



**FORMING A NEW JERSEY NON-PROFIT CORPORATION
AND
SEEKING FEDERAL TAX EXEMPT STATUS AS A 501(C)(3)
CHARITABLE ORGANIZATION**

A GUIDE FOR NEW JERSEY ARTISTS and ARTISANS

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This manual was prepared by Reed Smith LLP as a supporting member of the New Jersey Volunteer Lawyers for the Arts (“NJVLA”). This guide and all accompanying materials prepared by Reed Smith LLP are intended to provide helpful guidance and serve as a resource for New Jersey artists and artisans that are interested in forming a New Jersey nonprofit corporation and seeking an exemption from federal income tax as a 501(c)(3) organization.

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I. Becoming a Tax-Exempt Non-Profit Organization: What Do I Need To Know?

A tax-exempt nonprofit organization is an organization that serves the public interest. In general, the purpose of this type of organization must be charitable, educational, scientific, religious or literary. The public expects to be able to make donations to these organizations and deduct these donations from their federal income taxes.

Legally, a nonprofit organization is one that does not declare a profit and instead utilizes all revenue available after normal operating expenses (including salaries) in service to the public interest. These organizations can be unincorporated or incorporated, but while an unincorporated nonprofit organization may be granted federal tax-exempt status or the designation of being a 501(c)(3) organization as defined by the Federal Internal Revenue Service (“IRS”), an unincorporated nonprofit organization may not have the same legal protections, such as limited liability, that a corporate form provides. For that reason, materials relating to the formation of a New Jersey nonprofit corporation have been included.

The following are frequently asked questions about the process of becoming a nonprofit:

How do I become a New Jersey nonprofit corporation?

Formation: When forming a New Jersey nonprofit corporation, the organization must first file a certificate of incorporation with the State of New Jersey, Department of Treasury, Division of Revenue. (*See sample form Certificate of Incorporation provided with these materials.*) This process is similar to that for the formation of a for-profit corporation. Like most states, New Jersey requires the non-profit corporation to designate its name, appoint a registered agent resident within the State of New Jersey to receive service of process, name the individuals who will serve on the initial Board of Trustees and other information required by the

relevant New Jersey statute (N.J.S.A. §15A:2-8 lists the information that must be included in the certificate of incorporation.)

This certificate of incorporation may be filed online at <https://www.state.nj.us/cgi-bin/treasury/revenue/dcr/filing/page1.cgi> or in hard copy via mail-in/ regular processing (addressed to the Corporate Filing Unit, P.O. Box 308, Trenton, NJ 08646-0308) or over-the counter/ expedited processing by in person delivery (not available via USPS Overnight delivery service) to the Corporate Filing Section, 33 West State Street, 5th Floor, Trenton, NJ 08608-10001.

The certificate of incorporation may also be delivered by facsimile to (609) 984-6851. Additional service fees will be charged on a per page basis for filings that are faxed back to the filers.

The filing must be accompanied by the appropriate filing fee and any related service fees. As of January 20, 2011, the filing fee for a certificate of incorporation for a non-profit corporation was \$75.00. An additional service fee may be charged for expedited service over the counter or by fax.

Before filing a certificate of incorporation, it is recommended that you review the State of New Jersey, Department of the Treasury, Division of Revenue website at <http://www.state.nj.us/treasury/revenue> to ensure that the filing procedures for corporate entity formations have not changed. The commercial recording fee schedule should also be checked to ensure that the proper filing and service fees are paid.

Registration as a new Business Entity: Within sixty (60) days after your New Jersey nonprofit corporation has been formed, it is necessary to register it as a business entity with the State of New Jersey, Division of Revenue. This registration process will assist you in becoming aware of all of the taxes and related liabilities to

which a new business may be subject. The applicant for registration must complete the Business Registration Application, Form NJ-REG and mail it to New Jersey Division of Revenue, P.O. Box 252, Trenton, NJ 08646-0252. Overnight delivery can be made to Client Registration, 847 Roebbling Avenue, Trenton, NJ 08611. Electronic filing for the NJ-REG form is available as of January, 2011. The complete business registration packet and instructions, including the NJ-REG form, can be downloaded in pdf format from the New Jersey Business Gateway website found at <http://www.state.nj.us/njbgs> and click on the link for “I want to form/register a business”.

Most states also require nonprofit organizations to register with state charity bureaus or other agencies and adhere to reporting requirements particularly involving fundraising operations. In New Jersey, non-profit corporations may be required to register with the New Jersey Division of Consumer Affairs’ Charities Registration Section of the Office of Consumer Protection. This process is explained in greater detail later in this pamphlet. (*See Section III below, “Ability to Fundraise; Registering as a Charitable Entity in New Jersey”*).

Federal Identification Number: All corporations and businesses with employees must have a Federal Employer Identification Number (EIN). This number, which is the equivalent of a Social Security number assigned to an individual, is provided to your organization by the IRS. In order to obtain an EIN from the IRS, your organization should complete a Form SS4 application or use the online EIN application on the IRS website at <http://www.irs.gov/businesses/small/article/0,,id=102767,00.html> after its formation. This SS4 application form and related instructions can be found on the IRS website at www.irs.gov. It is important to note that a Form 1023 Application cannot be made without having an EIN number for your organization. (*See sample form SS4 provided with these materials.*)

What is a 501(c)(3) organization?

The designation "501(c)(3)" refers to the section of Internal Revenue Code (the "**Code**") that deals with tax exempt organizations. A tax-exempt organization (such as a nonprofit corporation) does not pay federal corporate income taxes on its income that arises from its charitable activities. There are two very important things to keep in mind with respect to this exemption:

- *Being formed as a nonprofit corporation under New Jersey law or the laws of any other state does NOT necessarily qualify your organization for federal tax exempt status.*
- *In order to obtain a determination from the IRS that your organization qualifies for such exemption under Section 501(c)(3) of the Code, an application on IRS Form 1023 must be made. As set forth in the accompanying materials, such Form 1023 requires substantial disclosures about your organization, its officers and directors, its finance, its fundraising activities and other information. (See sample Form 1023 and Form 1023 Attachments provided with these materials.)*

How will my organization benefit from obtaining an IRS determination that it is a 501(c)(3) organization?

The primary benefit, of course, is that your organization will not be required to pay federal income tax on profits arising from its charitable activities. Your organization will also be more attractive to potential donors because your donors' charitable contributions will be deductible for federal income tax purposes.

Being designated by the IRS as a tax-exempt nonprofit corporation can also qualify the organization for lower postal rates and for government and private grants.

Being designated by the IRS as a tax-exempt nonprofit corporation has some disadvantages, which include increased paperwork, record keeping and ongoing reporting requirements. For example, your organization will be required to keep accurate records of its fund-raising activities, and your organization may become subject to additional regulation, such as charitable registration requirements. (*See Infra. Part III and Part IV discussing charitable registration and filing of IRS Form 990.*)

Nonprofits are also prohibited from participating in certain lobbying activities, and must pay taxes on any profits that arise out of activities unrelated to your charitable purpose.

The list of advantages and disadvantages set forth above is not exhaustive and does not take into account the particular nature of your organization, its planned activities, its sources of funding or the individual goals of your incorporators. ***There is no substitute for obtaining professional legal advice, as well as tax and accounting advice, from licensed professionals who can discuss the advantages and disadvantages to your organization, as well as to its trustees, officers and employees, of forming a nonprofit corporation and seeking a federal tax exempt status.***

Should I start a 501(c)(3) non-profit organization?

First you should decide if your organization's mission would benefit by establishing a nonprofit corporation. If you want to raise funds in the form of tax deductible contributions, the organization must serve some charitable, religious, educational, scientific or literary purpose beneficial to the public interest. This will allow the organization to seek tax exempt status from the IRS, acquiring the designation of being a 501(c)(3) charitable organization.

If you'll be seeking funding from foundation grants, you should know that many foundations require grant recipients to be 501(c)(3) organizations. If you want your contributors to be able to deduct their donations from their taxable income (and they will want that as well), you need to be a 501(c)(3) organization.

It also depends on how much time, effort, and money you are willing and able to put into the process of filing forms and complying with legal requirements. Here's where consulting a lawyer would be highly recommended, if your organization can afford one. If your project is small and of short duration, you might be better off partnering with a 501(c)(3) that can provide you with legal protection and give your project legitimacy.¹

What should I know about how New Jersey law governs nonprofit corporations?

In New Jersey, nonprofit corporations are governed by the New Jersey Nonprofit Corporation Act, which is patterned on the New Jersey Business Corporation Act, although there are substantial differences.

¹ In some instances, a for profit entity or individual seeking grants may receive funding through a 501(c)(3) tax-exempt "fiscal sponsor". This may be a good option if you are seeking funding for a small project of limited duration. Fiscal Sponsorship is outside the scope of these materials, but may be something you wish to discuss with a tax professional that can provide further information.

One significant difference between a for-profit corporation and a nonprofit corporation is that a nonprofit corporation does not have any shareholders; in fact, no part of the earnings of the organization may be used to benefit any private individual.

Nonprofit corporations are governed by a Board of Trustees. Trustees of nonprofit corporations have fiduciary duties to the organization they serve and must act (a) in good faith², (b) with due care, after reasonable inquiry, and (c) in a manner in which the trustee reasonably believes to be in the best interests of the organization.

Under the New Jersey Nonprofit Corporation Act and common law, a trustee of a nonprofit corporation stands in a fiduciary relationship to the corporation and agrees to act with a duty of loyalty to the corporation. The duty of loyalty means trustees must act in the best interests of the corporation, without regard to the trustee's self-interest or personal gain when dealing with the organization's matters.³ A business relationship between a trustee and an organization is permissible, but the transaction between trustee and the organization must be fair and reasonable at the time it is authorized, the conflict must be known to the board, and the transaction is authorized, approved or ratified by the affirmative vote of a majority of disinterested trustees, even if the disinterested trustees be less than a quorum.⁴

Trustees also must act with a duty of care in making deliberative and informed decisions, but they are not expected to have specialized expertise.⁵ Trustees are expected to, be familiar with the organization's structure and mission, be adequately informed about any decision made by the board of trustees, fully participate

² "Good faith" requires honesty of intention, openness, and fair dealing and includes a requirement that a trustee's action be in keeping with the trustee's duty of loyalty.

³ See *Matter of Siedman*, 37 F.3d 911 (3rd Cir. 1994) ("Duty of loyalty includes a duty to avoid conflicts of interest")(citing *Pepper v. Litton*, 308 U.S. 295, 306, 310-11, 60 S.Ct. 238,247,84 L.Ed. 281(1939)).

⁴ N.J.S.A. § 15A:6-8.

⁵ See *Abrams v. Koether*, 766 F. Supp. 237 (D.N.J. 1991).

at board meetings, and ensure the organization's activities are in accordance with the mission, plans, and policies of the organization.

Furthermore, trustees may, when acting in good faith, rely on others (officers, employees, accountants, committees) to collect and evaluate information and/or to act for them in particular circumstances, if the board exercises due care in the selection and surveillance of its designees. Tasks requiring specialized expertise shall be delegated to qualified professionals. A trustee would not be considered to be acting in good faith or with due care if the trustee had knowledge concerning the matter in question that would cause the trustee's reliance on the designee to be unwarranted.

Because Trustees have responsibility and control over organizations that serve the public interest, they have a heightened level of obligation under the law to be loyal to the corporation and to further its nonprofit purposes. It is a good idea for an organization to have a written policy regarding business relationships with its Trustees.

The New Jersey Nonprofit Corporation Act imposes certain obligations upon the nonprofit corporations with respect to its corporate governance. All Trustees and officers of nonprofit corporations should familiarize themselves with this Act, as well as the procedures set forth in the corporation's bylaws.

For a short form checklist of some of the basic requirements to have in place prior to initiating the nonprofit formation process, see the "Checklist of Items to Have in Place Before Applying for a NJVLA Full Service Attorney" accompanying these materials.

501(c)(3) Organizations Enjoy the Following Privileges:

- Exemption from Federal Income Tax
- Exemption from F.U.T.A. (federal unemployment tax)
- Tax Deductibility for Donors
- Eligible for Government & Foundation Grants
- Eligible for Bulk Mailing Permit (postage discount)
- Gambling Permits (for raffles and other 'games of chance' fundraising)
- Credibility

501(c)(3) Organizations Must Fulfill the Following Responsibilities:

- Keep Adequate Records
- File Required Returns
- Provide Donor Substantiation
- Obey Disclosure Laws
- Generate Public Support
- Avoid "Excess Benefits" for insiders
- Shun Political Activity
- Limit Legislative Activity
- Limit Unrelated Business Activity

Special Considerations for Arts Organizations

As a first step, you will need to specifically consider whether you and your work as an artist would benefit from becoming a non-profit organization and whether you and your artistic organization's activities will meet the requirements for tax-exempt status.

In order to be exempt as an organization described in section 501(c)3, an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. At

the outset it is helpful to quote directly the description of a 501(c) (3) organization from the Internal Revenue Code (the “**Code**”). It is as follows:

Corporations and any community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if not part of its activities involve the provisions of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation (except as otherwise provided in subsection (h))and which does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.

Notice that the Code makes no mention of “artistic” purposes. This doesn’t mean that an arts organization cannot receive 501(c)(3) status, however it does mean that the arts organization must couple with one of the other designated purposes, usually “educational” or “charitable” (and perhaps “literary” if the organization is particularly focused on the linguistic or literary arts), or some multiple combination of these purposes. Because of this “coupling factor” it is important to make sure that your arts organization dedicates a recognizable portion of its activities in the educational, charitable or literary categories (or one of the other 501(c)(3) categories) worthy of tax-exemption under the Code.

In general the IRS has considered a number of factors when determining whether to grant tax-exempt status to non-profit arts organizations including: the extent to which the organization educates

and provides outreach to the community at large, whether or not there will be financial profits from art shows or performances and the purposes for which those funds will be used, the specific need for the arts organization within the specific community, whether or not artistic performances or exhibits will be juried, the extent to which the particular art is being pursued for artistic or commercial purposes, and whether or not arts activities will be open only to members of the organization or also to the public at large.

In prior case law and revenue rulings, the federal tax courts and IRS have determined that arts organizations which focused on art education and community outreach, the organization of juried shows of artwork involving the public, and the sale of artwork for the purposes of funding the organization (and not the members) serve an important function worthy of tax-exempt status. In addition, an organization which aims to foster and promote the arts by educating the public and supporting amateur artists will also be worthy of tax-exempt status. The IRS prefers that at least some of the organization's events and classes be open to the public at large (and not just members). However there are myriad possibilities for activities and combinations of activities which could receive tax exempt status. Just keep in mind that your description of your organization's activities should adequately describe your organization's charitable 501(c)(3) activities and the specific contribution your arts organization will bring to the artistic community or the public at large. (*See sample Form 1023 for a 'description of organizational activities' and the sample Certificate of Incorporation 'description of organizational purpose' provided with these materials.*)

If after reading this introduction you decide to become a New Jersey non-profit organization and to apply for 501(c)(3) status from the IRS, please read on to learn about the specific requirements for making your applications to the State of New Jersey and the Federal IRS. *Please also view the "Checklist of Items to Have in Place Before Applying for a NJVLA Full Service Attorney" and "Nonprofit Formation*

Task list” included in these materials for further instructions on how to proceed.

Special Considerations for Youth Serving Arts Organizations

Pursuant to Chapter 3A of the New Jersey Nonprofit Corporation Act, if your organization is formed as a New Jersey nonprofit corporation and is exempt from federal income taxes, and if its activities will involve recreational, cultural, charitable, social or other activities or services for persons younger than 18 years of age, your organization is considered to be a “nonprofit youth serving organization.” Chapter 3A permits a youth serving organization to request through the New Jersey Department of Law and Safety, that a criminal history record background check be conducted by the Division of State Police on each prospective and current employee or volunteer of the organization.

The Division of State Police may only conduct such criminal history record background check if it has received the written consent to such check by the prospective or current employee or volunteer. Such prospective or current employees or volunteers are required by law to submit their name, address, fingerprints and written consents to the organization requesting such check.

Upon receipt of the written consent, the Division of Police will examine its own files, and arrange for a similar examination by federal authorities. If the background check on the prospective or current employee or volunteer reveals a conviction of a “disqualifying crime or offense” (a list of those crimes or offenses are contained in N.J.S.A. §15A:3A-3), the Division will notify the youth serving organization. The law permits the youth serving organization to disqualify such person from serving as an employee or volunteer.

For more information on criminal history record background checks, see the website for the State of New Jersey, Department of Law and Public Safety, Office of the Attorney General.

II. How the IRS Exemption Application Review Process Works

Processing Fees

The IRS charges a non-refundable processing fee for 501(c)3 applications. There is currently a two tier fee schedule. Organizations whose gross receipts have averaged, or will average, not more than \$10,000 per year pay a \$400 flat fee. Larger organizations pay a \$850 flat fee. You may pay the fee with a cashier's check, money order or personal check.

Mailing Address

Currently, all exemption applications are initially handled in the IRS Cincinnati Service Center, located in Covington, Kentucky. If you mail your application package, it should be sent to:

Internal Revenue Service
E.O. Application Receiving
P.O. Box 12192
Covington, Kentucky 41012-0192

If you send your application by means of a delivery service which requires a street address, it should be sent to:

Internal Revenue Service
E.O. Application Receiving
Attn: Extracting Stop 312
201 West Rivercenter Blvd
Covington, Kentucky 41011

Screening

The Covington, Kentucky office should send you a brief letter acknowledging receipt of the application a few weeks after you mail it. All exemption applications are initially screened in Cincinnati to determine whether they can be closed without further development or with only minimal correspondence with the organization.. More complicated applications may require more time along with additional review.

An application which is approved without the need for the IRS to contact the organization may take only six to ten weeks, start to finish. However, when the IRS feels that additional development and information is needed, processing is likely to take much longer. You may obtain updates on the status of your application by visiting the IRS website at <http://www.irs.gov/charities/article/0,,id=156733,00.html>.

Expediting your application: Many applicants are interested in expedited handling for a number of reasons. For example, you may have a grantor waiting to award you funding upon your receipt of tax-exempt status. Although the IRS generally will not consider any application out of turn, they will sometimes be persuaded by a letter from an unrelated third party, such as a potential grantor, which explains the need for expedited treatment and mentions a specific deadline.

Because exemption applications may travel to different parts of the country depending on the IRS workload, a letter of this kind must accompany the application when it is originally submitted. You should also indicate clearly and upfront that you are seeking exemption by writing "Request for Expedited Treatment" at the top of your application.

Inquiry Letter

If the IRS feels that your application is incomplete or requires further information or development to make a determination, the IRS may send you an inquiry letter with a list of the additional information it may require. IRS employees in offices all over the country handle this phase of processing. When an inquiry letter (Form Letter 1312) is sent, you normally have 21 days to respond. If you need additional time, the agent handling the case will routinely grant an extension of ten days to two weeks. If that will not be enough time, however, the IRS usually prefers to close the case (Form Letter 1314). Your file is kept in the immediate work area, and reopened automatically when your additional information comes in.

Caution! If you take more than 90 days to submit the additional information, IRS rules say that they can charge you a new "User Fee."

Final Disposition

Once you have answered all of the IRS agent's questions satisfactorily, a favorable determination letter will be issued. **If the IRS denies your application, they must provide you with a written explanation of the facts, law, and argument upon which their decision is based, as well as an explanation of your appeal rights.** If your application is denied we strongly suggest that you seek the assistance of a lawyer in drafting your appeal. Very often successful appeals require drafting a detailed argument based upon legal precedent statutory requirements.

Putting Together a Complete 501(c)3 Tax-Exempt Entity

Application Package

Forms

Your application package should contain the following items, in the order shown.

1. An envelope containing your check for the User Fee. Make your check out to "United States Treasury" for either \$400 or \$850. It's a good idea to write the organization's Federal ID number and "Form 1023" in the memo area of the check.
2. The two-page Form 1023 Checklist, found at the end of Form 1023. Note that you must indicate which Form 1023 schedules you are filing, as well as entering the locations (from the articles of incorporation) of your organization's purpose and dissolution clauses.
3. If your organization is represented by a tax professional, Form 2848, Power of Attorney.
4. If you want the IRS to discuss your application with a third party, Form 8821, Tax Information Authorization.
5. If you are asking the IRS to expedite review of your application, an

Expedite Request, usually in the form of a letter.

6. Form 1023, Application for Recognition of Exemption Under Section 501(c)(3). Make certain that all applicable parts of the form are completed, including any schedules required for your type of organization. The form must be signed by an authorized person.

Required Materials

These materials are required; if they are not included, it may delay processing of your application:

1. A copy of the Certificate of Incorporation (if your group is incorporated...otherwise, submit your constitution, articles of association, or other governing document - Bylaws alone are not enough). The Certificate of Incorporation should clearly show that they have been filed with the proper state authority. The IRS usually asks for two signatures on the governing instrument of an unincorporated association. (*See the sample Certificate of Incorporation provided with these materials.*)
2. Bylaws. These should be signed and dated. (*See the Sample Bylaws and "Introduction to Corporate Bylaws" provided with these materials.*)
3. Actual financial data, for the most recent five tax years,(if the

organization has been in existence for five or more years) including income statement(s) and a recent balance sheet, if the organization has had any financial activity.

4. If the organization has been in existence for more than one tax year, but less than five years, include actual financial data for each year in existence and a four year projected budget of likely revenues and expenses based on a reasonable and good faith estimate. If the organization has not been in existence for a tax year, a three year projected budget will suffice.

Optional Materials

The following materials are often requested by IRS agents reviewing exemption applications (if you have these materials available it is a good idea to include as many of them as possible):

1. Brochures, pamphlets, descriptive literature, and any other printed materials describing the history of the organization, its activities and its plans for the future. If you don't have any, it is a good idea to say so somewhere in the application. If you have some in draft form, go ahead and submit them.

2. If the organization publishes a newsletter, sample copies.

3. If the group is a membership organization, any materials prepared for members - membership application forms, promotional materials, sample membership certificates or identification cards, sample copies of member-only publications, etc.

4. If you have received media coverage, copies of newspaper clippings, transcripts of interviews, etc.

5. Any documentation you have regarding grant monies. This might include grant applications, grant contracts, or correspondence between your organization and the grantor organization.

6. If appropriate, a "schedule of events," showing where and when your organization has held informational or other events during the last 12 months. Include approximate attendance.

7. If your organization will have a scholarship or grant program:
 - a description of how potential applicants will hear about your program
 - a description of eligibility requirements
 - a sample (draft will do) of the application form(s) you will require applicants to submit

- a description of the selection process, including a description of the selection committee itself, and how the selection committee is selected
- any guidelines prepared for the selection committee's use
- conditions placed upon grants or scholarships, including any requirements for grade notification, etc. and a description of action that will be taken if the terms of the grant are violated

8. In the absence of the several kinds of printed materials described in items 1-7 above, it is sometimes useful to have selected letters from your correspondence files, such as letters between your organization and potential members or board members, letters of appreciation from groups where you have made presentations or otherwise helped out, or perhaps even letters from public officials commenting on your efforts.

9. Any or all of the following:

- advertisements
- copies of contracts, rental agreements, leases, and loan agreements involving the applicant organization
- copies of Federal, State or local legislation, if any, regarding the creation or continued existence of the organization
- resumes of board members and/or key employees, if readily available, and/or copies of licenses, certificates, etc.
- independent appraisals of assets the organization is renting or

purchasing from related parties

10. Anything else you may have which would give the IRS insight into your organization's mission or operations.

III. Ability to Fundraise; Registration as a New Jersey Charitable Organization

The New Jersey Charitable Registration and Investigation Act requires charitable organizations to register with the Division of Consumer Affairs before conducting fundraising activities unless the charitable organization only raises \$10,000 or less annually.

Organizations which raise (or plan to raise) \$10,000 or less may choose to register but are no longer required to do so. An organization that intends to raise \$10,000 or less but ends up raising additional funds must register within 30 days of raising such additional funds.

Note that if you are intending to use fund raising counsel or an independent paid fund raiser, you should be sure that such person/entity is also registered in New Jersey.

How to Register

a. Short Form Registration

If your organization intends to raise between \$10,001 and \$25,000 annually, it may register with the Division of Consumer Affairs using Form CRI-200 (with addendum) – available on the Division of Consumer Affairs' website – if the funds are being raised by volunteers, members, officers or persons who are not being compensated for soliciting contributions. Form CRI-200 is available on the Division's website at <http://www.state.nj.us/lps/ca/ocp/charities.htm>. Included with the registration form should be copies of the organizations bylaws, articles of incorporation, the IRS determination letter and the most

recently filed IRS Form 990. If the organization does not have any of these documents, you should state why it (or they) is/are missing in the cover letter accompanying the form, e.g. because the organization has not yet received its determination letter from the IRS regarding its tax-exempt status.

A check or money order in the amount of \$30 must accompany Form CRI-200 and should be made out to The N.J. Division of Consumer Affairs. Form CRI-200 and the fee should be sent to:

New Jersey Division of Consumer Affairs
Charities Registration Section
P.O. Box 45021
Newark, NJ 07101

Short form registrants must renew their registration annually using CRI-200 and such renewal must be submitted within 6 months after the close of the organization's fiscal year and must be accompanied by the filing fee.

b. Long Form Registration

If your organization intends to raise more than \$25,000 annually or if it contracts with fund raising counsel or an independent paid fund raiser, it must register using Form CRI 150-1/1C (with addendum). Such forms are available on the Division's website at <http://www.state.nj.us/lps/ca/ocp/charities.htm>. Again, copies of the organization's bylaws, articles of incorporation, IRA determination letter and most recently filed IRS Form 990 must be included with the long

form registration, as well as a check or money order made out to The N.J. Division of Consumer Affairs in the amount specified: if your organization raises \$100,000 or less annually, you must submit a filing fee of \$60; if the organization raises more than \$100,000 but not more than \$500,000, the fee is \$150; and if the organization raises more than \$500,000 annually, the fee is \$250. Note that organizations filing the long form that raise more than \$250,000 must also submit a certified audit prepared by a public accountant.

Long form registrants must renew their registrations annually within 6 months of the close of the fiscal year. The renewal form is Form CRI-300R/300RC and must be accompanied by the filing fee.

IV. Continuing Obligations Upon a Favorable Determination by the IRS

Following receipt of a letter from the IRS providing a favorable determination that your organization qualifies as a federal tax exempt entity under Section 501(c)(3) of the Code, your organization will have continuing reporting obligations to various federal and state entities.

Those obligations include:

- **Annual filing of federal tax return Form 990/Form 990EZ:**

Starting in 2010, a tax exempt organization that normally has \$50,000 or more in gross receipts must make an annual filing of *Form 990, Return of Organization Exempt from Income Tax*. This return is due on the 15th of the month on the fifth month after the close of the organization's fiscal year. For organizations with gross receipts of less than \$200,000 and assets of less than \$500,000 at the end of the year may file *Form 990-EZ, Short Form Return of Organizations Exempt from Income Tax*. Small tax exempt organizations, whose gross receipts are normally \$50,000 or less, may be required to electronically submit Form 990-N, also known as the e-Postcard. Certain organizations are exempt from these filing requirements. More information about the filing requirements and instructions for completing such Form can be found on the IRS website.

It should be noted that all information provided on the Form 990 is open to public inspection. Information to be reported includes not only financial information relating to your organization's revenues, expenses, assets, etc., but it also includes compensation paid to five highest paid employees, compensation paid to the five highest paid independent contractors and a list of all contributors, including their names and addresses, aggregate contributions and type of contribution.

- **Annual filing of state tax returns:** In New Jersey, if your organization is properly incorporated and operated as a nonprofit corporation, your organization is exempt from the New Jersey corporation business tax without obtaining a separate exemption letter from the New Jersey Division of Taxation. Each state's tax filing requirements may differ, but many states require nonprofit entities to file a copy of its federal Form 990 with that state's tax division. However, the New Jersey Division of Taxation (as of January, 2011) does not require the filing of a federal Form 990.
- **Annual corporate report filing:** As a NJ nonprofit corporation, even though your organization may not be required to file a corporate business tax return (see above), your organization will be required to make an *online* filing of its annual report. The filing must be done through the State of New Jersey, Department of Treasury, Division of Revenue website, and a filing fee (\$25 for

nonprofit corporations as of January 2011) will be payable at the time of the filing. In order to enter the system, you will need to have the ten digit corporation number assigned upon formation, the month and year the business was formed and the business type (nonprofit domestic corporation).

- **Renewal of Charitable Registrations:** As noted above, organizations that have registered as charitable organizations with the New Jersey Division of Consumer Affairs must renew their registrations annually.

Your entity may have additional annual filing requirements, particularly if your organization engages in its activities in other states. Those other states will have their own tax, corporate and charitable registration requirements. In addition, if your organization retains a third party (for example, a fundraising management company or consultant) to do fundraising for it, additional regulatory approvals and filings may be required. The bulleted points above are only a starting point and should not be relied upon as an exhaustive list of your organization's periodic reporting obligations. If in doubt, it is always a good idea to check the website of the state's attorney general or any other agency that has jurisdiction over charitable entities or their activities.

A. *Nonprofit Formation and Organization Task List*

**FORMATION AND ORGANIZATION
OF A NEW JERSEY NON-PROFIT CORPORATION
TASK LIST
FORMATION OF A NEW JERSEY NON-PROFIT
CORPORATION**

	<u>Task/ Document</u>	<u>Purpose</u>	<u>Comments</u>
1	<p>File Certificate of Incorporation with NJ Division of Revenue along with \$75 fee.</p> <p>See more detailed list of tasks below for the formation and organization of a New Jersey nonprofit corporation.</p>	To form NJ entity	<p>Need the following information:</p> <p><i>-name & address of registered agent</i></p> <p><i>-3 trustees</i></p> <p><i>-business purpose must include 501(c)(3) language</i></p> <p>[include dissolution language required by IRS and IRS-required restrictions for 501(c)(3) entities – IRS pub. 557]</p>
2	File BUS-REG FORM with NJ Division of	To register business with	Need information about activities

	Revenue	the Division of Revenue for applicable taxes and liabilities administered by the department of Labor and Division of Taxation	and employees
3	File Form 1023 with the Federal IRS	To obtain 501(c)3 Tax Exemption	Will require projected or actual financial information.
4	File Form REG-1E Application for Exempt Organization Certificate with the Division of Revenue	To obtain exemption from NJ sales and use tax (an ST-5 Exempt Organization Certificate).	<p>Attach copy of certificate of incorporation, bylaws, 501(c)(3) determination letter.</p> <p>-review "Taxes" section of NJ REG package to be apprised of possible tax liabilities.</p> <p>-attach note to application if organization is starting to pay salaries so Division will promptly notify</p>

			the Client Registration Bureau.
5	File an initial registration packet with the NJ Division of Consumer Affairs' Charities Registration Section of the Office of Consumer Protection.	To obtain permission to conduct fundraising activities in NJ.	packet contains the following: <ul style="list-style-type: none"> -copy of articles of incorporation -copy of bylaws -copy of IRS tax exemption letter -copy of form 990 -initial registration form (either CRI-200 or CRI-1501C) -fee -financial statement certified by organization or CPA (if gross contributions are greater than \$250,000).

Task List for Incorporation and Organization Procedure:

1. Determine if desired name is available by checking with the State of New Jersey, Department of the Treasury.
2. Reserve exclusive use of desired name with the State of New Jersey, Secretary of State, if desired.
3. Draft Certificate of Incorporation (see sample form provided). Unless all of the initial Trustees are incorporators that will execute the Certificate of Incorporation, obtain a letter from each initial Trustee, consenting to serve and to be named in the filing.
4. Determine where your registered office and who your registered agent will be.
5. Have incorporator(s) execute the Certificate of Incorporation.
6. Send the signed Certificate of Incorporation and the appropriate fees to the State of New Jersey, Secretary of State (See Chart Below). Upon its acceptance by the Secretary of State, the entity will be formed, unless a subsequent effective date was set forth in the Certificate of Incorporation.
7. File Application for Employer Identification Number (Form SS-4) with the Internal Revenue Service. Form SS-4 must be signed by one of the principal officers of the corporation. Go to www.irs.gov to find the forms.
8. Draft bylaws for adoption by the initial Board of Trustees at organizational meeting.
9. Incorporator(s) should provide written notice of the first organizational meeting to all Trustees. In lieu of a meeting, all Trustees may sign a form of unanimous written consent to approve the actions to be taken to organize the company (see sample form provided).
10. At the organizational meeting, adopt the Bylaws and authorize officers to take actions to organize the corporation, such as establishing bank accounts, signing leases, etc. If the corporation has members, and if the Board of Trustees elects to issue membership certificates, then have the membership certificates signed by an officer and deliver to the members.
11. Prepare and file foreign qualification applications ("foreign" means other states of the U.S.), if any, in any states where your corporation will do business.
12. Collect and keep all of your original organizational materials in a binder: certificate of incorporation, SS4 application, EIN number assignment, Bylaws, forms of resolutions passed by the Board of Trustees at a meeting or by written consent, etc.

B. Nonprofit Website List

Useful Websites and Contacts for Information on Becoming a New Jersey Non-Profit Organization

1. Information, Instructions and Forms for IRS 1023 filing and issues related to tax-exempt applications with the IRS:

<http://www.irs.gov/pub/irs-pdf/i1023.pdf>

- Life Cycle of a Public Charity <http://www.irs.gov/charities/charitable/article/0,,id=136459,00.html>
- Frequently Asked Questions - <http://www.irs.gov/charities/article/0,,id=130101,00.html>
- New Form 1023 (Fill-in Form) - <http://www.irs.gov/pub/irs-pdf/f1023.pdf>
- New Instructions - <http://www.irs.gov/pub/irs-pdf/i1023.pdf>

A completed Form 1023 is a public document. Exempt organizations are required to make a copy of theirs available to anyone who requests it (with certain exceptions parallel to those that apply to requests for 990s - for more about this subject, see <http://www.nonprofits.org/npofaq/19/06.html>). Anyone can also request a copy from the IRS. On the IRS web site find form 4506-A -- <http://www.irs.gov/pub/irs-pdf/f4506a.pdf> -- fill it out and mail it in. It usually takes several months before the copy will be mailed.

Also helpful: <http://www.form1023help.com/>

2. Certificate of Incorporation Filing

<http://www.state.nj.us/treasury/revenue/filecerts.htm>

Additional Incorporation Information: www.state.nj.us/njbgs/

4. Federal EIN Application and Filing:

<http://www.irs.gov/businesses/small/article/0,,id=102767,00.html>FORM SS-4: Use Form SS-4 (Application for Employer Identification Number) to apply for an employer identification number (EIN). To view this form, click here: <http://www.irs.gov/pub/irs-pdf/fss4.pdf>. Download the instructions for this form here: <http://www.irs.gov/pub/irs-pdf/iss4.pdf>.

5. New Jersey Sales Tax (Or Corporate Tax) Exemption Information

Regulatory Services Branch, New Jersey Division of Taxation:
www.state.nj.us/treasury/taxation

6. Fundraising/ New Jersey Charities Registration Information

Charitable Registration Section New Jersey Division of Consumer Affairs:

<http://www.njconsumeraffairs.gov/charity/charhlp.htm>

Raffles, etc.: Legalized Games of Chance Control Commission, Division of Consumer Affairs: www.njconsumeraffairs.gov/lgccc.htm

7. Registration for Employee Tax Withholding (New Jersey) or Other State Tax Payments

Client Registration Bureau, New Jersey Division of Revenue
www.state.nj.us/treasury/revenue

8. Other Helpful Website and Resources for Information on New Jersey Nonprofits

New Jersey Nonprofits:

<http://www.njnonprofits.org/>

New Jersey State Publication “Starting a Nonprofit Organization in New Jersey: Questions and Answers”

<http://www.state.nj.us/treasury/taxation/pdf/pubs/exemptfaq.pdf>

New Jersey State Treasury Dept. of Treasury, Division of Taxation
Starting a Nonprofit Organization “Information and Links”

<http://www.state.nj.us/treasury/taxation/nonprofitinfo.shtml>

C. Checklist of Items to Have in Place Before Hiring an NJVLA Attorney

CHECKLIST OF ITEMS TO HAVE BEFORE APPLYING FOR A NJVLA FULL SERVICE ATTORNEY

- ____ 1. Proposed name of entity and an alternate (must end in Inc., Corp., Corporation, Incorporated or a New Jersey nonprofit corporation)
- ____ 2. Registered office and agent for service of process (must be located in New Jersey)
- ____ 3. At least three (3) trustees (names and addresses which addresses are different from the registered address of the corporation)
- ____ 4. Names and addresses of officers of the corporation
- ____ 5. Projected number of employees (for filing of federal Tax Identification Number)
- ____ 6. Funds to pay for filing of Form 1023 (\$400 if expected gross receipts will be less than \$10,000 annually for 4 years or \$850 if expected gross receipts will be greater than \$10,000 annually for 4 years) and filing of the certificate of incorporation (\$75) and (*if a youth service organization*) to pay for criminal background checks on volunteers/employees who will be working with children – unless to be paid by the volunteer/employee (\$41 each)
- ____ 7. Statement of purpose (preferred)
- ____ 8. Information regarding projected or actual financial information (as requested on Form 1023)

D. Sample Minutes of Organizational Meeting

**MINUTES OF ORGANIZATION MEETING OF
NJ Artists, Inc.
_____, 2008**

The organization meeting of NJ Artists, Inc. was held at the offices of NJ Artists, Inc. in New Jersey on the ____ day of _____, 2008 at __:00 _m., pursuant to waivers of notice signed by all Trustees named in the Certificate of Incorporation of the Corporation, a copy of which waiver of notice was ordered to be attached to the Minutes of this Meeting.

The following Trustees were present at the meeting:

Georgia O'Keefe
Bonnie Rait
William Shakespeare
Alvin Ailey

constituting all of the initial Board of Trustees of the Corporation.

Quorum Present

With assent of the Trustees, the meeting was called to order. Georgia O'Keefe was appointed Chairperson of the meeting and Alvin Ailey was appointed Secretary of the meeting.

Certificate of Incorporation

The Chairperson reported that the Certificate of Incorporation had been filed with the Secretary of the State of New Jersey on January 1, 2008. The Chairperson directed that the Certificate of Incorporation be filed with the records of the Corporation.

Adoption of By-Laws

The Chairperson stated that the next order of business was to adopt the by-laws of the Corporation. Following a full discussion thereof, the following resolution was, on motion duly made and seconded, adopted by all Trustees present:

RESOLVED, that the form of by-laws attached to the Minutes of this meeting are hereby adopted as the by-laws of the Corporation.

Affirmation of Officers

The Chairperson then affirmed the election of the officers of the Corporation. As set forth in the Bylaws, the Trustees:

RESOLVED, that the following individuals are elected to the offices indicated until further action of the Board:

Georgia O'Keefe	President
Bonnie Rait	Vice President
William Shakespeare	Treasurer
Alvin Ailey	Secretary

Corporate Records

The Trustees then:

RESOLVED, that the Corporation shall maintain, as part of its corporate record, a minute book including, but not limited to, a record of the Corporation's certificate of incorporation and amendments to the certificate, its by-laws and amendments to the by-laws, minutes of all meetings of its Trustees and minutes of all meetings of all committees of the Board of Trustees. The Secretary of the Corporation is directed to procure such other books as may be required by the Corporation.

Corporate Seal

On motion made, seconded and adopted by the Trustees present, it was:

RESOLVED, that the Secretary of the Corporation is hereby authorized, directed and empowered to adopt a form of corporate seal for the Corporation.

Part-Time Employment Agreement

Following a full discussion thereof, on motion made, seconded and adopted by the Trustees present, it was:

RESOLVED, that the President of the Corporation is hereby authorized, directed and empowered to enter into a part-time employment agreement with Norah Jones pursuant to which Ms. Jones shall provide administrative services to the Corporation during the hours of 3:00-6:00 pm every weekday and will be available by mobile telephone during that period of time. The agreement shall be in such form as is approved by the President upon the advice of counsel.

Insurance

On motion made, seconded and adopted by the Trustees present, it was:

RESOLVED, that the officers of the Corporation are hereby authorized, directed and empowered to purchase general liability and malpractice insurance for the Corporation and, if necessary, its part-time employees in amounts that are usual and customary for similarly situated entities.

Bank Account

In accordance with the by-laws, the Trustees:

RESOLVED, that a bank account shall be established and maintained by and in the name of this Corporation at such Bank as the Treasurer determines (the "Bank") for the receipt of funds donated to the Corporation; and be it

FURTHER RESOLVED, that all checks for payment from that account be signed on behalf of the Corporation by the Treasurer of the Corporation or by the President of the Corporation; and be it

FURTHER RESOLVED, that all checks drawn or accepted by this Corporation for payment from any account be signed on behalf of this Corporation by the Treasurer or the President; and be it

FURTHER RESOLVED, that all instruments relating to the borrowing of any money by this Corporation be executed on behalf of the Corporation by the Treasurer or the President; and be it

FURTHER RESOLVED, that any checks, drafts or other instruments for the payment of money, to be endorsed on behalf of this Corporation for deposit with or collection by the Bank, may be enforced in the name of the Corporation by written or stamped endorsement, without designation or signature of the person making that endorsement; and be it

FURTHER RESOLVED, that these resolutions appointing the bank and designated signatories for the payment of funds of the account are adopted and the Secretary is authorized to certify the resolutions for the forwarding to the Bank.

Adoption of Fiscal Year for Corporation

As per the bylaws, the Trustees:

RESOLVED, that the fiscal year of the Corporation shall be the calendar year.

Adjournment

The Chairperson asked whether there was any further business to come before the Trustees at this meeting, and there being no such further business, the meeting was adjourned.

Alvin Ailey, Secretary

WAIVER OF NOTICE OF SPECIAL MEETING
OF
NJ ARTISTS, INC. (the "Corporation")

I, the undersigned, being a Trustee of the Corporation, hereby agree and consent that the Special Meeting of the Trustees of the Corporation be held on the date and the time and at the place stated below for the purpose of discussing the organization of the Corporation as a charitable organization and any and all other business that should properly come before the Special Meeting and hereby waive all notice of the Special Meeting and of any adjournment thereof.

Date of meeting - _____
Time of meeting - _____
Place of meeting: Offices of NJ Artists, Inc.

Dated _____, 2008

Georgia O'Keefe

WAIVER OF NOTICE OF SPECIAL MEETING
OF
NJ ARTISTS, INC. (the "Corporation")

I, the undersigned, being a Trustee of the Corporation, hereby agree and consent that the Special Meeting of the Trustees of the Corporation be held on the date and the time and at the place stated below for the purpose of discussing the organization of the Corporation as a charitable organization and any and all other business that should properly come before the Special Meeting and hereby waive all notice of the Special Meeting and of any adjournment thereof.

Date of meeting - _____

Time of meeting - _____

Place of meeting: Offices of NJ Artists, Inc.

Dated _____, 2008

Bonnie Rait

WAIVER OF NOTICE OF SPECIAL MEETING
OF
NJ ARTISTS, INC. (the "Corporation")

I, the undersigned, being a Trustee of the Corporation, hereby agree and consent that the Special Meeting of the Trustees of the Corporation be held on the date and the time and at the place stated below for the purpose of discussing the organization of the Corporation as a charitable organization and any and all other business that should properly come before the Special Meeting and hereby waive all notice of the Special Meeting and of any adjournment thereof.

Date of meeting - _____

Time of meeting - _____

Place of meeting: Offices of NJ Artists, Inc.

Dated _____, 2008

William Shakespeare

WAIVER OF NOTICE OF SPECIAL MEETING
OF
NJ ARTISTS, INC. (the "Corporation")

I, the undersigned, being a Trustee of the Corporation, hereby agree and consent that the Special Meeting of the Trustees of the Corporation be held on the date and the time and at the place stated below for the purpose of discussing the organization of the Corporation as a charitable organization and any and all other business that should properly come before the Special Meeting and hereby waive all notice of the Special Meeting and of any adjournment thereof.

Date of meeting - _____

Time of meeting - _____

Place of meeting: Offices of NJ Artists, Inc.

Dated _____, 2008

Alvin Ailey

E. Introduction to Corporate Bylaws

CORPORATE BYLAWS FOR A NONPROFIT CORPORATION

The attached sample bylaws are drafted for a nonprofit corporation formed under the New Jersey Nonprofit Corporation Act, *N.J.S.A. 15A:1-1 et seq.* (the “**Nonprofit Act**”). They were drafted for a fictional nonprofit entity named New Jersey Artists, Inc. without members, to be governed exclusively by a Board of Trustees. *This is only a sample and is not intended to be a substitute for obtaining legal advice with respect to your entity’s corporate governance or its procedures.*

Corporate bylaws establish the procedures for the governance of the corporation. In certain cases, the Nonprofit Act may contain requirements that cannot be waived or changed by any provision in the bylaws or the certificate of incorporation. For example, *N.J.S.A. 15A:6-2* provides: “The number of trustees of a corporation shall be not less than three.” The minimum number of trustees cannot be changed by a provision in the bylaws or the certificate of incorporation.

In other cases, the Nonprofit Act will provide a “default” provision that will be binding upon the corporation *unless* the bylaws or the certificate of incorporation provides otherwise. For example, *N.J.S.A. 15A:6-7(c)* provides: “Unless otherwise provided by the certificate of incorporation or bylaws, any action required or permitted to be taken pursuant to authorization voted at a meeting of the board or any committee thereof may be taken without a meeting if, prior or subsequent to the action, all members of the board or committee, as the case may be, consent thereto in writing....” In that case, if the bylaws and the certificate of incorporation are silent on this issue, then the Nonprofit Act permits the board to act by executing a form of unanimous written consent. However, the bylaws could require that all action of the board be taken at a meeting.

If the Nonprofit Act requires or permits a particular provision to be set forth in the bylaws, such provision may be included in the certificate of incorporation instead. However, if that is done, it will be more difficult to amend that provision. The Trustees may prefer that certain provisions, such as provisions relating to voting requirements, be more difficult to amend; in that case, it would make sense to include those provisions in the certificate of incorporation rather than the bylaws.

The difference in the amendment procedures should be considered when deciding whether to include a provision in the bylaws or the certificate of incorporation. Compare the requirements for amending the bylaws and amending the certificate of incorporation:

- ***In order to amend the certificate of incorporation*** (except for amendments made before the organizational meeting of the board or amendments arising out of a merger), the Trustees must approve such amendment at a meeting by at least a two-thirds affirmative vote or, in lieu of holding a meeting, by having all Trustees sign a form of written consent approving such amendment. Then a certificate of amendment must be filed with the Secretary of State of the State of New Jersey and a filing fee must be paid.
- By contrast, ***in order to amend the bylaws***, the Trustees must approve such amendment at a meeting by a majority vote (or such greater voting requirement, if the bylaws so require) or in lieu of holding a meeting, by having all Trustees sign a form of written consent approving such amendment. The corporate Secretary should keep a record of the revised bylaws provisions with the corporate records, but no filing with the Secretary of State is required.

F. Sample Corporate Bylaws

BYLAWS OF NJ ARTISTS, INC.

ARTICLE 1 – NAME AND OFFICE

Section 1.1. The name of this corporation is NJ Artists, Inc. (hereinafter referred to as the "**Corporation**"). The Corporation was formed under the New Jersey Nonprofit Corporation Act (N.J.S.A. 15A:1-1 *et seq.*) (as amended from time to time, the "**Act**"). The principal offices of the Corporation shall be located at 123 Main St., Small Town, NJ 12345, or at such other location as the Board of Trustees may hereafter designate.

ARTICLE 2 – PURPOSES

Section 2.1. The Corporation is formed exclusively for religious, charitable, scientific, and educational purposes, all within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as the same may be amended or modified or replaced by any future United States internal revenue law (the "**Code**"), and not for pecuniary profit. Specifically, the Corporation was formed to provide arts education to children enrolled in the after-school program in public elementary schools located in Trenton, New Jersey. The Corporation shall have and exercise all rights

and powers as are now, or may hereafter be, conferred on or exercised by nonprofit corporations under the Act, other laws of the State of New Jersey or any other applicable laws, in furtherance of the Corporation's purposes, including, but not limited to the following:

- (a) To solicit support of the Corporation's activities from public or private sources;
- (b) To contract with other organizations, both for-profit and nonprofit, with individuals, and with governmental agencies in furtherance of these purposes;
- (c) To receive, administer, hold and invest funds for the purposes of the Corporation, and to that end take and hold by bequest, devise, gift, grant, purchase, lease or otherwise, either absolutely or jointly with any other person, corporation or other entity, any property, real, personal, tangible or intangible or any undivided interest therein, without limitation as to amount of value; to sell, convey, transfer, fit or otherwise dispose of any such funds or property and to invest, reinvest, or deal with the principal or the income thereof in such manner as, in the judgment of the Trustees, will best promote the purposes of the Corporation;

- (d) To raise and distribute funds either directly or through related organizations or other organizations exempt from Federal tax under Section 501(c)(3) of the Code in furtherance of the Corporation's purposes, subject to limitations on the nature and extent of such activities applicable to organizations exempt from Federal tax under Section 501(c)(3); and
- (e) To otherwise operate exclusively for charitable, religious, scientific or educational purposes within the meaning of the Code.

Section 2.2. Notwithstanding any other provision of these Bylaws, no part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its Trustees, Officers, Directors or other persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments in furtherance of the purposes set forth herein. Furthermore, no Trustee, Director, or Officer shall be entitled to share in the distribution of any of the corporate assets upon dissolution of the Corporation. Notwithstanding any other provision of these Bylaws, no substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(h) of the Code), and the

Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office, except as otherwise permitted by the Code. Notwithstanding any other provisions of these Bylaws, the Corporation shall not carry on any activities not permitted to be carried on by (1) a corporation exempt from Federal income tax under Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law); or (2) a corporation, contributions to which are deductible under Section 170(c)(2) of the Code (or the corresponding provision of any future United States Internal Revenue Law).

ARTICLE 3 – MEMBERS

Section 3.1. The Corporation shall have no Members.

ARTICLE 4 – TRUSTEES

Section 4.1. Number of Trustees. The Board of Trustees of the Corporation shall determine the number of Trustees of the Corporation, provided that the number of Trustees shall be not less than four (4) or more than ten (10).⁶ The initial number of Trustees shall be four (4), and the initial Trustees of the Corporation shall be those individuals listed in the Corporation's Certificate of Incorporation. At any annual meeting, the Board of Trustees may, by the affirmative vote

⁶ The Act requires a minimum of three (3) directors but it imposes no maximum on the number of Trustees.

of a majority of such Trustees, create one or more additional seats on the Board of Trustees up to the maximum number stated in these Bylaws and, at such meeting, appoint additional Trustees to fill such newly created seats, with such newly appointed Trustees to serve for a full two-year term commencing on the date of appointment and until their successor are duly appointed and qualified.

Section 4.2. Qualifications; Remuneration. All Trustees shall be at least eighteen years of age. Trustees need not be residents of the State of New Jersey or citizens of the United States.⁷ To be considered for election to the Board of Trustees, the person shall have evidenced a desire to render public service to the community and population served by the Corporation by serving on the Board of Trustees of the Corporation and shall not have an interest in the Corporation for financial gain. Persons who are involved in the administration of the Corporation and whose election and participation on the Board of Trustees have been duly authorized by these Bylaws shall also be eligible for election to the Board of Trustees. Trustees shall serve without remuneration,⁸ except that reasonable travel and other expenses properly incurred by a member of the Board of Trustees for the business

⁷ N.J.S.A. §15A:6-1 requires all Trustees to be at least eighteen years of age. The Corporation *may* require that Trustees be citizens of the United States and/or residents of New Jersey. The Corporation may establish any other qualifications as set forth in the bylaws or the certificate of incorporation.

⁸ Trustees may receive salaries, but all salary and related compensation must be disclosed on the Form 1023. The IRS scrutinizes compensation plans for the trustees and officers of nonprofit organizations to ensure that such compensation is reasonable.

and welfare of the Corporation shall be reimbursed from the Corporation's operating funds.

Section 4.3. Powers and Duties. Subject to the provisions of these Bylaws and the Certificate of Incorporation of the Corporation, the Board of Trustees shall be responsible for the direction of the business and affairs of the Corporation, shall have control over the funds, property, estate, and all activities of the Corporation, provided that such activities are not inconsistent with the purposes of the Corporation as set forth in the Corporation's Certificate of Incorporation, these Bylaws, and the laws and regulations of the Federal government and the State of New Jersey.

Section 4.4. Term. Trustees shall be appointed to serve for a term of two (2) years and until their successors are duly appointed and qualified. The terms of all Trustees shall commence on the date of the Board of Trustees' annual meeting at which such Trustees are elected, or on the date of the special meeting called to elect such Trustee to fill a vacancy. There will be no limitation on the number of terms that a Trustee may serve. A sufficient number of Trustees shall be appointed so as to maintain the requisite minimum number of Trustees. The appointment of Trustees shall be pursuant to the procedure specified in Section 4.5.

Section 4.5. Appointment and Removal of Trustees.

(a) Appointment. At the annual meeting of the Corporation's Board of Trustees in order to fill the vacancies on the Board created by the expiration of any Trustee's term, or at any annual or special meeting of the Board of Trustees in order to fill the vacancies on the Board arising out of the circumstances set forth in Section 4.6, the Board of Trustees shall appoint, as Trustees, the persons which have been approved by the affirmative vote of a majority of the Trustees present at such meeting.

(b) Removal. A Trustee appointed by the Board of Trustees may be removed at any time by a majority vote of the Board of Trustees, except that the Trustee at issue shall be prohibited from voting on his or her removal. In the event of such removal, the Board of Trustees may appoint a replacement Trustee to fill the seat of the removed Trustee.

Section 4.6. Resignation and Removal. Any Trustee may resign at any time by giving written notice of resignation to the President or Secretary. Any such resignation shall be effective upon the Corporation's receipt of such notice or at a subsequent time stated in such notice of resignation. Acceptance of such resignation by action of the Board of Trustees shall not be necessary to make it effective.

Section 4.7. Vacancies. A vacancy on the Board of Trustees shall be deemed to exist when a Trustee resigns from the Board, when a

Trustee is removed, when a Trustee dies or becomes disabled or otherwise unable to serve, or when the minimum number of Trustees required by these Bylaws has not been met for other reasons. A replacement Trustee shall be appointed by a majority vote of the remaining Trustees. The Trustee elected by the Board of Trustees to fill a vacancy shall serve until the next succeeding annual meeting and until a successor is duly elected and qualified.

ARTICLE 5 – MEETINGS OF THE TRUSTEES

Section 5.1. Annual Meetings. The Board of Trustees shall hold no less than one (1) regular meeting each year at the Corporation's offices within the State of New Jersey on the first Monday in February of each calendar year, unless such other day, time or place is designated by the Board of Trustees.⁹ The Board of Trustees shall conduct all business as may be properly considered at such annual meetings, including the appointment of Trustees and officers. The notice of such annual meeting shall be given as set forth in Section 5.3.

Section 5.2. Special Meetings. Special meetings of the Board of Trustees may be called at any time by the President or at the written request of no less than two (2) Trustees, which request has been filed with the Secretary. Any such request shall state the purpose or purposes of the meeting and all Trustees shall be given notice of such special

⁹ It is not necessary to specify a date for such annual meeting. Instead, the Corporation can issue notices that set the date, time, and place of the annual meeting.

meeting as set forth in Section 5.3. The business to be transacted at any such special meeting of the Board of Trustees shall be limited to the purpose or purposes set forth in the notice of meeting.

Section 5.3. Notice of Meeting. At least ten (10) but not more than sixty (60) days' prior written notice of any annual meeting, and not less than five (5) days' but not more than sixty (60) days' prior written notice of any special meeting, shall be given by the Secretary, by mail, with postage prepaid thereon, or by a reputable overnight courier, with delivery charges prepaid, addressed to each Trustee at the last address furnished to the Secretary. The notice shall state the date, hour and place of meeting, and in the case of a special meeting, the purpose or purposes of the meeting.

Section 5.4. Waiver of Notice. Written notice of any meeting need not be given to any Trustee who signs a written waiver of notice in person, whether before or after the meeting which waiver shall be filed by the Secretary with the minutes of the meeting. Attendance at or participation by teleconference in a meeting without protesting the lack of notice of such meeting shall constitute waiver of notice.

Section 5.5. Quorum. The presence in person of a majority of the Trustees entitled to vote shall constitute a quorum for action by the Trustees. Trustees present in person at a duly-organized meeting may continue to do business until adjournment, notwithstanding the

withdrawal of enough members to leave less than a quorum. Less than a quorum may adjourn any meeting.

Section 5.6. Adjourned Meetings. When a meeting is adjourned to another time and place, it shall not be necessary to give notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which adjournment is taken and and if the period of adjournment does not exceed ten (10) days in any one adjournment. At the adjourned meeting, the Trustees may only conduct the business as might have been transacted at the original meeting, unless a notice of the adjourned meeting specifying such other matters to be transacted is delivered to the Trustees.

Section 5.7. Action Without a Meeting by Unanimous Written Consent. The members of the Board of Trustees or any committee of the Board of Trustees may act without a meeting if, prior to or subsequent to such action, all members¹⁰ of the Board of Trustees or committee shall consent in writing to such action, such written consents to be filed with the minutes of the proceedings of the Corporation.

Section 5.8. Meeting by Telephone. The Board of Trustees or any committee of the Board of Trustees may participate in a meeting of the Board of Trustees or such committee by means of telephone

¹⁰ Please note that, pursuant to N.J.S.A. §15A:6-7(c), the written consent must be signed by all (unanimous) the Trustees or all the committee members entitled to vote on such matter.

conference call by which all persons participating are able to hear each other, provided that notice of such telephone conference call has been to all Trustees in accordance with Section 5.3.

Section 5.9. Absences. In the event that any Trustee shall fail to attend four (4) consecutive meetings of the Board of Trustees, the Board of Trustees, in its discretion, may direct the Secretary to notify such absent Trustee, by written notice, of his or her consecutive absences and to request a written explanation of such Trustee's reasons therefor. Unless said Trustee, having received the Secretary's notification, shall have tendered to the Secretary, before the next regular meeting of the Board of Trustees, a written excuse that in the judgment of the Board of Trustees is sufficient to excuse such absences, the Board of Trustees shall declare vacant the office of said absent Trustee, and the Secretary shall notify the absent Trustee, in writing, of such action.

Section 5.10. Voting. At all meetings of the Board of Trustees, each Trustee shall have one vote and all matters shall be determined by a majority vote of those Trustees present,¹¹ except as otherwise required in the Certificate of Incorporation, by these Bylaws, or by law.

ARTICLE 6 – OFFICERS

¹¹ In order for action to be taken at a meeting of the Board of Trustees, the quorum requirement (in this case, a simple 51% majority) must be met. See Section 5.5. In this example, three out of four Trustees must be present to constitute a quorum. To pass a resolution at a meeting, a majority vote of those **present** (not a majority of all Trustees) must vote in its favor. If there are three Trustees present, the affirmative vote of two Trustees would be required.

Section 6.1. Composition and Qualification. The Officers of the Corporation shall be a President, a Vice President, a Treasurer, a Secretary and such other officers as the Board of Trustees may, from time to time appoint. The Board of Trustees shall be empowered to appoint such additional officers as it deems necessary from time to time for the proper operation of the Corporation, and all officers shall serve at the discretion of the Board of Trustees.

Section 6.2. Term of Office. The term of office of each Officer shall be for two (2) years, commencing the first day following his or her election at the annual meeting of Trustees, or until his or her successor is elected and takes office. An Officer elected by the Board of Trustees to fill a vacancy occurring between the annual meetings of Trustees shall take office immediately upon election and shall serve the remainder of the term of his or her predecessor or until his or her successor is elected and takes office.

Section 6.3. Nominations. The Board of Trustees may, but shall not be required, to form a Nominating Committee, which Nominating Committee shall recommend to the Board of Trustees at a special meeting a slate of officers to be voted upon by the Board of Trustees at its annual meeting. The names of the officers to be nominated shall be sent to the members of the Board of Trustees with the notice of meeting as provided in Section 5.4. Nominations, in

addition to those so named, may be made by any Trustee from the floor at the Trustee's annual meeting.

Section 6.4. Vacancies. If any office shall become vacant at any time for any cause, the vacancy may be filled for the unexpired term at any regular or special meeting of the Board of Trustees, provided the notice of meeting shall have set forth the name of the person to be nominated for such office.

Section 6.5. Resignation and Removal.

(a) Any officer may resign at any time by giving written notice of resignation to the President or the Secretary. Any such resignation shall take effect upon its receipt by the Corporation or at a subsequent time as shall be specified in such notice of resignation. Acceptance of such resignation by action of the Board of Trustees shall not be necessary to make it effective.

(b) The Board of Trustees, at any time, may remove any officer elected or appointed by the Board with or without cause. Any officer of the Corporation may be removed from office by the affirmative vote of a majority of the remaining Trustees present at any regular or special meeting of the Board of Trustees, called for that purpose, notice of which shall have been given to such officer by the Corporation. Such officer may elect to appear and to be heard at the

meeting provided written notice of his or her request for such hearing has been given at least two (2) days before the date of the meeting.

Section 6.6. President. The President shall preside at all meetings of the Board of Trustees and on public occasions. The President shall acquaint himself or herself with the state, interest and wants of the Corporation, and in all ways by his or her reports and supervision seek to protect the property and promote the welfare and educational purposes of the Corporation. The President shall be an *ex-officio* member of all committees of the Board of Trustees. Provided that such action has been properly authorized by the Board of Trustees, the President may execute and deliver, or authorize other officers to execute and deliver, on behalf of the Corporation, agreements, certificates and other legal documents, and bind the Corporation to same, relating to the business and financial affairs of the Corporation. The President shall also be charged with seeing that all orders and resolutions of the Board of Trustees are carried into effect.

Section 6.7. Vice President. The Vice President shall, in the absence of the President or in the event of his or her death, inability or refusal to act, perform the duties of the President, and when so acting, shall have all the authority of, and be subject to all the restrictions upon, the President pursuant to the provisions of the Act, as amended from time to time, the Articles of Incorporation of the Corporation, as

amended from time to time, these By-laws, as amended from time to time, and to the direction of the Board.

Section 6.8. Treasurer. The Treasurer shall be the principal fiscal officer of the Corporation. He or she shall have custody of all monies and securities of the Corporation and shall make such disbursements of the funds of the Corporation as are proper and in accordance with the charitable or educational purposes of the Corporation. In addition, the Treasurer shall insure that a true and accurate accounting of the financial transactions of the Corporation is made in accordance with generally accepted accounting principles. He or she shall also provide general direction to the development of the Corporation's financial objectives, plans, and policies. If the Board of Trustees appoints a Finance Committee, the Treasurer shall act as Chair of the Finance Committee.

Section 6.9. Secretary. The Secretary shall keep full minutes of all meetings of the Board of Trustees. The Secretary shall attend all sessions of the Board of Trustees, shall act as Clerk thereof and record all votes and the minutes of all proceedings in a book kept for that purpose. The Secretary shall give or cause to be given notice of all meetings of the Board of Trustees and shall notify officers and members of the Committees of their election or appointment and shall in general perform such other duties as may be prescribed by the Board of

Trustees. The Secretary shall conduct the correspondence of the Board of Trustees under direction of the Board of Trustees. The Secretary shall, with the President, the President, or other officer expressly authorized, sign legal papers, contracts or certificates requiring the Seal of the Corporation; he or she shall have custody of the Seal of the Corporation and shall affix the Seal in the name of the Corporation whenever required.

ARTICLE 7 – COMMITTEES

Section 7.1. Composition; Appointment; Term; Vacancy; Removal.

(a) The Board of Trustees, by resolution duly adopted by a majority of the members of such Board, may appoint from among the current Board of Trustees¹² an executive committee or one or more other committees. The resolution appointing each such committee shall specify the number of members of such committee, the authority that such committee may exercise on behalf of the Board of Trustees, and the term of such committee's existence.

(b) Each committee member shall serve on such committee for one (1) year and until his or her successor is duly qualified and appointed. The Board shall reappoint the members of each committee of

¹² The phrase "from among the current Board of Trustees" reflects the requirement of N.J.S.A. §15A:6-9 that only Trustees serve on a committee of the Board of Trustees.

the Board at each annual meeting of the Board, following the general election of Trustees.

(c) The Board of Trustees, by a majority vote, may, at any time, fill any vacancy on a committee, appoint one or more Trustees to serve as alternate members of a committee to act in the absence or disability of members of the committee, with all the powers of the absent or disabled committee member, abolish any committee at the Board's pleasure, and remove any Trustee from membership on a committee at any time, with or without cause.

Section 7.2. Committee Procedures. All committees shall keep minutes of their proceedings and make formal reports in writing to the Board of Trustees at the next regularly scheduled meeting of the Board of Trustees.

Section 7.3. Committee Quorums; Voting. The presence in person of a majority of the members of any committee entitled to vote shall constitute a quorum for action by such committee. The assent of the majority of members present at any committee meeting shall be required to make their action valid. Unless the resolution of the Board of Trustees grants a committee the full authority to take certain actions, any action by a committee shall not be effective until approved by the Board of Trustees.

Section 7.4. Prohibited Actions. Notwithstanding anything to the contrary in these Bylaws, no Board committee shall have the authority to take any of the following actions without the approval of the Board of Trustees:

(a) To make, alter or repeal the Certificate of Incorporation of the Corporation, or any Bylaw of the Corporation;

(b) To elect or appoint any officer or Trustee, or remove any officer or Trustee;

(c) To make any grants or distributions of funds; or

(d) To amend or repeal any resolution previously adopted by the Board of Trustees.

ARTICLE 8 – INDEMNIFICATION OF TRUSTEES AND OFFICERS

Section 8.1. Third Party Actions. Any person who was, or is, or hereafter shall be a Trustee or officer (hereinafter referred to as a "corporate agent") of the Corporation shall be indemnified by the Corporation against the reasonable costs, disbursements and counsel fees (hereinafter "expenses") and liabilities paid or incurred in satisfaction of any judgment, fine, penalty or settlement (hereinafter "liabilities") in connection with any pending, threatened or completed civil, criminal, administrative or arbitrate action, suit or proceeding, and any appeal therein (hereinafter "proceeding") involving the corporate agent by

reason of his or her being or having been such a corporate agent other than a proceeding by or in the right of the Corporation, if (a) such corporate agent acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation; and (b) with respect to any criminal proceeding, such corporate agent had no reasonable cause to believe his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that such corporate agent did not meet the applicable standard of conduct set forth in this section.¹³

Section 8.2. Action by or in the Right of the Corporation. The Corporation shall indemnify a corporate agent against his or her expenses in connection with any proceeding by or in the right of the Corporation to procure a judgment in its favor which involves the corporate agent by reason of his or her being or having been such corporate agent, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation. However, in such proceeding no indemnification shall be provided in respect of any claim, issue or matter as to which such corporate agent shall have been adjudged to be liable for negligence or misconduct, unless and only to the extent that the court in which such proceeding was brought shall determine upon application that despite the

¹³ The Nonprofit Act permits, but does not require, a nonprofit corporation to provide this indemnification of its Trustees, officers or employees in any proceeding brought by a third party against the Corporation.

adjudication of liability, but in view of all circumstances of the case, such corporate agent is fairly and reasonably entitled to indemnity for such expenses as such court shall deem proper.¹⁴

Section 8.3. Mandatory Indemnification. The Corporation shall indemnify a corporate agent against expenses to the extent that such corporate agent has been successful on the merits or otherwise in any proceeding referred to in Section 8.1 and 8.2 of these Bylaws in defense of any claim, issue or matter therein.¹⁵

Section 8.4. Procedure for Effecting Indemnifications. Any indemnifications under Section 8.1 of these Bylaws and, unless ordered by a Court, under Section 8.2 of these Bylaws, may be made by the Corporation only as authorized in a specific case upon a determination that indemnification is proper in the circumstances because the corporate agent met the applicable standard of conduct as set forth in Section 8.1 or in Section 8.2 of these Bylaws. Such determination shall be made (a) by the Board of Trustees, acting by a majority vote of a quorum consisting of the Trustees who were not parties to or otherwise involved in the proceeding, or (b) if such a quorum is not obtainable or, even if obtainable, and such quorum of the Board of Trustees by a majority vote

¹⁴ The Nonprofit Act permits, but does not require, a nonprofit corporation to provide this indemnification of its Trustees, officers or employees in any proceeding brought by, or in the right of, the Corporation seeking a judgment in the Corporation's favor.

¹⁵ The Nonprofit Act requires a nonprofit corporation to indemnify its Trustees, officers and employees to the extent that such corporate agent was successful on the merits or otherwise in any proceeding of the type described in Section 8.1 or 8.2.

of the disinterested Trustees so directs, by independent legal counsel, in a written opinion, such counsel to be designated by the Board of Trustees.

Section 8.5. Advancing Expenses. Expenses incurred by a corporate agent in connection with a proceeding may be paid by the Corporation in advance of the final disposition of the proceeding if authorized in the manner provided in Section 8.4 of these Bylaws upon receipt of an undertaking by or on behalf of the corporate agent to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified as provided in these Bylaws.

Section 8.6. Scope of Bylaws. The indemnification provided by this Article 8 shall apply to (a) the corporate agent and the legal representative or representatives of the corporate agent and (b) shall not exclude any other rights to which a corporate agent may be entitled under the Certificate of Incorporation or Bylaws of the Corporation or by agreement or otherwise.

ARTICLE 9 – FISCAL YEAR AND AUDIT

Section 9.1. Fiscal Year. The Fiscal Year of the Corporation shall be the calendar year.

Section 10.2. Audit. An annual audit in accordance with generally accepted auditing standards by independent certified public

accountants shall be made of the financial condition and results of operation of the Corporation.

ARTICLE 10 – AMENDMENT OF CORPORATE DOCUMENTS

Section 10.1. Amendment of Certificate of Incorporation. The Corporation's Certificate of Incorporation may only be amended, supplemented, restated, revised or repealed by a vote of a majority of the members of the Board of Trustees.

Section 10.2. Amendment of Bylaws. These Bylaws may be amended, supplemented, restated, revised or repealed by a majority vote of the members of the Board of Trustees.

ARTICLE 11 – NONDISCRIMINATION

Whenever reference in these Bylaws is made to the masculine pronoun or proper noun, it should be construed to include both the masculine and the feminine gender. In addition to its affairs and conduct of its business, the Corporation shall not discriminate as to any person on account of age, race, creed, color, sex, marital status, national origin or handicap.

ARTICLE 12 – FORCE AND EFFECT

Section 12.1. These Bylaws are subject to the provisions of the Act and the Certificate of Incorporation of the Corporation, as such

corporate documents may be amended from time to time. If any provision of the Bylaws is inconsistent with a provision in the Act or in the Certificate of Incorporation, the provision of the Act or the Certificate of Incorporation shall govern to the extent of such inconsistency.

Section 12.2. The effective date of these Bylaws shall be the effective date of the filing of the Certificate of Incorporation of the Corporation.

ARTICLE 13 – PARLIAMENTARY GUIDE

Section 13.1. The Standard Code of Parliamentary Procedure by Alice Sturgis, as amended from time to time, shall be the Corporation's parliamentary guide, and shall govern procedures of the Board of Trustees when not in conflict with the provisions of these Bylaws or any amendments thereto.

G. *Sample Certificate of Incorporation*

**CERTIFICATE OF INCORPORATION¹⁶
OF
NJ ARTISTS, INC.**

The undersigned, being of age eighteen or older, in order to form a corporation under Title 15A of the Revised Statutes of the State of New Jersey, as amended, supplemented and succeeded, for a lawful purpose other than pecuniary profit, certifies as follows:

1. The name of this Corporation is:

NJ Artists, Inc.¹⁷

2. The Corporation is incorporated under the laws of the State of New Jersey for, and its activities shall be limited to, charitable, health, scientific, social and educational purposes of the nature set forth pursuant to Section 501(c)(3) of the Internal Revenue Service Code of 1986, as amended (hereinafter referred to as the “*Code*”), or the corresponding provisions of any applicable United States Internal Revenue Service Law, and not for pecuniary profit. Specifically, the Corporation was formed to provide arts education to children enrolled in the after-school programs in public elementary schools located in

¹⁶ N.J.S.A. § 15A:2-8 sets forth the provisions that must be contained in a certificate of formation, which is the document that must be filed with the State of New Jersey, Dept. of Treasury, to form the nonprofit corporation.

¹⁷ N.J.S.A. § 15A:2-2 contains the requirements for the corporate name of a domestic nonprofit corporation or a foreign nonprofit corporation authorized to do business in New Jersey. The name of a domestic nonprofit corporation must contain one of the following: “a New Jersey nonprofit corporation,” “incorporated,” “corporation,” “inc.,” or “corp.” A certificate of incorporation will be rejected for filing if the selected name is not available for use within the State of New Jersey or if the name does not comply with the requirements set forth in this statute.

Trenton, New Jersey. The Corporation shall have and exercise all rights and powers as are now, or may hereafter be, conferred on or exercised by nonprofit corporations under the Act, other laws of the State of New Jersey or any other applicable laws, in furtherance of the Corporation's purposes.¹⁸

3. The Corporation shall have no members.¹⁹

4. The business and affairs of the Corporation shall be managed by a Board of Trustees, to be elected in the manner set forth in the Bylaws.²⁰

5. The address of the registered office of this Corporation shall be [INSERT STREET AND POSTAL DESIGNATION, IF DIFFERENT], and the name of the registered agent at that address shall be [INSERT NAME OF INDIVIDUAL OR CORPORATE ENTITY].²¹

¹⁸ This statement should include the charitable, religious, scientific or educational purposes for which the Corporation is organized.

¹⁹ If the Corporation will have no members, all responsibility and authority for managing the Corporation shall reside with its Trustees.

²⁰ As an alternative, the method of electing Trustees may be set forth in the Certificate of Incorporation. If the Corporation has no members, the Trustees may be elected by the Board, or some or all of the Trustees may be elected other than by Trustees. See N.J.S.A. §15A: 6-3.

²¹ Pursuant to N.J.S.A. §15A:4-1, every corporation organized under the New Jersey Nonprofit Corporation Act must maintain a registered office *within the State of New Jersey*, and it must appoint a registered agent with an identical address. The address may, but need not be, the same as the address of the place where the Corporation conducts its activities. The registered agent appointed by the Corporation shall be an agent of the Corporation upon which or whom process against the Corporation may be served. In the event that the registered agent or the address of the registered office changes, the Corporation is obligated pursuant to N.J.S.A. §15A:4-3 to file a certificate to that effect with Secretary of State of the State of New Jersey.

6. The number of Trustees constituting the initial Board of Trustees shall be four (4).²² The names and post office addresses of the persons who shall serve as the initial Trustees of the Corporation are as follows:

<u>Name</u>	<u>Address</u>
Georgia O'Keefe	13 South Main St., Small Town, NJ 12345
Bonnie Raitt	45 Edwards Road, Small Town, NJ 12345
William Shakespeare	22 Gale Road, Small Town, NJ 12345
Alvin Ailey	87 Foxtrot Run, Small Town, NJ 12345

²² N.J.S.A. §15A: 6-2 requires that there be not less than three (3) Trustees. We have used the number four to be consistent with our other example documents. The Bylaws can state that the number of Trustees shall be not less than a stated number or more than a stated maximum, with the actual number of Trustees at any time to be determined by the method stated in the Bylaws.

7. The name(s) of the incorporator and her address is:

Georgia O'Keefe
13 South Main St.
Small Town, NJ 12345²³

8. The duration of the Corporation shall be [perpetual] or [other stated length of time].²⁴

9. Upon the dissolution of the Corporation, the remaining assets of the Corporation shall, after paying or making provisions for the payment of all of the liabilities of the Corporation, be disposed of to such organization or organizations organized and operated exclusively for charitable, educational, religious or scientific purposes which, at the time of such disposition, qualify as an exempt organization or organizations under Section 501(c)(3) of the Code, as amended, (or the corresponding provisions of any future United States Internal Revenue Law), as the Board of Trustees shall determine. Any assets not so disposed of shall be disposed of by a court of competent jurisdiction exclusively and for such purposes, or to such organization or organizations organized and operated exclusively for such purposes, as said court shall determine. No Trustee, Director, or Officer of the Corporation, or any other private individual, shall be entitled to share in

²³ The addresses of the incorporators may not be the address of the Corporation. Pursuant to N.J.S.A. §15A:2-7, one or more individuals, corporations, foreign corporations or other corporate entities may act as incorporators. Each incorporator named in this provision must sign the Certificate of Incorporation.

²⁴ The Certificate must state the duration of the existence of the Corporation, unless it is to be perpetual. If it is to be perpetual, this provision can be left out.

the distribution of any of the corporate assets upon dissolution of the Corporation.²⁵

10. [At the election of the incorporators, the Certificate of Incorporation may contain any other provision that is not inconsistent with the New Jersey Nonprofit Corporation Act or any other New Jersey statute, for the management and conduct of the affairs of the Corporation, or creating, defining, limiting or regulation the powers of the Corporation, or its Trustees. Any provision that is required or permitted by the New Jersey Nonprofit Corporation Act to be set forth in the Corporation's Bylaws may also be stated in the Certificate of Incorporation.]

11. [**Optional Provision**] This Certificate of Incorporation is to be effective on [DATE SUBSEQUENT TO FILING DATE].²⁶

IN WITNESS WHEREOF, the undersigned hereby executes this Certificate of Incorporation on this ___ day of _____, 200_.

²⁵ The language provided is only a sample. The Certificate of Incorporation must specify the method of distribution of assets of the Corporation upon dissolution, or that the distribution shall be as set forth in the Bylaws. In either case, the method of distribution must be set forth in one of those documents and, to be a nonprofit entity, the remaining assets must be used for a charitable, educational, religious or scientific purpose. In other words, the assets cannot be distributed to the Trustees, to the members or to an entity to be used for a for-profit purpose. This provision is very important for purposes of qualifying the Corporation as a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code.

²⁶ This provision is to be added ONLY if it is the intent of the incorporators for the formation to be effective as of a date *subsequent to* the date of actual filing.

Georgia O'Keefe, Incorporator

H. Sample Form 1023

See separate document at <http://www.irs.gov/pub/irs-pdf/f1023.pdf>

I. Sample Attachments to Form 1023

**Attachment to Part IV, Form 1023
Application for Recognition of Exemption
Under Section 501(c)(3) of the Internal Revenue Code**

Part IV – Narrative Description of Your Activities

Below is a description of the planned activities of NJ Artists, Inc. (the "**Corporation**" or "**NJ Artists**"):

As stated in the Articles of Incorporation, the Corporation was formed to provide arts education to children enrolled in the after-school program in public elementary schools located in Trenton, New Jersey. Studies have shown that arts education fosters a child's self-worth and confidence and that children exposed to the arts have higher achievement scores and are less likely to drop out after the age of compulsory education.

At least sixty five percent (65%) of the children enrolled in Trenton public elementary schools attend the after-school program. Some of those schools have no arts program because of budget reductions. The Corporation will initially offer its services to schools without any arts instruction and will expand into the other schools as funds permit. NJ Artists intends to recruit local artists and college-level art students to provide a half hour to an hour of instruction in various mediums (including visual arts, music and dance) to those children, in an effort to boost the children's self-confidence, reduce dropout rates and increase achievement scores.

The activities of the Corporation will be funded with donations from the public and grant money from other exempt entities. As indicated in the Form 1023, the Corporation intends to qualify as a public charity. Specific fundraising activities are intended to include silent art auctions that will feature work donated to NJ Artists by local artists. The funds raised will be used to purchase art and music supplies, pay instructors

hourly wages, pay for the services of a part-time manager/administrative assistant, put on a yearly "performance night" where students will display their artistic abilities to family members and guardians, and purchase insurance. The Corporation's officers and trustees will volunteer their time and efforts to support the Corporation's charitable and educational cause.

The activities described above will be conducted without the services of any full-time employees. As such, any time committed to the Corporation by officers or volunteers will be part-time, and shall not exceed one-third of any officer's or volunteer's professional service time.

No substantial part of the activities described herein will involve the carrying on of propaganda or otherwise attempting to influence legislation (except as may be permitted by Section 501(h) of the Internal Revenue Code, as amended from time to time). Furthermore, the Corporation shall not participate in, or intervene in (by publishing or distributing statements or otherwise), any political campaign on behalf of, or in opposition to, any candidate for public office.

**Attachment to Part V, Form 1023
Application for Recognition of Exemption
Under Section 501(c)(3) of the Internal Revenue Code**

Part V, Line 3a

Georgia O'Keefe will serve on the Board of Trustees (the "**Board**") as President of the Corporation. Ms. O'Keefe will not receive compensation for her duties. Ms. O'Keefe will, with the Board, direct all phases of program implementation and will oversee the hiring of visual art instructors, as well as a part-time administrator who will work for the Corporation approximately ten (10) hours a week, coordinating and offering guidance to the instructors during the hours of 3:30 to 5:30 on week days while the instructors are engaged in their teaching activities. Ms. O'Keefe is a world renowned painter who intends to operate the Corporation as a side project, spending approximately five (5) hours a week doing so.

Bonnie Rait is an accomplished musician and will serve on the Board as Vice President, assisting Ms. O'Keefe in the implementation of the program. In addition, she will oversee the hiring of part-time music instructors for the Corporation. She intends to participate in the Corporation's activities as a side project, spending approximately five (5) hour a week doing so, and will not receive compensation for her duties.

William Shakespeare is a world renowned author and will serve on the Board as the Treasurer. Mr. Shakespeare also has an MBA in business administration and will direct the Corporation's fundraising activities. He will not receive compensation for and intends to spend five (5) hours a week on his duties.

Alvin Ailey is a gifted dancer and will serve on the Board as the Secretary. He will oversee the hiring of dance instructors and intends to spend no more than five (5) hours a week on his duties.

Part V, Lines 5a, 5b and 5c:

The Corporation has adopted the following Conflict of Interest Policy:

CONFLICT OF INTEREST POLICY

(adopted February 1, 2008)

NJ Artists, Inc.

1. Disclosure. In connection with any actual or possible conflict of interest, an interested person must disclose the existence and nature of his or her financial interest to the Board of Trustees (“Board”) of NJ Artists, Inc., (“Corporation”), and any relevant committee members. For this purpose, an interested person shall include any trustee, officer, or member of a committee of the Corporation, or an entity affiliated with the Corporation who has a direct or indirect financial interest in a proposed transaction. A financial interest shall include: (a) an ownership or investment interest in any entity with which the Corporation has a proposed transaction or arrangement; (b) a compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a proposed transaction or arrangement; and (c) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement. A trustee or member of a committee shall not be deemed to have a possible conflict of interest solely by reason of serving, or having served, on the Board of any corporation affiliated with the Corporation.

2. Recusal and Investigation. After disclosure of the financial interest, the interested person shall leave the Board or committee meeting while the financial interest is discussed and voted upon. The remaining trustees or committee members shall decide if a conflict of interest exists. If a conflict of interest exists, the following procedures shall be followed: (a) the President shall, if appropriate, appoint a

disinterested person or committee to investigate alternatives to the proposed transaction or arrangement; (b) after exercising due diligence, the trustees or committee shall determine whether the Corporation could obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest; and (c) if a more advantageous transaction or arrangement is not reasonably attainable, the trustees or committee shall determine by a majority vote of the disinterested trustees whether the transaction or arrangement is in the Corporation's best interests and for its own benefit and whether the transaction is fair and reasonable to the Corporation and shall decide as to whether to enter into the transaction or arrangement in conformity with such determination.

3. Failure to Disclose. If a trustee or committee member has reasonable cause to believe that an interested person has failed to disclose actual or possible conflicts of interest, he shall inform the interested person of the basis of such belief and afford the interested person an opportunity to explain the alleged failure to disclose. If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, the trustees or committee determine that the interested person has in fact failed to disclose an actual or possible conflict of interest, the trustees shall take appropriate steps to protect the Corporation.

4. Record of Actions. The minutes of the Board and all relevant committees shall contain the following: (a) the names of persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the trustees' or committee's decision as to whether a conflict of interest in fact existed; and (b) the names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

5. Compensation. Special procedures shall be in effect with respect to compensation issues. A voting member of the Board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

6. Annual Statements. Each interested person shall annually sign a statement that affirms that such person (a) has received a copy of the conflicts of interest policy, (b) has read and understands the policy, (c) has agreed to comply with the policy, and (d) understands that the Corporation is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes. This policy shall be reviewed annually for the information and guidance of members of the Board, and any new member shall be advised of the policy upon entering on the duties of his office. In addition, the Corporation shall conduct periodic reviews of its activities, including any transactions or arrangements with interested persons, to ensure that its activities in the aggregate promote and further the Corporation's exempt purposes.

**Attachment to Part VI, Form 1023
Application for Recognition of Exemption
Under Section 501(c)(3) of the Internal Revenue Code**

Part VI, Line 1a:

The Corporation intends to provide arts instruction to public elementary school students enrolled in the after-school programs in Trenton, New Jersey. The instructors will be hired on a part-time basis and will consist of local artists and college-level art students. All instructors will be subject to criminal background checks prior to being permitted to work with the students.

The Corporation will coordinate the timing of the art instruction with the administrators of the after-school programs, and the expectation is that, at each location, students will be divided by age and each will attend one of two or three classes. For example, kindergarteners and first graders will attend from 3:15 to 4:00; second and third graders from 4:00 to 4:45; and fourth and fifth graders from 4:45 to 5:30. Each class or set of classes will explore a specific medium and students will discuss, view and/or produce an example of that medium. Any necessary supplies will be purchased by the Corporation and will be brought to the schools by the instructors.

It is intended that at the end of the school year, the Corporation will arrange for a "performance night" at each of the schools where the students' work will be displayed. Parents/guardians and families will be permitted to attend. Participation in this performance night is expected to boost students' self-worth by allowing attendees a chance to bestow accolades for the students' artistic abilities.

Part VI, Line 2:

The Corporation will provide arts instruction to children attending public elementary schools in Trenton, New Jersey. These children were chosen

as recipients with the knowledge that art education in the Trenton schools has been drastically reduced due to budget cuts. In addition, the public schools in that district have a high dropout rate and low number of college attendees. It is hoped that participation in this program will foster an appreciation for the arts, boost self-confidence and feelings of self-worth and increase the chances for academic achievement.

There are nineteen (19) elementary schools in Trenton. The schools have been polled by the trustees and Main Street Elementary and Trenton Elementary have been selected as the initial participating schools based on the interest of the after-school program directors, the current lack of art education available to their students and the expected availability of funding. It is anticipated that additional schools from the targeted district will be added on a first come first serve basis as available funds are increased.

**Attachment to Part VIII, Form 1023
Application for Recognition of Exemption
Under Section 501(c)(3) of the Internal Revenue Code**

Part VIII, Line 4a:

NJ Artists intends to conduct various fundraising activities as follows:

1. The Corporation will solicit donations of local artists' work and then auction these off at a yearly silent auction to attendees who will purchase tickets to attend. The profits from the sale of the artwork and tickets will be used to fund the Corporation's activities.
2. The Corporation intends to apply for grant money from various foundations, including Art for All, Inc., a New Jersey non-profit and tax-exempt corporation that provides grant money to organizations seeking to expose New Jersey residents to the arts.
3. The trustees intend to solicit, in-person and by mail, donations from New Jersey corporations.

Part VIII, Line 4d:

The Corporation intends to solicit funds for itself in New Jersey and may expand its fundraising activities into New York and Pennsylvania.

Part VIII, Line 11:

NJ Artists intends to accept donations of artwork from local artists to sell at its yearly silent auction. In addition, the Corporation may accept donations of theater tickets. It is expected that donors will not impose conditions on these donations.

**Attachment to Part IX, Form 1023
Application for Recognition of Exemption
Under Section 501(c)(3) of the Internal Revenue Code**

Part IX, Line 9:

Tickets to silent auction (fundraiser)	\$1000
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Part IX, Line 23:

First Year projected expenses:

Art supplies for programs at two schools	\$15,000
Mobile phone contract for administrative asst	\$500
Payroll expenses	\$1000
Start up costs (filing fees etc.)	\$2000
	<hr/>
	\$18,500

Second and third year projected expenses:

Art supplies for programs at four schools	\$43,000
Mobile phone contract for administrative asst	\$500
Payroll expenses	\$1000
Annual filing expenses	\$1000
	<hr/>
	\$45,500

J. Sample Form SS-4

See separate document at <http://www.irs.gov/pub/irs-pdf/fss4.pdf>