a different exercise of voting power, and except as may be otherwise prescribed by the provisions of the certificate of incorporation and these By-Laws. In the election of directors, and for any other action, voting need not be by ballot.

7. STOCKHOLDER ACTION WITHOUT MEETINGS. Any action required by the General Corporation Law to be taken at any annual or special meeting of stockholders, or any action which may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock 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 shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

ARTICLE II

121
DIRECTORS

1. FUNCTIONS AND DEFINITION. The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors of the corporation. The Board of Directors shall have the authority to fix the compensation of the members thereof. The use of the phrase “whole board” herein refers to the total number of directors which the corporation would have if there were no vacancies.

2. QUALIFICATION AND NUMBER. A director need not be a stockholder, a citizen of the United States, or a resident of the State of Delaware. The initial Board of Directors shall consist of _________ persons. Thereafter, the number of directors constituting the whole board shall be at least one. Subject to the foregoing limitation and except for the first Board of Directors, such number may be fixed from time to time by action of the stockholders or of the directors, or, if the number is not fixed, the number shall be _______. The number of directors may be increased or decreased by action of the stockholders or of the directors.

3. ELECTION AND TERM. The first Board of Directors, unless the members thereof shall have been named in the certificate of incorporation, shall be elected by the incorporator or incorporators and shall hold office until the first annual meeting of stockholders and until their successors are elected and qualified or until their earlier resignation or removal. Any director may resign at any time upon written notice to the corporation. Thereafter, directors who are elected at an annual meeting of stockholders, and directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next annual meeting of stockholders and until their successors are elected and qualified or until their earlier resignation or removal. In the interim between annual meetings of stockholders or of special meetings of stockholders called for the election of directors and/or for the removal of one or more directors and for the filling of any vacancy in that connection, newly created directorships and any vacancies resulting from the removal of directors for cause or without cause, may be filled by the vote of a majority of the remaining directors then in office, although less than a quorum, or by the sole remaining director.

4. MEETINGS.

- TIME. Meetings shall be held at such time as the Board shall fix, except that the first meeting of a newly elected Board shall be held as soon after its election as the directors may conveniently assemble.

- PLACE. Meetings shall be held at such place within or without the State of Delaware as shall be fixed by the Board.
- CALL. No call shall be required for regular meetings for which the time and place have been fixed. Special meetings may be called by or at the direction of the Chairman of the Board, if any, the Vice-Chairman of the Board, if any, or the President, or of a majority of the directors in office.

- NOTICE OF ACTUAL OR CONSTRUCTIVE WAIVER. No notice shall be required for regular meetings for which the time and place have been fixed. Written, oral, or any other mode of notice of the time and place shall be given for special meetings in sufficient time for the convenient assembly of the directors thereat. Notice need not be given to any director or to any member of a committee of directors who submits a written waiver of notice signed by him before or after the time stated therein. Attendance of any such person at a meeting shall constitute a waiver of notice of such meeting, except when he attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors need be specified in any written waiver of notice.

- QUORUM AND ACTION. A majority of the whole Board shall constitute a quorum except when a vacancy or vacancies prevents such majority, whereupon a majority of the directors in office shall constitute a quorum, provided, that such majority shall constitute at least one-third of the whole Board. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting to another time and place. Except as herein otherwise provided, and except as otherwise provided by the General Corporation Law and these By-Laws which govern a meeting of directors held to fill vacancies and newly created directorships in the Board or action of disinterested directors.

Any member or members of the Board of Directors or of any committee designated by the Board, may participate in a meeting of the Board, or any such committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other.

- CHAIRMAN OF THE MEETING. The Chairman of the Board, if any and if present and acting, shall preside at all meetings. Otherwise, the Vice-Chairman of the Board, if any and if present and acting, or the President, if present and acting, or any other director chosen by the Board, shall preside.

5. REMOVAL OF DIRECTORS. Except as may otherwise be provided by the General Corporation Law, any director or the entire Board of Directors may be removed, with
or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors.

6. COMMITTEES. The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of any such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not the number or numbers constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board, shall have and may exercise the powers and authority of the Board of Directors in the management of the business and affairs of the corporation with the exception of any authority the delegation of which is prohibited by Section 141 of the General Corporation Law, and may authorize the seal of the corporation to be affixed to all papers which may require it.

7. WRITTEN ACTION. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

ARTICLE III

OFFICERS

The officers of the corporation shall consist of a President, a Secretary, a Treasurer, and, if deemed necessary, expedient, or desirable by the Board of Directors, a Chairman of the Board, a Vice-Chairman of the Board, an Executive Vice President, one or more other Vice-Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers with such titles as the resolution of the Board of Directors choosing them shall designate. Except as may otherwise be provided in the resolution of the Board of Directors choosing him or her, no officer other than the Chairman or Vice-Chairman of the Board, if any, need be a director. Any number of offices may be held by the same person, as the directors may determine, except that no person may hold the offices of President and Secretary simultaneously.

Unless otherwise provided in the resolution choosing him, each officer shall be chosen for a term which shall continue until the meeting of the Board of Directors following the next
annual meeting of stockholders and until his or her successor shall have been chosen and qualified.

All officers of the corporation shall have such authority and perform such duties in the management and operation of the corporation as shall be prescribed in the resolutions of the Board of Directors designating and choosing such officers and prescribing their authority and duties, and shall have such additional authority and duties as are incident to their office except to the extent that such resolutions may be inconsistent therewith. The Secretary or an Assistant Secretary of the corporation shall record all of the proceedings of all meetings and actions in writing of stockholders, directors, and committees of directors, and shall exercise such additional authority and perform such additional duties as the Board shall assign to him or her. Any officer may be removed with or without cause, by the Board of Directors. Any vacancy in any office may be filled by the Board of Directors.

ARTICLE IV

CORPORATE SEAL

The corporate seal shall be in such form as the Board of Directors shall prescribe.

ARTICLE V

FISCAL YEAR

The fiscal year of the corporation shall be fixed, and shall be subject to change, by the Board of Directors.

ARTICLE VI

CONTROL OVER BY-LAWS

Subject to the provisions of the certificate of incorporation and the provisions of the General Corporation Law, the power to amend, alter or repeal these By-Laws and to adopt new By-Laws may be exercised by the Board of Directors or by the stockholders.
I HEREBY CERTIFY that the foregoing is a full, true and correct copy of the By-Laws of ________________, Inc., a Delaware corporation, as in effect on the date hereof.

WITNESS my hand and the seal of the corporation.

Dated:

______________________________________
Secretary of ________________, Inc.

(SEAL)

City of _______________________

County ______________________
MINUTES OF THE FIRST MEETING OF THE BOARD OF DIRECTORS

_______________________, INC.

FIRST MEETING OF THE BOARD OF DIRECTORS

The first meeting of the Board of Directors named in the Articles of Incorporation of ____________________, Inc., a corporation organized under the laws of the State of Illinois (the “Corporation”), was held at ____________________, on ______________________, 20__ at

The following members were present, constituting the entire Board:

_______________________

_______________________

Upon motion duly made, seconded and unanimously carried, ____________________ was named Chairman of the meeting and ____________________ was designated to act as Secretary.

The Chairman announced that the Articles of Incorporation had been filed with the Illinois Secretary of State on ____________________, 20__, that the Secretary of State had issued a certificate of incorporation with respect thereto on ____________________, 20__, and that such articles and certificate had been filed on ____________________, 20__ in the office of the Recorder of Deeds of ____________________ County, Illinois, being the county in which the Corporation’s registered office is located.

He presented to the meeting a certified copy of the Articles of Incorporation and thereupon the following resolutions were offered, seconded and unanimously adopted:

RESOLVED: That the Articles of Incorporation of this Corporation filed with the Illinois Secretary of State on ____________________, 20__, be and the same hereby are approved and accepted.

RESOLVED: That a certified copy of the Articles of Incorporation be annexed to the minutes of this meeting and made a part of the corporate records of the Corporation.

The Chairman then presented to the meeting a set of By-Laws for the conduct and regulation of the business and affairs of the Corporation. The By-Laws were read and
discussed, following which the following resolutions were offered, seconded and unanimously adopted:

RESOLVED: That the By-Laws submitted to and read at this meeting of the Board of Directors of the Corporation be and the same are hereby declared to be the By-Laws of this Corporation.

RESOLVED: That the Secretary of this meeting be and he is hereby instructed to cause the By-Laws referred to in the foregoing resolution to be annexed to the minutes of this meeting and made a part of the corporate records of the Corporation.

The Chairman announced that it was in order to elect officers of the Corporation to serve until the first annual meeting and until their successors may be elected and qualify.

Thereupon, the following persons were nominated to serve as officers of the Corporation in the respective capacities set after their several names, the term of office of each such person to be until the first annual meeting of the Board of Directors and until their respective successors shall be elected and qualified:

President
Vice President
Vice President
Treasurer
Secretary

There being no further nominations, on motion duly made, seconded and unanimously carried, the nominations were closed and the Secretary was directed to cast the ballot for the unanimous election of the persons nominated for the respective offices as set forth above. The ballot was cast and the Chairman declared all such persons to be elected to the respective offices for which they were nominated to serve until the first annual meeting of the Board of Directors of the Corporation and until their respective successors have been elected and qualified.

The Secretary presented the seal proposed to be adopted as the seal of the Corporation, following which the following resolution was offered, seconded and unanimously adopted:

RESOLVED: That the seal presented to this meeting by the Secretary is hereby adopted as the seal of the Corporation and the Secretary is hereby directed to place an impression thereof on the minutes of this meeting.

The Chairman stated that it was in order to designate a depositary for the funds of the Corporation and to make appropriate provisions for the drawing of checks or drafts thereon and for the transaction of other business incidental thereto. The following resolutions were offered, seconded and unanimously adopted:
RESOLVED: That the Bank be and it hereby is designated as a depositary of the Corporation, and that the corporate banking resolutions of said bank be and the same hereby are adopted and approved.

RESOLVED: That the Secretary of this meeting be and he is hereby instructed to cause the corporate banking resolutions referred to in the foregoing resolution to be annexed to the minutes of this meeting and made a part of the corporate records of the Corporation.

RESOLVED: That the Treasurer be and he is hereby authorized and directed to pay all fees and expenses incidental to and necessary for the organization and qualification of the Corporation, including, without limitation, all legal and accounting fees and costs to procure proper corporate books.

The Chairman stated that it was in order to authorize the opening of stock books to record ownership of capital stock of the Corporation and to authorize the issuance of stock, whereupon the following resolution was offered, seconded and unanimously adopted:

RESOLVED: That the proper officer of the Corporation cause to be prepared appropriate books and records with respect to the capital stock of the Corporation in which shall be recorded, among other things, the names and addresses of the several stockholders and the number of shares held by each.

The Chairman raised the question of whether the Corporation should elect to qualify as a tax option corporation pursuant to Subchapter S of the Internal Revenue Code of 1986. After a discussion, the following resolution was offered, seconded and unanimously adopted:

RESOLVED: That the Corporation make a “Subchapter S election” under Subchapter S of Chapter 1 of Subtitle A of the United States Internal Revenue Code of 1986, as amended, and each officer of the Corporation is hereby authorized to take such actions and to execute such instruments on behalf of the Corporation as are necessary in connection with the making by the Corporation of such election, including, without limitation, the filing of forms with the Department of Treasury, Internal Revenue Service, and requesting the shareholders of the Corporation to execute or to consent to the execution of the same where such execution or consent is necessary or appropriate.

The Chairman stated that it was in order to consider the matter of stock issuance. After discussion of this matter the following resolution was offered, seconded and unanimously adopted:

RESOLVED: That the Corporation issue the following number of shares of Common Stock without par value to the following below-named individuals, upon payment, by check or in cash, to the Corporation by such individuals of the amounts of money set forth opposite their names.

<table>
<thead>
<tr>
<th>Name</th>
<th>No. of Shares</th>
<th>Consideration</th>
</tr>
</thead>
</table>

129
The Chairman raised the question of whether the Corporation should make and accept a loan from _______________. After a full discussion of this matter, the following resolutions were offered, seconded and unanimously adopted:

RESOLVED: That the Corporation make and accept a loan from in the principal amount of _______________ Dollars ($_____________), said loan to be evidenced by a Promissory Note of this Corporation in the amount of said loan bearing simple interest at the rate of _______________% per annum, and said Promissory Note to be payable on or before ____________, 20__.

RESOLVED: That the President of the Corporation be and he hereby is authorized and directed in the name and on behalf of the Corporation to execute and deliver such Promissory Note.

RESOLVED: That the Secretary of this meeting be and he is hereby instructed to cause a true and complete photocopy of such executed Promissory Note to be annexed to the minutes of this meeting and made a part of the corporate records of the Corporation.

The Chairman raised the question of whether the Corporation should enter into an employment agreement with _______________, the President of the Corporation, with respect to such person's employment in that capacity. After discussion, the following resolution was offered, seconded and unanimously adopted:

RESOLVED: That the Corporation contract for the services of _______________, substantially upon the terms, covenants and conditions set forth in the written Employment Agreement between the Corporation and said _______________, attached hereto and incorporated by reference herein, and that the President of the Corporation be and he is hereby authorized and directed in the name and on behalf of the Corporation to execute and deliver such written Employment Agreement.

The Chairman raised the question of the Corporation's approval and ratification of the prior actions of the officers and directors of the Corporation. After discussion, the following resolution was offered, seconded and unanimously adopted:

RESOLVED: That any and all actions taken or contracts entered into heretofore by any officer or director for the Corporation, either as officer or director, as well as any and all actions taken or contracts entered into by said persons as individuals, acting for the Corporation, be and the same are hereby ratified, approved and confirmed by the Corporation, and all such contracts adopted as though said individual had at such time full power and authority to act for and by the Corporation and in the same manner as if each and every act had been done pursuant to the specific authorization of the Corporation.
There being no further business to come before the meeting, the meeting was adjourned.

Respectfully submitted,

___________________________________
Secretary of the Meeting
Sample Shareholders Resolutions Naming Board of Directors

UNANIMOUS CONSENT OF SHAREHOLDERS
NAMING THE INITIAL BOARD OF DIRECTORS

UNANIMOUS CONSENT OF THE SHAREHOLDERS
OF ______________________, INC.

The Articles of Incorporation of ______________________, Inc. (the “Corporation”) having been filed with, and the Certificate of Incorporation of the Corporation having been issued by, the Secretary of State of ______________________, the undersigned, being all of the shareholders of the Corporation, hereby consent to and adopt the following resolution:

RESOLVED: that the following persons be and they hereby are elected as directors of the Corporation to hold office until the next annual meeting of shareholders or until their respective successors are elected and qualified:

[name the directors]

Dated: ________________, 20__

[repeat names of directors]

Being all of the shareholders of ______________________, Inc., a(n) ______________ corporation
Directors Resolutions Authorizing Corporation to Execute a Material Contract

RESOLUTIONS OF THE BOARD OF DIRECTORS
OF ________________, INC.

WHEREAS, there has been presented to this meeting a form of [title of agreement] Agreement between this Corporation and [other party to contract], Inc. (“XYZ”), providing among other things, for [describe purpose of contract], and, in connection therewith, for the expenditure by the Corporation of up to $_______________ over a period of ____________ (years/months) and subject to the following terms and conditions: [additional material business terms]; and

WHEREAS, this Board has reviewed such form of Agreement and such terms and finds that it is in the best interest and to the benefit of the Corporation to enter into and perform such an agreement on such terms;

NOW THEREFORE BE IT RESOLVED, that the President or any Vice President of this Corporation, and each of them, be and hereby is authorized to execute, in the name and on behalf of this Corporation, and deliver the Agreement between this Corporation and XYZ, substantially in the form of the Agreement presented to this meeting, except for such changes, additions and deletions as to any or all of the terms and provisions thereof as the officer executing the Agreement on behalf of this Corporation shall deem proper, such execution by such officer of the Agreement between this Corporation and XYZ to be conclusive evidence that such officer deems all of the terms and provisions thereof to be proper;

FURTHER RESOLVED, that each and every officer of this Corporation be and hereby is authorized in the name and on behalf of this Corporation from time to time to take such actions and to execute and deliver such certificates, instruments, notices and documents as may be required or as such officer may deem necessary, advisable or proper in order to carry out and perform the obligations of this Corporation pursuant to these resolutions; all such actions to be performed in such manner, and all such certificates, instruments, notices and documents to be executed and delivered in such form, as the officer performing or executing the same shall approve, the performance or execution thereof by such officer to be conclusive evidence of the approval thereof by such officer and by this Board of Directors.

Dated: _________________, 20__

___________________________
Director

___________________________
Director

___________________________
Director
Being all of the Directors of ________________, Inc.,
a(n) _______________ corporation
RESOLUTIONS OF THE
BOARD OF DIRECTORS
OF ________________, INC.

RESOLVED: that the resignation of ________________ as President and as a member of the Board of Directors of the Corporation, and the resignation of ________________ as Vice President of the Corporation, be and they are hereby accepted by the Board of Directors of the Corporation.

RESOLVED: that ________________ be and is hereby elected to fill the vacancy on the Board of Directors of the Corporation resulting from the foregoing, to serve in such office for the remainder of the heretofore-existing term of ________________ and until his successor is duly elected and qualified.

RESOLVED: that ________________ and ________________ be and the same are hereby elected President and Vice President, respectively, of the Corporation to serve in such respective offices for the remainder of the heretofore-existing term of ________________ and ________________, respectively, and until their successors are duly elected and qualified.

Dated: ________________, 20__

__________________________
Director

__________________________
Director

__________________________
Director

Being all of the Directors of ________________, Inc., a(n) ________________ corporation.
Sample Minutes for a Board of Directors Meeting

MINUTES OF THE MEETING
OF THE BOARD OF DIRECTORS
OF __________________________, INC.
HELD ____________, 20__

Pursuant to written notice to each of the members of the Board of Directors, a Special Meeting of the Board of Directors of ________________, INC. (the “Corporation”), an ________________ corporation, was held at ____________, ____________, ____________, on ____________, 20__, at ___ p.m./a.m.

The following persons were present throughout the meeting:

________________________________________
________________________________________
________________________________________

being all of the members of the Board of Directors.

______________, President of the Corporation, presided as Chairman of the meeting, and designated ________________ to act as Secretary of the meeting.

The Chairman called the meeting to order.

The Chairman noted that minutes of the meeting of the Board of Directors held on ____________, 20__, had been delivered to each Director on ____________, 20__, together with the above-referred-to notice of this meeting. Following a general discussion of such minutes certain changes were made thereto and, upon notice duly made and seconded, such minutes as thus amended were unanimously approved and directed to be inserted into the minute book of the Corporation.

Thereupon Mr.(or Ms.) ________________, Vice President of the Corporation, and Mr. ________________, Treasurer of the Corporation, entered the meeting. Mr. ___ ________________ reviewed the Corporation's current capital spending program, and Ms. ________________ reviewed the Corporation's most recent financial statements.
general discussion of those matters ensued, following which Mr. ___________ and Mr. ___________ left the meeting.

The Chairman then proposed that the Corporation authorize a capital expenditure not to exceed $_________ for the purpose of ___________. Following a discussion of that matter _________, the following resolution was, upon motion duly made and seconded, adopted by the affirmative vote of ___________ Directors:

[Insert appropriate recitations and resolutions.]

There being no further business to come before the meeting, the meeting was, on motion duly made and seconded, adjourned.

Secretary of the Corporation
Sample Shareholders Agreement (Illinois example for an S-Corp)

ABC INC.
SHAREHOLDERS’S CORPORATION AGREEMENT

THIS SHAREHOLDER’S S-CORPORATION AGREEMENT (hereinafter referred to as the “Agreement”) is made this ____ day of [month], 20__, by and among ABC INC., an Illinois corporation (the “Company”), and D.E.F., G.H.I., J.K.L., M.N.O. and P.Q.R. (collectively, the “Shareholders”).

EXPLANATORY STATEMENT

The Company wishes to file an election to be taxed as an S corporation under the Internal Revenue Code of 1986, as amended (the “Code”), and each of the Shareholders has agreed to consent to such election.

In order to maintain the Company’s S corporation status, each Shareholder is agreeable to certain restrictions on the transfer of the shares of voting and nonvoting Common Stock of the Company (the “Common Stock”) owned by such Shareholder.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties hereto, the parties hereto do hereby covenant and agree as follows:

1. Consent to S Election.

   (a) Each Shareholder hereby irrevocably consents to the election by the Company of S corporation status under the Code and agrees to execute and deliver to the Company Internal Revenue Service Form 2553 concurrently herewith.

   (b) Each Shareholder hereby covenants and agrees that he or she will not take any action, and will refrain from taking any action, that would be reasonably likely to, in the opinion of counsel to the Company, terminate the Company's S corporation status or jeopardize the Company's retention of its S corporation status, except as specifically provided in this Agreement.

2. Restriction on Sale of Common Stock.

   (a) Each Shareholder agrees that he or she shall not, during the term of this Agreement, sell, assign, encumber, pledge, hypothecate, donate or otherwise transfer (whether or not for consideration) all or any portion of the shares of Common Stock now or hereafter owned of record or beneficially by him or her, except pursuant to the terms of this Agreement or with the prior written consent of the Company, which the Company may withhold in its sole and absolute discretion. It is acknowledged that the Company will not consent to any transfer by any Shareholder or by operation of law which may, in the opinion of the Company, jeopardize or call into question as a result thereof, the status of the Company as an S Corporation.
(b) Each Shareholder agrees to make, by his last will and testament or a codicil, a specific bequest of all of his shares of Common Stock to natural persons whose ownership of such shares of Common Stock shall not result in loss by the Company of its S corporation status.

3. Restrictive Legend.

Each stock certificate of the Company representing shares of Common Stock owned of record or beneficially by each of the Shareholders shall bear the following conspicuous restrictive legend:

“Transfer of shares of Common Stock of ABC INC. evidenced by this certificate is limited by the terms and provisions of a certain Shareholders' S corporation Agreement dated [date], 20__. A copy of such Agreement is on file at the principal office of the Corporation and will be furnished to the holder of this certificate upon request and without charge.”

4. Request to Transfer.

(a) If any Shareholder shall wish to transfer in any manner any or all of his Common Stock to any other person, such Shareholder shall give notice to the Company not less than days prior to such proposed transfer identifying the proposed transferee, and shall furnish the Company with any and all other information reasonably requested by the Company or its counsel regarding the proposed transaction and the proposed transferee. If the Company consents to the proposed transfer it shall notify the requesting Shareholder in writing of its determination within __ days after notice of the proposed transfer has been received by the Company. The Company shall be under no obligation to consent to any proposed transfer.

(b) If the Company consents to the transfer pursuant to Subsection (a) above, the requesting Shareholder shall be permitted to transfer the shares of Common Stock in accordance with the terms specified in his notice to the Company within 30 days after receipt of notice from the Company of its consent to the transfer.

(c) In the event the Company does not consent to the proposed transfer, or if the Company fails to give notice to the requesting Shareholder of its consent within the time specified in Subsection (a) above, then the requesting Shareholder shall not make the transfer, and the Company shall not be required to effect the transfer on the transfer books maintained by the Company.

5. Transfer by Reason of Death.

In the event of the death of a Shareholder, the Company shall not unreasonably object or withhold its consent to any transfer by reason of death of the Shareholder, provided that such
transfer will not result in or be likely to result in the termination, and will not jeopardize the retention of, the Company's S corporation status.

6. Transfer in Violation of Agreement.

   (a) Any transfer or attempt to transfer, deal with or dispose of any shares of Common Stock by any Shareholder in violation of the terms and conditions of this Agreement shall be void and the transferee or beneficiary thereof shall not be the record or beneficial owner of such shares of Common Stock or any interest therein or entitled to any of the rights thereof. The Company shall not transfer any such shares of Common Stock on its stock ledger books to the purported transferee or beneficiary thereof.

   (b) In the event of an attempt by a Shareholder to transfer any or all of his shares of Common Stock in violation of the provisions of this Agreement, the Company may, at its option, repurchase the Common Stock then being attempted to be transferred by such Shareholder (or his or her estate, as the case may be) at a price equal to 10% of the purchase price paid by the Shareholder for such Common Stock. At any time within 60 days after actual notice that the shares of Common Stock had been allegedly transferred has actually been received by the Company, the Company may exercise its option to repurchase the Common Stock by giving notice to the transferring Shareholder that the Company is exercising its right to repurchase such Common Stock. The closing of the repurchase of the Common Stock shall take place at the principal office of the Company on the 30th day after the date such notice is given by the Company. The transferring Shareholder shall deliver to the Company the certificates representing the Common Stock so purchased, free and clear of all liens, encumbrances and other matters affecting title, duly endorsed for transfer to the Company, and the Company shall pay to the transferring Shareholder the repurchase price for the Common Stock hereinabove stated. In the event the transferring Shareholder shall fail to deliver the Common Stock in proper form, the Company may cancel the certificates representing the Common Stock upon payment of the repurchase price specified above.

7. Stock Issued or Transferred in the Future.

   (a) Before any additional shares of Common Stock are issued during the term of this Agreement to any person, other than a signatory to this Agreement, such person shall be required to execute, acknowledge, seal and deliver a copy of this Agreement and become a party to this Agreement as a Shareholder as if an original party signatory thereto prior to the issuance or transfer of such shares of Common Stock to him or her, and the certificates therefore shall bear the restrictive endorsement referred to in Section 3 hereof.

   (b) Whenever any Shareholder acquires any additional shares of Common Stock such shares of Common Stock so acquired shall be subject to all terms of this Agreement, and the certificates thereof shall bear the restrictive endorsement referred to in Section 3 hereof.

8. Revocation of S Corporation Election.
(a) The Company shall attempt at all times to reasonably project quarterly the net tax liability generated by operations of the Company for each of its fiscal years. At such time as the Company projects that its operations will result in a net tax liability for any fiscal year of the Company (i.e., after deducting tax losses and credits), the Company will revoke the S Corporation election provided that Shareholders owning more than one-half of the Company’s outstanding stock will consent to such revocation; provided, however, that the Company shall not be obligated to revoke the S corporation election if the Company makes cash distributions to each Shareholder of an amount equal to the tax liability of each Shareholder in respect of the earnings of the Company, assuming each Shareholder is in the combined federal and state ___% income tax bracket.

(b) The Company shall not be liable to any Shareholder for, and each Shareholder hereby holds the Company harmless from and against, any claim relating to or arising out of, any net tax liability of such Shareholder in respect of the earnings of the Company during any period with respect to which the Company had projected that the Company operations would not result in a net tax liability.


(a) This Agreement shall continue in effect until the happening of the first to occur of any of the events listed below:

(i) The agreement in writing to terminate this Agreement by Shareholders who own of record and beneficially all of the issued and outstanding shares of Common Stock.

(ii) The filing by the Company of a petition commencing a voluntary case under the Bankruptcy Code; a general assignment by the Company for the benefit of creditors; an admission in writing by the Company of its inability to pay its debts as they become due; the filing by the Company of any petition or answer in any proceeding seeking for itself, or consenting to, or acquiescing in, any insolvency, receivership, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law or regulation, or the filing by the Company of an answer or other pleading admitting or failing to deny, or to contest, the material allegations of the petition filed against it in any such proceeding; the seeking or consenting to, or acquiescence by the Company in, the appointment of any trustee, receiver or liquidator of it or any part of its property; and the commencement against the Company of an involuntary case under the Bankruptcy Code, or a proceeding under any receivership, composition, readjustment, liquidation, insolvency, dissolution or like law or statute, which case or proceeding is not dismissed or vacated within 120 days.

(iii) The voluntary dissolution of the Company.

(iv) The receipt by the Company from the Securities and Exchange Commission of an order of effectiveness as to any registration statement for the sale of any capital stock of the Company, whether or not any of such capital stock shall be owned by any of the Shareholders.
(v) In the event that there shall be a merger, consolidation or share exchange whereby the Company is not the surviving or successor company, as the case may be.

(vi) Upon the occurrence of an event referred to in Section 8 hereof pursuant to which the Company shall revoke the S corporation election.

10. Miscellaneous.

(a) Notices. All notices, offers, acceptances, exercises of rights and other communications under this Agreement shall be in writing and shall be given by delivery in person or by first-class U. S. registered or certified mail, return receipt requested, postage prepaid, or by facsimile and addressed to the Company as follows: [address], and addressed to the Shareholders at the addresses shown on the signature pages hereto as any of them, by written notice to the Company, may from time to time designate. Any notice required to be given hereunder to the estate of a deceased Shareholder shall be sent to the personal representative of the estate at such personal representative's address, or if no personal representative shall have been appointed, to the deceased Shareholder at his last designated address. As soon as practical after being appointed, the personal representatives of the estate of a deceased Shareholder shall notify the Company of their address by written notice sent hereunder. Except as otherwise provided in this Agreement, time shall be counted from the date of such delivery or mailing. Any notice, offer, acceptance, exercise of rights, and other communications shall be deemed received when so received.

(b) Each of the parties hereto agrees to take or cause to be taken further actions, to execute, acknowledge, seal and deliver or cause to be executed, acknowledged and sealed and delivered such further instruments and documents and to use his best efforts to obtain such requisite consent as any other party may from time to time reasonably request in order to fully effectuate the purposes, terms and conditions of this Agreement.

(c) This Agreement contains the full, entire and integrated agreement among the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments or understandings with respect to the subject matters hereof, and no modification shall be binding upon the parties affected unless set forth in writing and duly executed by each party affected.

(d) All of the covenants, promises, agreements, representations and warranties of this Agreement by or on behalf of any of the parties hereto shall bind and inure to the benefit of their respective heirs, guardians, personal and legal representatives, successors and permitted assigns.

(e) This Agreement shall be governed by and construed and enforced in accordance with, the internal laws of the State of Illinois.
(f) In the event that one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

(g) This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall together constitute one document.

IN WITNESS WHEREOF, the parties hereunto set their hands and seals to this Agreement as of the date first above written.

ABC INC., an Illinois corporation

By: __________________________________________
Its: Duly Authorized Representative

____________________________________________
D.E.F., a natural person
[address]

____________________________________________
G.H.I., a natural person
[address]

____________________________________________
J.K.L., a natural person
[address]

____________________________________________
M.N.O., a natural person
[address]

____________________________________________
P.Q.R., a natural person
**Sample Agreements For Employees**

**Sample Employment Agreement for Business Employees**

SAMPLE EMPLOYMENT AGREEMENT

This AGREEMENT, entered into this ___ day of [Month], 20__, between [Business], a [state of incorporation] (the “Company”), and [name of employee] (the “Employee”),

WITNESSETH THAT:

WHEREAS, the parties hereto desire to enter into this Agreement to define and set forth the terms and conditions of the employment of the Employee by the Company;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, it is hereby covenanted and agreed by the Company and the Employee as follows:

1. Position; Employment Period  The Company hereby employs the Employee as its [position], and the Employee hereby agrees to serve in such capacity, for the period beginning [start date], 20__, and ending on the date on which the Employee's employment is terminated in accordance with paragraph 8 below (the “Employment Period”).

2. Performance of Duties  The Employee agrees that during the Employment Period he shall devote his full business time to the business affairs of the Company and shall perform his duties faithfully and efficiently subject to the direction of the [President] of the Company; provided that the foregoing shall not limit or prevent the Employee from serving on the board of directors of charitable organizations or other business corporations not in competition with the Company. The Employee shall not be assigned duties and responsibilities that are not generally within the scope and character associated or required of other employees of similar rank and position.

3. Compensation  Subject to the following provisions of this Agreement, during the Employment Period the Employee shall be compensated for his services as follows:

   (a) He shall receive an annual salary, payable in monthly or more frequent installments, in an amount which shall initially be [$ amount] per annum, subject to such increases as may from time to time be determined by the [President] of the Company.

   [specify pension and other non-salary benefits.]

   (b) He shall be entitled to vacations of not less than [amount] per year.

   (c) He shall be entitled to such other perquisites as may be customarily granted by the Company to employees of similar rank and position.
4. Disability  Subject to the provisions of paragraph 8, if the Employee's employment is terminated during the Employment Period by reason of his Disability (as defined below), the Employee shall continue to receive an annual salary and benefits in accordance with paragraphs 3(a) and 3(b) through the end of the [number] full calendar month of such disability but not in any event beyond the end of the Employment Period. For purposes of this Agreement the term “Disability” means a physical or mental disability which renders the Employee incapable of performing his duties under this Agreement and which disability has existed for at least [number] months, as determined by an independent physician selected by the Company and agreed to by the Employee. Any salary payments to the Employee shall be reduced by the amount of any benefits paid for the same period of time under the Company's disability insurance programs.

5. Competing Businesses. During the period of his employment under this Agreement, the Employee shall not be employed by or otherwise engage in or be interested in any business in competition with the Company, or with any of its subsidiaries or affiliates, except that the Employee's investment in any such business shall not be considered a violation of this paragraph if either (a) the Employee owns less than [number]% of the equity thereof, or (b) such business is not in competition with the Company.

6. Confidentiality. During and after the Employment Period, the Employee will not divulge or appropriate to his own use or to the use of others, in competition with the Company, any secret or confidential information or knowledge pertaining to the business of the Company, or of any of its subsidiaries, obtained by him in any way while he was employed by the Company or by any of its subsidiaries.

7. Remedies. If at any time the Employee violates to a material extent any of the covenants or agreements set forth in paragraphs 5 and 6, the Company shall have the right to terminate all of its obligations to make further payments under this Agreement. The Employee acknowledges that the Company would be irreparably injured by a violation of paragraph 5 or 6 and agrees that the Company shall be entitled to an injunction restraining the Employee from any actual or threatened breach of paragraph 5 or 6 or to any other appropriate equitable remedy without any bond or other security being required.

8. Amendment and Termination. This Agreement may be amended or cancelled by mutual agreement of the parties without the consent of any other person and, so long as the Employee lives, no person, other than the parties hereto, shall have any rights under or interest in this Agreement or the subject matter hereof. The Employment Period shall terminate as of the earliest of:

(a) [date];

(b) the last day of the month in which the date of the Employee's death occurs; or the date on which the Company gives notice to the Employee if such termination is for Cause or Disability.
(c) For purposes of this Agreement, “Cause” means the Employee's gross misconduct resulting in material damage to the Company or willful and material breach of this Agreement.

9. Notices Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and if sent by registered mail to the Company at its principal executive offices or to the Employee at the last address filed by him in writing with the Company, as the case may be.

10. Non-Assignment The interests of the Employee under this Agreement are not subject to the claims of his creditors and may not be voluntarily or involuntarily assigned, alienated or encumbered.

11. Successors This Agreement shall be binding upon, and inure to the benefit of, the Company and its successors and assigns and upon any person acquiring, whether by merger, consolidation, purchase of assets or otherwise, all or substantially all of the Company's assets and business.

12. Applicable Law The provisions of this Agreement shall be construed in accordance with the laws of the State of ______.

13. Counterparts The Agreement may be executed in two or more counterparts, any one of which shall be deemed the original without reference to the others.

IN WITNESS WHEREOF, the Employee has hereunto set his hand, and the Company has caused these presents to be executed in its name and on its behalf, all as of the day and year first above written.

______________________________
[Employee Name]

[name of business] Inc.

By: ____________________________
Its: Duly Authorized Representative
Sample Employment Termination Agreement

SEPARATION AGREEMENT AND GENERAL RELEASE

THIS SEPARATION AND GENERAL RELEASE AGREEMENT ("Agreement") is made by and between [employee] ("Employee"), [name of business owner(s) ("Owner(s)")] and [name of business, a [state of incorporation for the business] (the "Company").

RECITALS

A. Employee desires to freely and voluntarily resign as an employee of the Company and the Company desires to accept Employee's resignation on the terms set forth herein.

B. [If Employee is also an owner] In connection with his termination of employment and pursuant to the Buy-Sell Agreement, Employee desires to sell to the Company and the Company desires to purchase from Employee all of the Stock that Employee owns, for the price and terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein, the parties agree as follows:

ARTICLE 1
TERMINATION OF EMPLOYMENT

1.1 Termination of Employment. Effective [date] (the "Separation Date"), Employee's status as an employee of the Company shall terminate and any employment Agreement is hereby terminated. Notwithstanding the foregoing, the parties agree that any non-competition provisions contained in any employment agreement shall survive the termination of such agreement.

1.2 Separation Payment. The Company shall pay to Employee [$ amount] (the "Separation Payment"). This amount includes all amounts due to Employee in connection with his employment through the Separation Date.

1.3 Manner of Payment. The Separation Payment shall be mailed to Employee his home address at [Employee’s home address].

ARTICLE 2
SALE OF SHARES
[If Employee is also an owner]
2.1 **Transfer of Shares.** On the terms and subject to the conditions contained in this Agreement, the Company shall purchase from Employee, and Employee shall sell to the Company, all Employee’s equity interest in the Company (the “Equity Interest”). Employee shall sell, transfer, assign and deliver all shares or certificates representing the Equity Interest to the Company free and clear of all liens, claims, security interests, pledges, encumbrances and equities of any kind. The Company shall purchase and accept the Equity Interest from Employee under the terms and conditions set forth in this Agreement.

2.2 **Closing.** The closing of the sale and purchase of the Equity Interest pursuant to this Agreement shall take place on or before [date].

2.3 **Distributions.** Employee acknowledges that he has received all dividends of any nature or kind (if any) which were payable to him at any time as a result of his ownership of the Equity Interest. Employee has received all fees, salary, bonuses and other compensation which the Company owed to him at any time due to his serving the Company as an manager, officer, director, employee, independent contractor or agent. Employee has no outstanding claims of any kind or nature against the Company as a result of his ownership of the Equity Interest or his involvement with the Company.

**ARTICLE 3**
**INDEMNIFICATION**

Employee hereby indemnifies, saves, defends and holds the Company and its owners harmless for any costs and expenses, judgments and settlements (including attorney's fees), the Company and/or its owners may incur as a result of any type of litigation brought against the Company and/or its owners with respect to claims involving Employee.

**ARTICLE 4**
**MUTUAL RELEASE**

In consideration of the foregoing, and subject only to the performance of their obligations under this Agreement, Employee and the Company release, acquit and forever discharge the other and the officers, managers, directors, owners, subsidiaries, affiliates, supervisors, employees, agents, representatives, heirs, executors, legal representatives, administrators, successors and assigns from and against any and all claims, demands, actions, causes of action, and obligations of any kind or nature, arising out of Employee's employment and resignation thereof and the Company's purchase, ownership and disposition of the Equity Interest, whether fixed or contingent, known or unknown, liquidated or unliquidated, and whether arising from tort, statute or contract.

**ARTICLE 5**
**GENERAL**
5.1 **No Admission.** By entering into this Agreement, no party admits any wrongdoing or violation of any law. This Agreement may not be used in court or in any other litigation proceeding except with respect to a proceeding concerning a breach of the terms of this Agreement itself.

5.2 **Other Obligations.** Employee and the Company agree that Employee is no longer an employee of the Company and except as stated herein Employee shall have no obligation to the Company, and the Company assumes no obligations, with respect to Employee other than as set forth herein. The foregoing consideration and the other consideration set forth herein shall be in lieu of any severance payments or other obligations that the Company may have to Employee or Employee may have to Company pursuant to this Agreement or any other written or oral agreement made between the parties during the course of Employee's prior employment with the Company, including but not limited to

5.3 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties as well as their respective transferees, successors, assigns, representatives, executors, administrators, heirs and legatees.

5.4 **Assignment.** None of the parties hereunder shall have the right to assign any right or obligation under this Agreement.

5.5 **Modification.** No alteration or modification of any of the provisions of this Agreement shall be valid unless made in writing and signed by all of the parties hereto.

5.6 **Applicable Law; Venue.** The laws of the State of______ shall govern the interpretation of this Agreement, irrespective of the fact that one or more of the parties now is or may become a resident of a different jurisdiction. The parties consent to the exclusive jurisdiction and venue of the courts of the state of ______ or the jurisdiction and venue of the United States District Court for ______, any action or judicial proceeding brought to enforce, construe or interpret this Agreement.

5.7 **Descriptive Headings.** All section headings, titles and sub-titles are inserted in this Agreement for convenience of reference only, and are to be ignored in any construction of this Agreement's provisions.

5.8 **Severability.** If a court of competent jurisdiction adjudicates any one or more of this Agreement's provisions as invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any of this Agreement's other provisions or the applicability of such provision to other facts and circumstances, and such invalid, illegal or unenforceable provision shall be modified, to the minimum extent necessary, to make such provision valid, binding and enforceable.

5.9 **Entire Agreement.** This Agreement constitutes the complete understanding among the parties and supersedes all other understandings, whether written or oral, among the
parties that concerns the subject matter which this Agreement addresses, including, but not limited to any prior employment agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

__________________________________________
Employee

[name of business]

By: ______________________________________
Its: Duly Authorized Representative
Sample Employee Assignment of Inventions and Non-competition

ASSIGNMENT OF INVENTIONS, NON-DISCLOSURE AND NON-SOLICITATION AGREEMENT

Employee’s Last Name:

First Name:

Middle Initial:

In order for ___________ Inc. and its direct and indirect subsidiaries (herein collectively referred to as the “Company”) to maintain a competitive edge, the Company must protect its inventions, discoveries, works of authorship and its proprietary technical and business information.

Therefore, as a condition of employment with the Company, I agree as follows:

DEFINITIONS

1. “Inventions” means any new or useful art, discovery, new contribution, finding or improvement (including without limitation any technology, computer programs, test, concept, idea, apparatus, device, mechanism, equipment, machinery, process, method, composition of matter, formula or technique), whether or not patentable, and all know-how related thereto, that has been made, created, developed, written or conceived by me (i) in the course of my employment, (ii) relating to the actual or anticipated business of the Company, or (iii) with the use of the Company's time, material, proprietary information or facilities.

2. “Works” means any materials for which copyright protection may be obtained, including without limitation literary works (including books, pamphlets, articles and other writings), mask works, artistic works (including designs, graphs, drawings, blueprints and other graphic works), computer programs, compilations, recordings, photographs, motion pictures and other audio-visual works that has been made, created, developed, written or conceived by me (i) in the course of my employment, (ii) relating to the actual or anticipated business of the Company, or (iii) with the use of the Company's time, material, proprietary information or facilities.

3. “Confidential Information” means information (i) disclosed to or known by me as a consequence of my employment with the Company, (ii) not generally known to others outside the Company, and (iii) which relates to the trade secrets or otherwise to the research, development efforts and methodologies, testing, engineering, manufacturing, marketing, sales, finances or operations (including without limitation any processes, formulae, methods, techniques, devices, know-how, manufacturing processes, customer lists, sales statistics, tactics and projections, marketing strategies and plans, and personnel information or data) of the
Company or of any other party which has entrusted such information to the Company in confidence.

DISCLOSURE AND ASSIGNMENT OF INVENTIONS AND WORKS

4. I will promptly disclose to the Company in writing, all Inventions and Works which are conceived, made, discovered, written or created by me alone or jointly with someone else on the Company’s time or on my own time, while I am employed by the Company.

5. All Works created by me, alone or with others, shall be deemed “works made for hire” under the copyright laws and shall be owned by the Company.

6. I hereby assign to the Company all of my rights in all Inventions, and in all Works to the extent such Works may not, by operation of law, be works made for hire.

7. I will give the Company all assistance it reasonably requires to perfect, protect, and use its rights to Inventions and Works. In particular, I will sign all documents, do all things, and supply all information that the Company considers necessary or desirable to transfer or record the transfer of my entire right, title and interest in Inventions and Works; and to enable the Company to obtain patent, copyright, or other legal protection for Inventions and Works. Any out-of-pocket expenses will be paid by the Company.

8. An invention for which none of the Company’s equipment, supplies, facilities, or Confidential Information was used and which was developed entirely on my own time is exempted from this Agreement so long as it: (a) does not relate in any way to the Company’s business, or to the Company’s actual or demonstrably anticipated research and development; and (b) does not result in any way from my work for the Company.

9. Also excluded from this Agreement are the following Inventions and Works which I own or control and which were conceived, made, written, or created by me prior to my employment with the Company.

(1)
(2)
(Attach additional sheets if necessary)

Other than these, I do not claim to own or control rights in any inventions or works subject to copyright and will not assert any such rights against the Company.

NONDISCLOSURE OF CONFIDENTIAL INFORMATION

10. I will never disclose or use any of the Confidential Information for the benefit of myself or another, unless directed or authorized in writing by the Company to do so.

11. I understand that if I possess any proprietary information of another person or company as a result of prior employment or otherwise, the Company expects and requires that I
will honor any and all legal obligations that I have to that person or company with respect to proprietary information, and I will refrain from any unauthorized use or disclosure of such information.

RETURN OF COMPANY PROPERTY

12. All documents and other tangible property relating in any way to the business of the Company are the exclusive property of the Company (even if I authored or created them). I agree to return all such documents and tangible property to the Company upon termination of employment or at such earlier time as the Company may request me to do so.

CONFLICT OF INTEREST

13. During my employment, neither I nor members of my immediate family will have financial investments or other interests or relationships with the Company’s customers, suppliers or competitors which might impair my independence of judgment on behalf of the Company. I also agree not to engage in any competitive activity against the Company, and will avoid any outside activity that could adversely affect the independence and objectivity of my judgment, interfere with the timely and effective performance of my duties and responsibilities to the Company, discredit the Company or otherwise conflict with the Company’s best interests.

NON-SOLICITATION OF ACCOUNTS

14. During my employment, and for six (6) months after termination of employment with the Company, I will not solicit, induce, or attempt to induce any past or current customer of the Company (other than government agencies and regional, national or international telephone carriers or national retailers) whose identities as such were first made known to me or with whom I first had direct contact in the course of my employment (a) to stop doing business with or through the Company, or (b) to do business with any other person, firm, partnership, corporation or other entity that provides products or services materially similar to or competitive with those provided by the Company.

NON-SOLICITATION OF EMPLOYEES

15. During my employment by the Company and (with respect to employment or affiliation involving products or services competitive with those of the Company) for one (1) year after thereafter, I shall not, directly or indirectly, induce or attempt to induce any employee of the Company to accept employment or affiliation with another firm or entity of which I am an employee, owner, partner or consultant.

SEVERABILITY

16. If a provision of this Agreement is held invalid by a court of competent jurisdiction, the remaining provisions will nonetheless be enforceable according to their terms. Further, if
any provision is held to be overbroad as written, that provision should be considered to be amended to narrow its application to the extent necessary to make the provision enforceable according to applicable law and enforced as amended.

GOVERNING LAW

17. This Agreement shall be construed, interpreted and enforced in accordance with the internal laws of the State of ____________.

BURDEN AND BENEFIT

18. The Company may assign its rights under this Agreement to any successor in interest, whether by merger, consolidation, sale of assets, or otherwise. This Agreement shall be binding whether it is between me and the Company or between me and any successor or assigns of the Company.

NO EFFECT ON TERM OF EMPLOYMENT

19. Nothing in this Agreement prevents or limits my right to terminate my employment at any time for any reason, and nothing in this Agreement prevents or limits the Company from terminating my employment at any time for any reason. I understand and agree that there exist no promises or guarantees of permanent employment or employment for any specified term by the Company.

ENTIRE AGREEMENT

20. I understand that this Agreement contains the entire agreement and understanding between the Company and me with respect to the provisions contained in this Agreement, and that no representations, promises, agreements, or understandings, written or oral, related thereto which are not contained in this Agreement will be given any force or effect. No change or modification of this Agreement will be valid or binding unless it is in writing and signed by the party against whom the change or modification is sought to be enforced. I further understand that even if the Company waives or fails to enforce any provision of this Agreement in one instance, that will not constitute a waiver of any other provisions of this Agreement at this time, or a waiver of that provision at any other time.

* * * *

Employee:

_______________________________
Date
Address - Street
Address - City, State, Zip Code
Sample Consulting Agreements

Standard Consulting Agreement

CONSULTING AGREEMENT

This Consulting Agreement (“Agreement”), made and entered into this [day] of [month], 20__, by and between [name of business] (the “Company”), and [name of consultant or name of consulting business] (the “Consultant”),

WITNESSETH

WHEREAS, the Company wishes to receive consulting services from Consultant from time to time and Consultant is willing to provide such consulting services, and Company and Consultant wish to enter into this Agreement to set forth the terms and conditions on which services will be provided.

NOW, THEREFORE, the Company and Consultant hereby mutually covenant and agree as follows:

1. Engagement of Consultant. Consultant is hereby retained by the Company, and Consultant hereby accepts such retainment, as a general advisor and consultant to the Company for the compensation and on the terms and conditions hereinafter expressed. Consultant shall perform such consulting duties as are reasonably assigned to him by the Company in regard to the business of the Company and its Subsidiaries (“Services”). Services will include Consultant’s advice, counsel and assistance to be furnished at the reasonable request of the Company from time to time in connection with (i) maintaining contract volume on existing contracts with customers, (ii) making introductions with new potential customers and maintaining relations with ongoing customers, (iii) making introductions with, and maintaining relations with, key local and state persons having any relationship to the Company and its operations, and (iv) other general matters related to the conduct of the Company’s business. The Services shall also include: (i) finding and evaluating potential business acquisitions, (ii) evaluation of the Company’s internal research and development organizations and programs, (iii) recommendations as to new areas of technology in which the Company may engage, and (iv) general advisor in the field of Consultant’s expertise. Services to be performed by Consultant hereunder shall, however, be subject to the following limitations: (i) in the event that Consultant has not received at least fourteen days’ prior notice of the date upon which Services will be required hereunder, Services to be performed by Consultant shall not require more than [number]% of Consultant’s time, and (ii) in the event that Consultant has received at least fourteen days’ prior notice of the date upon which Services will be required hereunder, Services to be performed by Consultant may require up to [number]% of Consultant’s time.
2. Consultant's Duties. Consultant will make himself available for general consultation at all reasonable times by telephone or correspondence, and will be available at the Company's premises for up to  days per month on mutually-agreed dates. The Company agrees to give Consultant reasonable notice of what Services it desires and when it desires them to be performed. In that connection, the Company and Consultant agree to cooperate in resolving any scheduling problems that may arise with respect to Consultant being available at the times requested.

3. Compensation for Services. The Company agrees to pay to Consultant the following fees (collectively, the “Fee”):

(a) On the last day of each month falling within the Term, [$$ amount], and

(b) for each hour (including fractions thereof) of services rendered in excess of [__] hours during such month the sum of $ per hour (prorated for fractional hours). The amounts payable under this Subsection shall be payable on or before the tenth day after receipt by the Company of a statement from Consultant setting forth the amounts then owing. The parties understand that billing will not be more frequent than once a month.

In addition to the Fee, the Company shall reimburse Consultant for all valid out-of-pocket expenses approved by the Company, which shall be reimbursed to Consultant.

4. Term. The term of this Agreement (the “Term”) shall begin on the date of this Agreement and expire on [date], 20__; provided that it may be extended by mutual agreement in writing for additional one-year terms and may be terminated during the Term as provided in Section 6 hereof.

5. Duties of Consultant Relating to Consulting Services. Consultant shall at all times be acting and performing hereunder as an independent contractor. In connection with the performance by Consultant of Services, the Company shall not have or exercise any control or direction over the Services performed by Consultant, and will not in any way supervise or control his activities. Consultant shall perform all of the Services herein provided for relying on his own experience, knowledge, judgment and techniques. Consultant shall not, in the performance of his duties, be managed or advised concerning the same by the Company. Consultant will not be acting as the employee, agent, partner, servant or representative of the Company, and Consultant will not have any authority to bind the Company or any subsidiary of the Company in any manner.

6. Termination of Agreement. Notwithstanding that the Term shall not have been completed, the Company may terminate this Agreement (a) upon the death of Consultant, (b) if Consultant should be incapacitated by illness or any other matter from performing his duties hereunder for a continuous period of sixty days, or (c) for cause by delivery by the Company to Consultant of notice specifying such cause. If this Agreement is terminated, the Company shall only be obligated to make payments of Fee due on a pro rata basis to the date of termination.
7. **Confidential Information.** Consultant agrees that, during the Term and at all times after the termination of this Agreement for whatever reason, he will treat as confidential and maintain in confidence all information relating to the business of the Company, including without limitation the identity of the customers and suppliers of the Company, the Company’s arrangements with such suppliers and customers, and technical data relating to the Company’s products and services. In addition, Consultant agrees that, without the prior written approval of the Company, he will not disclose any such information at any time to any person, corporation, association or other entity except authorized personnel of the Company or a subsidiary of the Company. Upon the termination of this Agreement for any reason, Consultant will not take or retain from the premises of the Company or any subsidiary of the Company any records, files or other documents, or copies thereof, relating in any way to the business operations of the Company or any subsidiary of the Company. It is expressly agreed that the remedy at law for breach of the agreements set forth in this Section is inadequate and that the Company shall, in addition to any other available remedies (including, without limitation, the right of offset), be entitled to injunctive relief to prevent the breach or threatened breach thereof.

8. **Inventions and Patents.** Consultant agrees that:

   (a) He will disclose to the Company promptly and fully any and all inventions, improvements, discoveries, techniques and processes (herein referred to collectively as “Inventions”), whether patentable or not, conceived, discovered or invented during the Term or within months thereafter, whether conceived, discovered or invented solely by Consultant or jointly with others and whether conceived, discovered or invented during regular working hours or on the premises of the Company or otherwise, or resulting from or suggested by any work which Consultant may do for the Company. Such Inventions shall be and remain the sole and exclusive property of the Company and Consultant shall not be entitled to any payment therefor.

   (b) Consultant will keep and maintain adequate and current written records of all such Inventions at all stages of development thereof, in the form of notes, sketches, drawings and reports relating thereto, which records shall be and remain the property of and be available to the Company at all times.

   (c) Consultant will, upon request, promptly make, execute and deliver to the Company any and all assignments in writing which may be deemed by the Company proper, necessary or desirable to transfer to the Company or any subsidiary of the Company the entire right, title and interest, domestic and/or foreign, in and to any and all of the Inventions and in and to any and all applications for Letters Patent which may be filed therefor, and in and to all Letters Patent which may issue on such applications.

   (d) Without limiting the generality of the foregoing, Consultant will make, execute and deliver all documents, instruments and papers requested by the Company for use in applying for, obtaining and maintaining such patents for the Inventions as the Company may desire to obtain, and make all rightful oaths, and testify in all legal proceedings, involving such patents and the Inventions.
9. Assignability. The Company shall have the right to assign this Agreement to any subsidiary of the Company and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by or against said assigns. The rights, benefits and obligations of Consultant under this Agreement are personal to him, and no such rights, benefits or obligations shall be subject to voluntary or involuntary alienation, assignment or transfer.

10. Governing Law; Consent to Jurisdiction. This Agreement shall be deemed to have been made under, and shall be construed and interpreted in accordance with, the laws of the State of _____, excluding any conflicts-of-law rule or law which might refer such construction and interpretation to the laws of another state, republic or country. The parties hereby submit to the jurisdiction of the state and federal courts in, _______ and waive any right to which they might be entitled to submit any dispute hereunder to the courts of another state, republic or country.

11. Modifications; Waiver. This Agreement shall not be amended or modified except by written instrument executed by the Company and Consultant. The failure of the Company or Consultant to insist upon strict performance of any provision hereof shall not constitute a waiver of, or estoppel against asserting, the right to require such performance in the future, nor shall a waiver or estoppel in any one instance constitute a waiver or estoppel with respect to a later breach of a similar nature or otherwise.

12. Remedies. The remedies accorded to the parties by this Agreement are in addition to, and not in lieu of, all other remedies to which the parties may be entitled at law or in equity.

13. Inconsistent Obligations. Consultant represents and warrants that, at the date of this Agreement, he has no obligations that are inconsistent with those of this Agreement.

14. Sole Agreement. All prior negotiations and agreements between the parties hereto relating to the transactions, employment and services contemplated hereby are superseded by this Agreement, and there are no representations, warranties, understandings or agreements with respect to such transactions, employment or services other than those expressly set forth herein.

15. Severability. If any of the terms or conditions of this Agreement are held by any court of competent jurisdiction to be unenforceable or invalid, such unenforceability or invalidity shall not render unenforceable or invalid the entire Agreement. Instead, this Agreement shall be construed as if it did not contain the particular provision or provisions held to be unenforceable or invalid, the rights and obligations of the parties shall be construed and enforced accordingly, and this Agreement shall thereupon remain in full force and effect.

IN WITNESS WHEREOF, the Company and Consultant have executed this Agreement as of the day and year first above written.
Consultant

[name of Company]

By: ____________________________
Its: Duly Authorized Representative
Sample Computer Software Industry Consulting Agreement

SOFTWARE CONSULTANT CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT is made as of this ___day of [month], 20__, by and between __________ (the “Company”), a [state] corporation, with its principal place of business at _______________ and ___________ (“Consultant”) an individual having a place of business at _____________________.

BACKGROUND

The Company is engaged in the development and sale of _______________ software. Consultant has expertise and experience in areas beneficial to the Company and desires to consult with the Company in his area of expertise. Based on Consultant’s experience, the Company desires to retain the services of Consultant and Consultant desires to render such services on the terms and conditions set forth below.

IN CONSIDERATION of the foregoing and of the mutual covenants set forth below, the parties, intending to be legally bound, agree as follows:

1. Retention as Consultant. The Company hereby retains Consultant, and Consultant hereby agrees to render consulting services to the Company, upon the terms and conditions set forth herein.

2. Duties. Consultant covenants and agrees that, as an independent contractors, he will perform all services requested of him by the Company, acting through its authorized representatives, who shall initially be ___________. Consultant agrees that at the close of business on Friday of each week he will fax a signed weekly status report to _________, or to such other representatives as the Company may designate, outlining the following items: list of work items for the week just ended, deliverables and accomplishments for each of the work items, number of hours spent working on each item during the week just ended, and a list of any additional expenses attributable directly to the work being done for the Company, e.g. phone bills for calls made to the Company, with itemized bills detailing the expenses attached.

3. Independent Contractor Status. The parties recognize that Consultant is an independent contractor and not an employee, agent, co-venturer, or representative of the Company and that the Company will not incur any liability as the result of Consultant's actions. Consultant shall at all times disclose that he is an independent contractor of the Company and shall not represent to any third party that he is an employee, agent, co-venturer, or representative of the Company other than as expressly authorized by the Company. The Company shall not withhold any funds from Consultant for tax or other governmental purposes, and Consultant shall be responsible for the payment of same. Consultant shall not be entitled to
receive any employment benefits offered to employees of the Company, including but not limited to: workers' compensation coverage; savings or profit sharing plans; stock option, incentive or other bonus plans; health, dental or life insurance coverage; and paid vacations. The Company shall not exercise control over Consultant.

4. Compensation. The Company shall pay to Consultant, as compensation for the services to be rendered, the sum of ________________ per hour for hours actually worked. The Company shall not be obligated to provide a minimum number of hours of work, nor shall Consultant be entitled to receive any compensation for hours not actually worked.

The Company shall also reimburse Consultant for all ordinary and necessary expenses incurred in connection with the performance of his services hereunder, provided that timely notice of such expenses is sent to and approved by an appropriate officer or other authorized representative of the Company. Consultant shall report to ________, or to such other employee of the Company as the Company may designate from time to time.

The Company shall process payments to Consultant bi-weekly for all undisputed invoices presented by Consultant under this Agreement but in no case shall Consultant be paid later than thirty (30) days after the receipt of such undisputed invoices. In the case of a dispute, ________, or such other representative as the Company may designate, will discuss the controversial items with Consultant and attempt to resolve the dispute.

5. Term. This Agreement shall commence on the date first written above and shall continue indefinitely until such time as either Consultant or the Company terminates the Agreement as provided below.

6. Termination. The parties agree that either the Company or Consultant through written notice may terminate Consultant's engagement under this Agreement at any time for any reason or for no reason.

7. Covenant of Nondisclosure. Consultant shall not, at any time during or after the term of this Agreement, in any manner, either directly or indirectly, divulge, disclose, or communicate to any person, firm, corporation or other entity, or use for his own benefit or for the benefit of any other person, firm, corporation or other entity, and not for the benefit of the Company, any information acquired from the Company or its affiliates, without the express prior written consent of an authorized executive officer of the Company, as more fully set forth in a certain Non-disclosure Agreement between the Company and Consultant dated ____________.

8. Rights to Work. The parties acknowledge that any work created by Consultant in connection with the performance of services for the Company pursuant hereto is being created at the insistence of the Company and shall be deemed “work made for hire” under the United States copyright laws.
The Company shall have the right to use the whole work, any part or parts thereof, or none of the work, as it sees fit. The Company may alter the work, add to it, or combine it with any other work or works, at its sole discretion. Notwithstanding the foregoing, all original material submitted by Consultant as part of the work or as part of the process of creating the work, including but not limited to programs, listings, printouts, documentation, notes, flow charts, and programming aids, shall be the property of the Company whether or not the Company uses such material. No rights are reserved by Consultant.

All programs, specifications, documentation and all other technical information prepared by Consultant in connection with the performance of his services hereunder will become the Company's sole property. Title to all material and documentation, including but not limited to, systems specifications furnished by the Company to Consultant or delivered by the Company into Consultant's possession shall remain with the Company. Consultant shall immediately return all such material or documentation within seven (7) days of any request or upon the termination or conclusion of his engagement under this Agreement, whichever shall occur first.

Whenever an invention or discovery is made by Consultant either solely or in collaboration with others, including employees of the Company under or relating to this Agreement, Consultant shall promptly give the Company written notice thereof and shall furnish the Company with complete information thereon including, as a minimum, (1) a complete written disclosure of each such invention and (2) information concerning the date and identity of any public use, sale or publication of such invention made by or known to Consultant or of any contemplated publication by Consultant. As used herein, the terms (1) “invention” or “invention or discovery” includes any art, machine, manufacture, design or composition of matter or any new and useful improvement thereof where it is or may be patentable under the patent laws of the United States or of any foreign country; and (2) “made,” when used in relation to any invention or discovery, means the conception of the first actual or constructive reduction to practice of such invention.

Consultant hereby grants, assigns and conveys to the Company all right, title and interest in and to all inventions, works of authorship, trade secrets and other proprietary data and all other materials (as well as the copyrights, patents, trade secrets and similar rights attendant hereto) conceived, reduced to practice, authored or developed by Consultant, either solely or jointly with others, during and in connection with the performance of services under this Agreement with the Company. Consultant agrees that he will not seek patent, copyright, trademark, registered design or other protection for any rights in any such inventions, works of authorship, proprietary data or other materials. Consultant shall have no right to disclose or use any such inventions, works of authorship, trade secrets and proprietary data or other materials for any purpose whatsoever and shall not communicate to any third party the nature of or details relating to such inventions, works of authorship, proprietary data or other materials. Consultant agrees that at the Company's expense, he shall do all things and execute all documents as the Company may reasonably require to vest in the Company or its nominees the rights referred to herein and to secure for the Company or its nominees all patent, trademark, and trade secret copyright protection. Consultant's obligations under this Section 8 shall
survive expiration or termination of the Agreement and any amendments thereto. Furthermore, Consultant hereby irrevocably waives all rights in and to all works created or developed hereunder.

Consultant agrees he will not disclose to any third party, without prior written consent of the Company, any invention or discovery made under or relating to this Agreement or any proprietary or confidential information acquired from the Company under this Agreement, including trade secrets, business plans and confidential or other information which may be proprietary to the Company, all of which shall be subject to the Non-disclosure Agreement described in Section 7 hereof.

9. Legal Relief. In the event Consultant breaches, or threatens to breach any of the covenants expressed herein, the damages to the Company will be difficult to quantify; therefore, the Company may apply to a court of competent jurisdiction for injunctive or other equitable relief to restrain such breach or threat of breach, without disentitling the Company from any other relief in either law or equity. In the event that any or all of the covenants expressed herein shall be determined by a court of competent jurisdiction to be invalid or unenforceable, by reason of its geographic or temporal restrictions being too great, or by reason that the range of activities covered are too great, or for any other reason, such covenants shall be interpreted to extend over the maximum geographic area, period of time, range of activities or other restrictions with respect to which they may be enforceable.

10. Export Regulations. Consultant acknowledges his obligations to control access to technical data under the U.S. Export Laws and Regulations and agrees to adhere to such laws and regulations with regard to any technical data received under this Agreement.

11. Adherence to Laws. Consultant agrees that in carrying out his duties and responsibilities under this Agreement, he will neither undertake nor cause, nor permit to be undertaken, any activity which either (i) is illegal under any laws, decrees, rules, or regulations in effect in either the United States or any other country in which the Company has a business interest; or (ii) would have the effect of causing the Company to be in violation of any laws, decrees, rules, or regulations in effect in either the United States or any other country in which the Company has a business interest.

Consultant agrees to notify the Company immediately of any extortive solicitation, demand, or other request for anything of value, by or on behalf of any entity or individual, relating to the subject matter of this Agreement.

12. Indemnification. Consultant shall defend, indemnify and hold harmless the Company and its officers, directors, employees, agents, parent, subsidiaries and other affiliates, from and against any and all damages, costs, liability, and expense whatsoever (including attorneys' fees and related disbursements) incurred by reason of (a) any failure by Consultant to perform any covenant or agreement of Consultant set forth herein; (b) injury to or death of any person or any damage to or loss of property which is due to the negligence and/or willful acts of Consultant; or (c) any breach by Consultant of any representation, warranty, covenant or
agreement under this Agreement. The Company shall have the right to offset against any fees or commissions due Consultant under this Agreement the amount of any indemnity to which the Company is entitled under this Section 12 for any damage, cost, liability, expense, fee or other disbursement, incurred by the Company pursuant to this Section 12.

13. Miscellaneous

13.1 Cooperation. Consultant agrees that at any time and from time to time, upon the request of the Company, to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, documents and instruments as may be required to effect any of the transactions contemplated by this Agreement.

13.2 Amendments. This Agreement replaces and supersedes all prior consulting agreements, and any other agreements relating to the subject matter hereof, between the parties to this agreement. No alteration, modification, amendment or other change of this Agreement shall be binding on the parties unless in writing, approved and executed by Consultant and an authorized executive officer of the Company whether by operation of law or otherwise.

13.3 Assignment. This Agreement is not assignable by Consultant, whether by operation of law or otherwise, and all obligations of the Company hereunder, other than the obligation to pay previously accrued compensation, shall terminate automatically upon the death of Consultant should such death occur prior to the termination of this Agreement.

13.4 Governing Law. This Agreement shall be governed by and interpreted, construed and enforced in accordance with the laws of the State of __________, excluding conflicts of laws principles, and both parties further consent to jurisdiction by the state and federal courts sitting in the State of __________.

13.5 Invalidity. The terms of this Agreement shall be severable so that if any term, clause, or provision hereof shall be deemed invalid or unenforceable for any reason by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the remaining terms, clauses and provisions hereof, the parties intending that if any such term, clause or provision were held to be invalid prior to the execution hereof, they would have executed an agreement containing the remaining terms, clauses and provisions of this Agreement.

13.6 Waiver of Breach. The waiver by either party hereto of any breach of the terms and conditions hereof will not be considered a modification of any provision, nor shall such a waiver act to bar the enforcement of any subsequent breach.

13.7 Background, Enumerations and Headings. The “Background,” enumerations and headings contained in this Agreement are for convenience of reference only and are not intended to have any substantive significance in interpreting this Agreement.

13.8 Company Property. All Company property in the possession or control of Consultant including, but not limited to, specifications, documentation, source code,
magnetic media will be returned by Consultant to the Company on demand, or at the termination of this Agreement, whichever shall come first.

13.9 Entire Agreement. This Agreement and the Non-disclosure Agreement described in Section 7 hereof constitute the entire agreement between the parties hereto and supersedes all existing contracts or agreements, written or oral, between the parties hereto.

13.10 Warranty. As an inducement for Company to enter into this Agreement, Consultant represents and warrants to Company that all services, work and deliverables to be performed hereunder shall be performed by him in a professional and workmanlike manner, in accordance with the highest industry standards.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the date first written above.

____________________________________
Consultant

[name of business]

By: _________________________________
Its: Duly Authorized Representative
Sample Owner’s Guaranties

Sample Guaranty of Performance of a Contract to be Performed by Business

OWNER GUARANTEE

The undersigned [name of owner(s)] (“Owner(s)”), hereby guarantees the full, due and punctual performance by XYZ Inc., a [state of incorporation] corporation, (“XYZ”) of all of its obligations and liabilities under and with respect to that certain [name of agreement being guaranteed by owner(s)] (the “Agreement”), and further represents, warrants and covenants that:

(a) the owner(s) owns ___% of all of the issued and outstanding capital stock of XYZ;

(b) this Guaranty is made for the benefit of MNO Inc., an ______________ corporation (“MNO”) and to induce MNO to enter into the Agreement;

(c) the making and performance of this Guaranty will not violate any provision of or result in the acceleration of any obligation under any mortgage, lien, lease, indenture, other instrument or agreement, order, judgment or decree to which the undersigned is a party or by which it or any of its property is bound; and this Guaranty is the valid and binding obligation of the undersigned enforceable in accordance with its terms;

(d) this Guaranty shall remain in full force and effect without regard to, and shall not be affected or impaired by, any amendment of the Agreement, or any sale or transfer of all or any part of the undersigned's ownership of the stock of XYZ, or any voluntary or involuntary liquidation, dissolution, sale of assets, insolvency, reorganization, bankruptcy or filing for bankruptcy of XYZ or any subsidiary; and this Guaranty shall in addition be binding upon all successors, assigns, executors, heirs, administrators and estate of the undersigned (and the undersigned shall not permit any dissolution or liquidation of Seller without giving advance notice to MNO);

(e) the undersigned irrevocably submits to the jurisdiction of any state or federal court located in __________ County, the City of ________, State of ________ over any suit, action or proceeding arising out of or relating to this Agreement; and the undersigned agrees that service of process on the undersigned at the address stated below in accordance with the rules of any such court shall be deemed effective service of process upon the undersigned in any such suit, action, or proceeding and shall, to the fullest extent permitted by law, be taken and held to be valid personal service upon and personal delivery to the undersigned. Nothing in this paragraph shall affect any right which MNO may otherwise have to bring proceedings against the undersigned or in the courts of any jurisdiction or jurisdictions other than those named above.
Sample Guaranty of Business Debts

SAMPLE SHAREHOLDER GUARANTY
OF A COMPANY’S INDEBTEDNESS

The undersigned shareholders of [name of business], a business with offices located at [location], (the “Company”), FOR VALUE RECEIVED and in consideration of advances made by [party receiving the owner’s guaranty] (the “Obligee”) to the Company on the date hereof in the principal amount of [$ amount] and of any other loan or other financial accommodation heretofore or hereafter at any time made or granted by the Obligee to the Company, hereby unconditionally, jointly and severally guarantee the full and prompt payment when due whether by acceleration or otherwise, and at all times thereafter, of all obligations of Company to the Obligee, however created, arising or evidenced, direct or indirect, primary or secondary, absolute or contingent, joint or several, or now or hereafter existing or due (all such obligations being hereinafter collectively called the “Liabilities”), under that certain [name agreement to be guaranteed] between the Company and the Obligee, and the undersigned further jointly and severally agree to pay all expenses including attorneys' fees paid or incurred by the Company to collect the Liabilities or any part thereof and to enforce this guaranty.

The right of recovery against the undersigned under this guaranty is, however, limited to the amount of [$ amount] plus interest on such amount whether accruing before or after any bankruptcy or insolvency proceeding involving the Company and, if interest on any portion of the Liabilities ceases to accrue by operation of law by reason of the commencement of such proceeding, including such interest as would have accrued on any such portion of the Liabilities if such proceeding had not commenced at the rate set forth in the Note (hereinafter defined) and plus all expenses of enforcing this guaranty.

Each of the undersigned agrees that, in the event of the inability or failure of the Company or such undersigned to pay debts as they become due, or an assignment by the Company or such undersigned for the benefit of creditors, or the commencement of any case or proceeding in respect of the Company or such undersigned under any bankruptcy, insolvency or similar laws, and if such event shall occur at a time when any of the Liabilities may not then be due and payable, such undersigned will pay to the Obligee forthwith the full amount which would be payable hereunder by such undersigned if all Liabilities were then due and payable.

This guaranty shall in all respects be a continuing, absolute and unconditional guaranty, and shall remain in full force and effect (notwithstanding, without limitation, the death, incompetency or dissolution of any of the undersigned or that at any time or from time to time all Liabilities may have been paid in full), subject to discontinuance as to any of the undersigned only upon actual receipt by the Obligee of written notice from such undersigned, or any person duly authorized and acting on behalf of such undersigned, of the discontinuance hereof as to such undersigned; provided, however, that no such notice of discontinuance shall affect or impair any of the agreements and obligations of such undersigned hereunder with
respect to any and all Liabilities existing prior to the time of actual receipt of such notice by the Obligee, any and all Liabilities created or acquired thereafter pursuant to any previous commitments made by the Obligee, any and all extensions or renewals of any of the foregoing, any and all interest paid or incurred by the Obligee to collect any of the foregoing and enforce this guaranty against such undersigned; and all of the agreements and obligations of such undersigned under this guaranty shall, notwithstanding any such notice of discontinuance, remain fully in effect until all such Liabilities (including any extensions or renewals of any thereof) and all such interest and expenses shall have been paid in full. Any such notice of discontinuance by or on behalf of any of the undersigned shall not affect or impair the obligations hereunder of any other of the undersigned.

The undersigned further agree that, if at any time all or any part of any payment theretofore applied by the Obligee to any of the Liabilities is or must be rescinded or returned by the Obligee for any reason whatsoever (including, without limitation, the insolvency, bankruptcy or reorganization of the Company), such Liabilities shall, for the purposes of this guaranty, to the extent that such payment is or must be rescinded or returned, be deemed to have continued in existence, notwithstanding such application by the Obligee, and this guaranty shall continue to be effective or be reinstated, as the case may be, as to such Liabilities, all as though such application by the Obligee had not been made.

This guaranty shall be binding upon the undersigned, and upon the heirs, legal representatives, successors and assigns of the undersigned; and to the extent that the Obligee or any of the undersigned is a partnership or a corporation, all references herein to the Company and to such of the undersigned, respectively, shall be deemed to include any successor or successors, whether immediate or remote, to such partnership or corporation. The term “undersigned” as used herein shall mean all parties executing this guaranty and each of them, and all such parties shall be jointly and severally obligated hereunder.

This guaranty has been delivered at [location], and shall be construed in accordance with and governed by the laws of the State of ______. Wherever possible each provision of this guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this guaranty.

SIGNED AND DELIVERED this ___ day of [month], 20__.

____________________________________
Owner
Sample Agreement Among Shareholders for Sharing Liability

AGREEMENT FOR SHARING JOINT AND SEVERAL LIABILITIES

This Contribution and Cooperation Agreement (this "Agreement"), dated as of this ____

W I T N E S S E T H:

The parties hereto wish to enter into this Agreement to effect an agreed and equitable
sharing of the Joint Liabilities (as hereinafter defined) and to provide for the other matters
stated below;

NOW THEREFORE, in consideration of the premises and the mutual covenants herein
contained, the parties hereto agree as follows:

1. Sharing Proportion of Joint Liabilities. The Joint Liabilities shall be shared
between the Shareholders in the following proportions:

   (a) Joint Liabilities are the debts, obligations, contractual duties and other
liabilities of the ______________ corporation owned by the Shareholders (all of
such joint Liabilities are hereinafter called "Joint Liabilities") shall be shared in the
following proportions:

   [SHAREHOLDER 1] 60%
   [Shareholder 2] 40%

2. Right and Obligation of Contribution. If at any time a payment in respect of
Joint Liabilities is made by one of the Shareholders, such paying person shall have a right of
contribution against such other Shareholder (and such other person will be obligated to make
such contribution) in the amount (if any) necessary to assure that the Joint Liabilities shall have
been shared in the proportions stated above. A Shareholder’s right and obligation of
contribution, if any, pursuant to the immediately preceding sentence shall arise (and payment of
the contribution shall be made) at the time of each such payment in respect of such Joint
Liabilities, subject to adjustment at the time of any subsequent such payment.


   (a) Counterparts. This Agreement may be executed simultaneously in two
or more counterparts, each of which shall be deemed an original and all of which
together shall constitute one and the same instrument.
(b) **Choice of Forum; Appointment of Agent.** Each of the parties hereto agree that nonexclusive jurisdiction in any action, suit or proceeding related to any dispute arising under this Agreement and the other agreements related hereto shall be in a court located in the County of ________, ________.

(c) **No Waiver, Etc.** No delay of or omission in the exercise of any right, power or remedy accruing to any party as a result of any breach or default by any other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of or in any similar breach or default occurring later; nor shall any waiver of any single breach or default be deemed a waiver of any other breach of default occurring before or after that waiver. Notwithstanding any provision herein to the contrary, nothing contained in this Agreement shall prejudice a party’s liability for its own fault or negligence; provided that ^ and ^ each releases the other from any claims against the other of which the party having the claim has actual knowledge as of the date hereof.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above stated.

______________________________
Shareholder

______________________________
Shareholder
Sample Finder Fee Agreement

[Finder’s Letterhead]

______, 20

[Name & Address of Company Seeking Capital]

Dear ______:

This will confirm the terms of our mutual understanding and agreement ("Agreement") in connection with the efforts of ("Finder") to obtain financing for ("Company") as follows:

1. **Appointment.**

   The Company hereby authorizes Finder, on a [nonexclusive or exclusive] basis, to identify investors, underwriters, joint venturers, lenders and/or guarantors (collectively "Investors") interested in providing Financing (as defined below) for the Company on terms acceptable to the Company and the Investors.

   However, it is agreed that the Finder shall have no continuing role or part of the negotiations or relationship between any Investors that the Finder identifies to the Company (apart from any rights granted under section 2); and that Finder is not now, nor shall it ever be, an agent of the Company. Finder specifically warrants and represents that (s)he shall not represent (her)himself as an agent of the Company and agrees to indemnify the Company for any liability, fees (including attorney’s fees), costs or expenses, or settlements which the Company incurs as a result of any representation to third-parties by the Finder.

   It is understood that Finder is acting as a finder only, is not a licensed securities or real estate broker or dealer, and shall have no authority to enter into any commitments on the Company's behalf, or to negotiate the terms of Financing, or to hold any funds or securities in connection with Financing or to perform any act which would require Finder to become licensed as a securities or real estate broker or dealer.

2. **Compensation.**

   If Financing is consummated within months after termination of this Agreement, then Finder shall be entitled to a cash fee as follows:

   [e.g., 5% of the first $1,000,000 of Financing; 4% of the next $1,000,000 of Financing; 3% of the next $1,000,000 of Financing; 2% of the next $1,000,000 of Financing; and 1% of any amount in excess of $4,000,000 of Financing].

   “Financing”, as used herein, shall mean all amounts furnished to or for the use of the Company with Investors directed or introduced by, or through the efforts of, Finder after the
date of this Agreement, whether by investment in equity or debt securities of the Company, loans, loan commitments, guarantees of indebtedness, leasing, sale and leaseback, joint ventures or licensing.

[Optional: Additional Compensation.]

Finder shall receive, [along with the cash fees set forth above], (duration in years) warrants to purchase equity interests in the Company equal to % of the amount of equity interests purchased by Investors and/or issuable to Investors upon conversion of convertible securities sold or issued to Investors or exercise of warrants issued to Investors. The purchase price and conditions of such equity interests shall be the same as for those issuable to the Investors. The warrants shall be issued to Finder for the cash sum of (nominal sum) paid by the Finder.]

3. Fees.

The fees due Finder as set forth in Section 2 above shall be paid by bank or cashier's check at the closing of Financing. In the event that a portion of the Financing is completed in delayed increments, the fee shall be paid pro-rata as each increment is advanced.

4. Termination.

This Agreement may be terminated at any time by either party by written notice to the other party in accordance with the notice provisions listed in section __, but such termination shall not affect the obligation of the Company to pay the finder's fee hereunder as to Financing consummated within months after such termination with any Investor directed or introduced by Finder to the Company or through the efforts of Finder prior to such termination.

5. Accurate Information.

The Company hereby represents and warrants that all information provided Finder pertaining to the Company shall be true and correct; and the Company shall hold Finder harmless from any and all liability, expenses or claims arising from the disclosure or use of such information.

6. Applicable Law.

This Agreement is governed by and construed under the laws of the State of ______, and any action brought by either party against the other party to enforce or interpret this Agreement shall be brought in an appropriate court of such State. In the event of any such action, the prevailing party shall recover all costs and expenses thereof, including reasonable attorney's fees from the losing party.

Any notice, request, instruction or other document to be given under this Agreement by either party to the other party shall be in writing and (a) delivered personally; (b) sent by telecopy; (c) delivered by overnight express (charges prepaid); or (d) sent by registered or certified mail, postage prepaid:

If to Company to:

If to Finder to:

or at such other address for a party as shall be specified by like notice. Any notice which is delivered personally, telecopied or sent by overnight express in the manner provided in this section 8 shall be deemed to have been duly given to the party to whom it is addressed upon actual receipt by such party. Any notice which is addressed and mailed in the manner herein provided shall be conclusively presumed to have been given to the party to whom it is addressed at the close of business, local time of the recipient, on the third business day after it is so placed in the mail.

8. Complete Understanding.

This Agreement and the Purchase Agreement constitute the entire agreement and understanding between the parties and supersedes all prior agreements and understanding, both written and oral, between the parties hereto with respect to the subject matter.

9. Headings and Capitalized Terms.

The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of its provisions.

10. Successors and Assigns.

The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. Neither Finder nor Company may assign their rights or delegate their obligations under this Agreement without the prior written consent of the other.

11. Modification and Waiver.

None of the terms or conditions of this Agreement may be waived except in writing by the party which is entitled to the benefits thereof. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by Finder and Company. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver.

If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws by any court of competent jurisdiction, such illegality, invalidity or unenforceability shall not affect the legality, enforceability or validity of any other provisions or of the same provision as applied to any other fact or circumstance and such illegal, unenforceable or invalid provision shall be modified to the minimum extent necessary to make such provision legal, valid or enforceable, as the case may be.

If the foregoing correctly sets forth our Agreement, please sign and return the enclosed copy of this letter.

Sincerely,

__________________________________
(Finder)

AGREED TO AND ACCEPTED AS OF THE DATE HEREOF
(Company)
By: _________________________________________
Its: _________________________________________
Sample Owner Agreements for Partnerships and Limited Liability Companies

Sample Manager-Managed LLC Operating Agreement (Illinois example)

Note: this is a sample of a manager-managed limited liability company.

OPERATING AGREEMENT FOR
[name of LLC] LIMITED LIABILITY COMPANY

THIS OPERATING AGREEMENT (these “Articles”) is made as of the [date] day of [month], 20__ by and among the signatories identified on the signature pages hereto.

IN CONSIDERATION OF the mutual promises of the parties hereto and other good and valuable consideration, receipt and adequacy of which is hereby acknowledged, it is mutually agreed by and between the parties hereto as follows:

1. Name. The name of the limited liability company shall be “Limited Liability Company.”

2. Purpose. The purpose for which the limited liability company is formed is to engage in any and all activities permitted under applicable laws.

3. Registered Office and Agent. The name of the registered agent of the limited liability company shall be [name]. The registered office of the limited liability company shall be located at [city, state].

4. Filing of Articles of Organization. The members of the limited liability company shall:

   (a) promptly file a duly executed original copy of the Articles of Organization of the limited liability company, together with one or more additional copies thereof as appropriate, with the Secretary of State of Illinois (the “Secretary”) and in such other place or places as may be required by law; and

   (b) tender and pay all fees, charges and do all other things requisite for the due formation of the limited liability company pursuant to the laws of the State of Illinois.

5. Term. The limited liability company shall be deemed formed at the time of the filing of the Articles of Organization with the Secretary and shall continue for a period of thirty (30) years from the date of filing, unless sooner terminated pursuant to the further provisions of these Articles.

6. Interests and Contributions of Members.
6.1 The name and present mailing address of each member and the percentage interest of each member of the limited liability company are set forth on Schedule I hereto. The total amount of cash constituting the initial aggregate contribution by the members is [$ amount] dollars.

6.2 The initial contribution of each member shall be contributed to the limited liability company upon execution of these Articles by such member.

6.3 An individual capital account shall be maintained for each member. The capital account of each member shall consist of such member's initial contribution, increased by:

(a) additional contributions made by such member, and

(b) such member's share of the limited liability company's net profits,

and decreased by:

(i) distributions made to such member, and

(ii) such member's share of the limited liability company's losses,

all in accordance with any applicable provision of the Internal Revenue Code of 1986, as amended (the “Code”), or any rule or regulation thereunder.

6.4 No additional contributions have been agreed to as of the date of these articles, and none shall be required or permitted without the unanimous written consent of all the members.

6.5 Except as set forth in Article 13.3, a member shall not receive from the limited liability company any part or all of his or her contribution to capital until:

(a) all liabilities of the limited liability company, except liabilities to members on account of their contributions to capital, have been paid or there remains property of the limited liability company sufficient to pay them;

(b) the consent of all members is had, unless the return of the contribution to capital may be rightfully demanded as provided herein; and

(c) the Articles of Organization or these Articles are cancelled or so amended as to set out the withdrawal or reduction of the contributions of capital.

6.6 Subject to the provisions of Article 6.5, a member may rightfully demand the return of his or her contribution only upon the dissolution of the limited liability company.
6.7 The limited liability company shall have the discretion to distribute cash, notes, property or a combination thereof to a member in return for his or her contribution to capital as it deems appropriate.

6.8 A member of the limited liability company may have the limited liability company dissolved and its affairs wound up when:

(a) the member rightfully but unsuccessfully has demanded the return of his or her contribution to capital; or

(b) the other liabilities of the limited liability company have not been paid, or the limited liability company's property is insufficient for their payment and the member would otherwise be entitled to the return of his or her contribution.


7.1 For purposes of these Articles and until determined otherwise by the manager of the limited liability company, in such manager's sole discretion, the term “fiscal year” shall mean the calendar year.

7.2 The profits and losses of the limited liability company shall be determined for each fiscal year of the limited liability company in accordance with the accounting methods followed for federal income tax purposes and otherwise in accordance with generally accepted accounting principles and procedures applied in a consistent manner and shall be deemed to have been earned ratably during the fiscal year. For purposes of Sections 702 and 704 of the Code or the corresponding sections of any future internal revenue law or any similar tax law of any state or jurisdiction, and for such purposes only, the determination of each member's distributive share of all items of income, gain, deduction, loss, credit or allowance for any period or year shall be made in proportion to the amounts of the members' respective percentage interests in the limited liability company during such period or year.

7.3 The profits of the limited liability company shall be shared among the members, and the losses of the limited liability company shall be borne by the members in proportion to each member's respective percentage interest in the limited liability company.

8. Distributions.

8.1 To the fullest extent allowed by the Illinois Limited Liability Company Act (the “Act”), the Net Cash Flow, if any, of the limited liability company shall be distributed at least annually among the members in proportion to each member's respective percentage interest in the limited liability company. For such purpose, “Net Cash Flow” shall mean:

(a) For each calendar year, all cash income and receipts of whatsoever nature or kind received by the limited liability company less all costs and expenses incurred or paid by, and all net additions to reserves of, the limited liability company
(whether operating or capital costs, and including without limitation, all costs to acquire its interest in the real property described in Article 3, payments upon the principal of any indebtedness, secured or unsecured, of the limited liability company, expenditures for capital improvement, additions or replacements and any other expenditures which are not deductible in arriving at the limited liability company's federal taxable income, such as expenses for repairs and reserves to meet anticipated expenses as the manager shall deem to be reasonably necessary); plus

(b) Any other funds deemed by the manager to be available for distribution.

8.2 The net proceeds from the sale of all or any portion of any real property of the limited liability company shall be distributed to the members in proportion to each member's respective percentage in the limited liability company.

9. Designation of Manager. [OPTIONAL]

9.1 For the purpose of conducting the business and affairs of the limited liability company, [name of manager] shall act as manager until the first annual meeting of the members or until its successor is elected and qualifies. The address of the manager is as follows: [address].

9.2 The manager of the limited liability company shall be elected annually at a meeting of the members or by other action of the members to be held or taken on each annual anniversary of the date of these Articles, or as soon thereafter as such meeting or action can be held or taken. Such person who receives the approval of those members who own an aggregate of more than fifty percent (50%) of the total percentage interests of all members of the limited liability company shall be elected manager, and the Articles of Organization shall be amended to any extent required under the Act. The number of managers may be increased or decreased as determined also by the consent of those members whose respective percentage interests in the limited liability company in the aggregate exceed fifty percent (50%) of the total percentage interests of all members of the limited liability company.

9.3 Whenever the consent or approval of the members is referred to in these Articles, the consent or approval by sufficient members authorized to make such a decision shall be effective whether votes are cast at a meeting of members (and whether or not all of the members are in attendance at such meeting), or by formal or informal, oral or written instructions of such members, or otherwise, and such determination so made by the members shall be effective and legally binding upon all the members, regardless of the number of members who may actually vote or otherwise participate therein.


10.1 The manager shall have sole and complete control of the management and operation of the affairs and business of the limited liability company and shall operate the limited liability company for the benefit of all of the members. One of the signatures of the
manager shall be sufficient to bind the limited liability company (so long as such signatory has the consent thereto of the other managers, if there is more than one manager).

10.2 The manager (acting for and on behalf and at the expense of the limited liability company), in extension and not in limitation of the rights and powers given by law or by the other provisions of these Articles, shall, in its sole discretion, have full and entire right, power and authority in the management of the business and affairs of the limited liability company:

(a) to purchase, acquire, own, lease, manage and operate, either directly or indirectly, real estate (or any interest or interests therein), and to carry on any and all activities related thereto;

(b) subject to the provisions of Article 12.2 hereof, to sell, with or without notice, at public or private sale, and to exchange, trade, transfer, assign, convey, mortgage or otherwise encumber, finance, refinance, lease for any term, pledge, appraise, or have appraised, apportion, divide in kind, borrow on, hypothecate or give options for any and all of the property of the limited liability company, whether realty or personalty, upon such terms and conditions as the manager, in its sole discretion, may deem to be in the best interests of the limited liability company, and in so doing to execute, acknowledge, seal and deliver all necessary documents or instruments;

(c) to cause the limited liability company to participate in any capacity (whether as stockholder, bondholder, creditor, partner, venturer, member, fiduciary, beneficiary or otherwise) in any business or organization or enterprise, whether incorporated or unincorporated, in any manner or form whatsoever, to the extent consistent with the purposes of the limited liability company set forth in Article 3 hereof;

(d) to employ agents, servants, employees and independent contractors to assist in the management and operation of the business of the limited liability company, including persons related to or affiliated with the manager, and, in each such instance, to pay them reasonable compensation therefor;

(e) to commence or defend litigation with respect to the limited liability company or any of its assets or liabilities; to compromise, settle, arbitrate, or otherwise adjust claims in favor of or against the limited liability company and to insure its assets and undertakings and the manager against any and all risks;

(f) to make loans and extend credit to the limited liability company; to borrow money from any member, bank, lending institution, and other lender for any purpose of the limited liability company, and in connection therewith, issue notes, debentures or any other evidence of indebtedness and encumber the assets of the limited liability company to secure repayment of borrowed sums; and no member, bank, lending institution or other lender to which application is made for a loan by the manager shall be required to inquire as to the purposes for which such loan is sought,
and as between this limited liability company and such member, bank, lending
institution or other lender, it shall be conclusively presumed that the proceeds of such
loan are to be and will be used for the purposes authorized under these Articles; and to
obtain replacement or refinancing of any indebtedness or security therefor with respect
to any property of the limited liability company, or to repay the same in whole or in part
and whether or not a prepayment penalty may be incurred;

(g) to make such elections under the tax laws of the United States, the
several states and other relevant jurisdictions as to the treatment of items of income,
gain, loss, deduction and credit, and as to all other relevant matters, as the manager, in
its sole discretion, deem necessary or desirable; and

(h) to make investments in government obligations, bank certificates of
deposit, short-term debt securities, and short-term commercial paper, pending initial
investment or future reinvestment of the funds of the limited liability company, and to
provide a source from which to meet contingencies.

10.3 To the extent permitted by the Act, all powers of the manager hereunder may be
exercised by it, and any or all of such powers may be assigned or delegated by the manager to
any other person or persons, including the other members of the limited liability company and
other persons and entities related to or affiliated with the manager.

10.4 In addition to the specific rights and powers herein granted to the manager, the
manager shall possess and may enjoy and exercise all of the rights and powers of manager as
provided in the Act.

10.5 The manager or its delegate(s), as the case may be, shall devote such of their
time to the business of the limited liability company as they may, in their sole discretion, deem
to be necessary to conduct said business.

10.6 The limited liability company shall, to the fullest extent permitted by law,
indemnity, defend and save harmless the manager and former manager(s) from any and all
claims, actions, causes of action, suits, proceedings, losses, damage, liability, costs and
expenses (including, without limitation, attorneys' fees and expenses, and court costs) asserted
against or incurred or sustained by them by reason of any act performed by them while
manager or any omission on their part while manager to act for or in behalf of the limited
liability company and in furtherance of its interest provided that the manager(s) acted in good
faith and in a manner the manager(s) reasonably believed to be in, or not opposed to, the best
interest of the limited liability company and, with respect to any criminal action or proceeding,
had no reason to believe that their conduct was unlawful.

10.7 The manager shall not be liable for any mistakes in judgment or for any
inadvertent failure to perform any of its obligations hereunder, or for any loss due to such
mistake or failure to perform, or due to the negligence, dishonesty, fraud or bad faith of any
employee or other agent of the limited liability company.
10.8 The manager, on behalf of the limited liability company, may contract with any person related to or affiliated with the manager, and the manager and such persons related to or affiliated with the limited liability company (including any of the directors, officers or employees of such person), their designees and nominees, shall not be liable to the limited liability company or to any of the members for damages, losses, liability or expenses of any nature whatsoever resulting from mistakes in judgment or any acts or omissions, whether or not disclosed, unless caused by willful misconduct.

10.9 Notwithstanding anything to the contrary contained herein, the manager shall not perform any act on behalf of the limited liability company without the approval of those members who own an aggregate of more than fifty percent (50%) (or 75% in the case of the last sentence of Article 12.2 below) of the total percentage interests of all members of the limited liability company, which approval may be made in writing or at a meeting of the limited liability company in accordance with Article 12.3 below; provided that each member, by its execution of these Articles, approves of the execution, delivery and performance, from time to time, of, and directs the manager to execute, deliver and perform [identify agreements or transactions which have already been approved by a majority of the members and/or may be entered into and performed without specific approval of the members].

10.10 Unless not required by applicable law, the identification “a limited liability company” or “L.L.C.” shall appear after the name of the limited liability company on all correspondence, stationery, checks, invoices and any and all documents and papers executed by the limited liability company.

11. Legal Title to Property. Legal title to all or any portion of the property of the limited liability company shall be held in the name of “ABC Limited Liability Company” or, to the extent allowed by the Act, in such other name as the manager, in its sole discretion, shall determine to be in the best interest of the limited liability company. Without limiting the foregoing grant of authority, to the extent permitted by the Act, the manager may arrange to have title taken and held in its own name or in the names of trustees, nominees or straw parties for the limited liability company. It is expressly understood and agreed that the manner of holding title to the property (or any part thereof) of the limited liability company is solely for the convenience of the limited liability company, and that all such property shall be treated as property of the limited liability company, subject to the terms of these Articles.


12.1 With the exception of the manager(s) designated in Article 9 herein and as they shall be so elected from time to time, no member of the limited liability company shall participate in the management of the business and affairs of the limited liability company, except as otherwise provided in these Articles.

12.2 [A provision some opt to exclude] The manager of the limited liability company shall have the authority to amend these Articles provided that any such amendment
shall have received the consent of those members whose aggregate percentage interests in the limited liability company exceed fifty percent (50%) of the total percentage interests of all members of the limited liability company and the agreement of a majority in number of the managers. A sale, exchange, lease, mortgage, pledge or other transfer of any substantial assets of the limited liability company shall require consent of members whose aggregate percentage interests in the limited liability company exceed seventy-five percent (75%) of the total percentage interests of all members of the limited liability company.

12.3 Meetings of the limited liability company for any purpose shall be held at the call of the manager. All such meetings shall be held at a place designated by the manager, and notice of such location and of the date and time of the meeting shall be given by the manager to each member at least ten (10) days prior to such date (unless such notice is waived as to any member, by such member).

12.4 The members of the limited liability company shall have the right and the power to admit additional members upon the unanimous consent of all of the then members.

13. Transferability and Redemption of Interests.

13.1 Except as otherwise provided in this Article 13, none of the members of the limited liability company shall have the right to transfer or assign any part or all of their interest in the limited liability company, and any purported transfer or assignment shall be void and of no force or effect, and may be ignored by the limited liability company and its members. If all members of the limited liability company other than the member proposing to dispose of his or her interest do not approve of the proposed transfer or assignment by unanimous written consent, the transferee of the member's interest shall have no right to participate in the management of the business and affairs of the limited liability company or to become a member. In that event, the transferee shall only be entitled to receive the share of profits or other compensation by way of income and the return of contributions, to which that member otherwise would be entitled.

13.2 In the event of an assignment pursuant to this Article 13, the limited liability company shall, upon the unanimous written consent of all remaining members, continue with respect to the remaining members; appropriate adjustments shall be made to their capital accounts and percentage interests to reflect the assignment of the interest of the assignor member; and an election may be made by the manager, in its sole discretion, to adjust the basis of assets of the limited liability company.

13.3 Notwithstanding any provisions of Article 13.1, no transfer or assignment of all or any portion of a member's interest in the limited liability company shall be effective, unless the transferor or assignor delivers to the limited liability company a written opinion of counsel acceptable to the limited liability company, to the effect that:

(a) such transfer or assignment, when added to the total of all other transfers and assignments of interest in the limited liability company within the preceding twelve
(12) months, would not result in the limited liability company being considered to have terminated within the meaning of Section 708 of the Code;

(b) such transferor assignment would not violate the Securities Act of 1933, as amended, or any state securities of “Blue Sky” laws applicable to the limited liability company or the interest to be transferred or assigned; and

(c) such transfer or assignment would not cause the limited liability company to lose its status as a partnership for federal income tax purposes, result in a nonexempt “prohibited transaction” as defined under Section 4975 of the Code, with respect to the limited liability company or any of its managers or members or cause the limited liability company to be subject to registration as an investment company under the Investment Company Act of 1940.

13.4 Each transferor or assignor and each transferee or assignee agrees that it will pay all reasonable expenses, including attorneys' fees, incurred by the limited liability company in connection with a transfer or assignment of all or any portion of such transferor's or assignor's interest in the limited liability company being transferred to such transferee or assignee.

13.5 A person who is the transferee or assignee of all or any portion of the interest of a member as permitted hereby but does not become a substituted member and who desires to make a further transfer or assignment of all or any portion of such transferor's or assignor's interest in the limited liability company being transferred to such transferee or assignee.


14.1 The limited liability company shall be dissolved upon the occurrence of any of the following events:

(a) when the period fixed for the duration of the limited liability company shall expire;

(b) by the unanimous agreement of all members, which shall be in writing;

(c) upon the death, retirement, resignation, expulsion, bankruptcy, court declaration of incompetence with respect to, or dissolution of, a member or the occurrence of any other event that terminates the continued membership of a member in the limited liability company, unless within ninety (90) days after such event there are at least two (2) remaining members and all the remaining members elect to continue the business of the limited liability company by unanimous agreement; or

14.2 As soon as possible following the occurrence of any of the events specified in this Article effecting the dissolution of the limited liability company, the limited liability
company shall execute and file, with the Secretary, articles of dissolution in accordance with the Act and in such form as shall be prescribed by the Secretary.

14.3 Upon a dissolution of the limited liability company, the assets thereof shall be liquidated, and the proceeds therefrom, together with assets distributed in kind to the extent sufficient therefor, shall be applied and distributed in order of priority as follows:

(a) First, to creditors of the limited liability company, including members who are creditors, in the order of priority provided by law, in satisfaction of liabilities of the limited liability company other than liabilities for distribution to members under the Act;

(b) Second, to members of the limited liability company in respect of their share of the profits and other compensation by way of income on their contributions; and

(c) Third, to members of the limited liability company in respect of their contributions to capital.

14.4 The manager of the limited liability company shall not be personally liable for the return or repayment of all or any portion of the contributions of any member; any such return or repayment shall be made solely from assets of the limited liability company.

15. Bank Accounts. The funds of the limited liability company shall be deposited in such bank account or accounts as the manager shall deem appropriate, in its sole discretion, and the manager shall arrange for the appropriate conduct of such accounts. The name “ABC Limited Liability Company, a limited liability company” shall appear on all bank accounts in which funds of the limited liability company are deposited.


16.1 Unless otherwise provided in these Articles, no member shall be liable to any other member or to the limited liability company for any good faith act or omission to act in the exercise of his or her judgment under the provisions of these Articles.

16.2 Nothing herein contained shall be construed to constitute any member hereof the agent of any other member or to limit in any manner the members in the carrying on of their own respective business or activities.

16.3 The use of any gender herein shall be deemed to be or include the other genders, and the use of the singular herein shall be deemed to be or include the plural (and vice versa), wherever appropriate. The headings herein are inserted only as a matter of convenience and reference, and in no way define, limit or describe the scope of these Articles, or the intent of any provisions thereof.
16.4 These Articles set forth all (and are intended by all parties hereto to be an integration of all) of the covenants, promises, agreements, warranties and representations among the parties hereto with respect to the limited liability company, the business of the limited liability company and the property of the limited liability company, and there are no covenants, promises, agreements, warranties or representations, oral and written, express or implied, among them other than as set forth herein.

16.5 Nothing contained in these Articles shall be construed as requiring the commission by any person of any act contrary to applicable law, including, without limitation, Section 4975 of the Code (to the extent applicable). Wherever there is any conflict between any provision of these Articles and any statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but in such manner that the provision(s) of these Articles thus affected shall be curtailed and limited only to the extent necessary to conform with said requirement of law. In the event that any part, section, paragraph or clause of these Articles shall be held to be indefinite, invalid or otherwise unenforceable, the entire Articles shall not fail on account thereof, and the balance of the Articles shall continue in full force and effect.

16.6 The limited liability company shall indemnity, defend and save harmless each member or former member of the limited liability company against expenses actually and reasonably incurred by him, her or it in connection with the defense of an action, suit or proceeding, civil or criminal, in which he, she or it is made a party by reason of being or having been such member, except in relation to matters as to which he, she or it shall be adjudged in the action, suit or proceeding to be liable for gross negligence or willful misconduct.

17. Governing Law. It is the intention of the parties hereto that these Articles shall be governed by and construed and enforced in accordance with the internal laws of the State of Illinois.

18. Burden and Benefit. These Articles are binding upon and shall inure to the benefit of the parties hereto and their respective heirs, guardians, executors, administrators, personal and legal representatives, and successors and to the assigns of the parties hereto to the extent, but only to the extent, the same is provided for in accordance with, and permitted by, the provisions of these Articles.

19. Notices. Except as otherwise provided in these Articles, any notice, consent or other communication required or permitted hereunder shall be in writing and shall be addressed, in the case of the limited liability company, to its principal place of business specified in Article 2, in the case of the manager, to its office at the location specified in Article 9.1, and, in the case of any member, to its address set forth opposite its signature below, as specified on or to such other address or person as any of the foregoing parties shall furnish to the other parties in writing; and any such communication so addressed shall be deemed to have been given when delivered by hand or on the earlier of actual receipt and three (3) business days after being sent by registered or certified mail, postage prepaid, return receipt requested,
or one (1) business day after being sent by overnight courier, telegram, or cable or on actual receipt after being sent by any means not specified herein.

IN WITNESS WHEREOF, the parties have executed these Articles as of the day and year first above written.

<table>
<thead>
<tr>
<th>Owner</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Owner</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>2nd Owner</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>3rd Owner</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

© e-Business Press, L.L.C.
Sample Purchase Order language (buyer friendly)

1. ACCEPTANCE. This Purchase Order becomes the exclusive agreement between the parties for the supplies ordered herein when accepted by acknowledgment or commencement of performance by Seller. Additional or different terms proposed by Seller are hereby rejected unless specifically accepted in writing by Buyer. Shipment of any supplies, or performance of services, constitutes Seller’s acceptance of all the terms and conditions hereof, whether or not Seller has acknowledged this Purchase Order.

2. PACKING AND SHIPPING. Unless otherwise specified, (I) all packing and crating by Seller shall be in compliance with carrier’s tariffs and in suitable containers for protection in shipment and storage, and (ii) the price or prices include all charges for Seller’s packing and crating, and for transportation to the F.O.B. point.

3. PRICE AND QUANTITY. This Purchase Order shall not be filled at higher prices than specified herein. If price terms are omitted from the face hereof, the price of the supplies shall be lower of (I) the price last quoted to or paid by Buyer (whichever is later), or (ii) the prevailing market price at the time of shipment. Unless otherwise provided herein, the price or prices shall include all applicable federal, state and local taxes in effect on the date of this Purchase Order. In case of new taxes or increased rates or the repeal of taxes or the reduction of rates, prices shall be adjusted accordingly. Shipments must equal exact quantities ordered, unless otherwise agreed in writing by Buyer.

4. QUALITY CONTROL AND INSPECTION. Seller shall provide and maintain a quality control system acceptable to Buyer. All supplies may be subject to (i) inspection or verification during the period of manufacture, (ii) inspection or verification prior to shipment, and (iii) final inspection and acceptance at destination, notwithstanding any prior shipment, and (iii) final inspection and acceptance at destination, notwithstanding any prior payment or inspection and acceptance. Buyer may reject and hold at Seller’s expense, subject to Seller’s disposal, all supplies not conforming to applicable specifications, drawings, samples, or descriptions. Without limiting any other rights, Buyer may at its option require Seller to (i) repair or replace at Seller’s expense any item of supplies ordered which fails to meet the requirements of applicable specifications, drawings, supplies, or descriptions, or (ii) refund the price of any such item. Rejected supplies shall not be retendered to Buyer by Seller unless notification of such past rejection is submitted with the retender and Buyer has consented to such retender.

5. DELIVERIES. Buyer’s production schedules are based upon the understanding and agreement that supplies will be delivered to Buyer by the date specified on the face of this Purchase Order. Time is, therefore, the essence of this Purchase Order. If deliveries are not made at the time agreed upon, Buyer reserves the right to cancel or to purchase elsewhere, and to hold Seller accountable therefor.
6. WARRANTY. Seller warrants that all supplies furnished hereupon will be free from defects in material and workmanship, conform to applicable specifications, drawings, samples, and descriptions, and of Seller’s design, be free from design defects. Unless otherwise specified in this Purchase Order, the supplies shall be new and not used or reconditioned, shall be merchantable, and (if Seller knows or has reason to know of Buyer’s intended purpose or use therefor) shall in all respects be suitable for the particular purpose or use for which they are purchased by Buyer. Seller shall indemnify and hold Buyer harmless from and against any and all damages, losses, demands, costs and expense incurred by Buyer due to Seller’s breach of its warranties hereunder.

7. CHANGES. Buyer shall have the right to make, from time to time and without notice to any sureties or assignees, changes as to packing, testing, destinations, specifications, designs and delivery schedules. Seller shall immediately notify Buyer of any increases or decreases in costs caused by such changes, and an equitable adjustment in prices or other terms hereof shall be agreed upon in a written amendment to this Purchase Order.

8. RESPONSIBILITY FOR PROPERTY. Seller shall be liable for any loss or destruction of, or damage to, property of Buyer caused by the negligence or wrongful acts or omissions of Seller or Seller’s representatives, agents, or employees.

9. INDEMNIFICATION. In the event Seller, its employees, agents, subcontractors, or representatives enter premises occupied by or under the control of Buyer or third parties in the performance of this Purchase Order, Seller shall indemnify and hold harmless Buyer, from any costs, damage, expense, or liability by reason of property damage or personal injury to any person, including Seller’s employees, of whatsoever nature or kind arising out of, as a result of, or in connection with such performance occasioned in whole or in part by the actions or omissions of Seller, its employees, agents, subcontractors, or representatives. Without in any way limiting the foregoing, Seller and its subcontractors shall maintain public liability and property damage insurance in reasonable limits to covering the obligations set forth above, and shall maintain proper Workman’s Compensation insurance covering all employees performing this Order.

10. SECRECY OF BUYER’S DATA. Seller shall not use or disclose to third parties any data, designs, or other information belonging to or supplied by or on behalf of Buyer, without first obtaining the prior written authorization of Buyer. Upon Buyer’s request, such data, designs, or other information, including all copies thereof, shall be returned to Buyer. Where Buyer’s data, designs, or other information are furnished to Seller’s suppliers for procurement of supplies by Seller for use in the performance of Buyer’s orders, Seller shall insert the substance of this provision in its orders.

11. ASSIGNMENT AND SET-OFF. This Purchase Order shall be binding upon any successor to Seller’s business provided that Seller shall not delegate any duties, nor assign any rights or claims under this Purchase Order, or for breach thereof, without prior written consent of Buyer, and any such attempted delegation or assignment shall be void and unenforceable. All claims for monies due or to become due from Buyer shall be subject to deduction by Buyer for any
set-off or counterclaim arising out of this or any other of Buyer’s purchase orders with Seller, whether such set-off or counterclaim arose before or after any such assignment by Seller.

12. NON-INFRINGEMENT. To the extent that the supplies are manufactured to detailed designs not originated and furnished by Buyer, or by a process or method the use of which is not specifically directed by Buyer, Seller guarantees that the sale or use of such supplies or the use of such process or method hereunder will not infringe any United States or foreign patents, trademarks, trade names, copyrights, or trade secrets, and shall indemnify and save Buyer and its customers harmless from any expenses, loss, cost, damage, or liability which may be incurred on account of infringement or alleged infringement of patent rights, trademarks, trade names, copyrights, or trade secrets with respect to such supplies. Seller shall defend, at its own expense, any action or claim in which such infringement is alleged, provided Seller is notified within a reasonable time of such action or claim against Buyer. Indemnification shall not apply to infringements arising from use in combination with other items where infringement would not have occurred from the normal use of which the article supplied by Seller was designed.

13. LIMITATION OF LIABILITY. Buyer’s liability shall be limited to the unpaid balance of amounts due under this Purchase Order, and in no event shall Buyer be liable to Seller for indirect, incidental, consequential or special damages.

14. BANKRUPTCY. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, or in the event of the appointment, with or without Seller’s consent, of an assignee for the benefit of creditors or of a receiver, Buyer shall be entitled to cancel any unfilled part of this Purchase Order without any liability whatsoever.

15. GOVERNING LAW. This Purchase Order and the contract between the parties evidenced hereby, shall be deemed made in the State of [State], and shall be construed and interpreted solely in accordance with the laws of such state.

16. TRAFFIC ROUTING AND PROFIT OF SHIPMENT. Any losses accruing from deviation from Buyer’s routing instructions, shall be charged to Seller’s account. Seller shall forward to Buyer, with the invoice, the express receipt or bill of lading, signed by the carrier, evidencing the fact that shipment was made.
Asset Acquisition Agreement

ASSET SALE AGREEMENT

ASSET SALE AGREEMENT made this ____ day of _____, 20__ between ABC Inc., a ______ a corporation with offices located at ______________________("Seller") and XYZ Inc., a corporation with offices located at ________________________ ("Buyer").

WHEREAS, Seller owns certain assets relating to its business and Seller wishes to sell and Buyer to buy certain but not all of such assets.

NOW THEREFORE, in consideration of the premises and the mutual representations, warranties and covenants set forth herein, Seller and Buyer agree that:

1.

SALE AND PURCHASE

§1.1 Sale and Purchase of Certain Assets

On and subject to the terms and conditions set forth in this Agreement, Seller shall sell, assign, transfer and convey to Buyer, and Buyer shall purchase from Seller, all of the assets identified on Exhibit A (the "Sold Assets") for the consideration stated on Exhibit A (the "Purchase Price").

§1.2 Assets Excluded; Liabilities Not Assumed

Seller shall not sell nor Buyer purchase any assets other than the Sold Assets and, except for Buyer's assumption of obligations arising after the Closing under the contracts specifically identified on Exhibit A, Buyer shall not, and shall not be required to, assume or be obligated to pay, discharge or perform, any debts, liabilities, adverse claims or obligations of any kind or nature whatsoever of Seller, whether in connection with the Sold Assets or otherwise and whether arising before or after the consummation of the transactions contemplated herein, or bear any cost or charge with respect thereto.

2.

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer that:
§2.1 Corporate Status and Authority

Seller is a corporation duly organized, validly existing, and in good standing under ___________ law and has all corporate power and authority to conduct its business involving the Sold Assets now being conducted; the execution, delivery and performance of this Agreement have been duly authorized by its Board of Directors and (to any extent necessary) its shareholders; and this Agreement and such other agreements are the legal, valid and binding agreements of Seller, enforceable according to their respective terms.

§2.2 Taxes

There are no tax liens on any of the Sold Assets except for liens for taxes not yet due and payable, and no tax liens will at any time be asserted against the Sold Assets for or on the basis of taxes that are due and payable, or are accrued even though not due or payable, at any time before the Closing.

§2.3 Insurance

The Sold Assets and Seller's business relating thereto are insured against loss, damage and liability (including without limitation product liability) in the amounts, and by the insurers, set forth in Exhibit B.

§2.4 Consents

Except as stated on Exhibit C, no consent, authorization or approval of any third party or governmental authority is required for the execution and delivery by Seller of this Agreement or the consummation by Seller of the transactions contemplated hereby, and there exist no right-of-first-refusal or other preferential purchase rights with respect to any of the Sold Assets.

§2.5 Working Order

All of the tangible Sold Assets are in good condition, working order and repair, normal wear and tear excepted.

§2.6 Title

Seller has and will convey to Buyer hereunder good and marketable title to all of the Sold Assets, free and clear of all defects, liens, charges, lease or conditional sale obligations, licenses, and other encumbrances, defects or rights in third parties, except those identified in Exhibit D and except for mechanics and materialmens' liens securing amounts not past due and not exceeding $^ in total.

§2.7 Compliance with Applicable Law
Seller is in compliance in all material respects with all laws, regulations, governmental orders or judgments applicable to its business and has all domestic and foreign licenses, permits and other governmental authorization necessary for the conduct of its business utilizing the Sold Assets.

3.

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that:

§3.1 Corporate Status and Authority

Buyer is a corporation duly organized, validly existing, and in good standing under ________________ law and has all corporate power and authority necessary for its execution, delivery and performance of this Agreement.

§3.2 Due Authorization, Etc.

The execution, delivery and performance of this Agreement by Buyer have been authorized by its Board of Directors and (to any extent necessary) its shareholders; Buyer has all requisite authorization to enter into and perform this Agreement; and this Agreement is the legal, valid and binding agreement of Buyer, enforceable according to its terms.

4.

BULK SALES ACT COMPLIANCE

No later than ^, 19^, Seller will furnish Buyer a complete and accurate list (certified by an officer of Seller to be such) identifying all creditors of Seller and stating the amounts owing to each thereof, and identifying all persons known to Seller to assert claims against Seller, which list shall be subscribed and sworn to by Seller and shall in all other respects be in accordance with the ________________ Bulk Sales Act (Ill. Rev. Stat. Ch. 26, Article 6). Seller shall indemnify and hold harmless Buyer from and against any loss, damage or claims (including without limitation reasonable attorneys' fees incurred by Buyer) resulting from Seller's failure to comply with this §4 or any provision of such Act.

5.

THE CLOSING

§5.1 Date and Place of Closing
The closing of the transactions contemplated hereby (the "Closing") shall be held at ^ on ^, 19^, at ^ .m., or at such other place and time as Seller and Buyer shall agree. The date on which the Closing shall occur is herein called the "Closing Date."

§5.2 Certain Closing Actions and Obligations

At the Closing:

(a) Seller shall deliver a Bill of Sale and Assignment in the form of Exhibit E, together with such other assignments, deeds, bills of sale and other agreements, documents and instruments, all in form reasonably satisfactory to Buyer's counsel, as are necessary for the sale, transfer and vesting of title in Buyer of all of the Sold Assets in accordance with and as contemplated by this Agreement, and

(b) Buyer shall:

(i) deliver to Seller an agreement of assumption substantially in the form of Exhibit F assuming obligations and liabilities arising after the Closing Date under the contracts that are included in the Sold Assets and identified on Exhibit A, and

(ii) as the aggregate purchase price for the Sold Assets, pay to Seller $^ in immediately available funds.

6. MISCELLANEOUS

§6.1 Allocation of Purchase Price

The purchase price (and the portion of the aggregate purchase price hereunder properly allocable to each item) of the Sold Assets is as stated on Exhibit A.

§6.2 Binding Effect

This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and permitted assigns.

§6.3 Survival

All covenants, agreements, representations and warranties made by Seller or Buyer hereunder or pursuant hereto shall survive the Closing Date and the consummation of the transactions contemplated herein.

§6.4 Expenses
Except as otherwise specifically provided herein, all fees, costs, and expenses incurred by each party hereto in connection with the negotiation, authorization, and performance of this Agreement shall be paid by the party incurring the same.

§6.5 Governing Law

This Agreement and the other documents and transactions contemplated hereby shall be construed in accordance with, and governed by, the laws of the State of _________________ without regard, however, to its rules regarding conflicts of laws.

§6.6 Sales Taxes and Recording Fees

^ shall pay all sales, use, or transfer taxes occasioned by the transfer of the rights, interests, assets, properties, and estates described in or contemplated by this Agreement, without regard to whether such taxes are assessable against Seller or Buyer under applicable law. Seller shall pay all documentary, filing, and recording fees required in connection with the filing and recording of any assignments or other instruments or documents.

§6.7 Assignments

Neither party shall assign its rights and/or obligations hereunder without the prior written consent of the other party to this Agreement.

Executed and delivered as of the date first stated above.

^ABC INC.

By:
Its:

^XYZ INC.

By:
Its:

EXHIBIT A

IDENTIFICATION OF THE SOLD ASSETS

1. Equipment
<table>
<thead>
<tr>
<th>Description of Item</th>
<th>Manufacturer and Serial Number</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>^</td>
<td>^</td>
<td>$^</td>
</tr>
</tbody>
</table>

2. *Vehicles*

<table>
<thead>
<tr>
<th>Description of Items</th>
<th>Manufacturer and Serial Number</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>^</td>
<td>^</td>
<td>$^</td>
</tr>
</tbody>
</table>

3. *Inventory*

<table>
<thead>
<tr>
<th>Description of Item</th>
<th>Quantity Sold</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>^</td>
<td>^</td>
<td>$^</td>
</tr>
</tbody>
</table>

4. *Contracts*

<table>
<thead>
<tr>
<th>Description of Item</th>
<th>Amounts Remaining to Be Paid under Contract</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>^</td>
<td>$^</td>
<td>$^</td>
</tr>
</tbody>
</table>

5. *Patents, Trademarks and Know-How*

<table>
<thead>
<tr>
<th>Identification of Patent, Trademark Purchase or Know-How</th>
<th>Registration Information</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>^</td>
<td>^</td>
<td>$^</td>
</tr>
</tbody>
</table>
**EXHIBIT B**

**INSURANCE**

<table>
<thead>
<tr>
<th>Name of Insurer</th>
<th>Type and Coverage</th>
<th>Amount of Coverage</th>
</tr>
</thead>
</table>

**EXHIBIT C**

**PRIVATE THIRD-PARTY CONSENTS**

<table>
<thead>
<tr>
<th>Name of Third Party</th>
<th>Agreement under Which Consent is Required</th>
</tr>
</thead>
</table>

**GOVERNMENTAL AUTHORIZATIONS**

<table>
<thead>
<tr>
<th>Name of Governmental Entity</th>
<th>Permit or License under Which Authorization Is Required</th>
</tr>
</thead>
</table>

**EXHIBIT D**

**PERMITTED LIENS**

<table>
<thead>
<tr>
<th>Lienholders</th>
<th>Nature of Lien</th>
<th>Amount of Lien</th>
</tr>
</thead>
</table>

**EXHIBIT E**

**BILL OF SALE**

**BILL OF SALE, ASSIGNMENT AND CONVEYANCE**

THIS BILL OF SALE, ASSIGNMENT AND CONVEYANCE (this "Instrument") made, delivered, and effective at ^, Illinois at ^ M. local time on this ^ day of ^, 19^ (the
"Effective Time"), by and from, an Illinois corporation (the "Seller"), to, an Illinois corporation (the "Buyer"),

WITNESSETH:

The Seller, for and in consideration of the sum of Ten Dollars and other good and valuable considerations, the receipt and sufficiency of all of which is hereby recited and acknowledged, does, as of the Effective Time, grant, bargain, sell, convey, assign, transfer, set over and deliver unto the Buyer the following rights, titles, estates and interests (all of which are herein called the "Subject Interests"):

All right, title, interest and estate of the Seller in and to:

A. the following items of equipment, machinery, office furniture, vehicles and other personalty:

of Seller; and

B. all inventory, and all other new, used, junk, surplus, excess or idle personal property that has been used, is capable of being used, or is otherwise held in connection with the business of the Seller and located at the Seller's premises at, Illinois (the "Premises"); and owned, leased, held on consignment or otherwise held by the Seller and located at the Premises, including but not limited to the following-described items:

; and the following leases, contracts with customers and suppliers and other agreements:

; and the following trade names, trademarks and service marks:

TO HAVE AND TO HOLD the Subject Interests, together with all and singular the rights, privileges and appurtenances in any way belonging thereto, unto the Buyer and the Buyer's successors and assigns forever.

The Seller has concurrently herewith and in pursuance hereof directly assigned to the Buyer certificates of title to all of the above-described vehicles and duly executed and delivered to the buyer deeds in recordable form to all of the above-described property consisting of fixtures.
The Seller hereby grants and transfers unto the Buyer full power and right of substitution and subrogation in and to all covenants and warranties (including, without limitation, covenants and warranties as to title), if any, by others heretofore given or made in respect of the Subject Interests or any part thereof.

The Seller further covenants and agrees that it will at any time and from time to time after the date of this Instrument, upon the request of the Buyer, execute, acknowledge, deliver and perform, or cause to be executed, delivered, or performed, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be required for the better vesting and confirming unto the Buyer of the title to and possession of any and all of the assets, properties and rights acquired by the Buyer from the Seller hereunder.

The Seller does hereby constitute and appoint the Buyer as the Seller's true and lawful attorney with full power of substitution for it and in its name, place and stead or otherwise, but on behalf of and for the benefit of the Buyer, to demand and receive from time to time any and all assets, properties and rights, whether real, personal and mixed, tangible and intangible, which are hereby bargained, sold, transferred, assigned and conveyed, and to give receipts and releases for and in respect of the same, and any part thereof, and from time to time to institute and prosecute in the name of the Seller or otherwise, at the Seller's expense and for the benefit of the Buyer, any and all proceedings at law, in equity or otherwise that the Buyer may deem proper in order to collect, assert or enforce any claims, rights or title of any kind in and to the assets, properties, rights and privileges which are hereby bargained, sold, transferred, assigned and conveyed, and to defend and compromise any and all such actions, suits or proceedings in respect of any said property, assets, rights and privileges and, generally, to do any and all such acts and things in relation thereto as the Buyer shall deem advisable. The Seller hereby declares that the appointment hereby made and the powers hereby granted are coupled with an interest and are, and shall be, irrevocable by the Seller in any manner or for any reason, provided that nothing herein contained shall be deemed to enlarge the rights given to Buyer under the Agreement.

The Subject Interests are assigned to Buyer with and subject to ^[describe the warranties, if any, made by the Seller]. EXCEPT AS EXPRESSLY STATED IN THE IMMEDIATELY PRECEDING SENTENCE, THE SELLER EXPRESSLY DISCLAIMS AND NEGATES AS TO PERSONAL PROPERTY AND FIXTURES (a) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (b) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND (c) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS.

Executed, delivered and effective on and as of this ^ day of ^, 19^.

THE SELLER: ___________________________________________
By its Duly Authorized Representative
THE BUYER: ________________________________

By its Duly Authorized Representative
STATE OF ______________
COUNTY OF ____________

There personally appeared before me, ________________, who, being duly sworn, says that he saw the corporate seal of _____________, an (fill in proper state) corporation, affixed to the foregoing instrument and that he also saw ____________, as (title) of said corporation, sign and attest the same, and that he with ______________ witnessed the execution and delivery thereof as the act and deed of said corporation.

By: _________________________________

WITNESS MY HAND AND OFFICIAL SEAL. Sworn to before me this ^ day of ^, 19^.

_______________________________
NOTARY PUBLIC

My commission expires:

Address of Notary:

EXHIBIT F

AGREEMENT OF ASSUMPTION

^[Insert the agreed form of Assumption Agreement]
Financial Documents

Promissory Term Note

PROMISSORY TERM NOTE

$______________ Date: _____, 200__

FOR VALUE RECEIVED, the undersigned promises to pay on ____, 20__ to ABC INC. (herein called "ABC"), a corporation incorporated in Illinois, at the office of ABC at _____, ____ the principal sum of ___________________________ DOLLARS ($______).

The unpaid principal amount hereof from time to time outstanding shall bear interest at a rate per annum equal to the sum of _______% plus the Prime Rate (as hereinafter defined) from time to time in effect. Accrued interest shall be payable on the first business day of ^ of each year and at maturity, beginning with the first business day of October, 20___. The term "Prime Rate" shall mean, as of any point in time, the rate of interest then most recently announced by _______ Bank as its prime rate; and the applicable interest rate under this Note shall change simultaneously with each change in the Prime Rate. Interest shall be computed for the actual number of days elapsed on the basis of a year consisting of 365, or when appropriate 366, days.

This Note may be prepaid at any time in whole or in part without premium or penalty; provided that the amount of any prepayment shall be applied first to unpaid and accrued interest and second to principal.

Payments of both principal and interest are to be made in lawful money of the United States of America in immediately available funds.

This Note is made under and governed by the internal laws of the State of Illinois.

XYZ Inc.
Address: _____________________________
By: _____________________________
Title: _____________________________
**Secured Promissory Note Payable in Agreed Installments**

**SECURED TERM NOTE**

$__________ _____, 20__

The undersigned, for value received, promises to pay to the order of __________, a corporation with offices located at ________________ (herein called the "Payee"), the principal sum of $__________, payable in eight installments as follows (provided that the final installment shall be in an amount sufficient to pay in full all unpaid principal of and accrued interest on this Note):

<table>
<thead>
<tr>
<th>Payment Date:</th>
<th>Amount of Installment:</th>
</tr>
</thead>
<tbody>
<tr>
<td>___<strong>, 20</strong></td>
<td>$__________</td>
</tr>
<tr>
<td>___<strong>, 20</strong></td>
<td>$__________</td>
</tr>
<tr>
<td>___<strong>, 20</strong></td>
<td>$__________</td>
</tr>
<tr>
<td>___<strong>, 20</strong></td>
<td>$__________</td>
</tr>
<tr>
<td>___<strong>, 20</strong></td>
<td>$__________</td>
</tr>
<tr>
<td>___<strong>, 20</strong></td>
<td>$__________</td>
</tr>
<tr>
<td>___<strong>, 20</strong></td>
<td>$__________</td>
</tr>
<tr>
<td>___<strong>, 20</strong></td>
<td>$__________</td>
</tr>
</tbody>
</table>

The unpaid principal amount hereof from time to time outstanding shall bear interest from the date hereof at the following rates per annum: (A) prior to maturity, at a rate equal to ______% plus the Prime Rate (as hereinafter defined) from time to time in effect; and (B) after maturity of any installment; whether by acceleration or otherwise, until paid at a rate equal to the sum of (i) _____% plus (ii) the Prime Rate (as hereinafter defined) from time to time in effect (but not less than the Prime Rate in effect at such maturity).

Accrued interest shall be payable quarterly on the last business day of ______, _______, _______, and ______ of each year and at maturity, beginning with the first of such dates to occur after the date hereof. After maturity of any installment, whether by acceleration or otherwise, accrued interest on such installment shall be payable on demand. The term "Prime Rate" shall mean that annual rate of interest announced from time to time by __________ Bank called its prime rate, and the applicable interest rate under this Note shall change simultaneously with each change in the Prime Rate. Interest shall be computed for the actual number of days elapsed on the basis of a year consisting of 360 days.

Payments of both principal and interest are to be made in lawful money of the United States of America in immediately available funds.
This Note evidences indebtedness incurred [state nature or origin of debt] between the undersigned and the Payee. Upon the occurrence of any event of default as specified in the [agreement creating the underlying debt] the principal balance hereof and the interest accrued hereon may be declared to be forthwith due and payable, and any indebtedness of the holder hereof to the undersigned may be appropriated and applied hereon.

In addition to and not in limitation of the foregoing and the provisions of the [agreement creating the underlying debt], the undersigned further agrees, subject only to any limitation imposed by applicable law, to pay all expenses, including reasonable attorneys' fees and legal expenses, incurred by the holder of this Note in endeavoring to collect any amounts payable hereunder which are not paid when due, whether by acceleration or otherwise.

All parties hereto, whether as makers, endorsers, or otherwise, severally waive presentment for payment, demand, protest and notice of dishonor.

This Note is made under and governed by the internal laws of the State of ___________.

________________________________________
Signature of party issuing note

Address:  __________________________________
          __________________________________
          __________________________________
          __________________________________
Security Agreement

SECURITY AGREEMENT

1. Grant. On this ______ day of _______________________, 20__, _____________________________, a ________________ corporation with its principal place of business at _____________________________ (hereinafter called "Debtor"), for valuable consideration, receipt whereof is acknowledged, grants to _____________________________, a __________ corporation with its principal place of business at _____________________________ (hereinafter called "Secured Party") a security interest in, and mortgages to Secured Party, the following described property and interests in property of Debtor (hereinafter called the "Collateral"):

[Description of Collateral]

to secure payment of the following obligations of Debtor to Secured Party (all hereinafter called the "Obligations"):

(i) All obligations and liabilities of Debtor to Secured Party (including without limitation all debts, claims and indebtedness) whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and/or from time to time hereafter owing, due or payable, however evidenced, created, incurred, acquired or owing and however arising, or by oral agreement or operation of law or otherwise.

2. Warranties and Covenants of Debtor. Debtor warrants and covenants that:

(a) Except for the security interest granted hereby and the security interest granted to _____________________________ ("_________"), Debtor is the owner of the Collateral free from any adverse lien, security interest or encumbrance; and Debtor will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.

(b) No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office, except in favor of _____________________________. The Debtor shall immediately notify the Secured Party in writing of any change in name, address, identity or corporate structure from that shown in this Agreement and shall also upon demand furnish to the Secured Party such further information and shall execute and deliver to Secured Party such financing statements and other documents in form satisfactory to Secured Party and shall do all such acts and things as Secured Party may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Obligations, subject to no adverse liens or encumbrances; and Debtor will pay the cost of filing the same or filing or recording this agreement in all public
offices wherever filing or recording is deemed by Secured Party to be necessary or desirable. A carbon, photographic or other reproduction of this agreement is sufficient as a financing statement.

(c) Debtor will not sell or offer to sell, assign, pledge, lease or otherwise transfer or encumber the Collateral or any interest therein, without the prior written consent of Secured Party.

(d) Debtor shall keep the Collateral at all times insured against risks of loss or damage by fire (including so-called extended coverage), theft and such other casualties as Secured Party may reasonably require, including collision in the case of any motor vehicles, all in such amounts, under such forms of policies, upon such terms, for such periods and written by such companies or underwriters as Secured Party may approve, losses in all cases to be payable to Secured Party and Debtor as their interests may appear. All policies of insurance shall provide that Secured Party's interest therein shall not be invalidated by the act, omission or neglect of anyone other than Secured Party and for at least ten days' prior written notice of cancellation to Secured Party. Debtor shall furnish Secured Party with certificates of such insurance or other evidence satisfactory to Secured Party as to compliance with the provisions of this paragraph. Secured Party may act as attorney for Debtor in making, adjusting and settling claims under and cancelling such insurance and endorsing Debtor's name on any drafts drawn by insurers of the Collateral.

(e) Debtor will keep the Collateral free from any adverse lien, security interest or encumbrance and in good order and repair, shall not waste or destroy the Collateral or any part thereof, and shall not use the Collateral in violation of any statute, ordinance or policy of insurance thereon. Secured Party may examine and inspect the Collateral at any reasonable time or times, wherever located.

(f) Debtor will pay promptly when due all taxes and assessments upon the Collateral or for its use or operation or upon this Agreement or upon any note or notes evidencing the Obligations.

3. Additional Rights of Parties. At its option, Secured Party may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, may place and pay for insurance on the Collateral upon failure by the Debtor, after having been requested to do so, to provide insurance satisfactory to the Secured Party, and may pay for the maintenance, repair, and preservation of the Collateral. To the extent permitted by applicable law, Debtor agrees to reimburse Secured Party on demand for any payment made, or any expense incurred by Secured Party pursuant to the foregoing authorization. Until default Debtor may have possession of the Collateral and use it in any lawful manner not inconsistent with this agreement and not inconsistent with any policy of insurance thereon.

4. Events of Default. Debtor shall be in default under this agreement upon the occurrence of any of the following events or conditions, namely: (a) default in the payment or
performance of any of the Obligations or of any covenants or liabilities contained or referred to herein or in any of the Obligations; (b) any warranty, representation or statement made or furnished to Secured Party by or on behalf of Debtor proving to have been false in any material respect when made or furnished; (c) loss, theft, substantial damage, destruction, sale or encumbrance to or any of the Collateral, or the making of any levy, seizure or attachment thereof or thereon; (d) dissolution, termination of existence, filing by Debtor or by any third party against Debtor of any petition under any Federal bankruptcy statute, insolvency, business failure, appointment of a receiver of any part of the property of, or assignment for the benefit of creditors by, Debtor; or (e) the occurrence of an event of default in any agreement between Debtor and/or Secured Party and ______________.

5. Remedies. UPON DEFAULT AND AT ANY TIME THEREAFTER, SECURED PARTY MAY DECLARE ALL OBLIGATIONS SECURED HEREBY IMMEDIATELY DUE AND PAYABLE AND SHALL HAVE THE REMEDIES OF A SECURED PARTY UNDER THE UNIFORM COMMERCIAL CODE OF ILLINOIS, including without limitation the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Debtor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace), upon any premises on which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Uniform Commercial Code of Illinois); and the Secured Party shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Debtor's right of redemption in satisfaction of the Debtor's Obligations as provided in the Uniform Commercial Code of Illinois. Secured Party without removal may render the Collateral unusable and dispose of the Collateral on the Debtor's premises. Secured Party may require Debtor to assemble the Collateral and make it available to Secured Party for possession at a place to be designated by Secured Party which is reasonably convenient to both parties. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will give Debtor at least 5 days’ notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. The requirements of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of Debtor shown at the beginning of this agreement at least ten days before the time of the sale or disposition. Secured Party may buy at any public sale. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorney's fees and legal expenses incurred by Secured Party, shall be applied in satisfaction of the Obligations secured hereby. The Secured Party will account to the Debtor for any surplus realized on such disposition and the Debtor shall remain liable for any deficiency.

The remedies of the Secured Party hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Uniform Commercial Code of Illinois shall not be construed as a waiver of any of the other remedies of the Secured Party so long as any part of the Debtor's Obligation remains unsatisfied.
6. **General.** No waiver by Secured Party of any default shall operate as a waiver of any other default or of the same default on a future occasion. All rights of Secured Party hereunder shall inure to the benefit of its successors and assigns; and all obligations of Debtor shall bind its successors or assigns. If there be more than one Debtor, their obligations hereunder shall be joint and several. This agreement shall become effective when it is signed by Debtor.

All rights of the Secured Party in, to and under this agreement and in and to the Collateral shall pass to and may be exercised by any assignee thereof. The Debtor agrees that if the Secured Party gives notice to the Debtor of an assignment of said rights, upon such notice the liability of the Debtor to the assignee shall be immediate and absolute. The Debtor will not set up any claim against the Secured Party as a defense, counterclaim or set-off to any action brought by any such assignee for the unpaid balance owed hereunder or for the possession of the Collateral, provided that Debtor shall not waive hereby any right of action to the extent that waiver thereof is expressly made unenforceable under applicable law.

If any provision of this agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this agreement.

Secured Party:  
By:____________________________

Debtor:  
By:____________________________
ASSIGNMENT (AS PART OF SECURITY AGREEMENT)

FOR VALUE RECEIVED, the Secured Party sells, assigns and transfers to __________________________________________, its successors and assigns with recourse, all right, title and interest in, to and under the foregoing agreement and in and to the Collateral therein described, with authority to take either in its own name or in the name of the Secured Party, but for its own benefit, all such proceedings, legal or equitable, as the Secured Party might have taken but for this assignment.

The Secured Party warrants that the foregoing agreement represents a valid security agreement as provided under the laws of the State of ________________.

* __________________________________________

By: _________________________________________
Contract Terms Checklist

Most contracts will include the following provisions. Scan your documents (even if your lawyer has already done so) to make sure that all the following provisions appear—that is, if you want them to appear.

Contract Checklist

1. **Identity of Parties**
   - Name
   - Type of entity of each party (corporation, LLC, etc.)
   - Addresses
2. **Recitals**
   - Background of agreement
   - Purpose for entering into the contract
   - Key assumptions for the contract
3. **Obligations of the Parties**
   - What is each side required to do?
   - By what date?
   - If something has to be delivered, whose obligation is it and at who’s cost?
4. **Terms of the Contract**
   - Is the contract a one-shot situation or will it last for some designated time period?
   - How can the term be renewed or extended?
5. **Price**
   - What is the price for the product or service?
   - Is it a fixed price, determined by a formula, by a project fee, or some other manner?
   - Who pays any tax?
6. **Payment Terms**
   - When is payment due?
   - Will there be installment payments?
   - Will interest be charged?
   - Is there a penalty for late payment?
7. **Representations and Warranties**
   - What representations and warranties are to be made by the parties?
   - Are certain warranties disclaimed (e.g., merchantability or fitness for a particular purpose)?
   - How long are any warranties good for?
8. **Liability**
   - What limitations of liability exist (e.g., no liability in excess of payment received, or no liability for consequential damage or lost profits)?
   - Under what circumstances is one party liable (e.g., material breach of agreement or grossly negligent in performing services)?
9. **Termination of Contract**
   - When can one party terminate the contract early?
   - What are the consequences of termination?
   - What post-termination obligations are there?
10. **Confidentiality**
    - What confidentiality obligations are there?
    - What are the exclusions from confidentiality?
11. **Default**
12. **Disputes**
- What are the events of default?
- Does a party have a period to cure a default?
- What are the consequences of a default?

13. **Indemnification**
- How are disputes to be handled – litigation, mediation or arbitration?
- If arbitration, what rules will govern? (e.g., JAMS/Endispute or the American Arbitration Association)
- If arbitration, how many arbitrators and how will they be picked?
- If arbitration, will there be procedures for discovery and what the arbitrator can and can’t do?
- If litigation, where can or must the litigation be brought?

14. **Miscellaneous**
- Governing law
- Attorneys fees
- Modification of Agreement
- Notice
- Entire Agreement
- Severability
- Time of the Essence
- Survival
- Ambiguities
- Waiver
- Headings
- Necessary Acts and Further Assurances
- Execution
- Jury Trial Waivers
- Specific Performances
- Representation on Authority of Parties
- Force Majuere
- Assignment

15. **Signatures**
- What authority is required for one party to sign the contract (e.g., Board of Directors approval)?
- How many signatures are required?
- Are the signature blocks correct? For corporations, this is a typical appropriate signature block:
  
  ABC, Inc.
  
  By: _________________________________
  
  John Smith, President
Copyright: Copyright 20__, [Company Name] All rights reserved. [Company Name], [Company Address]. These materials are provided by [Company Name] as a service to its customers and may be used for informational purposes only.

Disclaimer of Warranty: [Company Name] assumes no responsibility for errors or omissions in these materials. THESE MATERIALS ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. [Company Name] does not warrant the accuracy or completeness of the information, text, graphics, links or other items contained within these materials. [Company Name] shall not be liable for any special, indirect, incidental, or consequential damages, including without limitation lost revenues or lost profits, that may result from the use of these materials. [Company Name] may make changes to these materials, or to the products described therein, at any time without notice. [Company Name] makes no commitment to update the information contained herein.

Restricted Rights: Use, duplication, or disclosure by the United States Government is subject to the restrictions set forth in DFARS Section 252.227-7013 (c)(1)(ii) and FAR Section 52.227-19 as applicable.

Trademark Information: The following are registered trademarks of [Company Name] and its affiliates:

The following are trademarks of [Company Name] and its affiliates:

* All other brands and names are the property of their respective owners.
Sample Source Material License Agreement

SOURCE MATERIAL LICENSE PROVISIONS

The following terms and conditions shall govern the licensing and use of any and all Source Material released to Company under any Agreement entered into between Supplier and Company pursuant to Section __ of the parties’ Agreement dated _______________ (the “Agreement”). These terms and conditions shall take precedence over any conflicting or inconsistent terms and conditions in the Agreement respecting the licensing and use of Software.

1. Non-use; Non-disclosure. Company agrees to use the Source Material solely to create modifications to correct defects in and otherwise maintain the Source Material (but not add new features or functions) (“Maintenance”). Company acknowledges that the Source Material constitutes a valuable trade secret of Supplier. Accordingly, Company agrees to use the Source Material solely for such Maintenance and solely in accordance with the provisions of this Appendix. Without limiting the foregoing, Company shall take all the same precautions to protect the Source Material as it takes to protect its own most highly confidential material, but in no case less than reasonable care. Such precautions shall include, without limitation, the following:

(a) Company shall restrict access to the Source Material to up to three (3) employees who require such access to perform the Maintenance contemplated herein (collectively, the “Technicians”), and neither Company nor the Technicians shall disclose the Source Material to any third parties;

(b) the Source Material shall only be used at the Designated Site (as specified in Exhibit A hereto);

(c) the Source Material shall not be used on any networked computers;

(d) when not in use as permitted under this Appendix, the Source Material shall be deleted from all computer memory and stored on tangible media and shall be secured in a locked room, with controlled access only to the Technicians located at the Designated Site;

(e) Supplier shall have the right, upon reasonable notice to Company, to inspect Company’s facility to verify compliance with the provisions of this Section 1;

(f) upon certification by Supplier and agreement by Company (which agreement shall not be unreasonably withheld) that the condition for release of the Source Material from escrow to Company no longer exists, Company shall return all copies of the Source Material including without limitation any modifications thereto to Supplier within forty-eight (48) hours by a
carrier designated by Supplier to Supplier’s address above, and upon Supplier’s request certify
that no copies of the Source Material have been retained; and

(g) during the two year period after a Technician’s last access of the Source Material, such Technician shall not participate in any manner in the development of any product with the same or substantially similar functionality to that of the Source Material.

Company shall be fully responsible for the conduct of the Technicians for any breach of this Agreement. Company shall immediately notify Supplier in the event of any unauthorized use or disclosure of the Source Material. Without limiting the foregoing, Company shall at its expense, upon request of Supplier, take all other steps necessary to recover any compromised trade secrets caused by such unauthorized use or disclosure, or in the event Supplier takes such steps, Company shall reimburse all reasonable costs related thereof.

2. **Limited License.** Subject to Section 1 above, Supplier hereby grants Company the limited license to copy and modify the Source Material solely for the purpose of creating modifications to correct defects and otherwise maintain the Source Material (but not add new features or functions), but for no other purposes. Except as expressly set forth in this Section 2, nothing in this Appendix is intended to grant any rights to Company under any intellectual or other property rights of Supplier, nor shall this Appendix grant Company any rights in or to the Source Material.

3. **No Warranty.** THE SOURCE CODE IS PROVIDED “AS IS”. SUPPLIER MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING THE SOURCE CODE, ITS ACCURACY, COMPLETENESS OR PERFORMANCE.

4. **Ownership.** Company acknowledges and agrees that all right, title and interest in and to the Source Material is and shall remain the property of Supplier or its licensors.

5. **Term.** This Agreement shall be in effect as long as Company has Source Material and terminate when Company returns all Source Materials to Supplier; provided, however, that the obligation to protect the confidentiality of the Source Code Material shall not terminate.

6. **Remedies.** Company acknowledges that any breach of any of its obligations with respect to confidentiality or use of the Source Material hereunder will cause or threaten irreparable injury to the Supplier and, accordingly, Company agrees that in such event Supplier may, in addition to any other remedy, seek equitable relief to protect its interests therein, including without limitation, preliminary and permanent injunctive relief.

7. **Survival.** The terms and conditions of Paragraphs 1(g), 3, 4 and 6 shall survive expiration to the extent necessary to effectuate their intent.
EXHIBIT A

SOURCE MATERIAL
[To be completed]

Source Material:

Designated Site:

EXHIBIT B

CONFIDENTIALITY AGREEMENT

This Agreement is made and entered into by _________________________ (“You”).

WHEREAS, you are an employee of ________ Corp. (“_________”).

WHEREAS, _________ desires that you have access to certain Source Material (as such term is defined in that certain Agreement between ________________ and __________ dated _________________, 20__ (the “License Agreement”) only at _______________________________ (the “Designated Site”) in order to assist __________ in maintaining the Source Material as set forth in the License Agreement.

NOW, THEREFORE, you agree as follows:

1. Nonuse; Nondisclosure. You agree to use the Source Material solely to create modifications to correct defects in and otherwise maintain the Source Material (but not add new features or functions). You acknowledge that the Source Material constitutes a valuable trade secret of ________________. Accordingly, you agree:

   (a) not to disclose the Source Material to any third parties;
   
   (b) the Source Material shall only be used at the Designated Site;
   
   (c) the Source Material shall not be used on any networked computers;

   (d) when not in use the Source Material shall be deleted from all computer memory and stored on tangible media and shall be secured in a locked room at the Designated Site; and

   (e) not to make any use of the Source Material for any purpose, except as specifically authorized herein.

2. Other Limitations. Since it would be difficult to establish whether or not you used concepts within the Source Material, and therefore to protect the confidentiality of the Source Material, you agree that during the two (2) year period after your last access to the Source
Material, you shall not participate in any manner in the development of any product with the same or similar functionality to that of the Source Material.

3. Limited License. Subject to Section 1 above, _________________ hereby grants you the limited license to copy and modify the Source Material solely for the purpose of creating modifications to correct defects in and otherwise maintain the Source Material (but not add new features or functions), but for no other purposes. Except as expressly set forth in this Section 3, nothing in this Agreement is intended to grant any rights to you under any intellectual or other property rights of _________________, nor shall this Agreement grant to you any rights in or to the Source Material.

4. Ownership. __________ acknowledges and agrees that all right, title and interest in and to the Source Material is and shall remain the property of _________________.

5. Term. This Agreement shall survive until such time as the Source Material disclosed hereunder becomes publicly known and made generally available to the public through no action or inaction of yours.

6. Remedies. You acknowledge that any breach of any of your obligations with respect to confidentiality or use of the Source Material hereunder will cause or threaten irreparable injury to _________________ and, accordingly, you agree that in such event _________________ may, in addition to any other remedy, seek equitable relief to protect its interests therein, including without limitation, preliminary and permanent injunctive relief.

7. Miscellaneous.

(a) Assignment. Neither this Agreement nor any right under this Agreement may be assigned or otherwise transferred by you, in whole or in part, whether voluntary or by operation of law, without the prior written consent of _________________.

(b) Governing Law. This Agreement shall be governed and construed in all respect by the laws of the State of ____________, without reference to its conflicts of law provisions.

(c) Jurisdiction; Venue. Any dispute or action arising from or out of this Agreement will be subject to the exclusive jurisdiction and venue of the state and federal courts in _________________, and the parties consent to the personal and exclusive jurisdictions of these courts.

(d) Severability. In the event that any provision of this Agreement is determined to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect without said provision.

(e) Modification; Waiver. This Agreement may not be altered, amended or modified in any way except by a writing signed by you and _________________. The failure of a party to
enforce any provision of the Agreement shall not be construed to be a waiver of the right of such party to thereafter enforce that provision or any other provision or right.

(f) **Entire Agreement.** You acknowledge that this Agreement sets forth the entire agreement and understanding as to the subject matter hereof, and supersedes all prior discussions, agreements and writings in respect hereto.

IN WITNESS WHEREOF, you have executed this Agreement on the date below written.

By: ____________________________
Name: __________________________
Date: ___
Sample Online Access Agreement

ON-LINE ACCESS AGREEMENT

THIS AGREEMENT (this "Agreement") is made and entered into as of day of
, 1998 by and between Continental Casualty Company, an Illinois-domiciled insurance
company with offices at [CUSTOMER] Plaza, Chicago, Illinois 60685 ("[CUSTOMER]"") and
[NAME], a [STATE] [BUSINESS ORGANIZATION] with offices at [ADDRESS]
(“Company”).

WHEREAS, [CUSTOMER] and Accessing Party have entered into that certain
agreement known as , dated (the "Underlying Agreement’.’);]

WHEREAS, in connection with [the Underlying Agreement]/[a contemplated business
relationship between [CUSTOMER] and Company], the parties expect Company to access
proprietary [CUSTOMER] computer systems and data (the "Computer Systems”); and

WHEREAS, [CUSTOMER] and Company agree that the following terms and
conditions shall apply to access by Company to the Computer Systems.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants
contained herein, the parties hereto agree as follows.

1. Scope of Access. Schedule A describes the authorized purpose, duration and
scope of, and the connection procedures for, Company’s access to the Computer Systems.’
Company shall access the Computer Systems only to [provide services to [CUSTOMER] under
the Underlying Agreement]. Access may be monitored and recorded by [CUSTOMER] without
notice. [CUSTOMER] may, in its sole discretion, reconfigure or discontinue any part of the
Computer Systems at any time.

2. Login ID Policy. [CUSTOMER] shall assign a login code (a "Login ID") to each
Company employee or consultant that will have access to the Computer Systems. Each
Computer System Login ID shall be used only by the Company employee assigned such Login
ID by [CUSTOMER]. Company shall not permit Logon IDs to be used or shared by multiple
employees without [CUSTOMER]’s prior written consent.

3. Company Responsibilities.

a. Company shall cause all persons obtaining access to the Computer
Systems through Company ("Users") to be aware of, and to comply with, the
obligations described herein.

b. Company shall be responsible for any access to the Computer Systems
by any User or any person accessing the Computer Systems through any Login ID
issued to Company or any User. Company shall not, and shall not permit any other
person to, use the Computer Systems in any manner, or attempt to access areas of the
Computer Systems, other than as expressly specified in Schedule A.

c. Company shall be responsible for maintaining equipment and security
procedures acceptable to [CUSTOMER] to ensure that Company's computer systems
are sufficiently secure to prevent unauthorized access to the Computer Systems.
Company shall install and maintain anti-viral software acceptable to [CUSTOMER] on
all computer systems used by Company having access to the Computer Systems.

d. Company shall maintain complete and accurate records detailing access
to the Computer Systems by Company and any User ("Access Records"). Access
Records shall be maintained until [five (5)] years after termination of this Agreement
and shall detail, for each connection and system to which the Company is granted
access, the Login ID used, user records requested, connection type, time and duration of
access and systems accessed.]

e. Company shall immediately notify [CUSTOMER], through its network
security representatives identified in Schedule B, of any threatened or actual security
breaches or unauthorized access to the Computer Systems. Company shall fully
cooperate with [CUSTOMER] to resolve security issues.

f. Company shall comply with all applicable laws and [CUSTOMER]
security procedures, including the requirements set forth on Schedule C. [CUSTOMER]
reserves the right to modify its security procedures from time to time, at its discretion.

g. [WHERE [CUSTOMER] SOFTWARE WILL BE USED, ADD:
Company shall comply with all use restrictions on software licensed to [CUSTOMER]
and accessed by Company in connection herewith.]

h. Company shall not, and shall not permit any User to, transmit any
unlawful, threatening, libelous, defamatory, obscene, scandalous, inflammatory,
pornographic or profane material to or through the Computer Systems. [CUSTOMER]
shall be free to cooperate with any law enforcement, regulatory or judicial authorities in
connection with Company's access to the Computer Systems, which cooperation may
include disclosure of the identity of, and the information transmitted or received by, any
person accessing the Computer Systems.

i. Company shall be responsible for providing and maintaining all
networking components between and within Company's premises, including any
routers, circuits or other equipment used to access the Computer Systems. Company
shall provide sufficient physical and electronic security controls for all Company
computer systems. [These controls shall include (i) requiring verification of
authorization for access to all secured locations and (ii) access doors equipped with card
4. **Confidentiality.** Company shall take all steps necessary to ensure that no User shall, without [CUSTOMER]'s prior written consent, use, duplicate or reveal to any person or entity any Login IDs, passwords, software, data, material, content or any other information related to or accessible on the Computer Systems, whether written, verbal or electronic (collectively, "Information"). Company shall treat all Information as copyrighted and owned by [CUSTOMER].

[OPTION 1: EXISTING NON-DISCLOSURE RESTRICTIONS: Company shall, and shall cause each of its employees, agents and subcontractors to, safeguard the confidentiality of Information pursuant to the terms and conditions of the [Underlying Agreement]/[NAME OF NON-DISCLOSURE AGREEMENT].]

[OPTION 2: NO NON-DISCLOSURE AGREEMENT IN PLACE: Without limiting the foregoing, Company shall not (i) transfer or disclose the Information (or any part thereof), directly or indirectly, to any third party (other than its employees who have a need to know such Information [and are authorized by [CUSTOMER] to have access to the Computer Systems]/[to perform Company's obligations under the Underlying Agreement]) without [CUSTOMER]'s prior written consent, (ii) use the Information (or any part thereof) in any manner, except as specified in [Schedule A]/[and]/[the Underlying Agreement], or (iii) take any other action with respect to the Information (or any part thereof) inconsistent with its confidential and proprietary nature. [Any Company employee wishing to access the Computer Systems must be authorized and approved by [CUSTOMER]. Notwithstanding such authorization and approval, Company shall permit access to the Computer Systems solely by those of its employees agreeing in writing to abide by the terms and conditions contained herein.]

5. **Company Information.** Except as provided otherwise in [the Underlying Agreement]/[or]/[any agreement in effect between [CUSTOMER] and Company], (i) any information or material transmitted by Company to [CUSTOMER], without regard to form or method of transmission, shall be treated as nonconfidential and non-proprietary, (ii) [CUSTOMER] and its affiliates may use, reproduce, display, distribute, perform, publish and create derivative works based upon such information and materials and (iii) [CUSTOMER] and its affiliates shall be free to use any ideas, concepts, know-how or techniques embodied in any such information or material.

6. **Audit of Company.** From time to time during the term of this Agreement and for a period of [three (3)] years thereafter, [CUSTOMER] shall be entitled to audit Company's compliance with this Agreement. Upon [seven (7) days']/[reasonable] prior notice from [CUSTOMER], Company shall permit [CUSTOMER] or its designee:

   a. to review and verify Company's Access Records;
b. to conduct physical audits of Company, which shall include on-site inspection and review of Company's computer systems having access to the Computer Systems, the environment surrounding Company's systems and Company's general security procedures; and

c. to conduct logical audits of Company, which shall include the execution of on-site and/or remote security tests intended to verify the integrity of, and identify potential security vulnerabilities existing in, Company's computer systems having access to the Computer Systems.

Company shall provide [CUSTOMER] with all necessary access to Company's applicable facilities and relevant records during normal business hours for the purpose of conducting the audits described above. [[CUSTOMER] personnel performing audits on-site at Company shall at all times be accompanied by an employee of Company.] Company shall immediately resolve and correct, at Company's expense, all vulnerabilities and problems identified by [CUSTOMER] pursuant to such audits.

7. Disclaimer. Unless otherwise expressly agreed in writing by [CUSTOMER], [CUSTOMER] makes no warranties or representations as to the accuracy or availability of the Information or operation of the Computer Systems. Company shall have no recourse against [CUSTOMER], and [CUSTOMER] shall not be liable, for any loss, liability, damages, costs or expenses that may be suffered or incurred at any time by Company or any User arising out of or in connection with access to or use of the Computer Systems, including any damage to Company's data, computer equipment or other property caused by viruses or other software or data downloaded from the Computer Systems. WITHOUT LIMITING THE FOREGOING, ACCESS TO THE COMPUTER SYSTEMS IS PROVIDED TO COMPANY "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

8. Limitation of Liability. NEITHER [CUSTOMER] NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING OR DELIVERING THE COMPUTER SYSTEMS SHALL BE LIABLE FOR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES ARISING OUT OF COMPANY'S OR ANY USER'S ACCESS TO, OR USE OF THE COMPUTER SYSTEMS.

9. Indemnity. Company hereby indemnifies and holds harmless [CUSTOMER] against any loss, liability, damages, cost or expenses suffered or incurred by [CUSTOMER] at any time because of any claim, action or proceeding arising out of the breach of the terms and conditions of this Agreement by Company or by any individual accessing the Computer Systems through Company.

10. Injunctive Relief. Company acknowledges that the security and integrity of the Computer Systems are critical to [CUSTOMER]'s business operations, and that the disclosure of any Information by Company or any of its employees, agents or subcontractors shall give
rise to irreparable injury to [CUSTOMER] inadequately compensable in damages. Accordingly, Company hereby agrees that [CUSTOMER] shall be entitled to obtain injunctive or other equitable relief against the breach or threatened breach of the terms and conditions of this Agreement without proof of actual damages or the posting of any bond or other security, and such relief shall be in addition to any other legal remedies which may be available.

11.  **Termination.** [CUSTOMER] may immediately terminate this Agreement or any Logon D access granted to any User at any time without cause or notice to Company.

12.  **Miscellaneous.**

   a.  **Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns; provided, however, that Company may not assign any of its rights or obligations under this Agreement.

   b.  **Entire Agreement.** This Agreement, including any Schedules attached hereto incorporated herein by reference), encompasses the entire agreement between [CUSTOMER] and Company with respect to the subject matter hereof and supersedes all prior representations, agreements and understandings, written or oral with respect to the subject matter hereof. If a provision of [the Underlying Agreement]/[any agreement or agreements in effect between [CUSTOMER] and Company] conflicts with a provision of this Agreement, the provision of this Agreement shall prevail. [Notwithstanding the foregoing, if the parties have executed an agreement of confidentiality or nondisclosure agreement (an "NDA") prior to or contemporaneously with this Agreement, the provisions of the NDA shall remain in force, except to the extent that the terms and conditions of this Agreement shall impose stricter requirements or standards, in which case the stricter terms and conditions of this Agreement shall control Company's duties and obligations to maintain and protect [CUSTOMER]'s Information.] No modifications or amendments to this Agreement shall be effective unless in a written document signed by a duly authorized representative of each party. As used herein, "include" and its derivatives shall be deemed to mean "including but not limited to".

   c.  **Governing Law.** This contract shall be interpreted and construed in accordance with the laws of the State of Illinois. Company agrees to submit to the jurisdiction of the Illinois Courts for resolution of any disputes that may arise hereunder.

   d.  **Headings.** The headings preceding the text of Articles and Sections of this Agreement are for convenience only and shall not be deemed part of this Agreement.

   e.  **Severability.** Should any term of this Agreement, for any reason, be held to be illegal or unenforceable by a court of competent jurisdiction, the remaining terms
f. **Survival.** Any provisions of this Agreement that by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement and shall remain in effect until all such obligations are satisfied.

g. **Waiver.** The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed by their duly authorized representatives.

[CUSTOMER]

By: ________________________________

Its: ________________________________

By: ________________________________

Its: ________________________________

**Schedule A**

**Scope of Access**

Subject to the terms and conditions of this Agreement, Company may access the Computer Systems identified below in accordance with the specifications set forth below. Company's access shall be reviewed by [CUSTOMER] on an [annual] basis. [CUSTOMER], at its sole discretion, shall determine if such access is renewed or terminated.

1. Business Purpose:
2. Duration and Permitted Hours of Access:

3. Permitted Uses of [CUSTOMER] Information:

4. Business Unit Contact Information:

5. Company Site Information:

6. [CUSTOMER] Site Information:

7. Authorized Method of Access:

8. Facilities Specifications:

   SPECIFY: Network Facilities Specifications. Access limited to designated [CUSTOMER] network entry points. Incoming data limited to packets originating from designated Company IP addresses. Access the [CUSTOMER] networks by other means is prohibited. For TCP/IP services, consider requiring at least the applicable [CUSTOMER] and Company router names, serial and Ethernet ports, IP addresses and masks, circuit types and numbers and applications names. For SNA/XNA services, consider requiring at least the applicable circuit types and application names. Access Control Lists from applicable gateways and firewalls. Equipment and Circuit Requirements (e.g., approved brands, models, protocols, data encryption, etc.).]
Schedule B

Network Security Contacts

In the event of any threatened or actual security or network problems, immediate contact shall be made to the following:

[CUSTOMER]:

[CUSTOMER] Security Help Numbers:

NUMBER:  
(Domestic)

NUMBER:  
(International)

[NAME OF [CUSTOMER] NETWORK SERVICE CENTER]:

1st Level Escalation: Helpdesk

2nd Level Escalation:

3rd Level Escalation:

Infrastructure Program Manager:

Company.*

Company Security Help Numbers and Contacts:

1st Level Escalation:

2nd Level Escalation:

3rd Level Escalation:

Each party may change the contacts listed above upon written notice to the other party.
Schedule C

Security Procedures

Company shall comply with the following:

a. All connections must be through a specified [CUSTOMER]-controlled backbone firewall.

b. Dial-up access to [CUSTOMER] will be through the [CUSTOMER] Dial-up Security Server and [CUSTOMER] System/Application owner shall be the sponsor of the Company access ID. C [CUSTOMER] may require token authentication for Company. [CUSTOMER] will provide the token authenticators for such arrangement.

d. Only [CUSTOMER]-approved equipment will be used within a [CUSTOMER] location.

e. For ISDN connectivity, the followings measures are required (if available):

- PPP, employing a unique user ID and password (this information should be programmed into each router and changed periodically).

- Password Authentication Protocol (PAP).

- Challenge-Handshake Authentication Protocol (CH~).


- Calling Line Identification, where the destination server uses the Caller ID feature of ISDN to verify that the calling server is authorized to make a connection.

- Multi-level passwords.
Sample Connection Specifications (insert in Schedule A)

I. TCP/IP Connections

The secure TCP/IP connections shall consist of a gateway router at a [CUSTOMER] backbone network location and a premise router at the Company's location. Equipment necessary for connectivity will be the responsibility of the equipment owner, regardless of the equipment location. Each party assigns the Internet Protocol address as follows:

**Company:**

<table>
<thead>
<tr>
<th>Company Router Name</th>
<th>Serial Port IP Address and Mask</th>
<th>Ethernet Port IP Address and Mask</th>
<th>Circuit Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**[CUSTOMER]:**

<table>
<thead>
<tr>
<th>[CUSTOMER] Gateway Router Name</th>
<th>Serial Port IP Address and Mask</th>
<th>Ethernet Port IP Address and Mask</th>
<th>Circuit Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

IP TRAFFIC. This Agreement allows for two-way traffic between [CUSTOMER] and the Company. Only traffic from Company’s host computers with IP addresses listed below shall be allowed to access the [CUSTOMER] IP addresses listed below. Access to IP addresses will be limited to the specified applications. Port numbers for applications must also be specified.

**Company**

<table>
<thead>
<tr>
<th>Connecting Party Host Name</th>
<th>Source IP Address</th>
<th>Mask</th>
<th>Destination IP Address</th>
<th>Mask</th>
<th>Application</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

228
### SNA/XNA Facilities Description

<table>
<thead>
<tr>
<th>Company</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>CSU Name</td>
<td>System Name</td>
<td>Circuit Number</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### RJE Facilities Description

<table>
<thead>
<tr>
<th>Company</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>CSU Name</td>
<td>System Name</td>
<td>Circuit Number</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

© e-Business Press, L.L.C.

Entrepreneur's Crash Course
Appendix A
Due Diligence Checklist for an Acquisition

Corporate Matters
✓ Articles of Incorporation, and operating agreements or by-laws of the Company and seller.
✓ Corporate minute books and stock transfer records of the Company. Records of agreements between partners for a LLC or partnership.
✓ Federal and state tax returns and related reports of the Company for all periods from , 20__________, including:
  • income tax returns,
  • audit reports of taxing authorities including descriptions of any open issues,
  • real estate tax bills and payment records,
  • personal property tax bills and payment records,
  • franchise, license, capital stock, doing business, and similar tax reports, and
  • any other material documents.
✓ Agreements and arrangements between the Company and seller or any affiliate of the Company or seller, including:
  • stock/partnership subscription agreements,
  • loan, line of credit or other financing arrangements,
  • tax sharing agreements or arrangements,
  • overhead allocation agreements or arrangements,
  • management services or personnel loan agreements or arrangements,
  • guarantees or keep-well arrangements for the benefit of creditors or other third parties, and
  • any others.
✓ Shareholder agreements/partnership agreements relating to stock/ownership interests owned by the Company.
✓ Documents imposing restrictions or conditions on transfer of ownership interests or merger, including any arrangements granting rights of first refusal or other preferential purchase rights.
✓ Third-party or governmental consents or authorizations required for merger or acquisition. (E.g., lenders or holders of options on equity interests.)

Financial Matters
✓ Financial statements, including:
  • audited financial statements for all periods beginning on or after , 20__________, consisting, in each case, of at least a balance sheet and income statement,
• interim monthly unaudited financial statements for periods after the latest audited statements, and
• working papers relating to the foregoing.
✓ Records concerning bank accounts and depositary arrangements.
✓ Credit agreements and credit instruments including loan agreements, notes, debentures and bonds, and files relating thereto.
✓ Performance and financial bonds.
✓ Letters of credit.
✓ Instruments or arrangements creating liens, encumbrances, mortgages, or other charges (including mechanics and materialmens' liens) on any real or personal property of the Company, including property held indirectly through joint ventures, partnerships, subsidiaries or otherwise.
✓ Receivables analysis including aging, turnover and bad debt experience.

*Management and Operations*

✓ Internal management reports and memoranda.
✓ Policy and procedures manuals including those concerning personnel policy, internal controls and legal and regulatory compliance.
✓ Budgets, financial projections, business plans and capital expenditure plans.
✓ Contracts and arrangements for supplies or services, including the following which were entered into or under which work was done during the past years:
  • contracts for the sale or purchase of real estate,
  • contracts for the purchase or sale of materials, equipment or other personal property or fixtures,
  • contracts or other arrangements for legal, accounting, consulting, brokerage, banking or other services, and
  • construction and engineering contracts or subcontracts.
✓ Proprietary information and documents, including:
  • patents and patent applications,
  • copyrights,
  • trademarks, service marks, logos and trade or assumed names,
  • nonpatentable proprietary know-how,
  • federal and state filings relating to any of the foregoing,
  • licensing agreements relating to any of the foregoing (whether the Company is a licensor or licensee), and
  • confidentiality agreements relating to any of the foregoing.
✓ Partnership or joint venture agreements to which the Company is a party and any other arrangements with third parties concerning the management or operation of properties, facilities or investments of the Company.

✓ Reports to management, board of directors or shareholders prepared by outside consultants, engineers or analysts.

✓ Closing documentation and related files for each prior sale of Company stock/equity interest and each material asset purchase or sale by the Company during the past 10 years.

✓ Leases, deeds and related instruments, including without limitation, office premises leases, equipment or vehicle leases, and any such instruments held indirectly through joint ventures, partnerships, subsidiaries or otherwise.

✓ Agreements or arrangements granting rights of first refusal or other preferential purchase rights to any property of the Company.

✓ Other material agreements or arrangements.

✓ Employee Matters

✓ Company policies concerning hiring, compensation, advancement and termination.

✓ Labor contracts together with a list of all labor unions that have represented or attempted to represent employees of the Company during the past 10 years.

✓ Agreements with individual employees, including:
  - executive employment agreements,
  - bonus, profit-sharing and similar arrangements,
  - postemployment agreements including “salary continuation” and “golden parachute” arrangements, and
  - covenants not to compete by present or former employees.

✓ Names of any officers or key employees who have left the Company during the past 5 years.

✓ Each of the following which the Company maintains or contributes to, together with filings with the Internal Revenue Service, Pension Benefit Guaranty Corporation (PBGC), Securities and Exchange Commission and Department of Labor, including without limitation Forms 5500 and 5310, summary plan descriptions, summary annual reports, IRS determination letters (for qualified plans), and PBGC reportable events:
  - union-sponsored multiemployer plans,
  - defined benefit plans,
  - defined contribution plans including: (i) money purchase pension plans, (ii) profit-sharing plans, (iii) stock bonus plans, (iv) employee stock ownership plans, and (v) savings or thrift plans,
  - health and welfare plans, including: (i) medical, surgical, hospital or other health care plans or insurance programs including HMOs, (ii) dental plans, (iii) short-term disability or sick pay plans or arrangements, (iv) long-term disability insurance or
uninsured arrangements, (v) group term or other life or accident insurance, (vi) unemployment or vacation benefit plans, and (vii) other welfare plans,

- nonqualified deferred compensation arrangements including: (i) director or officer deferred fee plans, (ii) excess benefit plans (providing benefits in excess of internal revenue code limitations for qualified plans), and (iii) severance pay plans,
- incentive or bonus plans including: (i) stock option plans, (ii) stock bonus plans, (iii) stock purchase plans, and (iv) cash bonus or incentive plans.

**Insurance**

✓ Insurance policies including those covering:
  - fire,
  - liability,
  - casualty,
  - life,
  - title,
  - workers' compensation,
  - directors' and officers' liability, and
  - any other insured events or matters.

✓ Claim and loss histories, correspondence with insurance carriers and names of all insurance representatives relating to the foregoing.

**Real Estate and Equipment and Other Personal Property**

✓ List of real estate (with legal descriptions), equipment and other personal property owned, leased or in the process of being acquired or sold by the Company, with the cost and book value of each item.

✓ Real estate, equipment and other personal property leases and conditional sale agreements.

✓ Information relating to title on all property listed in the items above, including motor vehicle title documents.

✓ Appraisals of real estate, personal property and equipment.

**Governmental Regulation**

✓ Licenses, permits, filings or authorizations obtained from, made with or required by any governmental entity.

✓ Correspondence with any governmental regulatory authority.

✓ Accident or injury reports to federal, state, local and foreign governmental entities.

**Litigation and Claims**

✓ Pending or threatened litigation, regulatory investigations, governmental actions, arbitrations, or notices of violation or possible violation, including proceedings in which the Company is a plaintiff or claimant, and the names and addresses of legal counsel advising or representing the Company in each matter.
Files and records relating to the foregoing including opinions and evaluations.
Appendix B

Checklist for Items Appearing in an Asset Purchase Contract

1. Certificate from the selling corporation’s home state and all states in which it does business that it is in good standing.

2. Representations and warranties from the selling corporation that:
   ✓ selling corporation has full authority to operate and sell business
   ✓ sale of the assets does not constitute a breach of the selling corporation’s articles of incorporation and by-laws
   ✓ no consent or approval is required from any governmental agency or other third parties
   ✓ any and all real estate holdings, including leases, used in connection with the business or necessary for the business’ operation are part of the sale
   ✓ selling corporation owns all rights title and interest to both the personal property and the real estate being transferred as part of the sale without any liens, encumbrances, or defects of title
   ✓ any inventory being transferred is free of material defects in workmanship and is fit for its intended use
   ✓ selling corporation owes no back-pay or other unpaid or unfunded salaries, bonuses, unpaid employee expenses, benefit plans, or other employee compensation
   ✓ any and all union contracts or other labor agreements are listed in exhibits attached to the contract
   ✓ all current and outstanding contracts, obligations, promises, etc. of the selling corporation that the buyer is assuming (i) have been disclosed to the buyer; (ii) there are no defaults of any of these agreements; and (iii) are fully set out in their entirety in an attached exhibit.
   ✓ All insurance contracts covering the business are attached as exhibits to the contract
   ✓ there are no permits required for the operation of the business that are not currently held by the business
   ✓ there are no lawsuits pending or threatened, and if there are, then the all of the documents relating to the lawsuits (except privileged documents) are attached as an exhibit. Make sure no the buyer assumes no liability for any such lawsuits, or better yet, don’t buy the business.
   ✓ selling corporation has no subsidiary corporations or interests in any other businesses.
   ✓ all bank accounts, safe-deposit boxes, and other banking arrangements of the selling corporation have been disclosed and are described in an attached exhibit.
   ✓ all purchase orders for goods by selling corporation and all other commitments to purchase goods by selling corporation are listed in an exhibit attached to the contract, and none of these orders are in arrears of in default.
   ✓ all unfilled customer purchase orders and all other uncancelled commitments from customers to buy goods from the selling corporation are listed in an attached exhibit,
and all money already collected on these orders (advances, earnest money, deposits, etc.) will be turned over to the buyer on the closing date.

✓ all property and equipment necessary for the operation of the business/production of goods is included in the assets sold by selling corporation.

✓ all intellectual property, including trademarks (applied for or held), trade secrets, inventions, patents (applied for or held), and copyrights are included and listed in an exhibit attached to the contract.

✓ all material contracts, agreements or commitments (oral or written) binding or affecting the selling corporation are listed in an exhibit attached to the contract.

✓ all material liabilities (besides those found in the balance sheet and the exhibit listing contracts, agreements, and commitments) affecting the selling corporation are listed in an exhibit attached to the contract are listed in an exhibit attached to the contract.

3. Clearance letter from state agencies assuring buyer that all taxes for sales, unemployment insurance, withholding taxes, etc. are fully paid

4. Personal guaranty of owner of selling corporation that everything in contract is true and that he/she is liable for the fulfillment of the contract as well.
Appendix C
Checklist for Items Appearing in a Stock Purchase Contract

ALL of the provisions found in the checklist for an asset purchase contract should be put into a contract for the sale of stock. In addition, to those terms, the following terms should also be included:

✓ description of the number and class of stock shares that will be transferred
✓ the ownership percentage and voting total percentages represented by the shares described by number one of this list
✓ owner of the shares warrants that he holds good title to the transferred shares free and clear and will transfer them free and clear of any liens, charges, encumbrances of any kind
✓ the shares are fully paid and nonassessable.
✓ the voting rights of the shares are not subject to any assignment of voting rights or proxies of any kind
✓ the sale of the shares is not prevented or restricted by any agreement, by-law or article of incorporation (these may well exist, and thus you need to obtain a waiver)
✓ all federal, state, and local taxes have been paid and all returns have been filed.
✓ no audits are being conducted, threatened or pending.
✓ all financial statements presented by the company are accurate and fairly represent the financial status of the business as of the date of their preparation and there have been no material changes since that date.
Appendix D
Employee Matters Checklist

In order to help you navigate through laws covering employees and employment, we whipped up a some checklists of things to remember when you are hiring employees, dealing with employees or investigating and firing employees for misconduct.

The first checklist is a list of topics that should be avoided in interviews and on applications, if possible. They should be avoided not because they are plainly illegal, but rather they should be avoided because these questions/topics can be construed as being an indication that you are employing discriminatory criteria in the hiring process.

- Marital status (this includes asking people for maiden name, previously used married names or the names of spouses)
- Place of birth
- Age (unless important to job)
- Religion
- Relatives (ask them for emergency numbers and other such information after you hire them)
- Arrest record (you can ask about convictions, however)
- Plans for having children in the future or number of children
- Height, weight, etc.
- Whether the person has been refused for a bond in the past
- Jobs held by family members
- Photographs (unless applicant is applying to be a model)
- Health questions unrelated to job
- Willingness to work on Saturdays or Sundays
- Credit references
- Military experience

This second checklist provides some general considerations to remember when you are investigating employee misconduct. Following these simple rules may reduce your exposure to lawsuits by disgruntled ex-employees fired for misconduct.

- Involve your attorney at the beginning by talking over your problem and anticipated actions. She can spot at the outset any legal problems you may have.
- Conduct a thorough and fair investigation of the alleged misconduct. Allow the employee to give you a full account of his/her side of the story. Obtain statements from other employees with direct knowledge of events (no second-hand information or heresay).
- Never threaten other employees if they do not want to cooperate with the investigation.
- Never touch your employees or tell them they cannot leave if, during the investigation, they want to end the conversation, refuse to cooperate or leave the room.
✓ Do not discuss the investigation with any employees who are not involved. Do not provide any information to other employees who are involved in the investigation except the absolute bare minimum necessary for the investigation.

✓ Never bring in any unrelated topics about the employees' personal lives while conducting the investigation (e.g., ``I know you have two kids that you need to provide for.'' etc.)

✓ Never lie to employees about what is going on. Even little white lies are bad. You should simply refuse to discuss the matter.

✓ Keep memos on all conversations you have with employees regarding the matter.

✓ Take notes during all conversations you have concerning the investigation.

✓ If you fire the employee as a result of the investigation, try to obtain an admission of misconduct from the employee before they leave, but do not use threats or other coercive means to wring a confession out the employee. (E.g., ``I'll tell the cops that you are a thief unless you sign this!'')
Appendix E
Credit Terms Abbreviations

3/10; 1/15; n/60: this means that a 3% discount off of the stated purchase price will be offered if payment is made within ten days of the invoice date (i.e., date of shipment), a 1% discount is offered off of the purchase price if payment is made within 11-15 days of the invoice date, and full payment must be made within at least sixty days of the invoice date with no discount offered after the 15th day. You can see how this is a simple shorthand that can be modified. For instance, 7/45 means that a 7% discount will be offered for the first forty five days following the invoice date. And n/30 means that full payment must be made within thirty days of the invoice date.

M.O.M. or Middle of Month: Payment must be made by the middle of (15th day of the calendar month) on all purchases made since the previous middle of the month.

E.O.M. or End of Month: Payment must be made by the end of (28th, 29th!, 30th or 31st day of the calendar month, whichever applies) on all purchases made since the previous end of the month.

R.O.G.: This means that the due date is calculated as of the date that goods are received, rather than the invoice date.

C.W.O. or C.I.A. or Cash With Order or Cash in Advance: This means that payment must be received before the business receiving the order will even fill the order. No credit going to be given in such an instance.

C.B.D. or Cash Before Delivery: In this case, the selling business will not ship the finished product until payment is received. It will, however, start and finish the product before then.

S.D./B.L. or Sight Draft--Bill of Lading: This is a little complicated. buyer provides the seller with a sight draft drawn on the buyer. Seller then sends a negotiable bill of lading, invoice, and the sight draft to the buyer's bank, which pays on the sight draft. The bank then holds the draft as a note until the buyer makes good.

Combinations: Adding M.O.M. or E.O.M. to a standard discount/day abbreviation alters the terms slightly. For instance, 3/10; 1/15; n/30. E.O.M. shifts the date used to calculate the discount and due dates from the invoice date to the end of the month in which the goods were received.

You may be asking why people would offer a “discount” for prompt payment. The truth is that they do not. The initial discount price is the sales price as far as the seller is concerned. The difference between the discount and the full invoice price is the interest that the seller is charging the buyer for using his money. After all, when you offer someone credit you are giving them a loan, right? Businesses charge each other interest just like everyone else, it is just more polite to call it a “discount” rather than interest. Welcome to business.
### Appendix F

#### List of Miscellaneous Resources

<table>
<thead>
<tr>
<th>Organization</th>
<th>Phone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Entrepreneur's Association</td>
<td>800 864 6868</td>
</tr>
<tr>
<td>Census Bureau</td>
<td>301 457 4100</td>
</tr>
<tr>
<td>Copyright Office</td>
<td>202 707 3000</td>
</tr>
<tr>
<td>Department of Labor</td>
<td>202 219 6666</td>
</tr>
<tr>
<td>• Employment Standards Administration</td>
<td>202 219 8743</td>
</tr>
<tr>
<td>• Employment and Training Administration</td>
<td>202 219 6871</td>
</tr>
<tr>
<td>• Occupational Safety and Health Administration</td>
<td>202 219 8148</td>
</tr>
<tr>
<td>Economic Development Administration</td>
<td>202 482 5081</td>
</tr>
<tr>
<td>Environmental Protection Agency (Small Business Hotline)</td>
<td>800 368 5888</td>
</tr>
<tr>
<td>Equal Employment Opportunity Commission (publications)</td>
<td>202 663 4900</td>
</tr>
<tr>
<td>Export-Import (EXIM) Bank</td>
<td>202 565 3900</td>
</tr>
<tr>
<td>Immigration and Naturalization Service</td>
<td>800 375 5283</td>
</tr>
<tr>
<td>Internal Revenue Service (programs for small businesses)</td>
<td>800 829 1040</td>
</tr>
<tr>
<td>International Franchise Association</td>
<td>202 628 8000</td>
</tr>
<tr>
<td>National Association of Women Business Owners</td>
<td>301 608 2590</td>
</tr>
<tr>
<td>National Association for Female Executives</td>
<td>212 477 2200</td>
</tr>
<tr>
<td>National Association for the Self Employed</td>
<td>800 232 6273</td>
</tr>
<tr>
<td>National Business Association</td>
<td>800 456 0440</td>
</tr>
<tr>
<td>National Institute of Standards and Technology</td>
<td>301 975 2000</td>
</tr>
<tr>
<td>National Small Business United</td>
<td>202 293 8830</td>
</tr>
<tr>
<td>National Venture Capital Association</td>
<td>703 351 5269</td>
</tr>
<tr>
<td>Patent and Trademark Office</td>
<td>800 786 9199</td>
</tr>
<tr>
<td>Securities and Exchange Commission, Office of Small Business Policy, Division</td>
<td>800 634 0245</td>
</tr>
<tr>
<td>Corporate Finance, 450 Fifth Street NW, Washington, DC 20549</td>
<td></td>
</tr>
<tr>
<td>Service Corps of Retired Executives</td>
<td>703 642 2490</td>
</tr>
<tr>
<td>Small Business Exporter's Association</td>
<td>202 659 6000</td>
</tr>
<tr>
<td>United States Chamber of Commerce</td>
<td>202 482 2000</td>
</tr>
<tr>
<td>United States Department of Commerce</td>
<td>202 255 8155</td>
</tr>
<tr>
<td>United States Department of Justice (Employer's hotline)</td>
<td></td>
</tr>
</tbody>
</table>
United States Small Business Administration  800 827 5722
Office of Financial Assistance  202 205 6490
Office of International Trade  202 205 6720
Answer Desk  800 827 5722
Office of Economic Development  202 205 6657
Office of Minority Enterprise Development  202 205 6410
Office of Women's Business Ownership  202 205 6673
Office of Rural Affairs and Economic Development  202 205 6485

Venture Capital
National Association of Small Business Investment Companies  202 628 5055
National Venture Capital Association  703 351 5269
Capital Network  512 305 0826
Appendix G
Economic Development Regional Administration Offices


Atlanta, Georgia (404) 991-7401 (covering Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee)

Denver, Colorado (303) 844-4714 (covering Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming)

Chicago, Illinois (312) 333-7707 (covering Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin)

Seattle, Washington (206) 442-0599 (covering Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, and Washington)

Austin, Texas (512) 482-5451 (covering Arkansas, Louisiana, New Mexico, Oklahoma, and Texas)
Appendix H
Banks Friendly to Small Business

The Small Business Administration publishes a state-by-state directory of the amount of small-business lending done by commercial banks. This information shows the amount of small business lending done during the last year by specific banks. (Small business loans are loans of less than $250,000.)

The directory uses five variables to sort the banks:

- the dollar value of small business loans relative to total bank assets
- the dollar value of small business loans relative to total business loans
- the dollar value of small business loans relative to total deposits
- the dollar value of small business loans
- the total number of small business loans

Alabama
CB&T Bank of Russell County - Phoenix City
Southland Bank - Dothan
Independent Bank - Oxford
Oxford Peoples Bank & Trust Company - Selma
West Alabama Bank & Trust Company - Reform
Exchange Bank of Alabama - Altoona
Union State Bank Bell City Bank of Albertville - Albertville

Arkansas
First National Bank in Mena - Mena
Bank of Eureka Springs - Eureka Springs
Bank of Little Rock North - Little Rock
First National Bank of Phillips County - Helena
First Bank of Arkansas - Trumann
First Bank of Arkansas - Wynne
First National Bank of Russellville - Russellville
Union Bank of Benton - Benton

California
Redding Bank of Commerce - Redding
Valle De Oro Bank NA - Spring Valley
North State National Bank -Chico
Six Rivers National Bank - Eureka
Capitol Trust & Loan Association - Napa
Community Trust & Loan Assoc. - Monterey Park
San Joaquin Bank - Bakersfield
Scripps Bank - La Jolla

Colorado
Bank Southwest NA - Pagosa
Springs Bank of Grand Junction - Grand Junction
Lafayette State Bank - Lafayette
Mountain National Bank - Woodland Park
Citizens State Bank of Ouray - Ouray
Independent Bank - Kersey
Farmers Bank - Eaton
Rio Grande County Bank - Del Norte

Connecticut
Equity Bank - Wethersfield
Bank of Southington - Southington
North American Bank & Trust Company - Stratford
Manchester State Bank - Manchester
Maritime Bank & Trust Company - Essex
New England Bank & Trust Company - Windsor
Salisbury Bank & Trust Company - Lakeville

Delaware
Citibank Delaware - New Castle
PNC National Bank - Wilmington
MBNA America Bank NA - Newark

Alaska
First Bank - Ketchikan
Northrim Bank - Anchorage
Denali State Bank - Fairbanks
First National Bank - Anchorage
Key Bank of Alaska - Anchorage
National Bank of Alaska - Anchorage
First Instr Bank of Alaska NA - Anchorage
Bank of America Alaska NA - Anchorage

Arizona
Community Bank of Arizona - Wickenburg
Stockmens Bank - Kingman
Bank of Casa Grande Valley - Casa Grande
Mohave State Bank - Lake Havasu City
County Bank - Prescott
Frontier State Bank - Show Low
National Bank of Arizona - Tucson
M&I Thunderbird Bank - Phoenix

Connecticut
Equity Bank - Wethersfield
Bank of Southington - Southington
North American Bank & Trust Company - Stratford
Manchester State Bank - Manchester
Maritime Bank & Trust Company - Essex
New England Bank & Trust Company - Windsor
Salisbury Bank & Trust Company - Lakeville

Delaware
Citibank Delaware - New Castle
PNC National Bank - Wilmington
MBNA America Bank NA - Newark
County Bank - Rehoboth Beach
Delaware National Bank - Georgetown
Baltimore Trust Company - Selbyville
Delaware Trust Company - Wilmington
Felton Bank - Felton

District of Columbia
Franklin National Bank of Washington DC - Washington
Industrial Bank of Washington - Washington
First Liberty National Bank - Washington
Century National Bank - Washington
Adams National Bank - Washington
First Union National Bank of Washington - Washington
National Capital Bank Washington - Washington
Citizens Bank of Washington NA - Washington

Florida
First National Bank of Southwest Florida - Cape Coral
American Bank & Trust Company - Pensacola
First National Bank & Trust Company - Fort Walton Beach
Citizens Bank of Marianna - Marianna
CNB National Bank - Lake City
Dadeland Bank - Miami
United Southern Bank - Umatilla
Wauchula State Bank - Wauchula

Georgia
Cordele Banking Company - Cordele
Farmers & Merchants Bank - Dublin
First Bulloch Bank & Trust Company - Statesboro
First National Bank of Alma - Alma
First National Bank of Commerce - Commerce
McIntosh State Bank - Jackson
Bank of Toccoa - Toccoa
Tifton Bank & Trust Company - Tifton

Hawaii
City Bank - Honolulu
Realty Finance - Hilo
Bank of Honolulu - Honolulu
First Hawaiian Bank - Honolulu
Central Pacific Bank - Honolulu
Hawaii National Bank - Honolulu
Investors Finance - Honolulu
Bank of Hawaii - Honolulu

Idaho
Farmers National Bank of Buhl - Buhl
Panhandle State Bank - Sandpoint
Farmers & Merchants State Bank - Meridian
DL Evans Bank - Burley
Key Bank of Idaho - Boise
Northern State Bank - Coeur D'Alene

Illinois
First National Bank of Warsaw - Warsaw
Jackson County Bank - Seymour
First Farmers Bank & Trust - Converse
Tri-County Bank & Trust Company - Roachdale
Bank of Western Indiana - Covington
Citizens National Bank of Linton - Linton
First-Citizens Bank & Trust Company - Greencastle
Fowler State Bank - Fowler

Indiana
Hardin County Saving Bank - Eldora
Carroll County State Bank - Carroll
De Witt Bank & Trust Company - De Witt
Farmers State Bank - Jesup
Homeland Bank Oelwein - Houghton
State Bank - Red Oak
Waukon State Bank - Waukon
Clear Lake Bank & Trust Company - Clear Lake

Iowa
First National Bank of Wawego - Wamego
Peoples Bank & Trust Company - McPherson
Peoples State Bank & Trust Company - Ellinwood
Coffeyville State Bank - Coffeyville
Peoples State Bank - Topeka
Bank of the Southwest - Dodge City
Columbus State Bank - Columbus
Community National Bank - Chanute

Kentucky
First & Farmers Bank of Somerset - Somerset
Citizens Deposit Bank & Trust Company - Vanceburg
Franklin Bank & Trust Company - Franklin
Peoples Bank & Trust Company of Hazard - Hazard
Farmers Bank & Trust Company - Georgetown
First Southern National Bank Lincoln County - Hustonville
American Fidelity Bank & Trust Company -Corbin
Casey County Bank - Liberty

Louisiana
Gulf Coast Bank - Abbeville
Peoples State Bank - Many
Sabine State Bank & Trust Company - Many
Central Progressive Bank - Amite
Evangeline Bank & Trust Company - Ville Platte
Delta Bank & Trust Company - Belle Chasse
American Security Bank - Ville Platte
Ville Platte First Republic Bank - Rayville

Maine
United Bank - Bangor
Katahdin Trust Company - Patten
Union Trust Company - Ellsworth
First Citizens Bank - Presque Isle
Border Trust Company - Jackman
Camden National Bank - Camden
Maine Bank & Trust Company - Portland
Bar Harbor Banking & Trust Company - Ellsworth

Maryland
Commercial & Farmers Bank - Ellicott City
Bank of Glen Burnie - Glen Burnie
Home Bank - Newark
Maryland Permanent Bank & Trust Company - Owings Mills
Bank of Maryland - Towson
Bank of Eastern Shore - Cambridge
Annapolis National Bank - Annapolis
Calvert Bank & Trust Company Prince - Frederick

Massachusetts
Enterprise Bank & Trust Company - Lowell
Bank of Western Massachusetts - Springfield
Cape Cod Bank & Trust Company - Hyannis
Luzo Community Bank - New Bedford
Milford National Bank & Trust Company - Milford
Beverly National Bank - Beverly Park
West Bank & Trust Company - West Springfield
Millbury National Bank - Millbury

Michigan
MFC First National Bank - Escanaba
1st Bank West Branch - Ionia County
National Bank of Ionia - Ionia
CB North Charlevoix - Madison
National Bank - Madison Heights
MFC First National Bank - Iron River
MFC First National Bank - Menominee
State Bank of Escanaba - Escanaba

Minnesota
First National Bank of Pipestone - Pipestone
Community First National Bank - Little Falls
Community First National Bank - Fergus Falls
Perham State Bank - Perham
Security Bank Northwest - Saint Michael
First Integrity Bank - Staples
Princeton Bank - Princeton
First National Bank of Walker - Walker

Mississippi
Union Planters Bank of Mississippi - Grenada
BankPLUS - Belzoni

First Bank - McComb
Merchants & Manufacturers Bank - Ellisville
Bank of Holly Springs - Holly Springs
First State Bank - Waynesboro
Peoples Bank & Trust Company - Tupelo
Peoples Bank of Mississippi - Indianola

Missouri
Allegiant Bank - Saint Louis
Capital Bank of Sikeston - Sikeston
Citizens National Bank Springfield - Springfield
First Midwest Bank - Poplar Bluff
Mercantile Bank of Poplar Bluff - Poplar Bluff
Peoples Bank & Trust Company of Lincoln County - Troy
Rockwood Bank - Eureka
Centennial Bank - Breckenridge Hills

Montana
Mountain West Bank of Helena - Helena
Mountain Bank - Whitefish
Rocky Mountain Bank - Billings
Bitterroot Valley Bank - Lolo
First Citizens Bank NA - Columbia Falls
First State Bank of Montana - Thompson Falls
State Bank & Trust Company - Dillon
BankWest NA - Kalispell

Nebraska
City State Bank - Sutton
Gering State Bank & Trust Company - Gering
Hershey State Bank - Hershey
American National Bank of Fremont - Fremont
Dakota County State Bank - South Sioux
City First Central Bank - Cambridge
Adams Bank & Trust Company - Ogallala
Beatrice National Bank & Trust Company - Beatrice

Nevada
Sierra Bank of Nevada - Reno
Laughlin National Bank - Laughlin
First Security Bank of Nevada - Las Vegas
US Bank of Nevada - Reno
Sun State Bank - Las Vegas
First National Bank - Elko
Commercial Bank of Nevada - Las Vegas
Great Basin Bank - Elko

New Hampshire
Centerpoint Bank - Bedford
First Colebrook Bank - Colebrook
Pemigewasset National Bank of Plymouth - Plymouth
Connecticut River Bank - Charlestown
Old Port Bank & Trust Company - Portsmouth
Village Bank & Trust Company - Gilford
Granite Bank - Keene
First National Bank of Portsmouth - Portsmouth

New Jersey
Burlington County Bank - Burlington
Minotola National Bank - Vineland
Continental Bank of New Jersey - Laurel Springs
Community National Bank of New Jersey - Westmont
Tinton Falls State Bank - Tinton Falls
Bank of Gloucester County - Deptford Township
Bergen Commercial Bank - Paramus
Farmers & Merchants National Bank - Bridgeton

New Mexico
Valley National Bank - Espanola
First National Bank - Tucumcari
Sunwest Bank of Santa Fe - Santa Fe
Bank of the Southwest - Roswell
Centinel Bank of Taos - Taos
First National Bank - Alamogordo
Valley Bank of Commerce - Roswell
Western Bank Artesia - Artesia

New York
Solvay Bank - Solvay
Continental Bank - Garden City
Wyoming County Bank - Warsaw
Great Eastern Bank - Flushing
Champlain National Bank - Elizabethtown
Ellenville National Bank - Ellenville
First National Bank - Cortland
Adirondack Trust Company - Saratoga Springs

North Carolina
Triangle Bank - Raleigh
First Commercial Bank - Asheville
Yadkin Valley Bank & Trust Company - Elkin
First Citizens Bank & Trust Company - Raleigh
Bank of Granite - Granite Falls
Bank of Currituck - Moyock
Bank of Stanly - Albemarle
Four Oaks Bank & Trust Company - Four Oaks

North Dakota
Farmers & Merchants Bank of Valley City - Valley City
First Western Bank & Trust Company - Minot
National Bank of Harvey - Harvey
Stutsman County State Bank - Jamestown
Kirkwood Bank & Trust Company - Bismarck
First Southwest Bank Bismarck - Bismarck
American State Bank & Trust Company of Williston - Williston Community First National Bank & Trust Company - Dickinson

Ohio
Citizens Banking Company - Salineville
National Bank & Trust Company - Wilmington
First Bank of Marietta - Marietta
Sutton State Bank - Attica
Peoples Banking Company - Findlay
Citizens National Bank of Norwalk - Norwalk
First National Bank of Shelby - Shelby
Henry County Bank - Napoleon

Oklahoma
Citizens Bank of Tulsa - Tulsa
First Bank of Hennessey - Hennessey
Peoples National Bank of Kingfisher - Kingfisher
American State Bank - Broken Bow
Bank of Western Oklahoma - Elk City
Bank Southern Oklahoma NA - Madill
Durant Bank & Trust Company - Durant
Arkansas Valley State Bank - Broken Arrow

Oregon
Bank of Astoria - Astoria
Columbia River Banking Company - The Dalles
Commercial Bank - Salem
Inland Empire Bank - Hermiston
Douglas National Bank - Roseburg
Security Bank - Coos Bay
Bank of Wallowa County - Joseph
Valley Commercial Bank - Forest Grove

Pennsylvania
Community Bank NA - Millersburg
First National Bank of Berwick - Berwick
Jersey Shore State Bank - Jersey Shore
First Columbia Bank & Trust Company - Bloomsburg
Community Bank & Trust Company - Forest City
First National Bank of Leesport - Leesport
Old Forge Bank - Old Forge
Williamsport National Bank - Williamsport

Rhode Island
Washington Trust Company - Westerly
First Bank & Trust Company - Providence
PierBank - Narragansett
Citizens Trust Company - Providence
Fleet National Bank - Providence
Domestic L&IC - Cranston
Rhode Island Hospital Trust National Bank - Providence
Bay L&IB East - Greenwich

South Carolina
Lexington State Bank - Lexington
Enterprise Bank of South Carolina - Ehrhardt
Bank of Walterboro - Walterboro

247
<table>
<thead>
<tr>
<th>State</th>
<th>Bank Name</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>MS</td>
<td>BAILEY &amp; SON BANK - CLINTON</td>
<td>Clinton</td>
</tr>
<tr>
<td></td>
<td>ANDERSON BROTHERS BANK - MULLINS</td>
<td>Mullins</td>
</tr>
<tr>
<td></td>
<td>BANK OF YORK - YORK</td>
<td>York</td>
</tr>
<tr>
<td></td>
<td>BANK OF SOUTH CAROLINA - CHARLESTON</td>
<td>Charleston</td>
</tr>
<tr>
<td></td>
<td>CAROLINA SOUTHERN BANK - SPARTANBURG</td>
<td>Spartanburg</td>
</tr>
<tr>
<td><strong>South Dakota</strong></td>
<td></td>
<td>Pierre</td>
</tr>
<tr>
<td></td>
<td>BANKWEST - PIERRE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CORTRUST BANK - MITCHELL</td>
<td></td>
</tr>
<tr>
<td></td>
<td>AMERICAN STATE BANK OF RAPID CITY - RAPID CITY</td>
<td></td>
</tr>
<tr>
<td></td>
<td>FIRST WESTERN BANK STURGIS - STURGIS</td>
<td></td>
</tr>
<tr>
<td></td>
<td>FIRST NATIONAL BANK IN GARRETSON - GARRETSON</td>
<td></td>
</tr>
<tr>
<td></td>
<td>FIRST FIDELITY BANK - BURKE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>FIRST NATIONAL BANK IN SIoux Falls - SIoux Falls</td>
<td></td>
</tr>
<tr>
<td></td>
<td>COMMUNITY FIRST STATE BANK - VERMILLION</td>
<td></td>
</tr>
<tr>
<td><strong>Tennessee</strong></td>
<td></td>
<td>Clarksville</td>
</tr>
<tr>
<td></td>
<td>FARMERS &amp; MERCHANTS BANK - CLARKSVILLE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>FIRST BANK - LEXINGTON</td>
<td></td>
</tr>
<tr>
<td></td>
<td>LINCOLN COUNTY BANK - FAYETTEVILLE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>AMERICAN CITY BANK - TULLAHOMA</td>
<td></td>
</tr>
<tr>
<td></td>
<td>BARRETVILLE BANK &amp; TRUST COMPANY - BARRETVILLE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>BANK OF GOODLETTSVILLE - GOODLETTSVILLE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CITIZENS NATIONAL BANK - ATHENS</td>
<td></td>
</tr>
<tr>
<td></td>
<td>FARMERS BANK - PORTLAND</td>
<td></td>
</tr>
<tr>
<td><strong>Texas</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>CITIZEN STATE BANK - CORPUS CHRISTI</td>
<td></td>
</tr>
<tr>
<td></td>
<td>FIRST COMMERCIAL BANK NA - SEGuin</td>
<td></td>
</tr>
<tr>
<td></td>
<td>FIRST NATIONAL BANK - HUGHES SPRINGS</td>
<td></td>
</tr>
<tr>
<td></td>
<td>GUARANTY BANK - MOUNT PLEASANT</td>
<td></td>
</tr>
<tr>
<td></td>
<td>MIDLAND AMERICA BANK - MIDLAND</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SURETY BANK NA - LUFKIN</td>
<td></td>
</tr>
<tr>
<td></td>
<td>FIRST BANK OF CONROE NA - CONROE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>FIRST NATIONAL BANK - NEWTON</td>
<td></td>
</tr>
<tr>
<td><strong>Utah</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>MOUNTAINWEST FINANCIAL - SANDY</td>
<td></td>
</tr>
<tr>
<td></td>
<td>ADVANTA FINANCIAL CORPORATION - MURRAY</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CACHE VALLEY BANK - LOGAN</td>
<td></td>
</tr>
<tr>
<td></td>
<td>BONNEVILLE BANK - PROVO</td>
<td></td>
</tr>
<tr>
<td></td>
<td>FAR WEST BANK - PROVO</td>
<td></td>
</tr>
<tr>
<td></td>
<td>FIRST COMMERCE BANK - LOGAN</td>
<td></td>
</tr>
<tr>
<td></td>
<td>GREAT WESTERN TRUST &amp; LOAN ASSOCIATION - SALT</td>
<td></td>
</tr>
<tr>
<td></td>
<td>LAKE CITY</td>
<td></td>
</tr>
<tr>
<td></td>
<td>WESTERN COMMUNITY BANK - OREM</td>
<td></td>
</tr>
<tr>
<td><strong>Vermont</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>UNION BANK - MORRISVILLE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CITIZENS SAVINGS BANK &amp; TRUST COMPANY - SAINT JOHNSBURY</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CHITTENDEN TRUST COMPANY - BURLINGTON</td>
<td></td>
</tr>
<tr>
<td></td>
<td>RANDOLPH NATIONAL BANK - RANDOLPH</td>
<td></td>
</tr>
<tr>
<td></td>
<td>FIRST VERMONT BANK &amp; TRUST COMPANY - BRATTLEBORO</td>
<td></td>
</tr>
<tr>
<td></td>
<td>NATIONAL BANK OF MIDDLEBURY - MIDDLEBURY</td>
<td></td>
</tr>
<tr>
<td></td>
<td>PEOPLES TRUST COMPANY OF ST. ALBANS - SAINT ALBANS</td>
<td></td>
</tr>
</tbody>
</table>

**Virginia**

<table>
<thead>
<tr>
<th>Bank Name</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benchmark Community Bank</td>
<td>Kenbridge</td>
</tr>
<tr>
<td>First Bank &amp; Trust Company</td>
<td>Lebanon</td>
</tr>
<tr>
<td>Highlands Union Bank</td>
<td>Abingdon</td>
</tr>
<tr>
<td>Chesapeake Bank</td>
<td>Kilmarnock</td>
</tr>
<tr>
<td>Powell Valley National Bank</td>
<td>Jonesville</td>
</tr>
<tr>
<td>Salem Bank &amp; Trust Company NA</td>
<td>Salem</td>
</tr>
<tr>
<td>Virginia Community Bank</td>
<td>Louisa</td>
</tr>
<tr>
<td>Bank of Botetourt</td>
<td>Buchanan</td>
</tr>
</tbody>
</table>

**Washington**

<table>
<thead>
<tr>
<th>Bank Name</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank of the West - Walla Walla</td>
<td>Walla Walla</td>
</tr>
<tr>
<td>Bank of Pullman</td>
<td>Pullman</td>
</tr>
<tr>
<td>Towne Bank - Woodinville</td>
<td></td>
</tr>
<tr>
<td>National Bank of Tukwila</td>
<td>Tukwila</td>
</tr>
<tr>
<td>North Sound Bank</td>
<td>Poulsbo</td>
</tr>
<tr>
<td>Bank of Fife - Fife</td>
<td></td>
</tr>
<tr>
<td>Pend Oreille Bank</td>
<td>Newport</td>
</tr>
<tr>
<td>First National Bank - Port Orchard</td>
<td></td>
</tr>
</tbody>
</table>

**West Virginia**

<table>
<thead>
<tr>
<th>Bank Name</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank of Raleigh - Beckley</td>
<td>Beckley</td>
</tr>
<tr>
<td>Traders Bank Banking Corporation - Spencer</td>
<td></td>
</tr>
<tr>
<td>Bank of White Sulphur Spring - White Sulphur</td>
<td></td>
</tr>
<tr>
<td>Spring</td>
<td></td>
</tr>
<tr>
<td>Calhoun County Bank</td>
<td>Grantsville</td>
</tr>
<tr>
<td>Citizens National Bank of Elkins - Elkins</td>
<td></td>
</tr>
<tr>
<td>Merchants National Bank of Montgomery -</td>
<td></td>
</tr>
<tr>
<td>Montgomery</td>
<td></td>
</tr>
<tr>
<td>Bank of Gassaway - Gassaway</td>
<td></td>
</tr>
<tr>
<td>Bank of Romney - Romney</td>
<td></td>
</tr>
</tbody>
</table>

**Wisconsin**

<table>
<thead>
<tr>
<th>Bank Name</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>First National Bank - Waupaca</td>
<td></td>
</tr>
<tr>
<td>Stephenson National Bank &amp; Trust Company -</td>
<td></td>
</tr>
<tr>
<td>Marinette</td>
<td></td>
</tr>
<tr>
<td>Citizens Bank NA - Shawano</td>
<td></td>
</tr>
<tr>
<td>F&amp;M Bank - Kaukauna</td>
<td></td>
</tr>
<tr>
<td>First National Bank Fox Valley - Menasha</td>
<td></td>
</tr>
<tr>
<td>M&amp;I National Bank of Ashland - Ashland</td>
<td></td>
</tr>
<tr>
<td>F&amp;M Bank Winnebago County - Omro</td>
<td></td>
</tr>
<tr>
<td>First National Bank Hartford - Hartford</td>
<td></td>
</tr>
</tbody>
</table>

**Wyoming**

<table>
<thead>
<tr>
<th>Bank Name</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Intrst Bank of Commerce - Sheridan</td>
<td></td>
</tr>
<tr>
<td>Riverton State Bank - Riverton</td>
<td></td>
</tr>
<tr>
<td>First National Bank of Buffalo - Buffalo</td>
<td></td>
</tr>
<tr>
<td>Equality State Bank - Cheyenne</td>
<td></td>
</tr>
<tr>
<td>Western Bank - Cheyenne</td>
<td></td>
</tr>
<tr>
<td>Cheyenne First Security Bank of Wyoming - Rock</td>
<td></td>
</tr>
<tr>
<td>Springs</td>
<td></td>
</tr>
<tr>
<td>Western Bank of Cody - Cody</td>
<td></td>
</tr>
<tr>
<td>Stockgrowers State Bank - Worland</td>
<td></td>
</tr>
</tbody>
</table>
Appendix I
Small Business Investment Company Listing

The Small Business Investment Company (SBIC) Program is a mixture of the private sector and the public. SBICs are privately managed and funded by private sources of money (i.e., no tax money), but they are regulated by the SBA. (Note: within the SBIC universe are Minority Enterprise Small Business Investment Companies which are supposed to assist small, minority owned businesses.) The SBIC managers make all the decisions about which businesses receive financing from the SBIC, the role of the SBA is to monitor the SBIC to insure that the SBIC conducts its affairs according to the regulations set up by the SBA.

Currently, there are less than 280 SBIC funds managing about $4.8 billion in assets for investment in start-up companies. This is 12% of the available venture capital in the country.

SBICs provide numerous services to small businesses. From Management assistance to long-term loans, debt securities and equity financing, the SBIC is a valuable resource for small businesses that qualify. Loans from an SBIC to a small business may be secured and must be at least five years in duration before maturity (usually). The maximum allowable loan term is for twenty years. SBICs may group together to provide financing, thus spreading the risk of default, or they may combine with other, non-SBIC lenders such as banks or private investors.

To qualify for help with equity capital and long-term dent financing, a small business cannot have over $6,000,000 in sales more than and cannot have a net worth over $18,000,000. (If you had those kind of numbers, who needs help, right?) There are exceptions to this for certain industries, but we won't be getting into each of those.

There are three types of SBICs. Regular SBICs serve small businesses in a wide variety of areas and industries, and there is no specific size or social considerations to the SBIC's decision to help a business. Generally serving medium to small businesses, the Regular SBICs can help businesses obtain financing through equity financing or subordinated debt. SBIC may not control the companies they invest in, and they are restricted in the types of securities they can own.

Operating under the same types of rules, Specialized SBICs are directed towards helping persons who are socially or economically disadvantaged. (Please do not send us angry e-mails about how Affirmative Action is wrong. We are describing programs available to small businesses, and we are not advocating nor condemning such programs. This is a business page, not a political one.) These operate in much the same way as the Regular SBICs, except that the Specialized SBICs obviously serve a more narrow market and require the small business to possess some addition qualities.

Venture Capital SBICs generally provide only equity financing to medium to larg(ish) businesses which possess significant growth potential.

Alabama
Alabama Capital Corporation
David C. DeLaney, President
16 Midtown Park East Mobile, AL 36606
ph: (334)476-0700
FAX: (334)476-0026

© e-Business Press, L.L.C. Entrepreneur's Crash Course
Preferred Investment Size: $500,000
Investment Policy: Asset-based Loans w/ Equity
Investment Type: All Stages
Industry Preference: Diversified
Geographic Preference: Southwestern Alabama

FJC Growth Capital Corp
William B. Noojin, Manager
200 Westside Square, Suite 340
Huntsville, AL 35801
ph: (256)922-2918
FAX: (256)922-2909
Preferred Investment Size: $350,000 to $500,000
Investment Policy: Loans with Equity Features
Investment Type: Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: South, SE, Mid-West

First SBIC of Alabama
David C. DeLaney, President
16 Midtown Park East Mobile, AL 36606
ph: (334)476-0700
FAX: (334)476-0026
Preferred Investment Size: $500,000
Investment Policy: Asset-based Loans w/ Equity
Investment Type: All Stages
Industry Preference: Diversified
Geographic Preference: Southwestern Alabama

Alabama
Hickory Venture Capital
J. Thomas Noojin, President
301 Washington Street, NW Suite
100 Huntsville, AL 35801
ph: (256)539-1931
FAX: (256)539-5130
Preferred Investment Size: $1 to $2 Million
Investment Policy: Equity, Convertible Debt
Investment Type: Early Stage, Expansion, LBO, MBO
Industry Preference: Healthcare, Security and Crime Prevention Retail
Geographic Preference: Mid-Atlantic South, SW

TD Javelin Capital Fund
Lyle Hohnke & Joan Neuschaler, Partners
2850 Cahaba Road, Suite 240
Birmingham, AL 35223
ph: (205)870-4811
FAX: (205)870-4822
Preferred Investment Size: $250,000 to $500,000
Investment Policy: Equity
Investment Type: Seed, StartUp Early Stage Expansion

Industry Preference: Health Care, Biomedical, Communications, Agriculture
Geographic Preference: Southeastern

Arkansas
Small Business Investment Capital, Inc.
Jerry W. Davis, President
12103 Interstate 30
Mail: P.O. Box 3627
Little Rock, AR 72203
ph: (501)455-6599
FAX: (501)455-6556
Preferred Investment Size: Up to $230,000
Investment Policy: Loans
Investment Type: Start-Ups & Debt Consolidation
Industry Preference: Supermarkets
Geographic Preference: AR, OK, TX, LA

Arizona
Sundance Venture Partners
Gregory Anderson & Brian Burns, Mgrs.
5030 E. Sunrise Drive, Suite 200
Phoenix, AZ 85004
ph: (602)252-3441
FAX: (602)252-1450
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:
Industry Preference: Diversified
Geographic Preference: Los Angeles

Ally Finance Corp.
Eric Steinmann, CEO
14011 Park Ave, Suite 310
Victorville, CA 92392
ph: (760)241-7025
FAX: (760)241-8232
Preferred Investment Size: $500,000
Investment Policy: Loans and/or Equity
Investment Type: All Stages
Geographic Preference: National

Asian American Capital
Jennie Chien, Manager
1251 West Tennyson Road Suite #4
Hayward, CA 94544
ph: (510)887-6888
FAX: (510)887-6897
Preferred Investment Size: $50,000 to $100,000
Investment Policy: Secured Loans
Investment Type: Expansion
Industry Preference: Diversified
Geographic Preference: Regional

Aspen Ventures West II
Alexander Cilento & David Crocket, Mgrs.
1000 Fremont Avenue, Suite V
Los Altos, CA 94024
ph: (650)917-5670
FAX: (650)917-5677
Preferred Investment Size: $500,000 to $3 MM
Investment Policy: Equity
Investment Type: Seed, Early Stage
Industry Preference: Information Technology
Geographic Preference: Western U.S.

Astar Capital Corp.
George Hsu, President
9537 E. Gidlely Street Temple City, CA 91780
ph: (626)350-1211
FAX: (626)443-5874
Preferred Investment Size: 
Investment Policy: 
Investment Type: 
Industry Preference: 
Geographic Preference:

California BT Capital Partners, Inc.
(Main Office: New York, NY)
300 South Grand Avenue Los Angeles, CA 90071

ph:
Preferred Investment Size: $5 to $25 Million
Investment Policy: Equity Investments
Investment Type: Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference:

National BankAmerica Ventures
Carla Perumean, Senior Vice President
950 Tower Lane, Suite 700
Foster City, CA 94404
ph: (415)378-6000
FAX: (415)378-6040
Preferred Investment Size: Up to $5 Million
Investment Policy: Equity
Investment Type: Early Stage, Expansion, Later Stage
Industry Preference: Medical Related
Biotechnology, Communications, Electr
Geographic Preference:

California Bay Partners SBIC, L.P
John Freidenrich & Neal Dempsey, Mgrs.
10600 North De Anza Blvd. Suite 100
Cupertino, CA 95014
ph: (408)725-2444
FAX: (408)446-4502
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Bentley Capital
John Hung, President
592 Vallejo Street, Suite #2
San Francisco, CA 94133
ph: (415)362-2868
FAX: (415)398-8209
Preferred Investment Size: $200,000
Investment Policy: Loans and/or Equity
Investment Type: Early Stage
<table>
<thead>
<tr>
<th>Company Name</th>
<th>Contact Person</th>
<th>Address</th>
<th>Ph. Number</th>
<th>Fax Number</th>
<th>Investment Policy</th>
<th>Investment Type</th>
<th>Industry Preference</th>
<th>Geographic Preference</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Best Finance Corporation</td>
<td>Yong Ho Park, General Manager</td>
<td>3540 Wilshire Blvd., Suite 804, Los Angeles, CA 90010</td>
<td>(213)385-7030</td>
<td>(213)385-7130</td>
<td>Loans and/or Equity</td>
<td>Purchase, Seed, Expansion</td>
<td>Diversified</td>
<td>West Best</td>
</tr>
<tr>
<td>Calsafe Capital Corp.</td>
<td>Ming-Min Su, President, Director &amp; Mgr.</td>
<td>245 East Main Street, Suite 107, Alhambra, CA 91801</td>
<td>(626)289-3400</td>
<td>(626)300-8025</td>
<td>Loans and Equity Investments</td>
<td>Expansion, Later Stage</td>
<td>Diversified</td>
<td>California</td>
</tr>
<tr>
<td>Canaan SBIC, L.P.</td>
<td>Eric Young, Manager 2884</td>
<td>Menlo Park, CA 94025</td>
<td>(415)854-8082</td>
<td>(415)854-8127</td>
<td>Equity</td>
<td>Early Stage, Expansion, Later Stage</td>
<td>Diversified</td>
<td>National</td>
</tr>
<tr>
<td>Capstone Ventures SBIC</td>
<td>Barbara Santry &amp; Gene Fischer, Managers</td>
<td>3000 Sand Hill Road Building 1, Suite 290, Menlo Park, CA 94025</td>
<td>(650)854-2523</td>
<td>(650)854-9010</td>
<td>Equity</td>
<td></td>
<td>Diversified</td>
<td>National</td>
</tr>
<tr>
<td>Charterway Investment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Edmund C. Lau, Chairman</td>
<td></td>
<td>9660 Flair Dr., Suite 328, El Monte, CA 91731</td>
<td>(626)279-1189</td>
<td>(626)279-9062</td>
<td>Loans</td>
<td>Expansion</td>
<td>Retail/ Wholesale</td>
<td>Los Angeles County</td>
</tr>
<tr>
<td>Timothy C. Draper, President</td>
<td></td>
<td>400 Seaport Court, Suite 250, Redwood City, CA 94063</td>
<td>(650)599-4050</td>
<td>(650)599-4060</td>
<td></td>
<td></td>
<td>Diversified</td>
<td></td>
</tr>
<tr>
<td>William Draper III, President</td>
<td></td>
<td>50 California Street, Suite 2925, San Francisco, CA 94111</td>
<td>(415)616-4050</td>
<td>(415)616-4060</td>
<td></td>
<td></td>
<td>Diversified</td>
<td></td>
</tr>
<tr>
<td>Tom Wang, Manager</td>
<td></td>
<td>977 N. Broadway, Suite 401, Los Angeles, CA 90012</td>
<td>(213)687-1361</td>
<td>(213)626-7497</td>
<td></td>
<td></td>
<td>Diversified</td>
<td></td>
</tr>
</tbody>
</table>
Investment Policy: Loans and/or Equity
Investment Type: Expansion
Industry Preference: Diversified
Geographic Preference: California

First American Capital
Chuoc Vota, President
10840 Warner Avenue, Suite 202
Fountain Valley, CA 92708
ph: (714)965-7190
FAX: (714)965-7193
Preferred Investment Size: $50,000
Investment Policy: Loans
Investment Type: Early Stage, Expansion, Later Stage
Industry Preference: Medical/Health
Geographic Preference:

Fourteen Hill Capital,
Bradley Rotter & Alan Perper, Managers
1700 Montgomery Street, Suite 250
San Francisco, CA 94111
ph: (415)394-9469
FAX: (415)394-9471
Preferred Investment Size: $500,000
Investment Policy: Sub. Debentures & Equity
Investment Type: Expansion, Acquisition $1M in sales
Geographic Preference: West Coast, prefer CA

Hall, Morris & Drufva
Ronald J. Hall, Managing Director
26161 La Paz Road, Suite E
Mission Viejo, CA 92691
ph: (714)707-5096
FAX: (714)707-5121
Preferred Investment Size: FULLY INVESTED
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Imperial Ventures, Inc
Christian Hobbs, Vice President
9920 South La Cienega Blvd.
Mail: P.O. Box 92991 L.A. 90009-2991
Inglewood, CA 90009
ph: (310)417-5409
FAX: (310)417-5781
Preferred Investment Size: Under $1 Million
Investment Policy: Debt or Equity
Investment Type: Expansion, Acquisition
Industry Preference: Healthcare Technology, Financial Serv
Geographic Preference: California

Kline Hawkes California
Frank R. Kline, Manager
11726 San Vicente Blvd.
Suite 300 Los Angeles, CA 90049
ph: (310)442-4700
FAX: (310)442-4707
Preferred Investment Size: $3 to $7 Million
Investment Policy: Equity
Investment Type: Expansion Capital MBO
Industry Preference: InfoTechnology Medical Serv.
Defense spin-out Enviro
Geographic Preference: California

LaiLai Capital Corp.
Danny Ku, President
223 E. Garvey Avenue, Suite 228
Monterey Park, CA 91754
ph: (626)288-0704
FAX: (626)288-4101
Preferred Investment Size: $150,000
Investment Policy: Loans and Equity
Investment Type: Seed, Early Stage, Expansion
Industry Preference: Diversified
Geographic Preference:

Magna Pacific Investment
David Wong, President
330 North Brand Boulevard, Suite
670 Glendale, CA 91203
ph: (818)547-0809
FAX: (818)547-9303
Preferred Investment Size: $50,000 to $300,000
Investment Policy: Loan and/or Equity
Investment Type: All Stages
Industry Preference: Hi-Tech, Medical/Health
Defense Contractors
Geographic Preference:
National Marwit Capital Company  
Matthew Witte, President  
180 Newport Center Drive Suite 200  
Newport Beach, CA 92660  
ph: (949)640-6234  
FAX: (949)720-8077  
Preferred Investment Size: $500,000 to $2 MM  
Investment Policy: Subordinated Debt w/ Equity  
Investment Type: Expansion, Acquisitions Buyouts  
Industry Preference: Diversified  
Geographic Preference: Western U.S.  

New Vista Capital Fund  
Roger Barry & Frank Greene, Managers  
540 Cowper St, Suite 200  
Palo Alto, CA 94301  
ph: (650)329-9333  
FAX: (650)328-9434  
Preferred Investment Size:  
Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:  

Novus Ventures, L.P.  
Daniel D. Tompkins, Manager  
20111 Stevens Creek Boulevard Suite 130  
Cupertino, CA 95014  
ph: (408)252-3900  
FAX: (408)252-1713  
Preferred Investment Size: $400,000 to $1 MM  
Investment Policy: Convertible Debt Convert. Stock  
Investment Type: Early Stage, Expansion  
Industry Preference: Information Technology  
Geographic Preference: Western U.S.  

Opportunity Capital Co  
J. Peter Thompson, President  
2201 Walnut Avenue, Suite 210  
Fremont, CA 94538  
ph: (510)795-7000  
FAX: (510)494-5439  
Preferred Investment Size: $300,000  
Investment Policy: Debt with Warrants, Equity  
Investment Type: Expansion, Later Stage, Acquisitions  
Industry Preference: Manufacturing, Healthcare, Telecommunications  
Geographic Preference: West Coast, National  

Opportunity Capital Partners II, L.P.  
J. Peter Thompson, General Partner  
2201 Walnut Avenue, Suite 210  
Fremont, CA 94538  
ph: (510)795-7000  
FAX: (510)494-5439  
Preferred Investment Size: Up to $150,000  
Investment Policy: Loans, Equity  
Investment Type: Expansion, Early Stage, Later Stage  
Industry Preference: Diversified, Rest Homes, Manufacturing, High Indus.  
Geographic Preference: North, Regional  

Positive Enterprises,  
Kwok Szeto, President  
1489 Webster Street, Suite 228  
San Francisco, CA 94115  
ph: (415)885-6600  
FAX: (415)928-6363  
Preferred Investment Size: Up to $150,000  
Investment Policy: Loans, Equity  
Investment Type: Expansion, Early Stage, Later Stage  
Industry Preference: Diversified, Rest Homes, Manufacturing, High Indus.  
Geographic Preference: North, Regional  

San Joaquin Business I Group Inc  
Eugene Waller, President  
1900 Mariposa Mall, Suite 100  
Fresno, CA 93721  
ph: (209)233-3580  

Pacific Mezzanine Fund  
Nathan W. Bell, General Partner  
2200 Powell St., Suite  
1250 Emeryville, CA  
94608 ph: (510)595-9800  
FAX: (510)595-9801  
Preferred Investment Size: $2 to $5 Million  
Investment Policy: Loans with Equity Features  
Investment Type: Expansion, Later Stage, Buyouts  
Industry Preference: Diversified  
Geographic Preference: Western US  

Pinecreek Capital Partners  
Randall F. Zurbach, President  
24 Corporate Plaza, Suite 160  
Newport Beach, CA 92660  
ph: (949)720-4620  
FAX: (949)720-4629  
Preferred Investment Size: $500,000 to $3 Million  
Investment Policy: Sub Debt with Warrants  
Investment Type: Later Stage, Growth Acquisition  
Industry Preference: Diversified  
Geographic Preference: Western US  

US Positive Enterprises,  
Kwok Szeto, President  
1489 Webster Street, Suite 228  
San Francisco, CA 94115  
ph: (415)885-6600  
FAX: (415)928-6363  
Preferred Investment Size: Up to $150,000  
Investment Policy: Loans, Equity  
Investment Type: Expansion, Early Stage, Later Stage  
Industry Preference: Diversified, Rest Homes, Manufacturing, High Indus.  
Geographic Preference: North, Regional  

Opportunity Capital Partners II, L.P.  
J. Peter Thompson, General Partner  
2201 Walnut Avenue, Suite 210  
Fremont, CA 94538  
ph: (510)795-7000  
FAX: (510)494-5439  
Preferred Investment Size: $1,500,000  
Investment Policy: Debt with Warrants, Equity  
Investment Type: Expansion, Later Stage, Acquisition  
Industry Preference: Manufacturing, Healthcare, Telecommunications  
Geographic Preference: West Coast, National  

Opportunity Capital Co  
J. Peter Thompson, President  
2201 Walnut Avenue, Suite 210  
Fremont, CA 94538  
ph: (510)795-7000  
FAX: (510)494-5439  
Preferred Investment Size: $1,500,000  
Investment Policy: Debt with Warrants, Equity  
Investment Type: Expansion, Later Stage, Acquisition  
Industry Preference: Manufacturing, Healthcare, Telecommunications  
Geographic Preference: West Coast, National  

Opportunity Capital Partners II, L.P.  
J. Peter Thompson, General Partner  
2201 Walnut Avenue, Suite 210  
Fremont, CA 94538  
ph: (510)795-7000  
FAX: (510)494-5439  
Preferred Investment Size: $1,500,000  
Investment Policy: Debt with Warrants, Equity  
Investment Type: Expansion, Later Stage, Acquisition  
Industry Preference: Manufacturing, Healthcare, Telecommunications  
Geographic Preference: West Coast, National  

Opportunity Capital Partners II, L.P.  
J. Peter Thompson, General Partner  
2201 Walnut Avenue, Suite 210  
Fremont, CA 94538  
ph: (510)795-7000  
FAX: (510)494-5439  
Preferred Investment Size: $1,500,000  
Investment Policy: Debt with Warrants, Equity  
Investment Type: Expansion, Later Stage, Acquisition  
Industry Preference: Manufacturing, Healthcare, Telecommunications  
Geographic Preference: West Coast, National  

Opportunity Capital Partners II, L.P.  
J. Peter Thompson, General Partner  
2201 Walnut Avenue, Suite 210  
Fremont, CA 94538  
ph: (510)795-7000  
FAX: (510)494-5439  
Preferred Investment Size: $1,500,000  
Investment Policy: Debt with Warrants, Equity  
Investment Type: Expansion, Later Stage, Acquisition  
Industry Preference: Manufacturing, Healthcare, Telecommunications  
Geographic Preference: West Coast, National  

San Joaquin Business I Group Inc  
Eugene Waller, President  
1900 Mariposa Mall, Suite 100  
Fresno, CA 93721  
ph: (209)233-3580  

Entrepreneur's Crash Course  
© e-Business Press, L.L.C.
FAX: (209)233-3709
Preferred Investment Size: $100,000 to $300,000
Investment Policy: Loans and Equity
Investment Type: Expansion
Industry Preference: Diversified
Geographic Preference: West Coast

Selby Venture Partners
2460 Sand Hill Road Suite 200
Menlo Park, CA 94025
ph: (650)854-7399
FAX: (650)854-7039
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Sorrento Growth Partnership
Robert Jaffe, Manager
4370 La Jolla Village Drive, Suite 1040
San Diego, CA 92122
ph: (619)452-3100
FAX: (619)452-7607
Preferred Investment Size: $2 Million
Investment Policy: Loans and Equity Investments
Investment Type: Early Stage
Industry Preference: Med./Health, Special Retail
Communications/Electron
Geographic Preference: Southern California

Sundance Venture Partnership
Larry Wells, Pres & CEO of GP
100 Clocktower Place, Suite 130
Carmel, CA 93923
ph: (831)625-6500
FAX: (831)625-6590
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Tangent Growth Fund,
Alexander H. Schilling, Manager
180 Geary St., Suite
500 San Francisco, CA 94108
ph: (415)392-9228
FAX: (415)392-1928
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:

TeleSoft Partners
Arjun Gupta, Manager
1450 Fashion Island Boulevard Suite 610
San Mateo, CA 94404
ph: (650)358-2500
FAX: (650)358-2501
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference: TeleSoft

UnionBanCal Venture Co
Robert S. Clarke, President
445 South Figueroa Street
P.O. Box 3100
Los Angeles, CA 90071
ph: (213)236-4092
FAX: (213)629-5328
Preferred Investment Size: $1,000,000
Investment Policy:
Investment Type: Loans with Equity
Investment Type: Expansion
Industry Preference: Communications Cable TV
Television Radio
Geographic Preference: National

Viridian Capital, L.P.
Christine Cordaro, Contact
220 Montgomery Street Suite 946
San Francisco, CA 94104
ph: (415)391-8950
FAX: (415)391-8937
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Walden-SBIC, L.P.
Arthur S. Berliner, Manager
750 Battery Street, 7th Floor
San Francisco, CA 94111
ph: (415)391-7225
FAX: (415)391-7262
Preferred Investment Size: $3,000,000
Investment Policy: Equity
Investment Type: Seed, Early, Expansion, Later Stages
Industry Preference: Diversified
Geographic Preference: Western Region

Western General Capital
Alan Thian, President
13701 Riverside Drive, Suite 610
Sherman Oaks, CA 91423
ph: (818)907-8272
FAX: (818)905-9220
Preferred Investment Size: $100,000 to $300,000
Investment Policy: Loans Only
Investment Type: Later Stage, Expansion
Industry Preference: Diversified
Geographic Preference: Regional

Woodside Fund III SBIC
Vincent Occhipinti & Frank Mendicino
850 Woodside Drive Woodside, CA 94062
ph: (650)368-5545
FAX: (650)368-2416
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Colorado
CapEx L.P.
Jeffrey Ross, Manager
1670 Broadway, Suite 3350
Denver, CO 80202
ph: (303)869-4700
FAX: (303)869-4602
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Hanifen Imhoff Mezzani
Edward C. Brown, Manager
1125 17th Street, Suite 1820
Denver, CO 80202
ph: (303)291-5209
FAX: (303)291-5327

Rocky Mountain Mezzanine Fund II, L.P.
Edward Brown & Paul Lyons, Mgrs.
1125 17th Street, Suite 1500
Denver, CO 80202
ph: (303)291-5209
FAX: (303)291-5327
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:

Roser Partnership III, SBIC, L.P.
James Roser and Christopher Roser, Mgrs.
1105 Spruce Street Boulder, CO 80302
ph: (303)443-6436
FAX: (303)443-1885
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Connecticut
AB SBIC, Inc.
Adam J. Bozzuto, President
275 School House Road
Cheshire, CT 06410
ph: (203)272-0203
FAX: (203)250-2954
Preferred Investment Size: $200,000
Investment Policy: Loans
Investment Type: Expansion
Industry Preference: Food Stores
Geographic Preference:

North Canaan SBIC, L.P.
Gregory Kopchinsky, Manager
105 Rowayton Avenue
Rowayton, CT 06853
ph: (203)855-0400
FAX: (203)854-9117
Preferred Investment Size: $3,000,000
Investment Policy: Equity
Investment Type: Early Stage, Expansion, Later Stage
Industry Preference: Info Tech, Healthcare, Distribution
Geographic Preference: National
Capital Resource Co.
c/o Morris Morgenstein, General Partner
Two Bridgewater Road
Farmington, CT 06032
ph: (860)677-1113
FAX: (860)677-5414
Preferred Investment Size: $200,000 to $300,000
Investment Policy: Loans and Some Equity
Investment Type: Expansion, Later Stage
Industry Preference: Diversified, Security Guard Taxi cab Industry
Geographic Preference: First New England Capital
Richard C. Klaffky, President
100 Pearl Street Hartford, CT 06103
ph: (860)293-3333
FAX: (860)293-3338
Preferred Investment Size: $50,000 to $1 MM
Investment Policy: Loans/Equity
Investment Type: Expansion, Later Stage
Industry Preference: Manufacturing, Distribution
Geographic Preference: Northeast
Imprimis SB, LP
Charles Davidson, Joseph Jacobs, Mgrs.
411 West Putnam Avenue
Greenwich, CT 06830
ph: (203)862-7074
FAX: (203)862-7374
Preferred Investment Size: up to $500,000
Investment Policy: Sub Debt with Equity Features
Investment Type: Expansion Acquisition Later Stage
Industry Preference: Manufacturing Distribution
Geographic Preference: Northeast, Mid-Atlantic
RFE Capital Partners,
Robert M. Williams, Managing Partner
36 Grove Street
New Canaan, CT 06840
ph: (203)966-2800
FAX: (203)966-3109
Preferred Investment Size: $250,000 to $500,000
Investment Policy: Debts and Equity Investments

Allied Investment Corp
Kelly Anderson, Controller
1919 Pennsylvania Avenue, NW
Washington, DC 20006
ph: (202)973-6328
FAX: (202)331-2434
Preferred Investment Size: $2 to $8 Million
Investment Policy: Subordinate Debt with Equity
Investment Type: Later Stage
Industry Preference: All Industries, but Biotech
Geographic Preference: National

Broadcast Capital, Inc
John E. Oxendine, President
1700 K Street, NW Suite 405
Washington, DC 20006
ph: (202)496-9250
FAX: (202)496-9259
Preferred Investment Size: $2 to $8 Million
Investment Policy: Debts and Equity Investments

RFE Investment Partners
James A. Parsons, General Partner
36 Grove Street New Canaan, CT 06840
ph: (203)966-2800
FAX: (203)966-3109
Preferred Investment Size: $5 to $9 Million
Investment Policy: Prefer Equity Investments
Investment Type: Later Stage, Expansion, Acquisitions
Industry Preference: Manufacturing & Services
Geographic Preference: National, Eastern US

RFE VI SBIC, L.P.
James Parsons & Robert Williams, Mgrs.
36 Grove Street
New Canaan, CT 06840
ph: (203)966-2800
FAX: (203)966-3109
Preferred Investment Size: $5 to $9 Million
Investment Policy: Prefer Equity Investments
Investment Type: Later Stage, Expansion, Acquisitions
Industry Preference: Manufacturing & Services
Geographic Preference: National, Eastern US

District of Columbia
Allied Investment Corp
Kelly Anderson, Controller
1919 Pennsylvania Avenue, NW
Washington, DC 20006
ph: (202)973-6328
FAX: (202)331-2434
Preferred Investment Size: $2 to $8 Million
Investment Policy: Subordinate Debt with Equity
Investment Type: Later Stage
Industry Preference: All Industries, but Biotech
Geographic Preference: National

© e-Business Press, L.L.C.
Investment Type: Start-up, Expansion, Later Stage
Industry Preference: Broadcast and Communications Related
Geographic Preference:

National Capitol Health Partner
Debora Guthrie, Manager
2620 P Street, NW
Washington, DC 20007
ph: (202)342-6300
FAX: (202)342-6399
Preferred Investment Size:
Investment Policy:
Industry Preference:
Geographic Preference:

Multimedia Broadcast I Corporation
Walter L. Threadgill, President
3101 South Street, NW
Washington, DC 20007
ph: (202)293-1166
FAX: (202)293-1181
Preferred Investment Size: $200,000 to $500,000
Investment Policy: Debt and/or Equity
Investment Type: Early Stage, Expansion, Later Stage
Industry Preference: Telecommunications, and Broadcasting
Geographic Preference: Nationwide

Women's Growth Capital
Patty Abramson & Rob Stein, Managers
1054 31st Street, N.W.
Washington, DC 20007
ph: (202)342-1431
FAX: (202)342-1203
Preferred Investment Size:
Investment Policy:
Industry Preference:
Geographic Preference:

Delaware
Blue Rock Capital, L.P
Virginia Bonker & Paul Collison, Mgrs.
5803 Kennett Pike, Suite A
Wilmington, DE 19807
ph: (302)426-0981
FAX: (302)426-0982
Preferred Investment Size:
Investment Policy:
Industry Preference:

Florida
Capital International
Manuel Iglesias, Contact
One S.E. Third Avenue, Suite 2255
Miami, FL 33131
ph: (305)373-6500
FAX: (305)373-6700
Preferred Investment Size:
Investment Policy:
Industry Preference:
Geographic Preference:

Market Capital Corp.
Eugene C. Langford, President
1715 W. Cleveland Street
Tampa, FL 33606
ph: (813)251-6055
FAX: (813)251-1900
Preferred Investment Size: $157,000
Investment Policy: Secured Loans
Investment Type: All Stages
Industry Preference: Retail Grocery
Geographic Preference:

Florida PMC Investment Corporation
(Main Office: Dallas, TX)
AmeriFirst Bank Building, 2nd Floor S
18301 Biscayne Boulevard
N. Miami Beach, FL 33160
ph: (305)933-5858
FAX: (305)931-3054
Preferred Investment Size: $1.5 Million
Investment Policy: Secured Lender
Investment Type: All Stages including Start-ups
Industry Preference: Diversified - Specializing in Motel and Franchises
Geographic Preference: National
Western Financial Capital Corporation  
(Main Office: Dallas, TX)  
AmeriFirst Bank Building, 2nd Floor S  
18301 Biscayne Boulevard  
N. Miami Beach, FL 33160  
ph: (305)933-5858  
FAX: (305)931-3054  
Preferred Investment Size: $1.5 Million  
Investment Policy: Secure Lender  
Investment Type: All Stages including Start-ups  
Industry Preference: Diversified - Specializing in Motel & Franchise  
Geographic Preference:

**Georgia**

National Cordova Enhanced Fund,  
Paul DiBella & Ralph Wright, Managers  
2500 North Winds Parkway Suite 475  
Alpharetta, GA 30004  
ph: (678)942-0300  
FAX: (678)942-0301  
Preferred Investment Size: $1 to $3 Million  
Investment Policy: Equity and/or Debt w/ Warrants  
Investment Type: Early Stage, Expansion, Later Stage  
Industry Preference: Diversified  
Geographic Preference: Southeast

EGL/NatWest Ventures  
U Salvatore Massaro, Manager  
6600 Peachtree-Dunwoody Road  
300 Embassy Row, Suite 630  
Atlanta, GA 30328  
ph: (770)399-5633  
FAX: (770)393-4825  
Preferred Investment Size:  
Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:

First Growth Capital,  
Vijay K. Patel, President  
P.O. Box 815 I-75 & GA 42, Best Western Plaza Forsyth, GA 31029  
ph: (912)994-9260  
FAX: (912)994-1280  
Preferred Investment Size: $200,000  
Investment Policy: Mezzanine with Equity  
Investment Type: Expansion Stage  
Industry Preference: Diversified  
Geographic Preference:

National Wachovia Capital Assoc  

---  

J. Peter Peyton, President  
191 Peachtree Street, N.E. 26th Floor  
Atlanta, GA 30303  
ph: (404)332-1437  
FAX: (404)332-1455  
Preferred Investment Size: $2 to $10 Million  
Investment Policy:  
Investment Type: Early, Later Expansion  
Industry Preference: Diversified  
Geographic Preference: Sotheast

**Hawaii**

Pacific Century SBIC  
Robert Paris, President  
130 Merchant St., 12th Floor  
Honolulu, HI 96813  
ph: (808)537-8613  
FAX: (808)521-7602  
Preferred Investment Size:  
Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:

Hawaii Pacific Venture Capital  
Dexter J. Taniguchi, President  
222 South Vineyard Street PH.1  
Honolulu, HI 96813  
ph: (808)521-6502  
FAX: (808)521-6541  
Preferred Investment Size: $200,000  
Investment Policy: Loans and/or Equity  
Investment Type: Early Stage, Expansion, Later Stage  
Industry Preference: Diversified  
Geographic Preference: Regional

**Iowa**

Berthel SBIC, LLC  
Jim Thorp & Henry Madden, Mgrs.  
100 2nd Street, SE  
Cedar Rapids, IA 52407  
ph: (319)365-2506  
FAX: (319)365-9141  
Preferred Investment Size:  
Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:

MorAmerica Capital Corp.  
David R. Schroder, President  
101 2nd Street, SE Suite 800
Cedar Rapids, IA 52401  
ph: (319)363-8249  
FAX: (319)363-9683
Preferred Investment Size: $750,000 to $1.3M  
Investment Policy: Sub Debt or Pref Stock-Warrants  
Investment Type: Expansion, Later Stage, MB0/LBO Acq.  
Industry Preference: Manufacturing, Service, Retail  
Geographic Preference:

North Dakota SBIC, L.P  
David R. Schroder, Manager  
101 Second Street SE, Suite 800  
Cedar Rapids, IA 52401  
ph: (701)298-0003  
FAX: (701)293-7819
Preferred Investment Size: $300,000 to $600,000  
Investment Policy: Sub Debt or Pref Stock-Warrants  
Investment Type: Expansion, Later Stage  
Industry Preference: Diversified  
Geographic Preference:

Illinois  
North Dakota National ABN AMRO Capital (USA)  
Paul Widuch, Chairman  
135 South LaSalle Street Chicago, IL 60674  
ph: (312)904-6445  
FAX: (312)904-6376
Preferred Investment Size:  
Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:

BMO Nesbitt Burns Equity Investments, Inc.  
William C. Morro, President  
111 West Monroe Street  
20th Floor Chicago, IL 60603  
ph: (312)461-2021  
FAX: (312)765-8000
Preferred Investment Size:  
Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:

Chicago Venture Partners  
John Fife, Manager  
360 E. Randolph Street Suite 2402  
Chicago, IL 60601  
ph: (312)228-9000  
FAX: (312)819-9701
Preferred Investment Size:  
Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:

Continental Illinois V  
Christopher J. Perry, President  
209 South LaSalle Street  
Mail: 231 South LaSalle Street  
Chicago, IL 60697  
ph: (312)828-8023  
FAX: (312)987-0887
Preferred Investment Size: $5 to $25 Million  
Investment Policy: Loans and/or Equity  
Investment Type: Expansion, Later Stage  
Industry Preference: Diversified  
Geographic Preference: National

First Chicago Equity C  
David J. Vitale, President  
Three First National Plaza Suite 1330  
Chicago, IL 60670  
ph: (312)895-1000  
FAX: (312)895-1001
Preferred Investment Size: $2,000,000 and up  
Investment Policy: Equity  
Investment Type: Expansion, Later Stage, Buyouts  
Industry Preference: Diversified  
Geographic Preference: National

Heller Equity Capital  
Charles Brisman, Steven Miriani  
500 West Monroe Street Chicago, IL 60661  
ph: (312)441-7200  
FAX: (312)441-7208
Preferred Investment Size:  
Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:

Midwest Mezzanine Fund  
David Gezon & Allan Kayler, Mgrs.  
208 South LaSalle Street 10th Floor  
Chicago, IL 60604  
ph: (312)855-7140  
FAX: (312)553-6647
Preferred Investment Size:  
Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:

© e-Business Press, L.L.C.
Peterson Finance and Investment Company
James S. Rhee, President
3300 West Peterson Avenue, Suite A
Chicago, IL 60659
ph: (312)539-0502
FAX: (312)583-6714
Preferred Investment Size: $50,000 to $200,000
Investment Policy: Loans
Investment Type: Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: National

Polestar Capital, Inc.
Wallace Lennox, President
180 N. Michigan Avenue, Suite 1905
Chicago, IL 60601
ph: (312)984-9875
FAX: (312)984-9877
Preferred Investment Size: $350,000 to $700,000
Investment Policy: Primarily Equity
Investment Type: Early to Later Stages
Industry Preference: Manufacturing or Proven Technology Areas
Geographic Preference: National

Prairie Capital Mezzanine
Bryan Daniels & Stephen King, Partners
300 S. Wacker Drive Suite 1050
Chicago, IL 60606
ph: (312)360-1133
FAX: (312)360-1193
Preferred Investment Size: Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Shorebank Capital Corp
David Shrockey, CEO
7936 S. Cottage Grove Ave.
Chicago, IL 60619
ph: (773)371-7030
FAX: (773)371-7035
Preferred Investment Size: $100,000 to $500,000
Investment Policy: Equity and Loans
Investment Type: Early Stage, Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: Mid-West

Walnut Capital Corp.
Burton W. Kanter, Chairman of the Board
Two North LaSalle Street, Suite 2200
Chicago, IL 60602
ph: (312)269-1700
FAX: (312)269-1747
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Indiana
1st Source Capital Corp.
Eugene L. Cavanaugh, Jr., Vice President
100 North Michigan Street
Mail: P.O. Box 1602
46634 South Bend, IN 46601
ph: (219)235-2180
FAX: (219)235-2227
Preferred Investment Size: $300,000 to $500,000
Investment Policy: Equity, Debt with Equity
Investment Type: Later Stage, Expansion
Industry Preference: Diversified
Geographic Preference:

Midwest Cambridge Ventures, LP
Ms. Jean Wojtowicz, President
8440 Woodfield Crossing, #315
Indianapolis, IN 46240
ph: (317)469-9704
FAX: (317)469-3926
Preferred Investment Size: $100,000 to $750,000
Investment Policy: Subordinate Debt and/or Equity
Investment Type: Expansion, Acquisition
Industry Preference: Diversified, Manufacturing
Geographic Preference: Within 200 miles of IN

White River Venture
Pa Sam Sutphin & Marc DeLong, Managers
3603 East Raymond St.
Indianapolis, IN 46203
ph: (317)547-7621
FAX: (317)547-7621
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Kansas
Kansas Venture Capital
Carol Laddish, Manager
6700 Antioch Plaza, Suite 460
Overland Park, KS 66204
ph: (913)791-2935
FAX: (913)791-2935
Preferred Investment Size: $500,000 to $1.5 MM
Investment Policy: Equity
Investment Type: No Seed but All Other Stages
Industry Preference: Manufacturing
Geographic Preference: Kansas Only

Kentucky
Equal Opportunity Finance
David A. Sattich, President
420 South Hurstbourne Parkway Suite 201
Louisville, KY 40222
ph: (502)423-1943
FAX: (502)423-1945
Preferred Investment Size: $50,000 to $200,000
Investment Policy: Loans and/or Equity
Investment Type: Early Stage, Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: Kentucky

Mountain Ventures, Inc
L. Ray Moncrief, Exec. Vice President
P.O. Box 1738
362 Old Whitley Road
London, KY 40743
ph: (606)864-5175
FAX: (606)864-5194
Preferred Investment Size: $100,000 to $250,000
Investment Policy: Loan, Debt and Equity
Investment Type: Seed, Early, Expansion, Later Stages
Industry Preference: Diversified
Geographic Preference: Diversified

Louisiana
Bank One Equity Investments
Thomas J. Adamek, President
451 Florida Street
Mail: P.O. Box
1511 Baton Rouge, LA 70821
ph: (504)332-4421
FAX: (504)332-7377
Preferred Investment Size: $1 to $5 Million
Investment Policy: Equity and Subordinate Debt
Investment Type: Expansion, Later Stage, MBO/LBO/Acquisition
Industry Preference: Diversified
Geographic Preference: South, Mid-West

First Commerce Capital
William Harper, Manager
201 St. Charles Avenue, 16th Floor
Mail: P.O. Box 60279
New Orleans, LA 70170
ph: (504)623-1600

Massachusetts
Argonauts MESBIC Corporation
Kevin Chen, General Manager
929 Worcester Road Framingham, MA 01701
ph: (508)875-6939
FAX: (508)872-3741
Preferred Investment Size: $3 Million or less
Investment Policy: Equity, Debt w/ Equity
Investment Type: Seed, Early Stage, Expansion
Industry Preference: Communication, Software, Medical Technology
Geographic Preference: New England

Ascent Venture Partner
Frank Polestra, General Partner
60 State Street, 19th Floor
Boston, MA 02109
ph: (617)742-7825
FAX: (617)742-7315
Preferred Investment Size: $3 Million or less
Investment Policy: Equity, Debt w/ Equity
Investment Type: Seed, Early Stage, Expansion
Industry Preference: Communication, Software, Medical Technology
Geographic Preference: New England

BancBoston Ventures, I
Frederick M. Fritz, President
100 Federal Street, 01-32-01
Mail: P.O. Box 2016 Stop 01-32-01
Boston, MA 02106
ph: (617)434-2442
FAX: (617)434-1153
Preferred Investment Size: $1 to $20 Million
Investment Policy: Equity and Mezzanine
Investment Type: Early Stage Expansion, Later Stage
Industry Preference: Medical/Health Technology, Media/Communication Diversified
Geographic Preference:

National Caduceus Capital Health Ventures, L.P.
Bill Golden, Manager
101 Arch Street Suite 1950
Boston, MA 02110
ph: (617)330-9345
FAX: (617)330-9349
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Chestnut Street Partners
David D. Croll, President
75 State Street, Suite 2500
Boston, MA 02109
ph: (617)345-7220
FAX: (617)345-7201
Preferred Investment Size: over $2 million
Investment Policy: Equity or Debt w/Equity Feature
Investment Type: Any Stage Industry Preference: Media and Telecom.
Geographic Preference: National

Citizens Ventures, Inc
Robert Garrow & Gregory Mulligan, Mgrs.
28 State Street, 15th Floor
Boston, MA 02109
ph: (617)725-5635
FAX: (617)725-5630
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Commonwealth Enterprise
Charles G. Broming, Fund Manager
10 Post Office Square Suite 1090
Boston, MA 02109
ph: (617)482-1881
FAX: (617)482-7129
Preferred Investment Size: $200,000 to $300,000
Investment Policy: Loans and/or Equity
Investment Type: Start Up, Expansion, Buyouts
Industry Preference: Diversified

Geographic Preference: Northeast
GMN Investors II, L.P.
James J. Goodman, Manager
20 William Street
Wellesley, MA 02481
ph: (781)237-7001
FAX: (781)237-7233
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Geneva Middle Market I
James J. Goodman, Manager
20 William Street
Wellesley, MA 02481
ph: (781)237-7001
FAX: (781)237-7233
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Marathon Investment
10 Post Office Square Suite 1225
Boston, MA 02109
ph: (617)423-2494
FAX: (617)423-2719
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

New England Partners C
Robert Hanks, Prin. & Todd Fitzpatrick
One Boston Place, Suite 2100
Boston, MA 02108
ph: (617)624-8400
FAX: (617)624-8416
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Massachusetts Northeast SBI Corp.
Joseph Mindick, Treasurer
212 Tosca Drive
Stoughton, MA 02072
ph: (781)297-9235
Prefered Investment Size: $50,000 to $60,000
Investment Policy: Loans and Equity
Investment Type: Early Stage, Expansion
Industry Preference: Diversified
Geographic Preference: Regional

Zero Stage Capital V,
Paul Kelley, Manager
Kendall Square 101 Main Street, 17th Floor
Cambridge, MA 02142
ph: (617)876-5355
FAX: (617)876-1248
Prefered Investment Size: $50,000 to $500,000
Investment Policy: Early & Later Stage, Expansion
Investment Type: Equity, Debt with Equity features
Industry Preference: Biotech, Computer Hardware & Software Energy
Geographic Preference: Northeast

Zero Stage Capital VI,
Paul Kelley, Gordon Baty, Stanley Fung
101 Main Street, 17th Floor
Cambridge, MA 02142
ph: (617)876-5355
FAX: (617)876-1248

Maryland
Anthem Capital, L.P.
William M. Gust, II, Manager
16 S. Calvert Street Suite 800
Baltimore, MD 21202
ph: (410)625-1510
FAX: (410)625-1735
Prefered Investment Size: $1 Million
Investment Policy: Equity
Investment Type: Early Stage, Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: VA to DE, SE PA

MMG Ventures, L.P.
Stanley W. Tucker, Manager
826 E. Baltimore Street
Baltimore, MD 21202
ph: (410)659-7851
FAX: (410)333-2552
Prefered Investment Size: $500,000-$1,500,000
Investment Policy: Socially or Economically Disadvantaged Business
Investment Type: Early Stage, Expansion, Later Stage
Industry Preference: Health Care, Computer and Information Services
Geographic Preference: Mid-Atlantic States

Security Financial and Investment Corp.
7720 Wisconsin Avenue, Suite 207
Bethesda, MD 20814
ph: (301)951-4288
FAX: (301)951-9282
Preferred Investment Size: $150,000 limit
Investment Policy: Loans
Investment Type: Early Stage No Start Ups
Industry Preference: No Specialty
Geographic Preference: 150 miles radius

D.C. Spring Capital Partner
Jay Wilson, Contact
Two Hopkins Plaza
Baltimore, MD 21201
ph: (410)237-5823
FAX: (410)237-5213
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Syncom Capital Corp.
Terry L. Jones, President
8401 Colesville Road, #300
Silver Spring, MD 20910
ph: (301)608-3207
FAX: (301)608-3307
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Maine
North Atlantic Venture
David M. Coit, Manager
70 Center Street
Portland, ME 04101
ph: (207)772-1001
FAX: (207)772-3257
Preferred Investment Size: $1 to $2 Million
Investment Policy: Sub. Debt with Equity Features
Investment Type: Buy-outs, Expansion Financing
Industry Preference: Diversified
Geographic Preference:

Michigan
New England Capital Fund, Inc.
Craig Woodman, President
6412 Centurion Drive Suite 150
Lansing, MI 48917
ph: (517)323-7772
FAX: (517)323-1999
Preferred Investment Size: $200,000 to $500,000
Investment Policy: Loans
Investment Type: Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference:

Michigan Dearborn Capital Corp.
Michael J. Kehres, President
c/o Ford Motor Credit Corporation
The American Road Dearborn, MI 48121
ph: (313)337-8577
FAX: (313)248-1252
Preferred Investment Size: $250,000 to $1 MM
Investment Policy: Loans
Investment Type: Expansion, Later Stage LBO, Acquisition
Industry Preference: Automotive
Geographic Preference: National

InvestCare Partners
L. Malcolm Moss, Manager
31500 Northwest Highway Suite 120
Farmington Hills, MI 48334
ph: (248)851-9200
FAX: (248)851-9208
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Merchants Capital Partners
Pat Beach, Dick Goff, Ross Martin, Mgrs.
24 Frank Lloyd Wright Drive Lobby L, 4th Floor
Ann Arbor, MI 48106
ph: (734)994-5505
FAX: (734)994-1376
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Motor Enterprises, Inc
Mark Fischer, Vice President & Treasurer
NAO Headquarters Bldg. 1-8, Worldwide Pu
30400 Mound Road, Box 9015
Warren, MI 48090
ph: (810)986-8420
FAX: (810)986-6703
Preferred Investment Size: $100,000 to $500,000
Investment Policy: Loans
Investment Type: Early Stage, Expansion, Later Stage
Industry Preference: Suppliers to General Motors
Geographic Preference:

Pacific Capital, L.P.
Lois F. Marler, Vice President
2401 Plymouth Road, Suite B
Ann Arbor, MI 48105
ph: (734)747-9401
FAX: (734)747-9704
Preferred Investment Size: $2,500,000
Investment Policy: Companies with Plus Cash Flow
Investment Type: Mezzanine with Equity
Industry Preference: Health Care, Education Services
Geographic Preference: National

White Pines Limited
Mr. Ian Bund, President
2401 Plymouth Road, Suite B
Ann Arbor, MI 48105
ph: (734)747-9401
FAX: (734)747-9704
Preferred Investment Size: $350,000 to $1 MM
Investment Policy: Conv Pref Stock, Debt w/ Equity
Investment Type: Expansion
Industry Preference: Manufacturing (Niche or Speciality Mkts) Value Added
Geographic Preference: Midwest, Southeast

Minnesota
Agio Capital Partners
Kenneth F. Gudorf, President & CEO
First Bank Place, Suite 4600
601 Second Avenue
South Minneapolis, MN 55402
ph: (612)339-8408
FAX: (612)339-4232
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Bayview Capital Partners
Cary Musech, Manager
641 East Lake Street, Suite 230
Wayzata, MN 55391
ph: (612)475-4935
FAX: (612)476-7820
Preferred Investment Size:

Medallion Capital, Inc
Tom Hunt, President
7831 Glenroy Road, Suite 480
Minneapolis, MN 55439
ph: (612)831-2025
FAX: (612)831-2945
Preferred Investment Size: $200,000 to $2 MM
Investment Policy: Debt and/or Equity
Investment Type: Early Stage, Expansion
Industry Preference: Communications and Technology
Geographic Preference: National

Meezanine Capital Partners
Gerald Slater and Ivar Sorenson
150 South 5th Street, Suite 1720
Minneapolis, MN 55402
ph: (612)338-0090
FAX: (612)338-1172
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Milestone Growth Fund,
Esperanza Guerrero-Anderson, President
401 Second Avenue South, Suite 1032
Minneapolis, MN 55401
ph: (612)667-1650
FAX: (612)667-1660
Preferred Investment Size: $3 to $15 Million
Investment Policy: Equity
Investment Type: Start-Up, Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference:

Norwest Equity Partners
Robert F. Zicarelli, General Partner
222 South Ninth Street 2800
Piper Jaffray Tower
Minneapolis, MN 55402
ph: (612)667-1650
FAX: (612)667-1660
Preferred Investment Size: $3 to $15 Million
Investment Policy: Equity
Investment Type: Start-Up, Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference:
National Norwest Equity Partners  
John F. Whaley, Manager  
222 South Ninth Street 2800  
Piper Jaffray Tower  
Minneapolis, MN 55402  
ph: (612)667-1650  
FAX: (612)667-1660  
Preferred Investment Size: $3 to $15 Million  
Investment Policy: Equity  
Investment Type: Start-Up, Expansion, Later Stage  
Industry Preference: Diversified  
Geographic Preference: National  

Norwest Equity Partners  
Daniel Haggerty, General Partner  
222 South Ninth Street 2800  
Piper Jaffray Tower  
Minneapolis, MN 55402  
ph: (612)667-1650  
FAX: (612)667-1660  
Preferred Investment Size: Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:  

Norwest Venture Partners  
222 South Ninth Street 2800  
Piper Jaffray Tower  
Minneapolis, MN 55402  
ph: (612)667-1650  
FAX: (612)667-1660  
Preferred Investment Size: Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:  

Norwest Venture Partners  
Daniel J. Haggerty, Manager  
2800 Piper Jaffray Tower  
Minneapolis, MN 55402  
ph:  
Preferred Investment Size:  
Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:  

Piper Jaffray Healthcare Capital L.P.  
Lloyd (Buzz) Benson, Manager  
222 South 9th Street  
Minneapolis, MN 55402  
ph: (612)342-6335  

E-Business Press  
FAX: (612)342-8514  
Preferred Investment Size: $750,000 to $1.5 MM  
Investment Policy: Equity Only  
Investment Type: Early Stage, Later Stage, Expansion  
Industry Preference: Medical/Healthcare  
Geographic Preference:  

Wells Fargo SBIC, Inc.  
John Whaley  
2800 Piper Jaffray Tower  
222 S Ninth St  
C/O Norwest Venture Capital  
Minneapolis, MN 55402  
ph: (612)667-1667  
FAX: (612)667-1660  
Preferred Investment Size:  
Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:  

Missouri  
BOME Investors, Inc.  
Gregory R. Johnson & John McCarthy, Mgrs  
8000 Maryland Ave., Suite 1190  
St. Louis, MO 63105  
ph: (314)721-5707  
FAX: (314)721-5135  
Preferred Investment Size:  
Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:  

Bankers Capital Corp.  
Raymond E. Glasnapp, President  
3100 Gillham Road  
Kansas City, MO 64109  
ph: (816)531-1600  
FAX: (816)531-1334
Preferred Investment Size: $100,000
Investment Policy: Loans and/or Equity
Investment Type: Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: Mid-West

CFB Venture Fund I,
James F. O'Donnell, Chairman
11 South Meramec, Suite 1430
St. Louis, MO 63105
ph: (314)746-7427
FAX: (314)746-8739
Preferred Investment Size: FULLY INVESTED
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Missouri CFB Venture Fund II,
L James F. O'Donnell, Chairman
11 South Meramec, Suite 1430
St. Louis, MO 63105
ph: (314)746-7427
FAX: (314)746-8739
Preferred Investment Size: $500,000 to $3 MM
Investment Policy: Debt w/Warrants Preferred Stock
Investment Type: Expansion, Later Stage,
MBO/LBO/Acquisition
Industry Preference: Diversified
Geographic Preference: Mid-West

Civic Ventures Investments
Byron E. Winton, Manager
One Metropolitan Square
211 North Broadway, Suite 2380
St. Louis, MO 63102
ph: (314)436-8222
FAX: (314)436-2070
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Eagle Fund I, L.P.
Scott Fesler, Operator
2301 S. Kingshighway
St. Louis, MO 63110
ph: (314)268-2512
FAX: (314)776-5200
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Gateway Partners, L.P.
John S. McCarthy
8000 Maryland Avenue, Suite 1190
St. Louis, MO 63105
ph: (314)721-5707
FAX: (314)721-5135
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

MidWest MorAmerica Capital Corporation
(Main Office: Cedar Rapids, IA)
911 Main Street, Suite 2424
Commerce Tower Building
Kansas City, MO 64105
ph: (816)842-0114
FAX: (816)471-7339
Preferred Investment Size: $500,000 to $1 Mill.
Investment Policy: Sub Debt or Preferred Stock-Warrants
Investment Type: Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: National

UMB Capital Corporation
Noel Shull, Manager
1010 Grand Boulevard
Mail: P.O. Box 419226
Kansas City, MO 64141
ph: (816)860-7914
FAX: (816)860-7143
Preferred Investment Size: $500,000
Investment Policy: Loans, Equity, Debt with Equity
Investment Type: Later Stage
Industry Preference: Manufacturing
Geographic Preference:
Mississippi
Midwest CapSource Fund, L.P.
Bobby Weatherly & James Herndon, Mgrs.
800 Woodlands Parkway Suite 102
Ridgeland, MS 39157
ph: (601)899-8980
FAX: (601)952-1334
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Sun-Delta Capital Access Center, Inc.
Howard Boutte, Jr., Vice President
819 Main Street
Greenville, MS 38701
ph: (601)335-5291
FAX: (601)335-5295
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

North Carolina
BA Capital Company,
L. Walter W. Walker, Jr., Managing Director
100 North Tryon Street, 25th Floor
NCI-007-25-02
Charlotte, NC 28255
ph: (704)386-8063
FAX: (704)386-6432
Preferred Investment Size: $3 to $25 Million
Investment Policy: Equity, Sub Debt with Warrants
Investment Type: Later Stage, Expansion,
MBO/LBO/Acquisition
Industry Preference: Diversified
Geographic Preference:

National BB&T Capital Partners,
David Townsend & Martin Gilmore, Mgrs.
200 West Second Street, 4th Floor
Winston-Salem, NC 27101
ph: (336)733-2420
FAX: (336)733-2419
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

BancAmerica Capital SBIC I, L.P.
North Dakota
North Dakota SBIC, L.P.
(Main Office: Cedar Rapids, IA)
406 Main Avenue, Suite 404
Fargo, ND 58103
ph: (701)298-0003
FAX: (701)293-7819
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

New Jersey
CIT Group/Venture Capital

© e-Business Press, L.L.C.

Entrepreneur's Crash Course
Penny Lane Partners,
L William R. Denslow, Jr., Manager
One Palmer Square, Suite 309
Princeton, NJ 08542
ph: (609)497-4646
FAX: (609)497-0611
Preferred Investment Size: $1 to $2 Million
Investment Policy: Equity
Investment Type: Expansion, Later Stage, Buyout
Industry Preference: Diversified
Geographic Preference: National

Rutgers Minority Investments
Oscar Figueroa, President
180 University Avenue 3rd Floor
Newark, NJ 07102
ph: (973)353-5627
FAX: (973)353-1175
Preferred Investment Size: Up to $150,000
Investment Policy: Loans with Equity Features
Investment Type: Early Stage, Expansion
Industry Preference: Diversified
Geographic Preference: Northeast

Tappan Zee Capital Corp.
Jeffrey Birnberg, President
201 Lower Notch Road
Mail: P.O. Box 416
Little Falls, NJ 07424
ph: (973)256-8280
FAX: (973)256-2841
Preferred Investment Size: $200,000
Investment Policy: Loans and/or Equity
Investment Type: Expansion, Later Stage, Buyouts
Industry Preference: Diversified Retail & Mfg.
Geographic Preference: Northeast

Transpac Capital Corp.
Tsuey Tang Wang, President
1037 Route 46 East Clifton, NJ 07013
ph: (201)470-8855
FAX: (201)470-8827
Preferred Investment Size: $200,000
Investment Policy: Primarily Loans
Investment Type: Seed, Early Stage, Expansion
Industry Preference: Diversified
Argentum Capital Partners
Daniel Raynor, Chairman
405 Lexington Avenue, 54th Floor
New York, NY 10174
ph: (212)949-6262
FAX: (212)949-8294
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

BOCNY, LLC
Shelley G. Whittington, Manager
10 East 53rd Street 32nd Floor
New York, NY 10022
ph: (504)332-7721
FAX: (504)332-7377
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

BT Capital Partners, I
Doug Brent, Managing Director
130 Liberty Street, 25th Floor
New York, NY 10006
ph: (212)250-5565
FAX: (212)250-7651
Preferred Investment Size: $5 to $25 Million
Investment Policy: Equity Investments
Investment Type: Expansion, Later Stage, MBO/LBO/Acquisition
Industry Preference: Diversified
Geographic Preference: National

Bank Austria Creditans SBIC, Inc.
Dennis O'Dowd, President
245 Park Avenue, 32nd Floor
New York, NY 10167
ph: (203)861-1410
FAX: (203)861-1477
Preferred Investment Size: $500,000 to $1 MM
Investment Policy: Loans and Equity Prefer Equity
Investment Type: Later Stage, Expansion
Industry Preference: Medical/Health Telecomm., Manufacturing
Geographic Preference: N.E., Midwest South, Pacific

Barclays Capital Investments
Lorrie Stapleton, President
222 Broadway, 11th Floor
New York, NY 10038
ph: (212)412-5832
FAX: (212)412-7600
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

C.B. Capital Investors
George E. Kelts, Managing Director
380 Madison Avenue, 12th Floor
New York, NY 10017
ph: (212)622-3100
FAX: (212)622-3799
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

CIBC WG Argosy Merchan Fund 1, L.P.
Jay Levine and Jay Bloom, Contacts
425 Lexington Avenue
New York, NY 10017
ph: (212)885-4611
FAX: (212)885-4878
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

CIBC WMV Inc.
Robi Blumenstein, Managing Director
425 Lexington Avenue, 9th Floor
New York, NY 10017
ph: (212)856-3713
FAX: (212)697-1544
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

CMNY Capital II, L.P.
Robert G. Davidoff, General Partner
135 East 57th Street 26th Floor
New York, NY 10022
ph: (212)909-8428
FAX: (212)980-2630
Preferred Investment Size: $800,000
Investment Policy: Loans and/or Equity
Investment Type: Expansion
Industry Preference: Diversified
Geographic Preference: National

New York Capital Investors
Rose Chao, Manager
210 Canal Street, Suite 611
New York, NY 10013
ph: (212)964-2480
FAX: (212)349-9160
Preferred Investment Size: $100,000 to $150,000
Investment Policy: Secured Loans
Investment Type: Expansion
Industry Preference: Retail
Geographic Preference: New York Tri State Area

Cephas Capital Partners
Clint Campbell, Jeff Holmes, Mgrs.
16 West Main Street
Rochester, NY 14614
ph: (716)231-1528
FAX: (716)231-1530
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Chase Manhattan Capital
George E. Kelts, Managing Director
380 Madison Ave 12th Floor
New York, NY 10017
ph: (212)552-6275
FAX: (212)622-3799
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Chase Venture Capital
Jeffrey C. Walker, Managing Gen. Partner
380 Madison Avenue, 12th Floor
New York, NY 10017
ph: (212)622-3060
FAX: (212)622-3750
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Citicorp Venture Capital
William Comfort, Chairman of the Board
399 Park Avenue, 14th Floor/Zone 4
New York, NY 10043
ph: (212)559-1127
FAX: (212)793-6164
Preferred Investment Size: $5 to $10 Million
Investment Policy:
Investment Type: Later Stage and Leverage Buyout
Industry Preference: Diversified
Geographic Preference: East Coast, National

Credit Suisse First Bostone SB Fund I, L.P.
David DeNunzio & John Hennessy, Mgrs.
11 Madison Avenue, 26th Floor
New York, NY 10010
ph: (212)325-2000
FAX: (212)325-2699
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Dresdner Kleinwort Ben Private Equity
Christopher Wright, President
75 Wall Street, 24th Floor
New York, NY 10005
ph: (212)429-2100
FAX: (212)429-2929
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

East Coast Venture Capital
Zindel Zelmanovitch, President
570 Seventh Avenue, Suite 1802
New York, NY 10018
ph: (212)869-7778
FAX: (212)819-9764
Preferred Investment Size: $50,000 to $200,000
Investment Policy: Loans and/or Equity
Investment Type: Seed, Expansion
Industry Preference: Diversified
Geographic Preference: Regional

East River Ventures
Alexander Paluch & Walter Carozza
150 East 58th Street, 16th Floor
New York, NY 10155
ph: (212)644-6211
FAX: (212)644-5498
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Edwards Capital Corporation
Michael Kowalsky, President
437 Madison Avenue
New York, NY 10022
ph: (212)328-2110
FAX: (212)328-2125
Preferred Investment Size: $50,000 to $5 MM
Investment Policy: Secured Loans
Investment Type: Acquisition, Expansion
Industry Preference: Transportation
Geographic Preference:

New York City Elk Associates Funding
Gary C. Granoff, President
747 Third Avenue
New York, NY 10017
ph: (212)421-2111
FAX: (212)759-3338
Preferred Investment Size: $100,000 to $300,000
Investment Policy: Secured Loans, Some Debt /w Equity
Investment Type: Later Stage
Industry Preference: Transportation & Diversified
Geographic Preference: Northeast, South FL, IL

Empire State Capital C
Dr. Joseph Wu, President
170 Broadway, Suite 1200
New York, NY 10038
ph: (212)513-1799
FAX: (212)513-1892
Preferred Investment Size: $500,000
Investment Policy: Loans or Equity Investments
Investment Type: Early Stage, Expansion
Industry Preference: Diversified
Geographic Preference: Atlantic Region

Eos Partners SBIC II, L.P.
Steven Friedman & Brian Young, Manager
320 Park Avenue, 22nd Floor
New York, NY 10022
ph: (212)832-5800
FAX: (212)832-5805
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Eos Partners SBIC, L.P
Steven Friedman, Partner

320 Park Avenue, 22nd Floor
New York, NY 10022
ph: (212)832-5814
FAX: (212)832-5815
Preferred Investment Size: $1 to $5 Million
Investment Policy: Equity & Debt with Equity
Investment Type: Early Stage, Expansion, Later, LBO
Geographic Preference: National

Esquire Capital Corp.
Wen-Chan Chin, President
69 Veterans Memorial Highway
Commack, NY 11725
ph: (516)462-6944
FAX: (516)864-8152
Preferred Investment Size: $250,000
Investment Policy: Loans and/or Equity
Investment Type: Early Stage, Expansion
Industry Preference: Diversified
Geographic Preference:

Exeter Capital Partners
Keith Fox, Timothy Bradley, Jeff Weber
10 East 53rd Street
New York, NY 10022
ph: (212)872-1170
FAX: (212)872-1198
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Exeter Equity Partners
Keith Fox, Timothy Bradley, Jeff Weber
10 East 53rd Street
New York, NY 10022
ph: (212)872-1170
FAX: (212)872-1198
Preferred Investment Size: $1 to $3 Million
Investment Policy: Equity Investments
Investment Type: Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: National

Exeter Venture Lenders
Keith Fox, Manager
10 East 53rd Street
New York, NY 10022
ph: (212)872-1170
FAX: (212)872-1198
Preferred Investment Size: $1 to $3 Million
Investment Policy: Loans and Equity Investments
Investment Type: Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: National

Exim Capital Corp.
Victor K. Chun, President
241 5th Avenue, 3rd Floor
New York, NY 10016
ph: (212)683-3375
FAX: (212)689-4118
Preferred Investment Size: $300,000
Investment Policy: Loans, Loans w/ Equity Features
Investment Type: Expansion & Acquisition
Industry Preference: Diversified
Geographic Preference: New York City

Fair Capital Corp.
Rose Chao, Manager
210 Canal Street, Suite 611
New York, NY 10013
ph: (212)964-2480
FAX: (212)349-9160
Preferred Investment Size: $50,000 to $100,000
Investment Policy: Secured Loans
Investment Type: Expansion
Industry Preference: Retail
Geographic Preference: New York, Tri-State

First County Capital I
Orest Glut, Financial Manager
135-14 Northern Blvd., 2nd Floor
Flushing, NY 11354
ph: (718)461-1778
FAX: (718)461-1835
Preferred Investment Size: $100,000 to $200,000
Investment Policy: Loans and/or Equity
Investment Type: All Stages
Industry Preference: Manufacturing, Retail, Wholesale, Food Service
Geographic Preference: North, Greater NY

Flushing Capital Corporation
Frank J. Mitchell, President
39-06 Union Street, Room 202
Flushing, NY 11354
ph: (718)886-5866
FAX: (718)939-7761
Preferred Investment Size: $300,000
Investment Policy: Loans
Investment Type: Expansion
Industry Preference: Diversified

Preferred Investment Size: $1 to $3 Million
Investment Policy: Loans and Equity Investments
Investment Type: Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: National

Exim Capital Corp.
Victor K. Chun, President
241 5th Avenue, 3rd Floor
New York, NY 10016
ph: (212)683-3375
FAX: (212)689-4118
Preferred Investment Size: $300,000
Investment Policy: Loans, Loans w/ Equity Features
Investment Type: Expansion & Acquisition
Industry Preference: Diversified
Geographic Preference: New York City

Fair Capital Corp.
Rose Chao, Manager
210 Canal Street, Suite 611
New York, NY 10013
ph: (212)964-2480
FAX: (212)349-9160
Preferred Investment Size: $50,000 to $100,000
Investment Policy: Secured Loans
Investment Type: Expansion
Industry Preference: Retail
Geographic Preference: New York, Tri-State

First County Capital I
Orest Glut, Financial Manager
135-14 Northern Blvd., 2nd Floor
Flushing, NY 11354
ph: (718)461-1778
FAX: (718)461-1835
Preferred Investment Size: $100,000 to $200,000
Investment Policy: Loans and/or Equity
Investment Type: All Stages
Industry Preference: Manufacturing, Retail, Wholesale, Food Service
Geographic Preference: North, Greater NY

Flushing Capital Corporation
Frank J. Mitchell, President
39-06 Union Street, Room 202
Flushing, NY 11354
ph: (718)886-5866
FAX: (718)939-7761
Preferred Investment Size: $300,000
Investment Policy: Loans
Investment Type: Expansion
Industry Preference: Diversified

Regional Fundex Capital Corp.
Larry Linksman, President
780 Third Ave, 48th Floor
New York, NY 10017
ph: (212)527-7135
FAX: (212)527-7134
Preferred Investment Size: $1 to $2 Million
Investment Policy: Sub. Debt with Equity, Loans
Investment Type: Early Stage Expansion
Communications Medical/Health, Special
Geographic Preference: Tri-State (NY, NJ, CT)

Genesee Funding, Inc.
Stuart W. Marsh, President & CEO
70 Linden Oaks, 3rd Floor
Rochester, NY 14625
ph: (716)383-5550
FAX: (716)383-5305
Preferred Investment Size: $200,000
Investment Policy: Loans and/or Equity
Investment Type: Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference:

Northeast Hanam Capital Corp.
Robert Schairer, President
38 West 32nd Street, Suite 1512
New York, NY 10001
ph: (212)564-5225
FAX: (212)564-5307
Preferred Investment Size: $50,000 to $200,000
Investment Policy: Loans and/or Equity
Investment Type: Early Stage, Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference:

Northeast Hudson Venture Partner
IBJ Whitehall Capital
Peter Handy, President
One State Street, 8th Floor
New York, NY 10004
ph: (212)858-2000
FAX: (212)952-1629
Preferred Investment Size: Up to $6 Million
Investment Policy: Mezzanine
Investment Type: Expansion Later Stage
Industry Preference: Manufacturing Distribution Service
Geographic Preference: National

ING Furman Selz Invest
Brian Friedman, Manager
230 Park Avenue
New York, NY 10169
ph: (212)309-8348
FAX: (212)692-9147
Preferred Investment Size: $2 to $6 Million
Investment Policy: Equity
Investment Type: Expansion, Later Stage, No Start-ups
Industry Preference: Diversified
Geographic Preference: National

International Ibero American Investor
Emilio Serrano, President
104 Scio Street
Rochester, NY 14604
ph: (716)262-3440
FAX: (716)262-3441
Preferred Investment Size: $450,000
Investment Policy: Loans and/or Equity
Investment Type: Early Stage, Expansion
Industry Preference: Diversified
Geographic Preference: National

InterEquity Capital
Irwin Schlass, President
220 Fifth Avenue, 12th Floor
New York, NY 10001
ph: (212)779-2022

J.P. Morgan Investment
Brian F. Watson, Managing Director
60 Wall Street
New York, NY 10260
ph: (212)483-2323
FAX: (212)648-5032
Preferred Investment Size: $5 to $10 Million
Investment Policy: Equity
Investment Type: Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: National

LEG Partners Debenture
Lawrence Golub, Manager
230 Park Avenue 19th Floor
New York, NY 10169
ph: (212)207-1423
FAX: (212)207-1579
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

LEG Partners III SBIC
Lawrence Golub, Manager
230 Park Avenue 19th Floor
New York, NY 10169
ph: (212)207-1423
FAX: (212)207-1579
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

LEG Partners SBIC, L.P
Lawrence E. Golub, Manager
230 Park Avenue, 21st Floor
New York, NY 10169
ph: (212)207-1585
FAX: (212)207-1579
Preferred Investment Size: $2 to $3 Million
Investment Policy: Equity and Debt w/ Warrants
Investment Type: Expansion
Industry Preference: Healthcare, Media, Basic Manufacturing
Geographic Preference: Mid-Atlantic

M & T Capital Corp.
Tom Scanlon, President One
Fountain Plaza 9th Floor
Buffalo, NY 14203
ph: (716)848-3800
FAX: (716)848-3150
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Medallion Funding Corp.
Alvin Murstein, President
437 Madison Avenue
New York, NY 10022
ph: (212)328-2110
FAX: (212)328-2125
Preferred Investment Size: $50,000 to $350,000
Investment Policy: Senior and Sub Debt w/ Warrants
Investment Type: Expansion
Industry Preference: Service, Retail
Geographic Preference: Mid-Atlantic N. East

Mercury Capital, L.P.
David W. Elenowitz, Manager
153 East 53rd Street 49th Floor
New York, NY 10022
ph: (212)838-0888
FAX: (212)759-3897
Preferred Investment Size: $2.5 to $7.5 Million
Investment Policy: Equity Only
Investment Type: Later Stage
Industry Preference: Manufacturing, Distribution, Serv. Businesses
Geographic Preference: National

NBT Capital Corporation
Daryl Forsythe & Joe Minor, Managers
19 Eaton Avenue
Norwich, NY 13815
ph: (607)337-6810
FAX: (607)336-8730
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

NYBDC Capital Corp.
Robert W. Lazar, President
41 State Street
P.O. Box 738
Albany, NY 12207
ph: (518)463-2268
FAX: (518)463-0240
Preferred Investment Size: $100,000
Investment Policy: Loans or Equity
Investment Type: Early Stage, Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: New York

NatWest USA Capital Co
Elliot Jones, President
65 East 55th Street, 21st Floor
New York, NY 10022
ph: (212)401-1330
FAX: (212)401-1390
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Needham Capital SBIC,
John Michaelson, Manager
445 Park Avenue
New York, NY 10022
ph: (212)705-0297
FAX: (212)751-1450
Preferred Investment Size: $500,000 to $1 MM
Investment Policy: Equity
Investment Type: Later Stage, Expansion
Industry Preference: Technology
Geographic Preference: National

Norwood Venture Corp.
Mark R. Littell, President
1430 Broadway, Suite 1607
New York, NY 10018
ph: (212)869-5075
<table>
<thead>
<tr>
<th>Company Name</th>
<th>President/Contact</th>
<th>Address</th>
<th>Phone</th>
<th>Fax</th>
<th>Preferred Investment Size</th>
<th>Investment Policy</th>
<th>Investment Type</th>
<th>Industry Preference</th>
<th>Geographic Preference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paribas Principal Inco</td>
<td>Steven Alexander, President</td>
<td>787 Seventh Avenue, 32nd Floor</td>
<td>(212)841-2000</td>
<td>(212)841-3558</td>
<td>$1.5 to $5 Million</td>
<td>Equity Only</td>
<td>Expansion, Later Stage</td>
<td>Healthcare, Media, Business Service Manufacturing</td>
<td>National</td>
</tr>
<tr>
<td>Pierre Funding Corp.</td>
<td>Elias Debbas, President</td>
<td>805 Third Avenue, 6th Floor</td>
<td>(212)888-1515</td>
<td>(212)688-4252</td>
<td>$100,000 to $500,000</td>
<td>Collateralized Loans</td>
<td>Expansion</td>
<td>Diversified</td>
<td>East Coast</td>
</tr>
<tr>
<td>Prospect Street NYC Discovery Fund, L.P.</td>
<td>John F. Barry, John F. Barry</td>
<td>10 E. 40th St. 44th Floor</td>
<td>(212)448-0702</td>
<td>(212)448-9652</td>
<td></td>
<td></td>
<td>Expansion</td>
<td></td>
<td>National</td>
</tr>
<tr>
<td>Pyramid Ventures, Inc.</td>
<td>Brian Talbot, Vice President</td>
<td>130 Liberty Street, 31th Floor</td>
<td>(212)250-9571</td>
<td>(212)250-7651</td>
<td>$10,000,000</td>
<td>Equity Investments</td>
<td>Expansion, Later Stage</td>
<td>Diversified</td>
<td>National</td>
</tr>
<tr>
<td>RBC Equity Investments</td>
<td>Stephen Stewart, Manager</td>
<td>One Liberty Plaza</td>
<td>(212)428-3035</td>
<td>(212)858-7468</td>
<td>$1 to $3 Million</td>
<td>Debt with Equity or Equity</td>
<td>Later Stage, MBO/LBO, Acquisition</td>
<td>Consumer Oriented, Media, Communications</td>
<td>National</td>
</tr>
<tr>
<td>Regent Capital Partners</td>
<td>J. Oliver Maggard, Managing Partner</td>
<td>505 Park Avenue, Suite 1700</td>
<td>(212)735-9900</td>
<td>(212)735-9908</td>
<td>$1 to $3 Million</td>
<td>Debt with Equity or Equity</td>
<td>Later Stage, MBO/LBO, Acquisition</td>
<td>Consumer Oriented, Media, Communications</td>
<td>National</td>
</tr>
<tr>
<td>National Signal Capital Partners</td>
<td>Timothy Bradley, Contact</td>
<td>10 East 53rd Street 32nd Floor</td>
<td>(212)333-9523</td>
<td>(212)208-2497</td>
<td>$100,000</td>
<td></td>
<td></td>
<td></td>
<td>National</td>
</tr>
<tr>
<td>Situation Ventures Corp.</td>
<td>Sam Hollander, President</td>
<td>56-20 59th Street</td>
<td>(718)894-2000</td>
<td>(718)326-4642</td>
<td>$100,000</td>
<td>Loans and/or Equity</td>
<td>Early Stage, Expansion</td>
<td>Manufacturing, Service, Retail</td>
<td>New York Metro Area</td>
</tr>
<tr>
<td>Sixty Wall Street SBIC</td>
<td>Brian F. Watson, Managing Director</td>
<td>56-20 59th Street</td>
<td>(212)894-2000</td>
<td>(212)326-4642</td>
<td>$100,000</td>
<td>Loans and/or Equity</td>
<td>Early Stage, Expansion</td>
<td>Manufacturing, Service, Retail</td>
<td>New York Metro Area</td>
</tr>
</tbody>
</table>
Societe Generale Capital
Steven Baronoff, President
1221 Avenue of the Americas 8th Floor
New York, NY 10020
ph: (212)278-5400
FAX: (212)278-5387
Preferred Investment Size: $5 to $50 Million
Investment Policy: Equity, Loans, Debt w/ Equity Features
Investment Type: MBO/LBO/Acq. Later Stage, Expansion
Industry Preference: Diversified
Geographic Preference: National

Sterling/Carl Marks
Harvey L. Granat, President
175 Great Neck Road--Suite 408
Great Neck, NY 11021
ph: (516)482-7374
FAX: (516)487-0781
Preferred Investment Size: $500,000
Investment Policy: Debt with Equity Features
Investment Type: Later Stage, Expansion
Industry Preference: Diversified
Geographic Preference: Northeast

T.S. Capital Corporation
James Trainor, Manager
32 Second Street
Troy, NY 12180
ph: (518)270-4914
FAX: (518)270-4904
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Toronto Dominion Capital (U.S.A.), Inc.
Brian A. Rich, General Manager
31 West 52nd Street
New York, NY 10019
ph: (212)827-7000
FAX: (212)974-8429
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Transportation Capital
Michael Fanger, Pres. & Linda Miranda
437 Madison Avenue
New York, NY 10022
ph: (212)328-2110
FAX: (212)328-2125
Preferred Investment Size: $25,000 to $135,000
Investment Policy: Loans
Investment Type: Seed, Expansion
Industry Preference: Transportation
Geographic Preference: Northeast, Mid-West

Triad Capital Corp. of Oscar Figueroa, Manager of Rutgers Inv.
305 Seventh Avenue, 20th Floor
New York, NY 10011
ph: (212)243-7360
FAX: (212)243-7647
Preferred Investment Size: $100,000 to $250,000
Investment Policy: Debt with Equity Features
Investment Type: Expansion
Industry Preference: Diversified
Geographic Preference: National

Trusty Capital Inc.
Yungduk Hahn, President
350 Fifth Avenue, Suite 2026
New York, NY 10118
ph: (212)736-7653
FAX: (212)629-3019
Preferred Investment Size: $200,000
Investment Policy: Loans and/or Equity
Investment Type: Seed, Early Stage, Expansion
Industry Preference: Diversified
Geographic Preference:

UBS Capital II LLC
Justin S. Maccarone, President
299 Park Avenue
New York, NY 10171
ph: (212)821-6490
FAX: (212)821-6333
Preferred Investment Size: $20,000,000
Investment Policy: Equity
Investment Type: Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference:

United Capital Investments
North-East Venture Opportunities
A. Fred March, President
150 East 58th Street, 16th Floor
New York, NY 10155
ph: (212)832-3737
FAX: (212)980-6603
Preferred Investment Size: $1 to $2 million
Investment Policy: Equity Investment Type: Expansion Financing, Early/Late
Industry Preference: Manufacturing, Distribution, Service Industry
Geographic Preference: Northeast & Mid-Atlantic

Walden Capital Partners
John Costantino & Allen Greenberg, Mgrs.
150 East 58th Street 34th Floor
New York, NY 10155
ph: (212)355-0090
FAX: (212)755-8894
Preferred Investment Size: $50,000 to $250,000
Investment Policy: Loans and/or Equity
Investment Type: Expansion, Later Stage
Industry Preference: Diversified, Medical Health, Retail
Geographic Preference: Northeast

Wasserstein Adelson Townsend Ziebold, Jr., Manager
31 West 52nd Street, 27th Floor
New York, NY 10019
ph: (212)969-2690
FAX: (212)969-7879
Preferred Investment Size: $50,000 to $250,000
Investment Policy: Loans and/or Equity
Investment Type: Expansion, Later Stage
Industry Preference: Diversified, Medical Health, Retail
Geographic Preference: Northeast

Winfield Capital Corp.
Stanley M. Pechman, President
237 Mamaroneck Avenue
White Plains, NY 10605
ph: (914)949-2600
FAX: (914)949-7195
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Ohio
Banc One Capital Partners
William P. Leahy, Managing Director
150 East Gay Street, 24th Floor
Columbus, OH 43215
ph: (614)217-1100
FAX: (614)217-1217
Preferred Investment Size: $3 to $7 Million
Investment Policy: Debt Securities/ Equities
Investment Type: Later Stage
Industry Preference: Diversified
Geographic Preference: Midwest, Southwest

Enterprise Ohio Investments
Steven Budd, President
8 North Main Street
Dayton, OH 45402
ph: (937)226-0457
FAX: (937)222-7035
Preferred Investment Size: $50,000 to $100,000
Investment Policy: Equity Loan Investments
Investment Type: Expansion, Later Stage, Franchise
Industry Preference: Diversified
Geographic Preference: Southwest, Ohio

Financial Opportunities
Gregg R. Budoi, Manager
300 Executive Parkway West
Hudson, OH 44236
ph: (330)342-6664
FAX: (330)342-6675
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Key Equity Capital Corp.
David Given, President
127 Public Square, 28th Floor
Cleveland, OH 44114
ph: (216)689-5776
FAX: (216)689-3204
Preferred Investment Size: $2,000,000
Investment Policy: Willing to make Equity Investm.
Investment Type: Later Stage
Industry Preference: Diversified
Geographic Preference: National

Key Mezzanine Capital,
Stephen Stewart, Manager
10th Floor, Banc One Building
600 Superior Avenue
Cleveland, OH 44114
ph: (216)858-6090
FAX: (216)263-3577
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

National City Capital
William H. Schecter, President & G.M.
1965 East Sixth Street, Suite 1010
Cleveland, OH 44114
ph: (216)857-2491
FAX: (216)857-9965
Preferred Investment Size: $1 to $5 Million
Investment Policy: Loans, Equity, Debt w/ Equity
Investment Type: Expansion, Financing, Later Stage
Industry Preference: Manufacturing, Distribution, Consumer Products
Geographic Preference: Mid-West

River Cities Capital
Edwin Robinson, Contact
221 East Fourth Street Suite 2250
Cincinnati, OH 45202
ph: (513)621-9700
FAX: (513)579-8939
Preferred Investment Size:
Investment Policy:

Investment Type:
Industry Preference:
Geographic Preference:

River Cities Capital
R. Glen Mayfield, Manager
221 East Fourth Street Suite 2250
Cincinnati, OH 45202
ph: (513)621-9700
FAX: (513)579-8939
Preferred Investment Size: $750,000 to $1.5 MM
Investment Policy: Equity
Investment Type: Early Stage, Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: OH, KY, IN

Oklahoma
BancFirst Investment C T.
Kent Faison, Manager
101 North Broadway
Mail: P.O. Box 26788
Oklahoma City, OK 73126
ph: (405)270-1000
FAX: (405)270-1089
Preferred Investment Size: Up to $500,000
Investment Policy: Loans and/or Equity
Investment Type: Early Stage, Expansion
Industry Preference: Diversified
Geographic Preference: Oklahoma

First United Venture Capital Corporation
John Massey and Greg Massey, Managers
1400 West Main Street
Durant, OK 74701
ph: (580)924-2256
FAX: (580)924-2228
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

Oregon
Northern Pacific Capital
Joseph P. Tennant, President
937 S.W. 14th Street, Suite 200
Mail: P.O. Box 1658
Portland, OR 97207
ph: (503)241-1255
FAX: None
Preferred Investment Size: $150,000 to $225,000
Investment Policy: Subordinate Debt with Warrants
Investment Type: Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: Pacific Northwest

Shaw Venture Partners
Ralph R. Shaw, Manager
400 Southwest Sixth Avenue Suite 1100
Portland, OR 97204
ph: (503)228-4884
FAX: (503)227-2471
Preferred Investment Size: $2 to $4 Million
Investment Policy: Equity
Investment Type: Seed, Early, Expansion, Later Stages
Industry Preference: Diversified
Geographic Preference: Intermountain, West

Shaw Venture Partners
Ralph R. Shaw, Managing General Partner
400 S.W. Sixth Avenue, Suite 1100
Portland, OR 97204
ph: (503)275-5710
FAX: (503)275-7565
Preferred Investment Size: FULLY INVESTED
Investment Policy: 
Investment Type: 
Industry Preference: 
Geographic Preference: 

Pennsylvania
Argosy Investment Partners
Knute Albrecht, Manager
950 West Valley Road, Suite 2902
Wayne, PA 19087
ph: (610)971-0558
FAX: (610)964-9524
Preferred Investment Size:
Investment Policy: 
Investment Type: 
Industry Preference: 
Geographic Preference: 

CEO Venture Fund III,
James Colker, Manager
2000 Technology Drive, Suite 160
Pittsburgh, PA 15219
ph: (412)687-3451
FAX: (412)851-1439
Preferred Investment Size:
Investment Policy: 
Investment Type: 
Industry Preference: 
Geographic Preference: 

CIP Capital L.P.

Winston Churchill, Jr., Manager
435 Devon Park Drive Bldg 300
Wayne, PA 19087
ph: (610)964-7860
FAX: (610)964-8136
Preferred Investment Size: $250,000 to $750,000
Investment Policy: Debt
Investment Type: Expansion, Later Stage
Industry Preference: Life Sciences, Communications
Geographic Preference:

GS Capital, L.P.
435 Devon Park Drive, Suite 612
Wayne, PA 19087
ph: (610)293-9151
FAX: (610)293-1979
Preferred Investment Size:
Investment Policy: 
Investment Type: 
Industry Preference: 
Geographic Preference: Greater Philadelphia

V Capital Corp.
Fred S. Choate, Manager
351 East Conestoga Road Room 203
Wayne, PA 19087
ph: (610)688-6829
FAX: (610)254-8958
Preferred Investment Size:
Investment Policy: 
Investment Type: 
Industry Preference: 
Geographic Preference: 

Liberty Ventures I, L.
Thomas R. Morse, Manager
441 North 5th Street
Philadelphia, PA 19123
ph: (215)928-1050
FAX: (215)928-1065
Preferred Investment Size:
Investment Policy: 
Investment Type: 
Industry Preference: 
Geographic Preference: 

Mellon Ventures, L.P.
Lawrence Mock & Ronald Coombs, Managers
One Mellon Bank Center Room 151-3200
Pittsburg, PA 15258
ph: (412)236-3594
FAX: (412)236-3593
Preferred Investment Size: $3 to $10 Million
<table>
<thead>
<tr>
<th>State</th>
<th>Fund Name</th>
<th>Contact Person</th>
<th>Address/Location</th>
<th>Phone/FAX/Email Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Puerto Rico</td>
<td>Meridian Venture Partners</td>
<td>Raymond R. Rafferty, General Partner</td>
<td>The Fidelity Court Building 259 Radnor-Chester Road, Suite 140 Radnor, PA 19087</td>
<td>ph: (610)254-2999, FAX: (610)254-2996, <a href="mailto:raymond@meridianventure.com">raymond@meridianventure.com</a></td>
</tr>
<tr>
<td>South Carolina</td>
<td>Fleet Venture Resource</td>
<td>Robert M. Van Degna, President</td>
<td>50 Kennedy Plaza, 12th Floor Mail Stop: RI MO F12C Providence, RI 02903</td>
<td>ph: (401)278-6770, FAX: (401)278-6387, <a href="mailto:fleetventure@fleetc.com">fleetventure@fleetc.com</a></td>
</tr>
<tr>
<td>Rhode Island</td>
<td>Domestic Capital Corp.</td>
<td>Nathaniel B. Baker, President</td>
<td>815 Reservoir Avenue Cranston, RI 02910</td>
<td>ph: (401)946-3310, FAX: (401)943-6708, <a href="mailto:nathaniel@domesticcapitalcorp.com">nathaniel@domesticcapitalcorp.com</a></td>
</tr>
<tr>
<td></td>
<td>Fleet Equity Partners</td>
<td>Robert Van Degna &amp; Habib Y. Gorgi, Mgrs.</td>
<td>50 Kennedy Plaza, 12th Floor Mail Stop: RI MO F12C Providence, RI 02903</td>
<td>ph: (401)278-6770, FAX: (401)278-6387, <a href="mailto:fleetventure@fleetc.com">fleetventure@fleetc.com</a></td>
</tr>
</tbody>
</table>

**Investment Policy:**
- Loans and/or Equity Debt with Equity
- Investment Policy: Equity
- Investment Policy: Loans
- Investment Policy: Leverage Buyouts, Expansion
- Investment Policy: Equity
- Investment Policy: Equity
- Investment Policy: Leverage Buyouts, Expansion

**Investment Type:**
- Expansion, Later Stage, Acquisition
- Expansion, Later Stage
- Expansion
- Expansion
- Expansion
- Expansion

**Industry Preference:**
- Diversified
- Health Care, On Line Services, Computer Software Special
- Media/Communications, Healthcare, Printing, Mfg.
- Diversified
- Media/Communications, Healthcare, Printing, Mfg.
- Diversified

**Geographic Preference:**
- National
- Mid-Atlantic
- National
- National
- National
- National
\textbf{Preferred Investment Size: $40,000 to $300,000}

\textbf{Investment Policy: Loans and Equity}

\textbf{Investment Type: Expansion, Later Stage}

\textbf{Industry Preference: Diversified}

\textbf{Geographic Preference: National}

\textbf{Pacific Capital, L.P.}

(Main Office: Ann Arbor, MI)

404 BNA Drive, Suite 404

Nashville, TN 37217

ph: (615)399-0606

FAX: (615)399-0604

Preferred Investment Size: $2,500,000

Investment Policy: Companies with Plus Cash Flow

Investment Type: Mezzanine with Equity

Industry Preference: Health Care, Education Services

Geographic Preference: National

\textbf{Sirrom Investments,}

George M. Miller, II, President

500 Church Street, Suite 200

Nashville, TN 37219

ph: (615)256-0701

FAX: (615)726-1208

Preferred Investment Size: $500,000 to $4 MM

Investment Policy: Senior/Sub. Debt with Warrants

Investment Type: Expansion No Start Ups

Industry Preference: Diversified

Geographic Preference: National

\textbf{Southern Venture Fund}

Don Johnston, President

310 25th Avenue North Suite 103

Nashville, TN 37203

ph: (615)329-9448

FAX: (615)329-9237

Preferred Investment Size:

Investment Policy:

Investment Type:

Industry Preference:

Geographic Preference:

\textbf{Valley Capital Corp.}

Lamar J. Partridge, President

Suite 212, Krystal Building

100 W. Martin Luther King Blvd.

Chattanooga, TN 37402

ph: (423)265-1557

FAX: (423)265-1588

Preferred Investment Size: $100,000 to $200,000

Investment Policy: Loans and/or Equity

Investment Type: Early Stage, Expansion Later Stage

\textbf{Tennessee}

Capital Across America

Whitney Johns & Chris Brown, Managers

414 Union Street, Suite 2025

Nashville, TN 37219

ph: (615)254-1414

FAX: (615)254-1856

Preferred Investment Size:

Investment Policy:

Investment Type:

Industry Preference:

Geographic Preference:

\textbf{Commerce Capital, L.P.}

Andrew Higgins, Pres & Rudy Ruark, V.P.

611 Commerce Street, Suite 2602

Nashville, TN 37203

ph: (615)726-0202

FAX: (615)242-1407

Preferred Investment Size:

Investment Policy:

Investment Type:

Industry Preference:

Geographic Preference:

\textbf{Equitas, L.P.}

D. Shannon LeRoy, President of CGP

2000 Glen Echo Road, Suite 100

Mail: P.O. Box 158838

Nashville, TN 37215

ph: (615)383-8673

FAX: (615)383-8693

Preferred Investment Size: $500,000 to $890,000

Investment Policy: Loans

Investment Type: Expansion, Later Stage

Industry Preference: Service, Distribution, Light Mfg

Geographic Preference: Southeast

\textbf{International Paper Capital Formation, Inc.}

Bob J. Higgins, V.P. and Controller

International Place II

6400 Poplar Avenue

Memphis, TN 38197

ph: (901)763-6282

FAX: (901)763-6076

Preferred Investment Size: $40,000 to $300,000

Investment Policy: Loans and Equity

Investment Type: Expansion, Later Stage

Industry Preference: Diversified

Geographic Preference: National
Industry Preference: Diversified Communications
Geographic Preference: Southeast West Tennessee

Venture Capital Corporation
Frank Banks, President
5 North Third Street
Memphis, TN 38103
ph: (901)522-9237
FAX: (901)527-6091
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:
Geographic Preference:

White Pines Limited Partnership I
(Main Office: Ann Arbor, MI)
Jere Ervin and Bill Orand, Managers
Two International Drive, Suite 200
Nashville, TN 37217
ph: (615)367-0770
FAX: (615)367-1771
Preferred Investment Size: $350,000 to $1 MM
Investment Policy: Conv Pref Stock, Debt w/ Equity
Investment Type: Expansion
Industry Preference: Manufacturing (Niche or Speciality Mkts) Value Added
Geographic Preference: Midwest, Southeast

Texas
AMT Capital, Ltd.
Tom H. Delimitros, CGP
8204 Elmbrook Drive, Suite 101
Dallas, TX 75247
ph: (214)905-9760
FAX: (214)905-9761
Preferred Investment Size: $250,000 to $500,000
Investment Policy: Equity
Investment Type: Early Stage
Industry Preference: Advanced Materials, Specialty Chemicals
Geographic Preference:

National Alliance Business Investment Company
(Main Office: Tulsa, OK)
1221 McKinney Street Suite 3100
Houston, TX 77010
ph: (713)659-3131
FAX: (713)659-8070
Preferred Investment Size: $500,000 to $750,000
Investment Policy: Equity
Investment Type: Expansion, Later Stage

Alliance Enterprise Co.
Donald R. Lawhorne, President
North Central Plaza 1, Suite 710
12655 North Central Expressway
Dallas, TX 75243
ph: (972)991-1597
FAX: (972)991-1647
Preferred Investment Size: $250,000 to $1 MM
Investment Policy: Debt with Equity Straight Equity
Investment Type: Expansion Later Stage
Industry Preference: Manufacturing, Retail, Technology, No Real Estate
Geographic Preference: National

Banc One Capital Partners, L.P.
(Main Office: Columbus, OH)
Suzanne B. Kriscunas, Managing Director
300 Crescent Court, Suite 1600
Dallas, TX 75201
ph: (972)233-8242
FAX: (972)233-7362
Preferred Investment Size: $5,000,000
Investment Policy: Debt Securities/Equities
Investment Type: Later Stage
Industry Preference: Diversified
Geographic Preference: National

Capital Southwest Ventures
William R. Thomas, President
12900 Preston Road, Suite 700
Dallas, TX 75230
ph: (972)367-1597
FAX: (972)367-1647
Preferred Investment Size: $1 to $2 Million
Investment Policy: Prefer Equity- Type Investments
Investment Type: Seed, Early, Expansion, Later Stages
Industry Preference: Manufacturing, Retail, Technology, No Real Estate
Geographic Preference: National

Catalyst Fund, Ltd.
T Richard L. Herrman, Manager
Three Riverway, Suite 770
Houston, TX 77056
ph: (713)623-8133
FAX: (713)623-0473
Preferred Investment Size: $1,250,000
Investment Policy: Loans with Warrants
Investment Type: Expansion, Acquisition, Recap, Later
Industry Preference: Diversified
Geographic Preference: National

Chen’s Financial Group
Samuel S. C. Chen, President
10101 Southwest Freeway, Suite 370
Houston, TX 77074
ph: (713)772-8868
FAX: (713)772-2168
Preferred Investment Size: $450,000
Investment Policy: Both Loans and/or Equity
Investment Type: Seed, Early, Later Stage, Acquisition
Industry Preference: Hotel/Motel, Retail
Geographic Preference: Houston, TX National

First Capital Group of Texas II, L.P.
Messrs. Blanchard, Greenwood, & Locy
750 East Mulberry, Suite 305
San Antonio, TX 78212
ph: (210)736-4233
FAX: (210)736-5449
Preferred Investment Size: $500,000 to $1 MM
Investment Policy: Equity
Investment Type: Early Stage, Expansion, Later, MBO
Industry Preference: Diversified
Geographic Preference: Texas, Southwest

HCT Capital Corp.
Vichy Woodward Young, Jr., President
4916 Camp Bowie Boulevard Suite 200
Fort Worth, TX 76107
ph: (817)763-8706
FAX: (817)377-8049
Preferred Investment Size: $250,000
Investment Policy: Loans and/or Equity
Investment Type: Seed, Early Stage, Expansion
Industry Preference: Health
Geographic Preference: Texas, Southwest

Houston Partners, SBIP
Glenda Overbeck, President,
CGP 401 Louisiana, 8th Floor
Houston, TX 77002
ph: (713)222-8600
FAX: (713)222-8932
Preferred Investment Size: $500,000
Investment Policy: Debt or Equity Investments
Investment Type: Later Stage
Industry Preference: Medical, Environmental, Information Technology
Geographic Preference: Sunbelt

Jardine Capital Corp.
Lawrence Wong, President
7322 Southwest Freeway Suite 787
Houston, TX 77074
ph: (713)271-7077
FAX: (713)271-7577
Preferred Investment Size: $260,000
Investment Policy: Loans and/or Equity
Investment Type: Expansion
Industry Preference: Diversified
Geographic Preference: North, South

MESBIC Ventures, Inc.
Donald R. Lawhorne, President
North Central Plaza I, Suite 710
12655 North Central Expressway
Dallas, TX 75243
ph: (214)991-1597
FAX: (972)991-1647
Preferred Investment Size: $250,000 to $1 MM
Investment Policy: Debt with Equity Straight Equity
Investment Type: Expansion, Later Stage
Industry Preference: Mfg, Specialty Electronics, Broadcast, Food Processor
Geographic Preference: Mostly Southwest

Mapleleaf Capital Ltd.
Patrick A. Rivelli, Manager
Three Forest Plaza, Suite 935
12221 Merit Drive
Dallas, TX 75251
ph: (972)239-5650
FAX: (972)701-0024
Preferred Investment Size: $1,000,000
Investment Policy: Equity or Equity-Related
Investment Type: Expansion, Later Stage
Industry Preference: Diversified-- No Real Estate Oil or Gas
Geographic Preference: Southwest, West

NationsBanc Capital Investors
(Main Office: Charlotte, NC)
901 Main Street, 22nd Floor
Dallas, TX 75202
ph: (214)508-0900
FAX: (214)508-0985
Preferred Investment Size: $3 to $25 Million
Investment Policy: Equity, Sub Debt with Warrants
Investment Type: Later Stage, Expansion
Industry Preference: Diversified
Geographic Preference: National

North Texas MESBIC,
Allan Lee, President  
9500 Forest Lane, Suite 430  
Dallas, TX 75243  
ph: (214)221-3565  
FAX: (214)221-3566  
Preferred Investment Size: $150,000  
Investment Policy: Loans  
Investment Type: Early Stage, Expansion  
Industry Preference: Retail, Wholesalers and Distributors  
Geographic Preference: State of Texas

PMC Investment Corporation  
Andrew S. Rosemore, President  
18111 Preston Road, Suite 600  
Dallas, TX 75252  
ph: (972)349-3200  
FAX: (972)349-3265  
Preferred Investment Size: $1.5 Million  
Investment Policy: Secure Lender  
Investment Type: All Stages including Start-ups  
Industry Preference: Diversified - Specializing in Motel and Franchise  
Geographic Preference: National

Retail & Restaurant Growth Capital, L.P.  
Raymond Hemmig, Joseph Harberg, Mgrs.  
10000 N. Central Expressway Suite 1060  
Dallas, TX 75231  
ph: (214)750-0065  
FAX: (214)750-0060  
Preferred Investment Size:  
Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:  

SBIC Partners II, L.P.  
Nicholas Binkley & Gregory Forrest, Mgrs  
201 Main Street, Suite 2302  
Fort Worth, TX 76102  
ph: (817)339-7020  
FAX: (817)338-2047  
Preferred Investment Size:  
Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:  

SBIC Partners, L.P.  
Gregory Forrest & Jeffrey Brown, Manager  
201 Main Street, Suite 2302  
Fort Worth, TX 76102  
ph: (949)729-3222  

Southwest/Catalyst Capital Ltd.  
Ronald Nixon and Rick Herman, Mgrs.  
Three Riverway, Suite 770  
Houston, TX 77056  
ph: (713)623-8133  
FAX: (713)623-0473  
Preferred Investment Size:  
Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:  

Stratford Capital Partners  
Michael D. Brown/John Fannin/Darin Winn  
200 Crescent Court Suite 1650  
Dallas, TX 75201  
ph: (214)740-7377  
FAX: (214)740-7340  
Preferred Investment Size: $2 to $9 Million  
Investment Policy: Equity, Subord. Debt with Equity  
Investment Type: Expansion, Later Stage, Acquisition  
Industry Preference: Manufacturing, Distribution, Niche Services, Diversified  
Geographic Preference:  

Stratford Equity Partners  
Michael Brown, Manager  
200 Crescent Court, Suite 1600  
Dallas, TX 75201  
ph: (214)740-7377  
FAX: (214)740-7340  
Preferred Investment Size:  
Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:  

United Oriental Capital  
Jai Min Tai, President  
908 Town & Country Blvd. Suite 310  
Houston, TX 77024  
ph: (713)461-3909  
FAX: (713)465-7559  
Preferred Investment Size: $200,000
Victoria Capital Corp.
Steve Selinski, Acting President
c/o Norwest Bank Texas, N.A.
16416 San Pedro
San Antonio, TX 78232
ph: (210)856-8804
FAX: (210)856-8848
Preferred Investment Size:
Investment Policy: Loans or Equity Investments
Investment Type: Early Stage
Industry Preference: Diversified
Geographic Preference: Texas

Western Financial Capital Corporation
Andrew S. Rosemore, President
18111 Preston Road, Suite 600
Dallas, TX 75252
ph: (972)349-3200
FAX: (972)349-3265
Preferred Investment Size: $500,000
Investment Policy: Secure Lender
Investment Type: All Stages including Start-ups
Industry Preference: Diversified - Specializing in Motel & Franchise
Geographic Preference: National

Utah
First Security Business Investment Corp.
Louis D. Alder, Manager
15 East 100 South, Suite 100
Salt Lake City, UT 84111
ph: (801)246-5737
FAX: (801)246-5740
Preferred Investment Size: $500,000 to $750,000
Investment Policy: Loans and/or Equity
Investment Type: Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: West/Mt-West Mid-West

Utah Ventures II L.P.
Alan Dishlip & James Dreyfous, Mgrs.
423 Wakara Way, Suite 206
Salt Lake City, UT 84108
ph: (801)583-5922
FAX: (801)583-4105
Preferred Investment Size:
Investment Policy:
Investment Type:
Industry Preference:

Virginia
Continental SBIC
Arthur Walters, President
4141 N. Henderson Road Suite 8
Arlington, VA 22203
ph: (703)527-5200
FAX: (703)527-3700
Preferred Investment Size: $250,000 to $1 MM
Investment Policy: Loan and/or Equity
Investment Type: Early Stage, Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: North, South Midwest

East West United Investment Company
Dung Bui, President
1568 Spring Hill Road, Suite 100
McLean, VA 22102
ph: (703)442-0150
FAX: (703)442-0156
Preferred Investment Size: $100,000.00
Investment Policy: Loans
Investment Type: Expansion
Industry Preference: Retail
Geographic Preference: Washington Metropolitan

Virginia Capital SBIC,
Frederick Russell & Tom Deardorff, Mgrs.
Walnut Capital Corp.  
(Main Office: Chicago, IL)  
8000 Tower Crescent Drive, Suite 1070  
Vienna, VA 22182  
ph: (703)448-3771  
FAX: (703)448-7751

Preferred Investment Size:  
Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:

Waterside Capital Corp  
Alan Lindauer, President  
300 East Main Street, Suite 1380  
Norfolk, VA 23510  
ph: (757)626-1111  
FAX: (757)626-0114

Preferred Investment Size: $500,000  
Investment Policy: Loans and/or Equity  
Investment Type: Early Stage, Expansion, Later Stage  
Industry Preference: Diversified  
Geographic Preference: Eastern Virginia

Vermont  
Green Mountain Capital  
Michael Sweatman, General Manager  
RR 1, Box 1503  
Waterbury, VT 05676  
ph: (802)244-8981  
FAX: (802)244-8990

Preferred Investment Size: $500,000  
Investment Policy: Subordinated Debt  
Investment Type: Expansion  
Industry Preference: Diversified  
Geographic Preference: Northeast

Washington  
Northwest Venture Partners  
Thomas Simpson & Jean Balek-Miner, Mgrs.  
221 North Wall Street Suite 628  
Spokane, WA 99201  
ph: (509)747-0728  
FAX: (509)747-0758

Preferred Investment Size:  
Investment Policy:  
Investment Type:  
Industry Preference:  
Geographic Preference:

Wisconsin  
Capital Investments, I  
Steve Rippl, Exec. Vice-President  
1009 W Glen Oaks Lane, Suite 103  
Mequon, WI 53092  
ph: (414)241-0303  
FAX: (414)241-8451

Preferred Investment Size: $500,000 to $1 MM  
Investment Policy: Subordinated Debt w/ Warrants  
Investment Type: Expansion, Later Stage  
Industry Preference: Manufacturing & Value-Added Distributors  
Geographic Preference: Mid-West, National

Future Value Ventures,  
William P. Beckett, President  
2821 N. 4th Street, Suite 526  
Milwaukee, WI 53212  
ph: (414)264-2252  
FAX: (414)264-2253

Preferred Investment Size: $100,000 to $300,000  
Investment Policy: Minorities Women  
Investment Type: Expansion, Start Up Distributors  
Industry Preference: Diversified  
Geographic Preference: Great Lakes, National

M & I Ventures, L.L.C.  
John T. Byrnes, President  
770 North Water Street  
Milwaukee, WI 53202  
ph: (414)765-7910  
FAX: (414)765-7850

Preferred Investment Size: $2 to $3 Million  
Investment Policy: Debt & Equity Securities  
Investment Type: Expansion, Later Stage
Industry Preference: Diversified, Manufacturing
Medical, Business Service
Geographic Preference: Mid-West

MorAmerica Capital Corporation
(Main Office: Cedar Rapids, IA)
600 East Mason Street Suite 304
Milwaukee, WI 53202
ph: (414)276-3839
FAX: (414)276-1885
Preferred Investment Size: $500,000 to $1 Mill.
Investment Policy: Sub Debt or Pref Stock-Warrants
Investment Type: Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: National

West Virginia
Shenandoah Venture Capital
Thomas E. Loehr, President
208 Capital Street, Suite 300
Charleston, WV 25301
ph: (304)344-1796
FAX: (304)344-1798
Preferred Investment Size: $500,000
Investment Policy: Loans and or Equity
Investment Type: Early Stage, Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: Regional

Whitney Capital Corpor Thomas Loehr, Manager
707 Virginia Street, East Suite 1700
Charleston, WV 25301
ph: (304)345-2480
FAX: (304)345-7258
Preferred Investment Size: $500,000
Investment Policy: Loans and or Equity
Investment Type: Early Stage, Expansion, Later Stage
Industry Preference: Diversified
Geographic Preference: Regional

Glossary

**Depreciation** means the accounting/tax records process of allocating the cost of an asset to an expense category using a length of time based on the useful life of the asset. Essentially, a business gets to deduct the cost of an asset over the useful life of the asset.

**Dunn & Bradstreet** A business which sells, among other things, credit information on businesses operating in the United States. Dunn & Bradstreet information portfolios regarding businesses are sometimes referred to as “D&B Reports”. Such reports are essential when judging the creditworthiness of a business.

**Fiduciary duty** This legal term refers to the duty of corporate officers and directors (or in the case of partnerships, the partners) to act in the best interests of the business and the corporation and use reasonable care when performing their duties. Fiduciary duties require that an officer or director do what is best for the corporation, even if that is not what is personally best for the officer or director! These duties exist whether the corporation is public or private, big or small.

**Flow through tax treatment** Term of art used to describe the tax treatment afforded to certain types of legal entities, including limited liability companies, partnerships and S-Corps.
The entity is not taxed on its income but instead all income (and losses) "flow through" the entity directly to the owners, who then claim their pro rata share of income or losses on their respective personal tax returns.

**Force majeure** a legal term of art referring to “irresistible force” which causes a party to breach its contractual obligations. For example, suppose a farmer agreed to deliver to a buyer ten bushels of wheat for $5 a bushel. But the farmer could not get the wheat to the buyer at the specified time because of a hurricane storm occurring at the time of delivery. The farmer may be excused from his breach of the contract because of “force majeure” or he may not, depending on the terms of the contract.

**Going public (or “go public”)** Slang term used among lawyers, investment bankers and business people to refer to the act of selling shares of a business to the public for the very first time. This is also known more formally as making an “initial public offering” of securities which will then be registered on a public exchange such as the New York Stock Exchange or NASDAQ.

**Liabilities** A term which refers to the debts payable to others. Bank loans, amounts owed to suppliers, employee salaries earned but not yet paid, taxes owed and any other amount someone could reasonably claim a business owes typically falls into this category.

**Minutes (shareholder or director)** Legal documents kept by a corporation as a record of what the shareholders and directors have agreed to and been informed of during formal shareholder and board of director meetings. These are typically kept by the corporation’s Secretary (the corporate officer, not the typist) in a “minute book”.

**Officers (of a corporation)** These are the people selected by a corporation’s board of directors to run the affairs of the corporation on a day to day basis. Many times in small businesses, the business’ sole owner serves as the sole director and sole officer.

**Pass through tax treatment** See "flow through" tax treatment.

**Piercing the corporate veil** A legal term of art where judicial proceedings (i.e., a lawsuit) results in the shareholders of a corporation are held liable for the debts and actions of a corporation. This is an extremely rare event, but it can happen if legal formalities are not observed.

**Retained earnings** An accounting term used by corporations. Retained earnings are the total earnings/equity kept by the corporation (either in the form of cash or other assets) throughout its lifetime, excluding the current year. For instance, if a corporation makes a $1,000 profit in a year, but only pays out $400 in the form of dividends for that year, it has $600 in retained earnings.

**Shareholders agreement** An agreement typically entered into by the shareholders of corporations which are closely-held (i.e., relatively few shareholders).
Index

**A**

Assets records of ............................................................... 25

**B**

Banks bankers view ............................................................. 84
common terms used by ....................................................... 83
dealing with banks ........................................................... 86
loans .................................................................................. 83
Business expenses receipts .................................................... 24
records ............................................................................. 24

**C**

Contracts damages ............................................................... 32
damages, under the ucc ..................................................... 39
goods, for the sale of .......................................................... 32
purchase orders ................................................................. 37
sales ................................................................................... 32
sales orders ........................................................................ 37
service contracts ................................................................ 40
uniform commercial code .................................................. 36
warranties, contractual ....................................................... 32
warranties, under the ucc ................................................... 39
Corporations characteristics ................................................ 9
continuity of existence ....................................................... 9
corporate liabilities, owner/s/shareholder's liability for .......... 9
fiduciary obligations of officers and directors ...12
formation ........................................................................... 8
incorporation, state of ....................................................... 11
maintenance ...................................................................... 10
selling stock ...................................................................... 10
Sub-chapter C...See Sub-chapter C corporations taxation ..................................................... 13
Credit, extending collecting on bad debts ................................ 71
common mistakes ................................................................ 73
credit reporting bureaus ..................................................... 70
information needed ........................................................... 69
tracking receivables ........................................................... 70

**D**

Deductions common deductions, list of .................................. 29
defined .............................................................................. 28
home office deduction ....................................................... 43
home office deduction, requirements .................................... 43
receipts, need for ................................................................. 28
requirements ........................................................................ 29
Demand note...See Banks, common terms used by

**E**

Employees equal opportunity laws ........................................ 48
interviewing prospective ................................................... 47
termination ......................................................................... 50

**F**

Federal taxation c-corporation .................................................. 26
employee withholding tax .................................................. 26
IRS form ss-4 ................................................................. 26
limited liability companies .................................................. 26
Local/municipal taxes...See Local/municipal taxation
medicare tax ...................................................................... 27
partnerships ...................................................................... 26
quarterly estimated taxes ................................................... 46
payment methods ................................................................ 27
s-corporation .................................................................... 26
self-employment tax ......................................................... 46
social security tax ............................................................... 27
sole proprietorship ............................................................. 26
State taxes...See State taxation
tips, taxation of ................................................................. 26
unemployment tax .............................................................. 27
Federal taxes employer identification number ....................... 26
Financing, obtaining from other businesses ......................... 75
from relatives and friends ................................................... 74
Franchises buying a franchise .............................................. 65
due diligence on the franchisor .......................................... 66
regulations on ................................................................. 65

**I**

Insurance ........................................................................... 52
“key-man” ....................................................................... 53
business interruption ........................................................ 53
liability .............................................................................. 52
property ............................................................................. 53
purchasing ........................................................................ 54
surety bonds ..................................................................... 53
workers' compensation .................................................... 53
L

Legal entities ............................................................. 5
choosing, factors for ............................................. 5
Limited liability companies. See Limited liability companies
Letter of credit. See Banks, common terms used by
Limited liability companies ...................................... 6
advantages over partnerships ............................... 6
flow-through tax treatment. See Partnerships
formation .................................................................. 6
managers ................................................................ 6
taxation of .................................................................. 7
Loans. See Banks, loans
Local/municipal taxation ........................................28
Losses
“micro-business”, to offset other income ..........45

P

Partnerships .............................................................14
capital accounts ...................................................18
contributions .......................................................... 18
fiduciary obligations of owners..............................16
formation .............................................................14
general partnerships .........................................14
limited partnership, formation, .....................19
limited partnership, general partner of a............20
limited partnerships ............................................19
limited partnerships, liability of owners for
partnership debts ..................................................19
partnership debts, owners’ liability for ..........15
pass-through taxation. See Partnerships: taxation
property contributions .........................................18

S

Sales orders. See Contracts
Securities
’33 act (registration) ............................................. 88
’34 act (reporting) .................................................. 88
accredited investor exemption ............................93
intrastate offering exemption .............................. 89
private offering exemption ............................... 90
regulation A offering ........................................... 90
regulation d offering ............................................. 91
state laws ............................................................. 93
Sole Proprietorship ..................................................20
taxation .................................................................. 21
State taxation ........................................................ 28
Sub-chapter C corporation ................................. 8

U

Uniform Commercial Code. See Contracts

V

Venture capital
selection proces by venture capitalists ..........77
The Best Way To Start Your Business!
Fast, Easy and Affordable Incorporation Services
http://www.activefilings.com - E-Mail: info@activefilings.com
1-800-609-2521