

## RESTRICTIVE AGREEMENT

This Restrictive Agreement (the "Agreement") is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and among:

*XYZ CORPORATION*, a New York corporation ("XYZ");

*JOHN DOE* ("DOE"); and

*ABC CORPORATION*, a New York corporation ("ABC").

### RECITALS

Whereas, XYZ and Doe have had extensive and valuable experience in the service business performing maintenance, service, repair, and other related activities on heating, ventilating and air conditioning systems, equipment and controls. All of such business operations are referred to as the "Business"; and

Whereas, ABC desires to enter into a restrictive agreement with XYZ and Doe so that ABC may engage in business without competition from them;

NOW, THEREFORE, in consideration of the recitals and of the representations, warranties, covenants and agreements contained, and intending to be legally bound, the parties agree as follows:

### ARTICLE I

#### RESTRICTIVE COVENANT

1.1 *Restrictive Covenant.* XYZ and Doe agree that, for a period of three years from and after the date of this Agreement, they will not, directly or indirectly, own, manage, operate, finance, join, control or participate in the ownership, management, operation, financing or control of, or be connected as a shareholder, director, officer, partner, principal, agent, representative, consultant or otherwise with, or use or permit their names to be used in connection with, the Business or enterprise engaged in the service business performing maintenance, service, repair, and other related activities on heating, ventilating and air conditioning systems, equipment and controls, within 50 miles of Franklin, New York. XYZ shall liquidate and dissolve, under applicable laws, not later than 18 months from January \_\_\_\_\_, 20\_\_. In the event that the provisions of this Section 1.1 should ever be deemed to exceed the time, geographic, product or other limitations permitted by applicable law in any jurisdiction, then such provisions shall be deemed reformed in such jurisdiction to the maximum time, geographic, product or other limitations permitted by applicable law. XYZ and Doe specifically acknowledge and agree that the foregoing restrictions are reasonable and necessary to protect the legitimate interests of ABC, that ABC would not have entered into an Agreement among them dated January \_\_\_\_\_, 20\_\_, for the purchase of certain assets of XYZ in the absence of such restrictions, that any violation of such restrictions will result in irreparable injury to ABC, that the remedy at law for any breach of the foregoing restrictions will be inadequate, and that, in the event of any such breach, ABC, in addition to any other relief available to it, shall be entitled to temporary and permanent injunctive relief without the necessity of proving actual damages. XYZ and Doe

further specifically acknowledge and agree that ABC shall be entitled to an equitable accounting of all earnings, profits and other benefits arising from any such breach, and further agree to pay the reasonable legal fees and expenses incurred by ABC or any successor assignee thereof in enforcing the restrictions contained in this Section 1.1.

Notwithstanding the foregoing, the parties agree that the following shall not violate this restrictive covenant:

- (a) the performance of Doe's duties as an employee of ABC; and
- (b) the administrative function of collecting XYZ's unpaid accounts receivable.

1.2 *Consideration for the Restrictive Covenant.* ABC shall pay the following consideration to XYZ and Doe for the restrictive covenant:

- (a) the total sum of \$15,000 to XYZ (or its assigns) payable on the date of this Agreement; and
- (b) the total sum of \$90,000 to Doe payable (i) \$20,000 on the date of this Agreement, (ii) the balance of \$70,000 in equal monthly installments of \$1,944.44 over thirtysix (36) months, commencing one month from the date of this Agreement and continuing on the same date of each month thereafter until paid in full.

## **ARTICLE II**

### **MISCELLANEOUS**

2.1 *Contents of Agreement; Parties in Interest; etc.* This Agreement sets forth the entire understanding of the parties with respect to the transactions contemplated hereby. It shall not be amended or modified except by written instrument duly executed by each of the parties hereto. Any and all previous agreements and understanding between or among the parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement.

2.2 *Assignment and Binding Effect.* Neither XYZ, Doe nor ABC shall assign this Agreement nor any part of it, nor delegate any obligation imposed by this Agreement without the prior written consent of the other. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the successors and assigns of XYZ, Doe and ABC.

2.3 *Waiver.* Any term or provision of this Agreement may be waived at any time by the party or parties entitled to the benefit thereof by a written instrument duly executed by such party or parties.

2.4 *Notices.* Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given only if delivered personally or sent by telegram or by fax or by registered or certified mail, postage prepaid, as follows:

If to ABC to:

ABC  
123  
New York, New York 12345

America

Corporation  
Street

With a required copy to:

Attorney  
456  
New York, New York 12345

James  
State

White  
Street

If to XYZ or Doe, to:

John  
XYZ  
890  
New York, New York 12345

James

Doe  
Corporation  
Street

With a required copy to:

Attorney  
567  
New York, New York 12345

Thomas  
Eighth

Greene  
Street

or to such other address as the addressee may have specified in a notice duly given to the sender as provided herein. Such notice, request, demand, waiver, consent, approval or other communication will be deemed to have been given as of the date so delivered, telegraphed, faxed or mailed.

*2.5 New York Law to Govern.* This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of New York.

*2.6 No Benefit to Others.* The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the parties hereto and their heirs, administrators, legal representatives, successors and assigns, and they shall not be construed as conferring any rights on any other persons.

*2.7 Headings, Gender and "Person."* All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires. Any reference to a "person" herein shall include an individual, firm, corporation, partnership, trust, governmental authority or body, association, unincorporated organization or any other entity.

*2.8 Severability.* Any provision of this Agreement which is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

2.9 *Counterparts*. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any teletype or other facsimile transmission of any signature shall be deemed an original and shall bind each Party.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written.

(Corporate Seal)

XYZ CORPORATION

Attest:

By: \_\_\_\_\_  
As its Secretary

By: \_\_\_\_\_  
As its President

\_\_\_\_\_  
John Doe

(Corporate Seal)

ABC CORPORATION

Attest:

By: \_\_\_\_\_

By: \_\_\_\_\_

[restrict.nys]

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