

At Special Term Part
____ of the Supreme Court
held in and for the County of
NIAGARA, on the ____
day of _____, 2022.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NIAGARA

IN THE MATTER OF THE APPLICATION OF
DR. YASAR SHAD, as a MEMBER

Plaintiff, **ATTORNEY AFFIRMATION**
against

ROD J. DAVIS

Defendant.

Jane M. Harrington, Esq., an attorney admitted to practice law in the State of New York,
s under penalty of perjury as follows:

1. I am the attorney for DR. YASAR SHAD, Plaintiff in the above captioned action, and submit this Affirmation in support of Plaintiff's Order to Show Cause seeking judicial dissolution of POWER CITY, LLC pursuant to New York Limited Liability Company Law Sections 702 and 703.
2. THIS COURT SHOULD ORDER THE DISSOLUTION POWER CITY, LLC IN ACCORDANCE WITH SECTION 702 OF NEW YORK'S LIMITED LIABILITY COMPANY LAW BECAUSE IT IS NOT REASONABLY PRACTICAL TO CARRY ON THE BUSINESS.
3. Section 702 of New York Limited Liability Company Law provides as follows: "on application by or for a member, the supreme court in the judicial district in which the office of the limited liability company is located may decree dissolution of a limited

liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement. A certified copy of the order of dissolution shall be filed by the applicant with the department of state within thirty days of its issuance."

4. As set forth in the Affidavit of DR. YASAR SHAD, the Plaintiff and Defendant have reached an impasse regarding the operation of Power City LLC. Defendant has controlled the business operations and will not cooperate with Petitioner in the process of winding up its business affairs. The primary asset of the company is an apartment building which is in such a state of disrepair as to render it uninhabitable, and suffering from ongoing vandalism. No renovation work has been commenced and no actions have been taken to secure the property from weather and vandal damage. As such, the value of the property is rapidly declining and it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement and this Court should issue an Order of dissolution.

i. **THIS COURT SHOULD ORDER THE APPOINTMENT OF A TEMPORARY RECEIVER TO EFFECTUATE THE SALE OF THE COMPANY ASSETS AND FINALIZE THE COMPANY BUSINESS AFFAIRS.**

5. Section 703 of New York Limited Liability Company Law provides as follows:

a. In the event of a dissolution of a limited liability company, except for a dissolution pursuant to Section 702 of this article, unless otherwise provided in the operating agreement, the members may wind up the limited liability company's affairs. Upon cause shown, the supreme court in the judicial district in which the office of the limited liability company is located may wind up the

limited liability company's affairs upon application of any member, or his or her legal representative or assignee, and in connection therewith may appoint a receiver or liquidating trustee.

- b. Upon dissolution of a limited liability company, the persons winding up the limited liability company's affairs may in the name of and for and on behalf of the limited liability company, prosecute and defend suits, whether civil, criminal or administrative, settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge the limited liability company's liabilities and distribute to the members any remaining assets of the limited liability company, all without affecting the liability of members including members participating in the winding up of the limited liability company's affairs.
6. As set forth in the Affidavit of DR. YASAR SHAD, Plaintiff has attempted to wind up Company affairs with Defendant without this Court's intervention to no avail. The real property cannot be sold without both members' consent. Plaintiff has attempted to enter into real estate contracts to sell the property but the Defendant and Defendant's attorney are no longer responding to communications from realtor and or Plaintiff's attorney. This Court must appoint a temporary receiver to take control of Company and liquidate its assets and wind up its affairs because Defendant has refused to take those necessary steps for the past six (6) months since Plaintiff began requesting to terminate the LLC.

Based upon the foregoing, I respectfully request that this Court enter an Order to dissolve POWER CITY, LLC pursuant to Limited Liability Law section 702, direct that it pay its

liabilities and distribute its assets, appoint a temporary receiver pursuant to Limited Liability Law section 703, declare the rights and responsibilities of the parties upon dissolution, compel the Defendant to take such action and execute such documents as are necessary to effectuate the sale of the LLC's only asset, to wit 320 Cedar, Niagara Falls, NY, payment of any outstanding liabilities, repayment of the funds invested by the Plaintiff, and distribution of its assets; compel the Defendant to account to Plaintiff for any and all funds he may have expended for his sole and personal benefit, compel Defendant to account to the Company for all sums received and expended since Defendant excluded Plaintiff from the business, together with such other further relief, including costs and attorneys' fees, as to the court deems just and proper.

Dated: June 10, 2022

/s/ Jane M. Harrington



Jane M. Harrington, Esq.
Attorney for Plaintiff