LLC OR INC.?

THE PROCESS OF INCORPORATION VS. LLC FORMATION

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Introduction

This session will compare corporations and LLCs from the perspective of the creation and filing of organizational documents and agreements between equity owners. We will begin with a discussion of choosing the state in which to form a new entity before moving to an examination of the basic organizational and relational documents that govern corporations and LLCs. To keep the discussion focused on practical matters, we will refer frequently to the sample documents at the end of the materials. Because this seminar is being presented in Missouri, the forms and most of these materials are based on Missouri law.

Selecting the State of Formation

Several factors may be in play when advising a client on the best state in which to form a new business entity. The formation and governance of corporations and LLCs are controlled by statutes that differ from state to state. For some companies, it is clear from the time of formation that the courts’ interpretation of the controlling statutes will be important, so case law can be as important as the statutes themselves. The location and type of business play a large part in choosing the state of formation. For some companies, differences in state income and other tax regimes may be critical considerations. In the Kansas City area, clients are typically trying to choose between forming in Kansas, Missouri, or Delaware, so we will focus on those states.

All 50 states have statutes that allow for the formation of both corporations and LLCs. Delaware has long been regarded as a pro-business state because of its favorable corporate statute (the Delaware General Corporation Law (“DGCL”)) and wealth of case law interpreting most of the litigable issues in the DGCL. Although not the first state to adopt a limited liability company act—that distinction belongs to Wyoming in 1977—Delaware has capitalized on its prominence in the corporate arena to develop a similarly pro-business reputation for LLC formation. The Kansas legislature has traditionally adopted new provisions of the DGCL, often verbatim, a few years after they become effective in
Delaware. Missouri’s corporate statute was originally modeled after the Illinois statute, but it is not a replica of any other state’s law. Although there are some differences on fine points, choosing between formation of either an LLC or a corporation in Kansas, Missouri, or Delaware should not often come down to a choice of the state with the “best” statute or case law.

Several distinctions, however, deserve discussion.

- Missouri does not require an LLC to file an annual report with the Secretary of State. It is not hard to file an annual report and the fees are not large, but this lack of a filing requirement can tip the scale toward formation in Missouri in some close cases.

- Delaware and Kansas require the affirmative vote of a majority of all outstanding shares to approve certain, significant corporate actions (e.g., amending the articles of incorporation or approving a merger or asset sale). See, e.g., KSA § 17-6602(c), 17-6801(a); DGCL §§ 242, 251. Missouri’s law gives more protection to minority shareholders by requiring the affirmative vote of two-thirds of all outstanding shares to approve a merger or an asset sale. See RSMo. §§ 351.400, 351.425.

- Missouri makes appraisal rights available to shareholders who dissent from a vote to merge the corporation or sell substantially all of its assets. See RSMo. §§ 351.405, 455. Kansas and Delaware provide appraisal rights only in the merger context. See KSA § 17-6712; DGCL § 262.

- Missouri law presumes that shareholders will have preemptive rights (the right of existing shareholders to participate in subsequent share issuances) and cumulative voting for directors (i.e., every share casts one vote for each seat up for election with shareholders having the right to “cumulate” their votes for one or more directors as they choose). If these rights are not
affirmatively eliminated, they exist for a Missouri corporation. See RSMo. §§ 351.055.2, 351.245.3. Delaware and Kansas afford these rights to shareholders only if the articles of incorporation or bylaws specifically adopt them.

When a business will have a single, physical location, it is often wise to incorporate in that state. If a company is to be based in Kansas, for example, filing articles of incorporation or organization in Missouri would necessitate a second filing to qualify to do business in Kansas. The company would then be required to file annual reports and pay franchise taxes in both states every year (unless it’s an LLC that is not required to file annual reports in Missouri). The company would also be submitting to jurisdiction in two states instead of one. From a state income tax perspective, the state where the company earns income, has employees, and owns property is more significant than the state of formation, but tax considerations would also favor formation in the state where the company is physically located.

The type and goals of a business also affect this analysis. If the business is a joint venture between sophisticated parties, especially if they are publicly traded, Delaware is often the best state of formation. Delaware’s robust corporate court system and deep roster of decisions on key issues give clients in this situation a level of comfort that disputes will be handled in a predictable fashion that other states can’t match. Similarly, if the new business plans to raise capital in a private or public offering, the national scope of Delaware’s reputation tends to make investors more comfortable than they would be with a company formed in Kansas or Missouri. It simply takes less education to gain the confidence of an investor or joint venturer from another part of the country if the entity is formed in Delaware, where the rules of the game are familiar to corporate lawyers across the nation.

On the flip side of this coin, family-owned businesses or companies formed by groups located and represented locally are usually best served by forming in Kansas or Missouri. As noted above, Kansas and Missouri courts typically look to Delaware case law for guidance. The Kansas statute, in particular, is so similar to the DGCL that the ability to
form a Kansas-based entity in Kansas should usually outweigh the advantages of being directly subject to Delaware law.

In some, more exotic, circumstances, state tax law may play a particularly large role in deciding where to form an entity. For example, some businesses have adopted a strategy of forming an LLC in a low- or no-tax state for the purpose of holding the operating company’s intellectual property. The operating company executes a license to use the intellectual property for the payment of royalties that, theoretically, escape state taxation by being paid (with a deduction to the operating company) to an LLC in a state that doesn’t tax royalty income. This strategy has often been abused, especially by people trying to maximize the potential benefits by stretching the payments to the LLC out of all proportion.

**Drafting and Filing Articles of Incorporation**

One or more natural persons at least 18 years old may act as incorporators to form a Missouri corporation by filing articles of incorporation with the Secretary of State. RSMo. § 351.050. Pursuant to RSMo. § 351.055.1, the articles of incorporation must set forth the following items:

- The name of the corporation, which must contain the word corporation, company, incorporated, or limited or end with an abbreviation of one of them. The name cannot imply that the corporation is a governmental agency and must be distinguishable from all other entities formed or qualified to do business in Missouri. See RSMo. § 351.110.

- The name and address of the registered agent in Missouri.

- If the number of authorized shares exceeds 30,000 or the par value of the authorized shares exceeds $30,000, indicate the number of shares of each class with a par value, stating the par value, and the number of shares of each class without a par value. Also state any preferences, qualifications,
limitations, restrictions, and special or relative rights including convertible rights with respect to each class of shares.

- The name and physical business or residence address of each incorporator.

- The duration of the corporation’s existence, which may be any number of perpetual.

Pursuant to RSMo. § 351.055.2, the articles of incorporation may also set forth any of the following items:

- The number of directors to constitute the board of directors.

- The extent to which the preemptive rights of shareholders are limited or denied.

- A provision eliminating or limiting the personal liability of a director to the corporation and its shareholders for monetary damages for breach of fiduciary duty as a director; provided, however, that such elimination or limitation cannot apply (a) to any breach of the duty of loyalty, (b) to acts or omissions not in subjective good faith or involving intentional misconduct or a knowing violation of law, (c) to any violation of RSMo. § 351.345 (imposing liability on directors for issuing dividends while the corporation is insolvent), or (d) to any transaction from which the director derived an improper personal benefit.

- Any other provisions that are not inconsistent with law.

Missouri law gives shareholders a presumptive right to vote cumulatively for directors. Cumulative voting can be eliminated only by a provision in the articles of incorporation or bylaws. See RSMo. § 351.245.3.
Articles of incorporation must be signed by the incorporators before a notary public. Once signed, the articles may be filed by mail or fax.

**Drafting and Filing Articles of Organization**

Any person, whether or not a member of manager, may form an LLC in Missouri by filing articles of organization pursuant to RSMo. § 347.037. The articles of organization of an LLC must contain the following items:

- The name of the LLC, which must contain one of the following: “limited company,” “limited liability company,” “LC,” “LLC,” “L.C.,” or “L.L.C.” The name may not contain the words “corporation,” “incorporated,” “limited partnership,” “limited liability partnership,” “limited liability limited partnership,” or “Ltd.” or any abbreviation of the foregoing. RSMo. § 347.020.

- The purpose for which the LLC is formed, which may be to transact any or all lawful business for which an LLC may be organized under the Missouri act.

- The address and name of the registered agent.

- A statement as to whether the LLC will be managed by the members or managers.

- The duration of the LLC, which may be perpetual.

- The name and physical business or residence address of each organizer.

The articles of organization of an LLC may also contain any other provisions that are not inconsistent with law.
Articles of organization must be signed by the organizers. A notarial seal is not required. Once signed, the articles may be filed by mail or fax.

**Operating Agreement v. Shareholders Agreement**

The operating agreement of an LLC is analogous to a corporation’s bylaws and shareholders agreement. A corporation’s bylaws govern the internal relations among shareholders and directors, including such things as voting rights, indemnification provisions, and notice requirements for annual and special meetings. If a corporation has a shareholders agreement, it typically restricts the rights of shareholders to transfer their shares to new owners and may also contain agreements on voting shares together for the election of directors and other matters. There are no bylaws in an LLC, so the operating agreement covers both the internal governance of the LLC and the relationships between its members and managers. In addition, because LLCs are often taxed as partnerships, the operating agreement of a multiple-member LLC should contain detailed provisions to cause the LLC to comply with the complex partnership taxation rules.

A single-member LLC is a special entity that typically has a very simple operating agreement. As a single-member entity, an LLC is treated, absent an election to the contrary, as a disregarded entity for tax purposes. Therefore, the IRS simply ignores the existence of the LLC for almost all purposes and treats its assets as being owned, and its income as being earned, by its owner. With only one member, the LLC does not need anything like a shareholders agreement. The operating agreement of a single-member LLC can be a very short, straight-forward document. It should contain some basic information about the formation and existence of the LLC, identify the manager (if any), set forth express limitations of liability for the member and manager, and define the authority of any officers that the manager or member is authorized to appoint.

Shareholders in a closely held corporation should always consider adopting a shareholders agreement to govern the shareholders’ rights to dispose of their shares. Nothing is more important to a closely held corporation than cooperation between the shareholders.
When two or more shareholders found a corporation, they almost always believe they have a good, mutual understanding of the way they plan to run the company. The relationships they forge over time may allow them to carry the corporation through difficult times and to share the wealth in the good times. The basic purpose of a shareholders agreement is to ensure that no shareholder can unilaterally bring an outsider into the ownership circle and to provide for rules to follow if the shareholders ultimately find that they must part ways.

This same idea undergirds the transfer restrictions that typically are included in a multiple-member LLC’s operating agreement. LLCs evolved from the partnership form of entity, which has traditionally employed even more stringent controls on partners’ transfer rights than closely held corporations. Whereas corporate shareholders sometimes do not choose to use a shareholders agreement, it is a rare LLC that does not include transfer restrictions in its operating agreement.

LLCs and corporations use numerous types of transfer restrictions, but some basic restrictions are commonly found in both operating agreements and shareholders agreements:

- Most transfer restrictions begin with a general prohibition on transferring shares or membership interests by sale, assignment, gift, pledge, or otherwise, except as provided in the agreement. This provision should clearly state that an attempted transfer in violation of the provision is deemed null and void from its inception.

- One very typical exception to the prohibition involves a right of first refusal. In order to avoid the common judicial reluctance to enforce absolute restraints on alienation of property, most operating and shareholders agreements allow a member or shareholder to transfer its interest or shares in connection with a bona fide offer from a third party if the other members or shareholders (or the company) fail to exercise a right of first refusal to buy the interests or shares at the price offered by the third party. It is important for the right of first refusal to be triggered only by a bona fide offer from an
unaffiliated third party to avoid the possibility that an owner might get a close affiliate to offer an unrealistic price that will in effect not be paid (because the payment will end up back in the buyer’s pocket) just to extract an unrealistically high price from the other members. If the other owners fail to exercise their option, the selling owner should be allowed to complete the sale, but only on the terms originally offered, for a limited period of time. The agreement should require the buyer to be subject to the agreement or to become (in the case of an LLC) a merely economic interest owner with no voting rights.

- Another common transfer restriction relates to involuntary transfers. Owners would typically rather not allow a bankruptcy trustee, divorce court, or executor to dispose of shares or membership interests. To avoid this problem, the agreement should define events such as divorce, bankruptcy, and death (but see below) as involuntary transfers that give rise to an option for the company or the other owners to buy the interest affected by the event. The exercise price for the option raises an issue not present in the right of first refusal context: determining the value of the interest or stock. Methods for determining the value of a company include mutual agreement of the owners, a formula price, appraisal by a mutually acceptable appraiser, and many variations on these themes. Mutual agreement provisions should be backstopped by one of the other alternatives because owners often forget to update their agreed valuations or fail to reach an agreement. Formula prices may be based on cash flow (e.g., a multiple of EBITDA), revenue, book value, or some other measure. Appraisals may be conducted at the outset and updated annually or only done when required. If the other owners or the company do not exercise their option, an operating agreement may specify that the transferred membership interest will no longer bear voting rights but will only entitle the owner to an economic interest in the LLC. This option is not available in the corporate context.
An operating or shareholders agreement may specify that an owner has the right to transfer interests or shares to his heirs upon his death. Similarly, it may allow transfers to revocable trusts of the owners. On the other hand, in some cases, the owners may prefer to require their interests or shares to be purchased upon death so that their family members are not burdened with ownership of a closely held company with no reasonable options for liquidating their interest.

The partnership tax provisions and internal governance components of operating agreements cause them typically to be longer and more complex than shareholders agreements. Setting aside these items, which consist almost entirely of “boiler plate,” the substantive points in a shareholders agreement are often virtually identical to those in an operating agreement.

**Sample Forms and Documents**

The following forms are attached below:

- Articles of incorporation
- Articles of organization
- Operating agreement for a single-member LLC
- Operating agreement for a multiple-member LLC
- Shareholders agreement
ARTICLES OF INCORPORATION OF

The undersigned natural person of the age of eighteen (18) years or more, for the purpose of forming a corporation under The General and Business Corporation Law of Missouri, hereby adopts the following Articles of Incorporation:

ARTICLE ONE

The name of the Corporation is ________.

ARTICLE TWO

The address of the Corporation's initial registered office in the State of Missouri is 1000 Walnut, Suite 1400, Kansas City, Missouri 64106-2140, and the name of its initial registered agent in the State of Missouri is Spenserv, Inc.

ARTICLE THREE

The Corporation shall have authority to issue _____ shares of Common Stock, par value _______________ Dollars ($_____) per share, aggregating ________________ Dollars ($_____).

There shall be no preferences, qualifications, limitations, restrictions, or special or relative rights, including convertible rights, in respect of the shares herein authorized.

ARTICLE FOUR

No holder of issued and outstanding shares of any class of stock of the Corporation shall have a preemptive right to subscribe for or acquire any shares of stock of such class or any other class, or any other securities of any kind, hereafter issued by the Corporation.

ARTICLE FIVE

The name and place of residence of the Incorporator are ____________________________________________.

ARTICLE SIX

The number of directors to constitute the Board of Directors is _________ (___).

ARTICLE SEVEN

The duration of the Corporation is perpetual.

ARTICLE EIGHT

The Corporation is formed for profit for the purpose of conducting or engaging in any lawful business or activities for which corporations may be organized under The General and Business Corporation Law of Missouri, or any successor law thereto.
ARTICLE NINE

The Board of Directors shall have power to make, and from time to time alter, amend, or repeal the Bylaws of the Corporation; provided, however, that (i) the shareholders shall have the paramount power to alter, amend and repeal the Bylaws or adopt new Bylaws, exercisable by a majority vote of the shareholders present in person or by proxy at any annual or special meeting of shareholders, and (ii) if and to the extent the shareholders exercise such power, the Board of Directors shall not thereafter suspend, alter, amend or repeal the Bylaws, or portions thereof, adopted by the shareholders, unless, in adopting such Bylaws, or portions thereof, the shareholders otherwise provide.

ARTICLE TEN

Each outstanding share entitled to vote under these Articles of Incorporation shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, including, without limitation, each vote taken in the election of directors. There shall be no cumulative voting in the election of directors.

ARTICLE ELEVEN

A director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its shareholders, (ii) for acts or omissions not in subjective good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to RSMo. '351.345, or (iv) for any transaction from which the director derived an improper personal benefit.

IN WITNESS WHEREOF, these Articles of Incorporation have been signed this _____ day of ______________, 20__.

__________________________________________________________
Incorporator

STATE OF MISSOURI  )
 ) ss.
COUNTY OF JACKSON    )

I, __________________, the undersigned, a Notary Public, do hereby certify that on the _____ day of ________, 20__, personally appeared before me, __________________, who being by me first duly sworn, declared that he is the person who signed the foregoing document as Incorporator, and that the statements contained therein are true.

__________________________________________________________
Notary Public

My Commission Expires:
Articles of Organization

of

___________________, LLC

The undersigned, for the purpose of forming a limited liability company (the “Company”) under the Missouri Limited Liability Company Act (the “Act”), hereby adopts the following Articles of Organization.

ARTICLE ONE

The name of the Company is ______________, LLC.

ARTICLE TWO

The purpose of the Company is to transact any and all lawful business for which a limited liability company may be organized under the Act.

ARTICLE THREE

The name and address of the Company’s registered agent in Missouri are Spenserv, Inc., 1000 Walnut Street, Suite 1400, Kansas City, Missouri 64106.

ARTICLE FOUR

The management of the Company is vested in one or more managers.

ARTICLE FIVE

The Company’s existence shall be perpetual.

ARTICLE SIX

The name and address of the Organizer are ______________, ____________________.

IN AFFIRMATION THEREOF, the facts stated above are true as of this ___ day of __________, 20__. 

__________________

_______________, Organizer
OPERATING AGREEMENT

This Operating Agreement of ______________, LLC (the “Company”), a limited liability company organized pursuant to the Missouri Limited Liability Company Act (the “Act”), is entered into as of the _______ day of __________, 20__, by and between the Company and ______________, its sole member (the “Member”).

1. FORMATION.

1.1. Organization. The Company was formed on _____________, 20__, by filing Articles of Organization (the “Articles”) with the Secretary of State of Missouri pursuant to the provisions of the Act.

1.2. Duration. The duration of the Company shall commence as of _____________, 20__, and continue until the Company is wound up and liquidated.

1.3. Registered Agent and Office. The registered agent for the service of process and the registered office shall be that person and location reflected in the Articles as filed in the office of the Secretary of State of Missouri. The Manager may, from time to time, change the registered agent or office through appropriate filings with the Secretary of State of Missouri.

1.4. Nature of Business. The Company may engage in any lawful business permitted by the Act and the laws of any jurisdiction in which the Company may do business, and the Company shall have the authority to do all things necessary or convenient to operate its business.

2. RIGHTS AND DUTIES OF MANAGER.

2.1. Management. Except as provided in this Operating Agreement, the management of the Company shall be vested in one Manager who shall have full authority, power and discretion to manage and control the business, affairs and properties of the Company. The Manager need not be a Member of the Company. The Manager may create such offices and appoint such officers as determined from time to time by the Manager.

2.2. Number, Tenure, and Qualifications. The initial Manager of the Company shall be __________________, who shall serve until his death, resignation, or removal. The number of Managers shall not be changed without the consent of the Member.

2.3. Resignation. The Manager may resign at any time by giving written notice to the Member. The resignation of a Manager who is also a Member shall not affect such person’s rights as a Member.

2.4. Vacancies. Any vacancy in the position of Manager shall be filled as directed by the Member.

2.5. Action by Consent. The Manager may take any action which could be taken at a duly called and legally held meeting by consenting to the action in writing.
3. **RIGHTS AND OBLIGATIONS OF THE MEMBER.**

   3.1. **Limitation of Authority.** Except as otherwise provided in this Operating Agreement, the Member shall not have any authority to act for or on behalf of the Company, and no such action shall be binding upon or enforceable against the Company.

   3.2. **Action by Consent.** The Member may take any action required or permitted to be taken by the Member, without a meeting, by signing a written consent setting forth the action so taken.

4. **LIMITATIONS ON LIABILITIES AND DUTIES.**

   4.1. **Limitation of Liability.** Except as otherwise required by law, neither the Member, the Manager, nor any other agent of the Company shall be obligated personally for the acts, debts, obligations or liabilities of the Company, whether arising in contract, tort or otherwise, or for the acts or omissions of any other agent of the Company. The limited liability described in this Article 4 shall continue in full force and effect without regard to the dissolution, winding up, and termination of the Company.

   4.2. **No Exclusive Duty to Company.** The Member, the Manager and agents of the Company may engage in, or possess an interest in, other business ventures of every nature and description, independently or with others, whether or not similar to or in competition with the Company. The Member, the Manager and agents of the Company shall not be required to devote all of their time or business efforts to the affairs of the Company. No contract or other transaction between the Company and the Member, the Manager or any agent of the Company shall be void or voidable because of the relationship of the parties, and neither the Member, the Manager nor the agents of the Company shall be obligated to account to the Company for any profit or benefit derived from such contract or other transaction.

5. **CONTRIBUTIONS AND DISTRIBUTIONS.**

   5.1. **Contributions.** The Member shall make an initial capital contribution to the Company in an amount agreed upon by the Member. In no event shall the Member be required to make any further contributions to the capital of the Company.

   5.2. **Distributions.** The Member may at any time and from time to time withdraw distributions of cash or other property from the Company.

6. **TRANSFER OF MEMBERSHIP INTEREST.** The Member may sell, assign, transfer, give away or otherwise dispose of all or any part of the Member’s membership interest in the Company without restriction under this Agreement.

7. **DISSOLUTION AND WINDING UP.**

   7.1. **Dissolution.** The Company shall be dissolved, and its affairs wound up, only upon the first to occur of the following:

      (a) the approval of the Member;
(b) the entry of a decree of dissolution pursuant to Section 347.143 of the Act;

(c) the merger or consolidation in which the Company is not the surviving entity;

or

(d) at any time that there are no Members; provided, however, that the legal representative of the Member may, within 90 days of the event that terminated the membership of the last remaining member (including the death of such member), elect to continue the existence of the Company with a new Member selected by such legal representative.

7.2. **Effect of Dissolution.** Upon dissolution, the Company shall cease carrying on the Company’s business, except that the Company shall continue to take all actions necessary to wind up the business and to file for cancellation of the Articles in accordance with the Act.

7.3. **Winding Up and Distribution of Assets on Dissolution.** Upon the dissolution of the Company, the Member (or legal representative) shall proceed as soon as possible to wind up the Company by (a) collecting or making provision for the collection of all known debts owing to the Company; (b) selling, leasing, transferring or otherwise disposing of any properties not to be distributed in kind to the Member; and (c) paying or making reasonable provision for the payment of all claims and obligations of the Company. Except as otherwise provided in the Act, all tangible and intangible property (including money) remaining after discharging, or providing for the discharge of, the debts, obligations, and liabilities of the Company shall be distributed to the Member, and if the Member has a deficit capital account, the Member shall not be obligated to restore the deficit, and the deficit shall not be considered a debt owed by the Member to the Company or to any other person for any purpose whatsoever.

7.4. **Articles of Termination.** Upon the completion of the winding up of the Company pursuant to Section 7.3, Articles of Termination shall be delivered to the Secretary of State of Missouri for filing.

8. **INDEMNIFICATION.** The Company shall indemnify the Member and the Manager for all costs, losses, liabilities, and damages suffered or incurred by the Member, the Manager or any such officer in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State of Missouri. In addition, the Company may advance costs of defense of any proceeding to the Member or the Manager, at the discretion of the Member.

9. **MISCELLANEOUS PROVISIONS.**

9.1. **Governing Law.** This Operating Agreement shall be governed by and construed in accordance with the laws of the State of Missouri (without regard to conflicts of law principles).

9.2. **Amendment.** This Operating Agreement may be amended or modified from time to time by a written instrument adopted by the Member.

9.3. **Entire Agreement.** This Operating Agreement represents the entire agreement between the Member and the Company.
9.4. **Rights of Creditors and Third Parties under Operating Agreement.** This Operating Agreement is entered into between the Company and the Member for the exclusive benefit of the Company, the Member, and their successors and assigns. This Operating Agreement is expressly not intended for the benefit of any creditor of the Company or any other person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under this Operating Agreement or any agreement between the Company and the Member with respect to any capital contribution or otherwise.

IN WITNESS WHEREOF, the parties to this Operating Agreement have executed it on the date first appearing above.

____________________, LLC

By:_____________________

____________________, Manager

Name:____________________
OPERATING AGREEMENT

This Operating Agreement of ________________ LLC, a limited liability company organized under the Missouri Revised Limited Liability Company Act, is hereby adopted and approved on this ___ day of _____________, 20__, by the undersigned Members of the Company, who agree as follows:

ARTICLE I
Definitions

In addition to terms defined elsewhere in this Operating Agreement, the following terms used in this Operating Agreement shall have the following meanings:

1.1. Act. The Missouri Revised Limited Liability Company Act, as amended from time to time.

1.2. Additional Member. A Member other than an Initial Member who has acquired a Membership Interest from the Company.

1.3. Affiliate shall mean with respect to any Person, any other Person or group of Persons directly or indirectly controlling, controlled by or under direct or indirect common control with such Person. For purposes of this definition, a Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to vote 50% or more of the outstanding securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other individuals performing similar functions of such other Person (irrespective of whether or not at the time shares of stock or other ownership interests of such Person shall have or might have voting power by reason of the happening of any contingency).

1.4. Articles. The Company’s Articles of Organization, as amended from time to time.

1.5. Bona Fide Offer. An all-cash offer in writing to an Equity Owner offering to purchase such Equity Owner's Ownership Interest and setting forth all the relevant and material terms and conditions of the proposed purchase, from an offeror who is ready, willing, and able to consummate the purchase and who is not an Affiliate or a Family Member of such Equity Owner.

1.6. Capital Account. With respect to any Equity Owner, the account maintained by the Company in accordance with Section 7.2.

1.7. Capital Contribution. Any contribution to the capital of the Company in cash or property by an Equity Owner, whenever made.

1.8. Cash Available for Distribution. With respect to any Fiscal Year, all cash receipts of the Company during such Fiscal Year (other than Capital Contributions or the proceeds of any indebtedness used or to be used in the operation of the Company’s business), less (a) all Company
cash disbursements during such Fiscal Year as the Manager shall determine in his discretion are necessary for the conduct of the Company’s business, and (b) such reserves as may be established by the Manager in his discretion during such Fiscal Year. Cash Available for Distribution shall also include any other Company funds, including, without limitation, any amounts previously set aside as reserves by the Manager, no longer deemed by the Manager necessary or advisable for the conduct of the Company’s business.

1.9. **Code.** The Internal Revenue Code of 1986, as amended from time to time.

1.10. **Company.** ______________, LLC, a Missouri limited liability company.

1.11. **Deficit Capital Account.** With respect to any Equity Owner, the deficit balance, if any, in such Equity Owner’s Capital Account as of the end of the Fiscal Year, after giving effect to the following adjustments:

(a) credit to such Capital Account any amount which such Equity Owner is obligated to restore under Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations, as well as any addition thereto pursuant to the next to last sentence of Sections 1.704-2(g)(1) and (i)(5) of the Treasury Regulations, after taking into account thereunder any changes during such year in partnership minimum gain (as determined in accordance with Section 1.704-2(d) of the Treasury Regulations) and in the minimum gain attributable to any partner nonrecourse debt (as determined under Section 1.704-2(i)(3) of the Treasury Regulations); and

(b) debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.

This definition of Deficit Capital Account is intended to comply with Sections 1.704-1(b)(2)(ii)(d) and 1.704-2 of the Treasury Regulations, and will be interpreted consistently with those provisions.

1.12. **Depreciation.** For each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager.

1.13. **Economic Interest Owner.** An owner of Financial Rights who is not a Member.

1.14. **Entity.** Any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization, and also includes local, municipal, state, United States, and foreign governments.

1.15. **Equity Owner.** An Economic Interest Owner or a Member.
1.16. **Family Member** shall mean with respect to any Person, any spouse, child (by birth or adoption), or relative within the second degree of consanguinity of such Person.

1.17. **Financial Rights.** An Equity Owner's rights to share in profits and losses and to receive interim and liquidating distributions.

1.18. **Fiscal Year.** The Company’s fiscal year, which shall be the calendar year.

1.19. **Governance Rights.** A Member's right to vote on one or more matters, and all of a Member's rights as a Member in the Company other than Financial Rights.

1.20. **Gross Asset Value.** With respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

- (a) The initial Gross Asset Value of any asset contributed by an Equity Owner shall be the gross fair market value of such asset, as determined by the Manager.

- (b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as reasonably determined by the Manager as of the following times: (i) the acquisition of an additional interest by any new or existing Equity Owner; (ii) the distribution by the Company to an Equity Owner of more than a de minimis amount of property as consideration for an Ownership Interest; and (iii) the liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations; provided, however, that adjustments pursuant to clause (a) above and this clause (b) shall be made only if the Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relative Financial Rights of the Equity Owners in the Company;

- (c) The Gross Asset Value of any Company asset distributed to any Equity Owner shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the Manager; and

- (d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m) and Section 7.2 and subparagraph (d) under the definition of Net Profits and Net Losses; provided, however, that Gross Asset Values shall not be adjusted pursuant to this definition to the extent the Manager determines that an adjustment pursuant to subparagraph (b) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (d).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraphs (a), (b) or (d) of this definition, then such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profits and Net Losses.

1.21. **Initial Members.** ________________.
1.22. **Involuntary Transfer.** Any one or more of the following events with respect to an Equity Owner:

(a) The Equity Owner makes an assignment for the benefit of creditors, is the subject of a bankruptcy, files a petition or answer seeking for the Equity Owner any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation or files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Equity Owner in a proceeding of such nature, or seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Equity Owner or of all or any substantial part of his or its property;

(b) 120 days after the commencement of any proceeding against the Equity Owner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if such proceeding has not been dismissed, or 90 days after the appointment, without the Equity Owner's consent or acquiescence, of a trustee, receiver or liquidator of the Equity Owner or of all or any substantial part of the Equity Owner's property, if the appointment is not vacated or stayed, or 90 days after the expiration of any such stay, if the appointment is not vacated;

(c) Receipt by the Equity Owner of notice of a public, private or judicial sale of all or any part of the Ownership Interest owned by such Equity Owner to satisfy a judgment against or other indebtedness of such Equity Owner, which is not canceled or withdrawn at least ten (10) days before the scheduled date of such sale;

(d) The entry of a decree of divorce or dissolution of marriage, or the execution by the Equity Owner of a property settlement agreement, or any other action in connection with a pending divorce proceeding, the effect of which is to grant rights to all or any part of the Ownership Interest owned by such Equity Owner to any person other than such Equity Owner;

(e) The judicial attachment or levy upon all or any part of the Ownership Interest owned by the Equity Owner by any federal, state or local governmental authority or agency thereof, which is not satisfied or discharged within ten (10) days after such attachment or levy takes place;

(f) In the case of an Equity Owner who is a natural person, the death of the Equity Owner or the entry of an order by a court of competent jurisdiction adjudicating the Equity Owner incompetent to manage the Equity Owner’s person or estate;

(g) In the case of an Equity Owner that is a trust, the termination of the trust (but not merely the substitution of a new trustee) or a distribution of its entire interest in the Company;

(h) In the case of an Equity Owner that is a general or limited partnership, the dissolution and commencement of winding up of the partnership or a distribution of its entire interest in the Company;

(i) In the case of an Equity Owner that is a corporation, the filing of articles of dissolution, or their equivalent, for the corporation, or the revocation of its charter or a distribution of its entire interest in the Company; or
(j) In the case of an Equity Owner that is a limited liability company, the filing of articles of dissolution or termination, or their equivalent, for the limited liability company or the distribution of its entire interest in the Company.

1.23. **Member.** A Person who owns Governance Rights of a Membership Interest reflected in the Company's records.

1.24. **Membership Interest.** A Member's interest in the Company consisting of the Member's Financial Rights and the Member's Governance Rights.

1.25. **Net Profits and Net Losses.** For each Fiscal Year of the Company, an amount equal to the Company's net taxable income or loss for such year as determined for federal income tax purposes (including separately stated items) in accordance with the accounting method and rules used by the Company and in accordance with Section 703 of the Code with the following adjustments:

(a) Any items of income, gain, loss and deduction allocated to Equity Owners pursuant to Section 8.2 or Section 8.7 shall not be taken into account in computing Net Profits or Net Losses;

(b) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits and Net Losses (pursuant to this definition) shall be added to such taxable income or loss;

(c) Any expenditure of the Company described in Section 705(a)(2)(B) of the Code and not otherwise taken into account in computing Net Profits and Net Losses (pursuant to this definition) shall be subtracted from such taxable income or loss;

(d) In the event the Gross Asset Value of any Company asset is adjusted pursuant to Section 1.20(b) or 1.20(d), the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profits and Net Losses;

(e) Gain or loss resulting from any disposition of any Company asset with respect to which gain or loss is recognized for federal income tax purposes shall be computed with reference to the Gross Asset Value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value;

(f) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year; and

(g) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required pursuant to Section 1.704-1(b)(2)(iv)(m)(4) of the Treasury Regulations to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of an Ownership Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Profits or Net Losses.
1.26. **Operating Agreement.** This Operating Agreement as originally executed and as further amended from time to time.

1.27. **Ownership Interest.** In the case of a Member, the Member's Membership Interest. In the case of an Economic Interest Owner, the Economic Interest Owner's Financial Rights.

1.28. **Person.** Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such “Person,” where the context so permits.

1.29. **Sharing Ratio.** An Equity Owner's percentage interest in Financial Rights as set forth on Exhibit A.

1.30. **Substitute Member.** A person who has acquired a Membership Interest in the Company from a Member and has satisfied the conditions to become a Substitute Member set forth in Section 9.4.

1.31. **Treasury Regulations.** Shall include proposed, temporary and final regulations promulgated under the Code in effect as of the date of filing the Articles and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations.

1.32. **Voting Interest.** A Member's percentage interest in Governance Rights as set forth on Exhibit A.

**ARTICLE II**

**Organization**

2.1. **Formation.** The Company was formed on __________, 20__, by the filing Articles of Organization with the Secretary of State of the State of Missouri.

2.2. **Principal Executive Office.** The Company’s principal executive office is located at ______________________________. At any time, the Manager may change the Company’s principal executive office to another location within or outside the State of Missouri.

2.3. **State of Kansas Registered Office and Registered Agent.** The Articles set forth the street address and zip code of the Company’s initial registered office in the State of Missouri, and the name of its initial registered agent at that address. At any time, the Manager may change the Company’s registered office or its registered agent in the State of Missouri.

2.4. **Term.** The term of the Company shall commence as of the effective date set forth in Section 2.1 and continue until the Company is wound up and liquidated.

**ARTICLE III**

**Members and Membership Interests**

3.1. **Nature of Ownership Interest.** An Ownership Interest is personal property. No Equity Owner has an interest in specific property of the Company. All property transferred to or acquired by the Company is property of the Company itself.
3.2. **Additional Members.** Except as provided in ARTICLE IX, the Company shall not admit Additional Members without the affirmative unanimous vote of the Members.

3.3. **Capital Contribution of Additional Member.** Upon the admission of any Person as an Additional Member, such Person shall contribute money or other rights, interests or assets to the Company, as agreed between all of the Members and the newly admitted Member, and the Financial Rights and Governance Rights of the Members shall be adjusted as agreed between the Manager and the newly admitted Member.

3.4. **Effect of Additional Member.** The Members hereby agree in advance that upon the admission of an Additional Member to the Company, the Additional Member shall become a party to this Operating Agreement upon agreeing in writing to be bound by the terms and provisions of this Operating Agreement and upon agreeing to contribute to the capital of the Company the amount agreed. If any such Additional Member becomes a party to this Operating Agreement, this Operating Agreement will continue to be binding on every Member without the re-execution of this Operating Agreement or any amendment to this Agreement.

**ARTICLE IV**

**Meetings of Members**

4.1. **No Required Meetings.** The Members may hold, but shall not be required to hold, annual, periodic, or other formal meetings. Meetings of the Members may be called by the Managers or by any Member.

4.2. **Place of Meetings.** Meetings of Members shall be held at the place specified in the notice calling the meeting or at such location as Members holding at least a majority of the Voting Interests may designate.

4.3. **Notice of Meetings.** Except as provided in Section 4.4, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than ten (10) nor more than seventy (70) days before the date of the meeting, either personally, by mail, by facsimile, by electronic mail, or by other type of wire or wireless communication by or at the direction of the Managers or the Members calling the meeting, to each Member entitled to vote at the meeting.

4.4. **Meetings of all Members.** To the extent permitted by law, if all of the Members meet at any time and place, either within or outside of the State of Missouri, and consent to the holding of the meeting at such time and place, the meeting shall be valid without call or notice, and the Members may take lawful action at the meeting.

4.5. **Record Date.** For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members.
4.6. **Quorum.** Members holding a majority of the Voting Interests, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, a majority of the Members by Voting Interest so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed.

4.7. **Manner of Acting.** If a quorum is present, the affirmative vote of Members holding at least a majority of the Voting Interests present in person or by proxy shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, by the Articles, or by this Operating Agreement.

4.8. **Proxies.** At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with any Manager before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

4.9. **Action by Members Without a Meeting.** Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents or approvals describing the action taken and signed by all the Members. Action taken under this Section 4.9 is effective when all the Members have signed the consent or approval, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

4.10. **Waiver of Notice.** When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein shall be equivalent to the giving of such notice.

**ARTICLE V**

**Manager**

5.1. **Management.** Except as otherwise required in this Operating Agreement or by applicable law, all powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed by or under the direction of, one Manager. The Manager may, but need not, be a Member of the Company. The number of Managers shall not be changed without the affirmative vote of all of the Members.

5.2. **Election and Qualification.** The initial Manager of the Company shall be _______. The Manager shall serve until his successor is elected and qualified, or until his earlier death, resignation or removal. Any successor Manager shall be elected by a plurality of the Voting Interests voted by Members constituting a quorum at a meeting duly called and legally held for the purpose of electing a successor Manager.

5.3. **Resignation, Removal and Vacancies.** The Manager may resign at any time by giving a written resignation to any Member of the Company (other than the Manager himself if he is
a Member). Such a resignation shall be effective without acceptance when it is actually received by a Member, unless a later effective time is specified in the resignation. The Manager may be removed by the affirmative vote of Members holding at least a majority of the outstanding Voting Interests of the Company at a meeting called for the purpose of removing the Manager. Any such meeting notice must state that the purpose of the meeting, or one of the purposes of the meeting, is to remove the Manager. If a vacancy occurs, it may be filled only at a meeting of the Members called for the purpose of filling the vacancy, and the meeting notice must state that the purpose of the meeting, or one of the purposes of the meeting, is to elect a new Manager.

5.4. **Meetings.** The Manager shall not be required to hold annual or other meetings.

5.5. **Restrictions on Authority of the Manager.** Notwithstanding the general provisions of Section 5.1, the unanimous affirmative vote of the Members shall be necessary to effect any of the following actions:

(a) Any act in contravention of this Operating Agreement;

(b) Any merger, consolidation, acquisition or joint venture, partnership, or business combination of the Company with or into any other Person;

(c) Commencement of any voluntary proceeding in respect of the Company seeking liquidation, reorganization, dissolution or bankruptcy;

(d) Any issuance or redemption of Membership Interests;

(e) Any requirement of additional Capital Contributions from the Members;

(f) Confession of a judgment against the Company;

(g) Any sale, lease, assignment or other disposition by the Company, in any single transaction or series of related transactions, (i) of all or substantially all of its assets, or (ii) of any asset of the Company if such sale, lease, assignment, or other disposition is not in the ordinary course of business;

(h) Any transaction involving or consisting of a voluntary pledge of, mortgage of, grant of a security interest in, or other encumbrance in the nature of a pledge or mortgage of, any assets of the Company the Company affecting property that has a value, individually or in the aggregate, of more than $10,000;

(i) Any transaction pursuant to which the Company incurs, assumes, or otherwise becomes liable for any obligations (except for obligations to the Members arising under Section 7.1(a)) in excess of $10,000 (i) for borrowed money; (ii) evidenced by bonds, debentures, notes or other similar instruments; (iii) under leases required by generally accepted accounting principles to be treated as financing leases; or (iv) in the nature of guarantees of obligations described in clauses (i) through (iv) above of any other Person;
(j) Entry by the Company into any contract or transaction, including but not limited to any employment agreement, with, or for the benefit of, any Equity Owner or any Affiliate or Family Member of an Equity Owner;

(k) Any amendment of the Articles or this Operating Agreement;

(l) Any change in the number of Managers; or

(m) Liquidation or dissolution of the Company.

5.6. **Officers.** The Manager shall have the authority to appoint such officers, including but not limited to, a President and one or more Vice Presidents as the Manager may choose from time to time to appoint. Any officer appointed by the Manager shall have the authority granted to such officer at the time of the officer’s appointment or at any subsequent time; provided, however, that such grant of authority shall be made pursuant to a written document executed by the Manager. The Manager may delegate any or all of the Manager’s powers and authority pursuant to this Operating Agreement to such officers, but any such grant will not preclude the Manager from exercising such authority directly nor shall any such grant purport to delegate powers and authority reserved to the Members. The Manager shall have the right at any time to remove an officer with or without cause and shall not be required to name a successor to any officer. Any person may be named to multiple offices if the Manager so elects. The Manager shall have the right to set the compensation (if any) of every officer of the Company, except to the extent limited by Section 5.5(j).

**ARTICLE VI**

**Limitations on Liabilities and Duties**

6.1. **Limited Liability.** An Equity Owner, Manager, employee, officer, or other agent of the Company shall not be obligated personally for (a) the acts, debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, or (b) the acts or omissions of any other Equity Owner, Manager, officer, employee or other agent of the Company. A n Equity Owner, Manager, employee, officer, or other agent of the Company is not a proper party to proceedings by or against the Company, except when the object is to enforce the rights of an Equity Owner, Manager, employee, officer, or other agent of the Company against the Company. The limited liability described in this Section 6.1 shall continue in full force regardless of any dissolution, winding up, and termination of the Company.

6.2. **Other Business Activities.**

(a) Any Equity Owner, Manager, officer, or Affiliate of an Equity Owner, Manager, or officer may engage in, or possess an interest in, other business ventures of every nature and description, independently or with others, whether or not similar to or in competition with the Company, and neither the Company nor any Equity Owner, Manager, officer, or Affiliate of an Equity Owner, Manager, or officer shall have any right, by virtue of this Operating Agreement, in or to such other business ventures, or to the income or profits derived from such other business ventures.
(b) Neither the Equity Owners, the Manager, nor the officers shall be required to devote all of their time or business efforts to the affairs of the Company, but shall devote so much of their time and business efforts as is reasonably necessary and advisable to manage the affairs of the Company to the best advantage of the Company.

6.3. **Transactions with Equity Owners, Managers, Officers, and their Affiliates and Family Members.** No contract or other transaction between the Company and any Equity Owner, Manager or officer of the Company, or any Affiliate or Family Member of an Equity Owner, Manager, or officer of the Company, shall be void or voidable because of the relationship of the parties, and neither the Equity Owner, Manager, officer, nor Affiliate shall be obligated to account to the Company for any profit or benefit derived from such contract or other transaction, provided (a) the terms and conditions of the contract or other transaction are fully disclosed to the Company and are not materially less favorable to the Company than generally would be available in an arms' length transaction, and (b) the contract or other transaction is otherwise valid under applicable law.

**ARTICLE VII**

**Contributions and Capital Accounts**

7.1. **Capital Contributions.**

(a) Upon formation of the Company, each Initial Member made a Capital Contribution in the amount set forth opposite his name on Exhibit A.

(b) Except as provided in this Section 7.1, no Equity Owner shall be required to make Capital Contributions. Equity Owners may be requested or required to make additional Capital Contributions only upon terms and conditions approved by the Members pursuant to Section 5.5. If the Manager proposes a capital call but the Members do not approve the proposal pursuant to Section 5.5(e), then the Members shall be permitted to elect, by delivering written notice to the Manager within thirty (30) days of the rejection of the capital call proposal, on a pro rata basis in accordance with the respective Sharing Ratios of all Members so electing, to make loans (each, a "Member Loan") to the Company in an aggregate amount equal to the amount of capital proposed in the rejected capital call. Each Member Loan shall be evidenced by a promissory note bearing interest at the average U.S. prime rate reported in The Wall Street Journal on the date of the Member Loan. Interest only shall be payable annually on each Member Loan until the earlier of the ninth (9th) anniversary of such Member Loan or the date of the Company's dissolution pursuant to Section 10.3, at which time all principal and interest on such Member Loan shall be payable in full. Each Member Loan shall be expressly subordinated to all of the Company's borrowings from non-Members.

(c) The Financial and Governance Interests of the Equity Owners shall be adjusted in a reasonable manner selected by the Manager to reflect any Capital Contributions made pursuant to Section 7.1(a).
7.2. **Capital Accounts.**

(a) The Company shall maintain a separate Capital Account for each Equity Owner in conformity with the requirements under Section 1.704-1(b)(2)(iv) of the Treasury Regulations. Consistent with such Treasury Regulations, each Equity Owner’s Capital Account will be increased by (i) the amount of money contributed by such Equity Owner to the Company; (ii) the fair market value of property contributed by such Equity Owner to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code); (iii) allocations to such Equity Owner of Net Profits; (iv) any items in the nature of income and gain which are specially allocated to the Equity Owner pursuant to subsections (a) through (f) of Section 8.2; and (v) allocations to such Equity Owner of income described in Section 705(a)(1)(B) of the Code. Each Equity Owner’s Capital Account will be decreased by (i) the amount of money distributed to such Equity Owner by the Company; (ii) the fair market value of property distributed to such Equity Owner by the Company (net of liabilities secured by such distributed property that such Equity Owner is considered to assume or take subject to under Section 752 of the Code); (iii) allocations to such Equity Owner of expenditures described in Section 705(a)(2)(B) of the Code; (iv) any items in the nature of deduction and loss that are specially allocated to the Equity Owner pursuant to subsections (a) through (f) of Section 8.2; and (v) allocations to such Equity Owner of Net Losses.

(b) In the event of a permitted sale or exchange of an Ownership Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Ownership Interest in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

(c) Upon liquidation of the Company, liquidating distributions will be made in accordance with the positive Capital Account balances of the Equity Owners, as determined after taking into account all Capital Account adjustments for the Company’s Fiscal Year during which the liquidation occurs. Liquidation proceeds will be paid in accordance with ARTICLE X.

**ARTICLE VIII**

**Allocations and Distributions**

8.1. **Allocation of Net Profits and Net Losses.** Subject to Section 8.2 below, the Net Losses and Net Profits for each Fiscal Year shall be allocated to the Equity Owners in proportion to their Sharing Ratios.

8.2. **Special Allocations to Capital Accounts.** Notwithstanding Section 8.1 above:

(a) In the event any Equity Owner unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(d)(4), (5), or (6) of the Treasury Regulations, which create or increase a Deficit Capital Account of such Equity Owner, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year and, if necessary, for subsequent years) shall be specially allocated to such Equity Owner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Deficit Capital Account so created as quickly as
possible. It is the intent that this Section 8.2(a) be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations.

(b) In the event any Equity Owner would have a Deficit Capital Account at the end of any Company taxable year which is in excess of the sum of any amount that such Equity Owner is obligated to restore to the Company under Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations and such Equity Owner’s share of minimum gain as defined in Section 1.704-2(g)(1) of the Treasury Regulations (which is also treated as an obligation to restore in accordance with Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations), the Capital Account of such Equity Owner shall be specially credited with items of Company income (including gross income) and gain in the amount of such excess as quickly as possible.

(c) Notwithstanding any other provision of this Section 8.2, if there is a net decrease in the Company’s minimum gain as defined in Treasury Regulation Section 1.704-2(d) during a taxable year of the Company, then, the Capital Accounts of each Equity Owner shall be allocated items of income (including gross income) and gain for such year (and if necessary for subsequent years) equal to that Equity Owner’s share of the net decrease in Company minimum gain. This Section 8.2(c) is intended to comply with the minimum gain charge back requirement of Section 1.704-2 of the Treasury Regulations and shall be interpreted consistently therewith. If in any taxable year that the Company has a net decrease in the Company’s minimum gain, if the minimum gain charge back requirement would cause a distortion in the economic arrangement among the Equity Owners and it is not expected that the Company will have sufficient other income to correct that distortion, the Equity Owners may in their discretion cause the Company to seek to have the Internal Revenue Service waive the minimum gain charge back requirement in accordance with Treasury Regulation Section 1.704-2(f)(4).

(d) Notwithstanding any other provision of this Section 8.2 except Section 8.2(c), if there is a net decrease in Equity Owner Nonrecourse Debt Minimum Gain attributable to a Equity Owner Nonrecourse Debt during any Company Fiscal Year, each Equity Owner who has a share of the Equity Owner Nonrecourse Debt Minimum Gain attributable to such Equity Owner Nonrecourse Debt (determined in accordance with Regulation Section 1.704-2(i)(5)) as of the beginning of the year shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) equal to such Equity Owner’s share of the net decrease in Equity Owner Nonrecourse Debt Minimum Gain attributable to such Equity Owner Nonrecourse Debt. An Equity Owner’s share of the net decrease in Equity Owner Nonrecourse Debt Minimum Gain shall be determined in accordance with Regulation Section 1.704-2(i)(4); provided that an Equity Owner shall not be subject to this provision to the extent that an exception is provided by Regulation Section 1.704-2(i)(4) and any Revenue Rulings issued with respect thereto. Any Equity Owner Nonrecourse Debt Minimum Gain allocated pursuant to this provision shall consist of first, gains recognized from the disposition of Company property subject to the Equity Owner Nonrecourse Debt, and, second, if necessary, a pro rata portion of the Company’s other items of income or gain for that year. This Section 8.2(d) is intended to comply with the minimum gain charge back requirement in Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(e) Items of Company loss, deduction and expenditures which are attributable to any nonrecourse debt of the Company and are characterized as partner (Equity Owner) nonrecourse
deductions under Section 1.704-2(i) of the Treasury Regulations shall be allocated to the Equity Owners’ Capital Accounts in accordance with said Section 1.704-2(i) of the Treasury Regulations.

(f) Beginning in the first taxable year in which there are allocations of “nonrecourse deductions” (as described in Section 1.704-2(b) of the Treasury Regulations), such deductions shall be allocated to the Equity Owners in the same manner as Net Loss is allocated for such period.

8.3. Application of Credits and Charges. Any credit or charge to the Capital Accounts of the Equity Owners pursuant to subsections (a) through (f) of Section 8.2 shall be taken into account in computing subsequent allocations of Net Profits and Net Losses pursuant to Section 8.1, so that the net amount of any items charged or credited to Capital Accounts pursuant to subsections (a) through (f) of Section 8.2 hereof shall to the extent possible, be equal to the net amount that would have been allocated to the Capital Account of each Equity Owner pursuant to the provisions of this ARTICLE VIII if the special allocations required by Sections 8.2(a) through 8.2(f) had not occurred.

8.4. Distributions. The Manager shall no less frequently than annually authorize distributions of cash or other property to the Equity Owners in an aggregate annual amount equal to the Cash Available for Distribution, provided that no distribution shall be declared and paid unless, after the distribution is made, the total assets of the Company exceed the sum of its total liabilities to which such assets are subject, the Company is able to pay its debts as they become due in the usual course of business, and the Company satisfies such other requirements as may apply under the Act. Except as provided in ARTICLE X, distributions made by the Company with respect to Ownership Interests (excluding distributions in redemption of all or part of a Equity Owner’s Ownership Interest) shall be made in accordance with the Equity Owners’ Sharing Ratios.

8.5. Interest on and Return of Capital Contributions. No Equity Owner shall be entitled to interest on, or to a return of, the Equity Owner’s Capital Contribution, except as otherwise specifically provided in this Operating Agreement.

8.6. Tax Matters Partner. ______ shall be the Tax Matters Partner as defined in Section 6231(a)(7) of the Code for so long as he is a Member of the Company.


(a) In accordance with Section 1.704-1(b)(2)(i)-(iv) of the Treasury Regulations, if an Equity Owner contributes property with an initial Gross Asset Value that differs from its adjusted basis at the time of contribution, income, gain, loss and deductions with respect to the property shall, solely for federal income tax purposes (and not for Capital Account purposes), be allocated among the Equity Owners so as to take account of any variation between the adjusted basis of such property to the Company and its Gross Asset Value at the time of contribution pursuant to such method as determined by the Manager.

(b) Pursuant to Section 704(c)(1)(B) of the Code, if any contributed property is distributed by the Company other than to the contributing Equity Owner within seven years of being contributed, then, except as provided in Section 704(c)(2) of the Code, the contributing Equity Owner shall, solely for federal income tax purposes (and not for Capital Account purposes), be
treated as recognizing gain or loss from the sale of such property in an amount equal to the gain or loss that would have been allocated to such Equity Owner under Section 704(c)(1)(A) of the Code if the property had been sold at its fair market value at the time of the distribution.

(c) In the case of any distribution by the Company to an Equity Owner, such Equity Owner shall, solely for federal income tax purposes (and not for Capital Account purposes), be treated as recognizing gain in an amount equal to the lesser of:

(i) the excess (if any) of (A) the fair market value of the property (other than money) received in the distribution over (B) the adjusted basis of such Equity Owner’s Ownership Interest immediately before the distribution reduced (but not below zero) by the amount of money received in the distribution, or

(ii) the Net Precontribution Gain (as defined in Section 737(b) of the Code) of the Equity Owner. The Net Precontribution Gain means the net gain (if any) which would have been recognized by the distributee Equity Owner under Section 704(c)(1)(B) of the Code if all property which (A) had been contributed to the Company within seven years of the distribution, and (B) is held by the Company immediately before the distribution, had been distributed by the Company to another Equity Owner. If any portion of the property distributed consists of property which had been contributed by the distributee Equity Owner to the Company, then such property shall not be taken into account under this Section 8.7(c)(ii) and shall not be taken into account in determining the amount of the Net Precontribution Gain. If the property distributed consists of an interest in an Entity, the preceding sentence shall not apply to the extent that the value of such interest is attributable to the property contributed to such Entity after such interest had been contributed to the Company.

(d) All recapture of income tax deductions resulting from sale or disposition of Company property shall be allocated to the Equity Owner to whom the deduction that gave rise to such recapture was allocated hereunder to the extent that such Equity Owner is allocated any gain from the sale or other disposition of such property.

(e) If as described in Section 1.20 of this Operating Agreement, the Gross Asset Values of the Company’s assets are adjusted thereby creating a disparity between their adjusted tax bases and their value as reflected in the Equity Owners’ Capital Accounts, the Company shall use the “traditional method” of making Section 704(c) allocations as described in Section 1.704.3(b)(1) of the Treasury Regulations, unless, under the circumstances, such method would be unreasonable under the provisions of the Treasury Regulations.

ARTICLE IX
Transfer of Ownership Interests

9.1. Restrictions on Transfer of Ownership Interests. Without the written consent of all of the Members, an Equity Owner shall not sell, assign, transfer, give away or otherwise dispose of all or any part of the Equity Owner’s Ownership Interest except as permitted in this ARTICLE IX. A permitted transferee shall become a Substitute Member only if the transferor is a Member and the conditions specified in Section 9.4 are satisfied; otherwise, the transferee will become an Economic Interest Owner and any Governance Rights purported to be transferred will expire. Any attempted
disposition of an Equity Owner’s Ownership Interest not in compliance with the provisions of this ARTICLE IX shall be a breach of this Agreement, shall be null and void ab initio, and shall confer no rights on the purported transferee. Notwithstanding the limitations on transfer set forth herein, an Equity Owner who is a natural person may transfer all or part of his Ownership Interest to a revocable, grantor trust for the benefit of such Equity Owner or his spouse, issue, or adopted children, provided that the Equity Owner shall be and remain a trustee of the trust during his lifetime. If such Equity Owner dies or otherwise ceases to be a trustee of the trust, then the Ownership Interest held by the trust shall be subject to purchase by the Company in the same manner as if such Ownership Interest were held directly by the granting Equity Owner upon such Equity Owner’s death.


(a) If an Equity Owner (the “Offering Owner”) receives a Bona Fide Offer (the “Offer”) to purchase all or any part of the Offering Owner’s Ownership Interest, the Offering Owner shall promptly give written notice (the “Purchase Notice”) to the Company and to the Members other than the Offering Owner (the “Offeree Members”), fully describing the offeror (the “Proposed Transferee”), the portion of the Offering Owner’s Ownership Interest to which the Offer relates (the “Offered Interest”), and the terms and conditions of the Offer (including a true and complete copy thereof). In the Purchase Notice, the Offering Owner shall represent and warrant that the Offering Owner intends to accept the Offer.

(b) The Company shall then have a right and option, for a period ending thirty (30) calendar days following receipt of the Purchase Notice, to elect to purchase all or any part of the Offered Interest at the purchase price and upon the terms specified in the Offer. If the Company does not elect to purchase the entire interest, then the Offeree Members shall have the right and option, for a period ending fifteen (15) days following the Company’s decision not to purchase the entire Offered Interest to elect to purchase all or any part of the Offered Interest not being purchased by the Company, such right and option to be exercised on a pro rata basis with respect to the Offeree Members’ respective Sharing Ratios. If the Company and the Offeree Members do not elect to purchase the entire Offered Interest, then the Offeree Members electing to purchase shall have the right, pro rata in accordance with their Sharing Ratios, to elect to purchase the remaining part of the Offered Interest available for purchase. If the option(s) set forth in this Section 9.2(b) are exercised, unless the parties involved mutually agree otherwise, delivery to the Company and the purchasing Offeree Members of the interest to be purchased and payment of the purchase price therefor shall take place at a closing to be held at the principal office of the Company within forty-five (45) calendar days following the exercise of the last option. At such closing, the Offering Owner shall deliver to each purchasing Offeree Member and to the Company (if it is purchasing) a bill of sale and assignment effecting the transfer of the interest to be purchased, in form and substance satisfactory to such purchaser (but without representation or warranty other than a representation and warranty that the interest to be purchased is transferred free and clear of any and all liens, encumbrances and charges of any nature whatsoever, other than arising under this Operating Agreement), and shall deliver, in addition, any other documents reasonably requested by such purchaser to effectuate the purposes of this Operating Agreement.

(c) Notwithstanding the foregoing, however, if the Offeree Members and the Company do not elect to purchase all of the Offered Interest subject to the right of first refusal
pursuant to this Section 9.2, the Offering Owner may transfer all, but not less than all, of the Offered Interest, subject to all the terms and conditions contained in the Offer, to the Proposed Transferee, who shall take and hold the interest subject to this Operating Agreement and to all of the obligations and restrictions upon the Offering Owner and shall observe and comply with this Operating Agreement and with all such obligations and restrictions. Any such transfer of the Offered Interest must be effected within sixty (60) calendar days after the date of the termination of the Company’s and the Offeree Members' options as provided herein. If the Offering Owner fails to complete such transfer on such terms and conditions within the sixty (60) calendar day period, then any subsequent proposed transfer of all or any part of such Offered Interest shall once again be subject to the provisions of this Section 9.2.

(d) Any transferee to whom voting rights are transferred in a transaction subject to this Section 9.2 shall become a Substitute Member and be entitled to vote as a Member only upon satisfaction of the conditions set forth in Section 9.4.

9.3. **Involuntary Transfers.**

(a) Upon the occurrence of an Involuntary Transfer with respect to an Equity Owner (the “Affected Owner”), the Company shall purchase all of the Ownership Interest of the Affected Owner with respect to which the Involuntary Transfer has occurred; provided, however, that the Company shall not purchase any of the Affected Owner’s Ownership Interest if (i) doing so would cause the sum of the Company’s total liabilities to which its assets are subject to be greater than its total assets, (ii) the Company is unable to pay its debts as they become due in the ordinary course of business, or (iii) the Act otherwise prohibits the purchase.

(b) Upon the occurrence of an Involuntary Transfer, the Affected Owner (or the Affected Owner's legal representative) shall promptly notify the Company thereof, stating when and why the Involuntary Transfer occurred, the portion of the Affected Owner's Ownership Interest involved (the “Affected Interest”), the amount of any judgment or any other indebtedness with respect to which the Involuntary Transfer has occurred, the name, address and capacity of the transferee, if a purported transfer has occurred, and such other information reasonably necessary for the Company to understand fully the terms and conditions of the Involuntary Transfer. If no such notice is given, the Company may institute purchase proceedings under this Section 9.3 by giving written notice thereof to the Affected Owner.

(c) The purchase price for an Affected Interest shall be determined pursuant to Section 9.3(f). The Company shall pay the purchase price to the Affected Owner (or the Affected Owner’s legal representative) at the closing described in Section 9.3(d) by paying 10% of the purchase price in cash or by wire transfer of immediately available funds and by delivering a promissory note for the remaining 90% of the purchase price on the terms described below (the “Purchase Note”). The Purchase Note shall bear interest at the applicable federal rate in effect for nine-year obligations on the date of the Purchase Note. The Purchase Note shall be paid in nine equal, annual installments of principal and interest, with installments due on the first nine anniversaries of the Purchase Note.

(d) The closing of any sale under this Section 9.3 shall be held at the principal executive office of the Company within thirty (30) days after the determination of the Appraised
Value (as defined in Section 9.3(f)). At the closing, the Affected Owner (or the Affected Owner's legal representative) shall deliver to the Company a bill of sale and assignment effecting the transfer of the Affected Interest, together with such other documents which the Company reasonably requests to effect the purposes of this Agreement.

(e) If, upon the occurrence of an Involuntary Transfer, the Company does not purchase the Affected Interest, and the business of the Company is not dissolved, the transferee shall become an Economic Interest Owner who holds only the Affected Owner’s Financial Interest and none of the Affected Owner’s Governance Interest, which shall be deemed extinguished; provided, however, that if (i) the Affected Owner was a Member at the time of the Involuntary Transfer, (ii) the Involuntary Transfer was of the type described in Section 1.22(f), and (iii) the conditions specified in Section 9.4 are satisfied, then the transferee shall become a Substitute Member pursuant to Section 9.4.

(f) The purchase price of an Affected Interest shall be 100% of the appraised value of the Company (the “Appraised Value”) multiplied by the Sharing Ratio represented by the Affected Interest. The Appraised Value will be determined as follows: The Affected Owner or his representative will select one qualified business appraiser within 15 days after notice of an Involuntary Transfer. Selection will be evidenced by written notification to all parties concerned. In the event the Company agrees to the selection, then the appraiser's determination of the Appraised Value will be final and binding upon all parties. In the event the parties fail to agree upon an appraiser within 25 days after notice of an Involuntary Transfer, then the Company may select a qualified business appraiser. The two appraisers so selected will proceed promptly to determine the Appraised Value. The determination of the Appraised Value by the two appraisers selected will be final and binding upon all parties; provided, however, that if the two appraisers so selected are unable to agree on the Appraised Value, the two appraisers will select a third qualified business appraiser, whose determination as to the Appraised Value will be final and binding upon all parties. The appraiser or appraisers will deliver a written report of the appraisal to the Company and the Affected Owner or his representative. Each party will pay the fees and expenses of the respective appraiser selected by such party, and if a third appraiser is appointed, the fees and expenses of said third appraiser will be shared between the Affected Owner and the Company. The method of valuation contained in this Section will be conclusive as to the Appraised Value for all purposes under this Section 9.3, and no evidence will be permitted in court to challenge the conclusiveness of the Appraised Value.

9.4. **Assignee Becoming Substitute Member.** No assignee of the whole or any portion of a Member’s Membership Interest in the Company shall become a Substitute Member unless all of the following conditions are satisfied (at which time such assignee shall become a Substitute Member):

(i) The transferor and transferee shall have executed, acknowledged and delivered to the Manager a written instrument of assignment and such other documents and instruments as the Manager may reasonably request, all in form and content satisfactory to the Manager;

(ii) The assignee shall have executed and delivered to the Manager a written agreement to be bound by the terms and conditions in the Articles and this Operating
Agreement as fully as if the assignee were an original signatory thereto, in form satisfactory to the Manager;

(iii) The assignee shall have executed and delivered to the Manager a written representation by the assignee (together with such supporting documentation or evidence as the Manager may reasonably request) that the assignee (if an individual) is at least 18 years of age, is a citizen of the United States, that he is acquiring a Membership Interest for his own account for investment and not with a view towards resale, that such transfer has not been made in violation of any applicable securities laws, and such other matters as the Manager may reasonably request;

(iv) The Manager is satisfied that the transfer will not jeopardize the Company's classification as a partnership for federal income tax purposes; and

(v) All of the Members shall have approved the admission of the assignee as a Substitute Member.

The Company may charge a reasonable fee in connection with any transaction resulting in the assignee becoming a Substitute Member. If any of the foregoing requirements are not met, the assignee shall not become a Member, the Governance Rights purported to be transferred to the assignee shall expire and become null and void, and the assignee will become an Economic Interest Owner.

ARTICLE X
Dissolution and Termination

10.1. Withdrawal. A Person shall cease to be a Member upon the happening of any of the following events ("Events of Withdrawal"): 

(a) The withdrawal of a Member;

(b) The Member makes an assignment for the benefit of creditors, is the subject of a bankruptcy, files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation or files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in a proceeding of such nature, or seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Member or of all or any substantial part of its property;

(c) One hundred (120) days after the commencement of any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if such proceeding has not been dismissed; or ninety (90) days after the appointment, without the Member's consent or acquiescence, of a trustee, receiver or liquidator of the Member or of all or any substantial part of the Member's property, if the appointment is not vacated or stayed, or ninety (90) days after the expiration of any such stay, if the appointment is not vacated;
(d) In the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's person or estate;

(e) In the case of a Member that is a trust, the termination of the trust (but not merely the substitution of new trustee) or a distribution of its entire interest in the Company;

(f) In the case of a Member that is a general or limited partnership, the dissolution and commencement of winding up of the partnership or a distribution of its entire interest in the Company;

(g) In the case of a Member that is a corporation, the filing of articles of dissolution, or their equivalent, for the corporation, or the revocation of its charter or a distribution of its entire interest in the Company;

(h) In the case of a Member that is an estate, the distribution by the fiduciary of the estate's entire interest in the Company; or

(i) In the case of a Member that is a limited liability company, the filing of articles of dissolution or termination, or their equivalent, for the limited liability company or the distribution of its entire interest in the Company.

10.2. **Effect of Event of Withdrawal.** Upon the occurrence of an Event of Withdrawal with respect to a Member, the Company shall not be dissolved and shall continue to carry on its business unless all of the Members agree to dissolve the Company. If a Person ceases to be a Member upon the occurrence of an Event of Withdrawal but retains any portion of his Membership Interest, the Governance Rights of his Membership Interest shall expire and the Person shall become an Economic Interest Owner.

10.3. **Dissolution Events.** The Company shall be dissolved only upon the occurrence of any of the following events:

(a) By approval of the Members as set forth in Section 5.5;

(b) At any time that there are no Members; or

(c) By the entry of a decree of dissolution pursuant to Section 347.143 of the Act.

10.4. **Effect of Dissolution.** Upon dissolution, the Company shall cease carrying on the Company’s business, except that the Company shall continue to take all actions necessary to wind up the business and to file for cancellation of the Articles in accordance with the Act.

10.5. **Procedure in Winding Up.** If the business of the Company is to be wound up and terminated other than by merging the Company into a surviving business entity, the following procedures shall be followed:

(a) The Manager shall proceed as soon as possible to (i) collect the Company’s assets; (ii) pay, satisfy, discharge, or make provision for the payment or discharge of all of the
Company’s liabilities and obligations (including obligations to repay loans to the Members); and (iii) sell, lease, transfer or otherwise dispose of such of its properties as are not to be distributed in kind to the Equity Owners.

(b) Except as otherwise provided in the Act, all tangible or intangible property, including money, remaining after the discharge of the debts, obligations, and liabilities of the Company shall be distributed to the Equity Owners in accordance with the positive Capital Account balances of the Equity Owners. The assets may be distributed in cash or in kind as determined by the Manager. Any assets distributed in kind shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Equity Owners shall be adjusted pursuant to the provisions of Sections 8.1 through 8.5 of this Operating Agreement to reflect the deemed sale. Distributions to the Equity Owners in respect of their Capital Account balances shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations.

(c) If any Equity Owner has a Deficit Capital Account at the time of a liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which the liquidation occurs), such Equity Owner shall not be obligated to make any Capital Contribution, and the negative balance in the Equity Owner’s Capital Account shall not be considered a debt owed by such Equity Owner to the Company or to any other Person for any purpose whatsoever.

10.6. **Articles of Termination.** Upon the completion of the winding up of the Company pursuant to Section 10.5, Articles of Termination shall be delivered to the Secretary of State of Missouri for filing.

10.7. **Return of Contribution Nonrecourse to Other Equity Owners.** Upon dissolution, except as provided by law or as expressly provided in this Operating Agreement, each Equity Owner shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company’s assets remaining after the payment or discharge of the debts and liabilities of the Company are insufficient to return the cash contribution of one or more Equity Owners, such Equity Owners shall have no recourse against any other Equity Owner.

10.8. **Withdrawal of a Member.** No Member shall withdraw from the Company without the unanimous approval of all the other Members, subject to the right of each Member to sell or otherwise dispose of his Membership Interest in accordance with ARTICLE IX of this Operating Agreement.

**ARTICLE XI**

**Indemnification**

11.1. **Definitions.** As used in this ARTICLE XI, unless the context otherwise requires:

(a) **Expenses.** Include counsel fees.
(b) **Liability.** The obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable Expenses incurred with respect to a Proceeding.

(c) **Official Capacity.** The position of Manager or officer of the Company or the employment or agency relationship undertaken by an employee or agent on behalf of the Company. “Official Capacity” includes service at the request of the Company for any other foreign or domestic corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or other enterprises.

(d) **Party.** Includes an individual who was, is, or is threatened to be made a named defendant or respondent in a Proceeding.

(e) **Proceeding.** Any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal.

(f) **Responsible Person.** An individual who is or was a Manager or officer of the Company, or an individual who, while a Manager or officer of the Company, is or was serving at the Company’s request as a manager, director, governor, officer, partner, trustee, employee, or agent of another foreign or domestic limited liability company, corporation, partnership, joint venture, employee benefit plan or other enterprise. A Manager or officer is considered to be serving an employee benefit plan at the Company’s request if the Manager’s or officer’s duties to the Company also impose duties on, or otherwise involve services by the Manager or officer to the plan or to participants in or beneficiaries of the plan. “Responsible Person” includes, unless the context requires otherwise, the estate or personal representative of a Responsible Person.

(g) **Special Legal Counsel.** Counsel who has not represented the Company or a related limited liability company, or a Manager, officer, agent or employee, whose indemnification is in issue.

11.2. **Authority to Indemnify.** The Company shall indemnify an individual made a Party to a Proceeding because such individual is or was a Responsible Person against Liability incurred in the Proceeding if the individual acted in good faith and reasonably believed, in the case of conduct in such individual’s Official Capacity with the Company, that such individual’s conduct was in the Company’s best interest, and in all other cases, that such individual’s conduct was at least not opposed to the Company’s best interests, and in the case of any criminal Proceeding, had no reasonable cause to believe such individual’s conduct was unlawful.

(a) A Responsible Person’s conduct with respect to an employee benefit plan for a purpose such person reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of this Section 11.2.

(b) The termination of a Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the Responsible Person did not meet the standard of conduct described in this Section 11.2.

(c) Except as provided in Section 11.5 below, the Company may not indemnify a Responsible Person in connection with a Proceeding by or in the right of the Company in which the
Responsible Person was adjudged liable to the Company, or in connection with any other Proceeding charging improper personal benefit to such Responsible Person, whether or not involving action in such person's Official Capacity, in which such person was adjudged liable on the basis that personal benefit was improperly received by such person.

11.3. **Mandatory Indemnification.** The Company shall indemnify a Responsible Person who was wholly successful, on the merits or otherwise, in the defense of any Proceeding to which the person was a Party because the person is or was a Responsible Person of the Company against reasonable Expenses incurred by the person in connection with the Proceeding.

11.4. **Advances for Expenses.** The Company shall pay for or reimburse the reasonable Expenses incurred by a Responsible Person who is a Party to a Proceeding in advance of final disposition of the Proceeding if (a) the Responsible Person furnishes the Company a written affirmation of good faith belief that the Person has met the standard of conduct described in Section 11.2; (b) the Responsible Person furnishes the Company a written undertaking, executed personally or on such person's behalf, to repay the advance if it is ultimately determined that the Person is not entitled to indemnification; and (c) a determination is made that the facts then known to those making the determination would not preclude indemnification under this ARTICLE XI. The undertaking required by this Section 11.4 must be an unlimited general obligation of the Responsible Person but need not be secured and may be accepted without reference to financial ability to make repayment. Determinations and authorizations of payments under this Section 11.4 shall be made in the manner specified in Section 11.6.

11.5. **Court-Ordered Indemnification.** A Responsible Person of the Company who is a Party to a Proceeding may apply for indemnification to the court conducting the Proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification if it determines:

(a) The Responsible Person is entitled to mandatory indemnification under Section 11.3, in which case the court shall also order the Company to pay the Responsible Person's reasonable Expenses incurred to obtain court-ordered indemnification; or

(b) The Responsible Person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the person met the standard of conduct set forth in Section 11.2 or was adjudged liable as described in Section 11.2(c), but if the person was adjudged so liable the person's indemnification is limited to reasonable Expenses incurred.

11.6. **Determination and Authorization of Indemnification.** Except as provided in Section 11.5, the Company may not indemnify a Responsible Person under Section 11.2 unless authorized in the specific case after a determination has been made that indemnification of the Responsible Person is permissible in the circumstances because the person has met the standard of conduct set forth in Section 11.2. The determination shall be made:

(a) By the Manager if he is not at the time a party to the Proceeding;

(b) If the Manager is a party to the Proceeding, by Members holding at least a majority of the Voting Interests held by Members who are not at the time parties to the Proceeding; or
(c) By independent Special Legal Counsel selected by the Manager (in which selection the Manager may participate even if he is a party to the Proceeding).

Authorization of indemnification and evaluation as to reasonableness of Expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by Special Legal Counsel, authorization of indemnification and evaluation as to reasonableness of Expenses shall be made by those entitled under Section 11.6(c) to select counsel.

11.7. Indemnification of Employees and Agents.

(a) The Company may indemnify and advance Expenses to an employee, independent contractor or agent of the Company who is not a Responsible Person to the same extent as a Responsible Person.

(b) The Company may also indemnify and advance Expenses to an employee, independent contractor or agent who is not a Responsible Person to the extent, consistent with public policy, provided by general or specific action of the Manager, or by contract.

11.8. Insurance. The Company may purchase and maintain insurance on behalf of an individual who is or was a Responsible Person, Manager, officer, employee, independent contractor, or agent of the Company, or who, while a Responsible Person, Manager, officer, employee, independent contractor, or agent of the Company, is or was serving at the request of the Company as a Responsible Person, Manager, officer, partner, trustee, employee, independent contractor, or agent of another foreign or domestic limited liability company, corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against Liability asserted against or incurred by such person in that capacity or arising from such person's status as a Responsible Person, Manager, officer, employee, independent contractor, or agent, whether or not the Company would have power to indemnify such person against the same Liability under Section 11.2 or 11.3.

11.9. Application of Article. The indemnification and advancement of Expenses provided by this Article shall not be deemed exclusive of any other rights to which a Responsible Person seeking indemnification or advancement of Expenses may be entitled, whether contained in the Act, the Articles, this Operating Agreement, a resolution of Members, a resolution of the Manager, or an agreement providing for such indemnification; provided, that no indemnification may be made to or on behalf of any Responsible Person if a judgment or other final adjudication adverse to the Responsible Person establishes such person's Liability for any breach of the duty of loyalty to the Company or its Members, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law. Nothing contained in this Section 11.9 shall affect any rights to indemnification to which the Company’s personnel, other than Responsible Persons, may be entitled by contract or otherwise under law. This Section 11.9 does not limit the Company’s power to pay or reimburse Expenses incurred by a Responsible Person in connection with such person's appearance as a witness in a Proceeding at a time when such person has not been made a named defendant or respondent to the Proceeding.
ARTICLE XII
Miscellaneous Provisions

12.1. **Notices.** All notices, consents, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given or delivered if delivered personally or mailed by registered or certified mail, return receipt requested, with first class postage prepaid, or if sent by facsimile transmission, with transmission confirmed by the transmitting device:

To __________:
____________________________
____________________________
Fax:__________________________

or to such other address or facsimile number as such person shall have last designated by notice to the other parties. Any item so mailed shall be deemed to have been delivered on the third day following the date on which it is so mailed.

12.2. **Books of Account and Records; Audit.** The Manager shall keep complete records and books of account at the principal executive office of the Company, which shall be open to the reasonable inspection and examination by the Equity Owners and their duly authorized representatives during reasonable business hours. Each Member shall have the right, which may be exercised collectively by the Members no more than once per calendar year, to request an audit of the financial records of the Company. Any such audit shall be performed by a certified public accounting firm or regional or national standing and shall include (if requested by the exercising Member) the production of a balance sheet, a statement of profit and loss and Equity Owners’ equity, and a statement of cash flows for the preceding fiscal year audited in accordance with generally accepted auditing standards together with unaudited quarterly balance sheets, statements of profit and loss and Equity Owners’ equity, and statements of cash flows for the periods since the end of the audited period. The work product of any such auditor shall be provided to each Member and shall be available at the Company’s offices for inspection by Economic Interest Owners.

12.3. **Application of Law.** This Operating Agreement shall be governed by the laws of the State of Missouri without regard to principles of conflicts of laws.

12.4. **Amendments.** This Operating Agreement may not be amended without the approval of the Members required by Section 5.5.

12.5. **Successors and Assigns.** This Operating Agreement shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective legal representatives, successors and assigns.

12.6. **Creditors and Other Third Parties.** None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any third parties, including, without limitation, any creditors of the Company.
12.7. **Counterparts.** This Operating Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

12.8. **Entire Agreement.** This Operating Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and all prior and concurrent agreements, understandings, representations and warranties with respect to such subject matter, whether written or oral, including but not limited to any prior Operating Agreements, are and have been merged herein and superseded hereby.

THIS AGREEMENT has been adopted by the undersigned on the day and year first above written.

____________________, LLC

By: _____________________

______________, Manager

Name: _____________________

Name: _____________________

Exhibit A

**MEMBERS**

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<th>Member</th>
<th>Capital Contribution</th>
<th>Financial Rights</th>
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Last updated on ______________, 20__. 
This **Stock Restriction Agreement** is entered into as of this __ day of ___________, 20__, by and among ________________, Inc., a ___________ corporation (the “Company”), __________ (“________”), and _____________ (“________” and, collectively with __________, the “Stockholders”).

**Recitals**

__________ is a founder of the Company and has been its sole stockholder since 20__. __________ has been working with the Company. In recognition of ______’s importance to the success of the Company, _______ has offered to make _______ a stockholder and employee of the Company. On the date of this Agreement, _________ is purchasing ___ newly issued shares of the common stock of the Company, par value ___ per share (the “Common Stock”). Upon completion of _______’s purchase, _______ will own ___ shares of the Common Stock, __________ will own ___ shares of the Common Stock, and such shares will constitute all of the issued and outstanding shares of Common Stock of the Company. The Stockholders and the Company desire to use this Agreement to govern the Stockholders’ ownership and right to dispose of any and all shares of Common Stock that the Stockholders now own or hereafter acquire beneficially or of record (the “Shares”).

**Now, Therefore**, the parties hereto agree as follows:

1. **Restrictions on Sale of Common Stock and Right of First Refusal.**

   (a) **Sale of Common Stock Restricted.** Each Stockholder agrees that all Shares shall be subject to the terms and conditions of this Agreement. No sale or other disposition, voluntary or involuntary, of any Shares by a Stockholder other than _________ shall be effective unless the terms and conditions of this Agreement have been complied with.

   (b) **Legend.** All certificates representing shares of Common Stock issued to a Stockholder other than _________ shall be endorsed as follows:

      (i) “The shares represented by this certificate are subject to restrictions on transfer and certain rights of others to purchase such shares pursuant to the terms of a certain Stock Restriction Agreement, dated as of ___________, 20__, on file and available for inspection at the principal office of the corporation.”; and

      (ii) “The shares represented by this certificate have not been registered pursuant to the Securities Act of 1933, as amended, or pursuant to any state securities law. These shares may not be sold or otherwise transferred unless such are first registered pursuant to the applicable federal and state securities laws or unless the corporation receives a written opinion of counsel which opinion and counsel are satisfactory to the corporation, that such registration is not required.”

   (c) **Right of First Refusal.** Subject to any other restrictions contained elsewhere in this Agreement, any Stockholder other than __________ (the “Selling Stockholder”) may
sell or transfer any or all of his Shares to any unrelated third party who makes a bona fide, written offer therefor (the “Offer”), but the Company and ________ shall have the right of first refusal to purchase such Shares from the Selling Stockholder as set forth below.

(i) The Selling Stockholder shall give prior notice in writing (the “Offer Notice”) to the Company and ________ of each intended sale or transfer, which Offer Notice shall describe the material terms of the Offer (a copy of which shall be enclosed), including, without limitation, the name and address of the prospective transferee, the purchase price and other terms and conditions of payment, and the number of shares of Common Stock to be disposed of by the Selling Stockholder (such shares being referred to herein as the “Offered Stock”). The Selling Stockholder shall specifically represent and warrant in such Offer Notice that the above terms reflect an actual bona fide offer which the Selling Stockholder intends to accept, subject to compliance with the terms of this Agreement.

(ii) For a period ending on the thirtieth day after the Company’s receipt of the Offer Notice (the “Option Period”), the Company and ________ shall have the right and option to purchase all, but not less than all, of the Offered Shares at the price and on the terms set forth in the Offer as described in this Section 1(c) (the “Right of First Refusal”). To exercise the Right of First Refusal, the Company or ________ shall provide written notice of exercise (the “Company Notice”) to the Selling Stockholder prior to the expiration of the Option Period.

(iii) If, after following the procedures outlined in Section 1(c)(ii) above, fewer than all the shares of Offered Stock are subscribed for, then the Selling Stockholder, for a period of 60 days following expiration of the Option Period, shall then be free to sell all, but not less than all, of the Offered Stock, to the purchaser named in the Offer Notice on the terms specified in the Offer Notice, but only if such purchaser executes a written agreement to be bound by the terms of this Agreement subject to all the terms that apply to the Selling Stockholder. If the Selling Stockholder fails to consummate such sale to such purchaser on such terms and conditions within such 60-day period, any sale or other transfer by the Selling Stockholder to any person shall again be subject in all respects to all the provisions of this Agreement, including, without limitation, the right of first refusal specified in this Section 1(c).

(iv) If the Company and ________ (individually or collectively) exercise the Right of First Refusal for all the Offered Stock, then the Selling Stockholder shall sell, and the Company and ________ shall purchase, the Offered Stock, with such Shares being divided between the Company and ________ as specified in the Company Notice. No later than the 10th day following the date of the Company Notice (the “Payment Date”), each of the subscribers shall deliver to the Secretary of the Company the amount of the purchase price for the Offered Stock to be purchased by such subscriber, with payment in the form specified in the Offer Notice. No later than the Payment Date, the Selling Stockholder shall deliver the certificates representing the Offered Stock to the Secretary, together with stock powers duly executed in blank for the transfer of such Shares. On the Payment Date, the Secretary
shall transfer the Offered Stock to the subscribers and the purchase price to the Selling Stockholder.

2. **Transfers to Revocable Grantor Trusts.** The restrictions contained in Section 1 of this Agreement shall not apply to a transfer of any Common Stock by any Stockholder during his or her lifetime to a grantor trust created and revocable at any time by the Stockholder and of which such Stockholder is a trustee. Thereafter, the transferee trust will be bound by the terms of this Agreement to the same extent as the transferring Stockholder. If, at any time, the transferring Stockholder ceases to serve as a trustee of the transferee trust, the transferred Shares shall be deemed to have been subject to an Involuntary Transfer pursuant to Section 3; provided, however, that __________ shall not be subject to the requirement to be and remain a trustee of any trust to which she may transfer Shares hereunder.

3. **Purchase of Stock Upon Involuntary Transfer.** Upon the death, divorce, or bankruptcy of any Stockholder other than __________ (an “Affected Stockholder”), or upon the occurrence of any other event that would result in the transfer, by operation of law or order of any court of competent jurisdiction, of any Shares of an Affected Stockholder (any such event, an “Involuntary Transfer”), then all of the Shares of the Affected Stockholder shall be subject to purchase as provided in this Section 3.

   (a) Immediately following the occurrence of an Involuntary Transfer, the Affected Stockholder (or the Affected Stockholder’s legal representative) shall provide written notice (the “Involuntary Transfer Notice”) of the event to the Company. The Company and ________ shall have the right and option, to purchase all, but not less than all, of the Affected Stockholder’s Shares for a purchase price equal to the product of (i) three times the net earnings of the Company during the last-completed fiscal year of the Company multiplied by (ii) a fraction the numerator of which is the number of Shares owned beneficially or of record by the Affected Stockholder and the denominator of which is the total number of shares of Common Stock outstanding (the “Involuntary Transfer Option”). To exercise the Involuntary Transfer Option, the Company or ________ shall provide written notice of exercise (the “IT Exercise Notice”) to the Affected Stockholder (or the Affected Stockholder’s legal representative) within thirty days following the Company’s receipt of the Involuntary Transfer Notice.

   (b) The purchase price shall be payable, in the discretion of the Company and ________, in cash or by delivery of 10% of the purchase price in cash and the remaining 90% of the purchase price by the Company’s and/or ________’s notes payable to the Affected Stockholder or the estate or appropriate representative of the Affected Stockholder. Such notes shall be payable in equal annual installments over five years, together with interest at a rate equal to the prime rate as listed in *The Wall Street Journal* on the date of the notes. The purchase shall be closed no later than 10 days following the date of the IT Exercise Notice (the “IT Payment Date”). At the closing, the Affected Stockholder (or the Affected Stockholder’s legal representative) will deliver, in exchange for the purchase price, all the certificates for the Affected Stockholder’s Shares, duly endorsed or accompanied by duly executed stock powers, to the Company and ________ in such proportions as specified in the IT Exercise Notice.
4. **Purchase upon Termination of Employment.** If any Stockholder other than [________] who is an employee of the Company (a “Terminated Stockholder”) ceases to be employed by the Company for any reason (other than upon an Involuntary Transfer, upon the occurrence of which Section 3 shall govern), then the Company and [________] shall have the right and option to purchase all, but not less than all, of the Shares of the Terminated Stockholder (the “Termination Option”). To exercise the Termination Option, the Company or [________] shall provide written notice of exercise (the “Termination Exercise Notice”) to the Terminated Stockholder within thirty days following the termination of the Terminated Stockholder’s employment with the Company. The purchase price for the Terminated Stockholder’s Shares shall be equal to the product of (i) three times the net earnings of the Company during the last-completed fiscal year of the Company multiplied by (ii) a fraction the numerator of which is the number of Shares owned beneficially or of record by the Terminated Stockholder and the denominator of which is the total number of shares of Common Stock outstanding multiplied by (iii) the Reason Factor (as defined below). If the Terminated Stockholder’s employment was terminated by the Company for Cause (as defined below) or by the Terminated Stockholder without Good Reason (as defined below), the purchase price for the Terminated Stockholder’s shares will be subject to a factor (the “Reason Factor”) of 0.5. If the Terminated Stockholder’s employment was terminated by the Company without Cause or by the Terminated Stockholder for Good Reason, the purchase price for the Terminated Stockholder’s shares will be subject to a Reason Factor of 1.0. The purchase price shall be payable, in the discretion of the Company and [________], in cash or by delivery of 10% of the purchase price in cash and the remaining 90% of the purchase price by the Company’s and/or [________]’s notes payable to the Terminated Stockholder. Such notes shall be payable in equal annual installments over five years, together with interest at a rate equal to the prime rate as listed in *The Wall Street Journal* on the date of the notes. The purchase shall be closed no later than 10 days following the date of the Termination Exercise Notice (the “Termination Payment Date”). At the closing, the Terminated Stockholder will deliver, in exchange for the purchase price, all the certificates for the Terminated Stockholder’s Shares, duly endorsed or accompanied by duly executed stock powers, to the Company and [________] in such proportions as specified in the Termination Exercise Notice.

(a) The term “Cause” shall mean (i) the willful failure of the Terminated Stockholder to perform his or her material duties with the Company as provided in this Agreement, and which failure is not cured (if capable of cure) within 15 days after receipt by the Terminated Stockholder of written notice from the Company of such failure, which notice identifies the manner in which the Terminated Stockholder has willfully failed to perform; (ii) the engaging by the Terminated Stockholder in willful conduct which is demonstrably injurious to the Company, monetarily or otherwise; (iii) the conviction (treating a nolo contendere plea as a conviction) of the Terminated Stockholder of any crime or offense constituting a felony (whether or not any right to appeal has been or may be exercised); or (iv) the willful failure of the Terminated Stockholder to comply with any material terms of the Company’s employment policies and requirements.

(b) The term “Good Reason” shall mean without the Terminated Stockholder’s written consent: (i) a material adverse alteration in the nature or status of the Terminated Stockholder’s position, duties, responsibilities or authority; (ii) a reduction in the Terminated Stockholder’s base salary or level of employee benefits, except for a reduction that is part of across-the-board reductions for all similarly situated employees of the Company; (iii) failure
to pay or provide any of the compensation owed to the Terminated Stockholder which is not cured within 15 days after receipt by the Company from the Terminated Stockholder of written notice thereof; or (iv) the relocation of the Terminated Stockholder’s principal place of employment to a location more than 100 miles from principal place of employment last agreed upon by the Terminated Stockholder and the Company, except for required travel on the Company’s business.

5. Drag Along Rights. If ________ agrees to sell all of her Shares to a third-party purchaser unrelated to ________ (the “Purchaser”) in a bona fide, arms-length transaction (the “Proposed Sale”), ________ may in her sole discretion require the other Stockholders to sell all of their Shares along with ________’s Shares.

(a) Consideration. The consideration to be received by each other Stockholder shall be the same consideration per share to be received by ________ for her Shares, and the terms and conditions of such sale shall be the same as those upon which ________ sells her Shares.

(b) Notice. ________ shall provide written notice to the other Stockholders setting forth the consideration to be paid by the Purchaser and the material terms of the Proposed Sale at least twenty (20) days prior to closing of the sale (the “Sale Notice”). The Sale Notice shall specify whether ________ elects to exercise the drag along rights set forth in this Section 5. If ________ does not exercise her drag along rights, the terms of Section 6 will apply to the Proposed Sale.

(c) Exchange of Certificates. Within ten (10) days after the date of the Notice, if ________ elects to exercise her drag along rights, each other Stockholder shall deliver to ________, for delivery to the Purchaser at closing of the sale, certificates representing all the Shares held by such Stockholder duly endorsed for transfer by such Stockholder or accompanied by a validly executed stock power in form acceptable to the Purchaser, in either case effective at closing of the Proposed Sale. In the event that each other Stockholder should fail to deliver such shares, the Company shall cause the books and records of the Company to show that such shares are bound by the provisions of this Section 5 and that such shares have been transferred to the Purchaser. The shares of Common Stock delivered pursuant to this Section 5(c) shall continue for all purposes to be owned by the Stockholders delivering such shares to ________ until closing of the Proposed Sale. If the Proposed Sale fails to close, ________ shall promptly deliver the certificates and instruments of transfer back to their respective Stockholders.

(d) Payment. Promptly after the consummation of the Proposed Sale, the Purchaser shall remit directly to each Stockholder the total sales price of the Shares sold by such Stockholder.

6. Tag Along Rights. If ________ elects not to exercise her drag along rights in a Proposed Sale, then the other Stockholders shall have the right to participate in the Proposed Sale in accordance with the following provisions:
(a) Each Stockholder other than _______ may elect to participate in the Proposed Sale on the same terms as ________, as set forth in the Sale Notice, by providing written notice (with respect to each Stockholder, the “Tag Notice”) to _______ within ten (10) days of such Stockholder’s receipt of the Sale Notice. The maximum number of shares which any other Stockholder shall be entitled to sell under the tag along rights described in this Section 6 shall be determined by multiplying the number of Shares proposed to be sold by _______ by a fraction, the numerator of which is the number of Shares owned by the other Stockholder and the denominator of which is the total number of outstanding shares of Common Stock (not including treasury shares).

(b) In the event that none of the other Stockholders elects to exercise his or her tag along rights within the time period allotted therefor by so indicating in the Tag Notice, _______ shall have the right to sell the Shares that she proposed to sell in the Proposed Sale on the terms set forth in the Sale Notice; provided, however, that the Proposed Sale is consummated within sixty (60) days of the date of the Company Notice.

(c) In the event that any of the other Stockholders elects to exercise his or her tag along rights, _______ agrees to reduce the number of Shares to be sold by her, and to sell, for the account of the selling other Stockholders, that amount of Common Stock intended for sale by the other Stockholders. Each other Stockholder exercising tag along rights shall deliver certificates for his or her Shares to be sold in the Proposed Sale, together with such other documents as may be required by the purchaser in the Proposed Sale, to the purchaser or _______, as directed by _______.

7. Tax and Accounting Matters.

(a) ‘S’ Election. No Stockholder shall transfer any of his Shares, if such transfer, or the ownership of such Common Stock by the transferee, would cause a termination of the election made by the Company pursuant to Section 1362(a) of the Internal Revenue Code 1986, as amended, to be an ‘S’ corporation.

(b) No Pledges. No Stockholder other than _______ shall pledge, hypothecate or encumber any Shares to secure any indebtedness, or for any other purpose, except for any pledge, hypothecation or encumbrance of Shares to the Company.

(c) Revocation of ‘S’ Election. Without the prior written consent of all of the Stockholders, no Stockholder shall execute any document to effect a revocation of the Company’s election to be treated as an ‘S’ corporation.

(d) Allocation of Income, etc. In the event a Stockholder ceases to be a Stockholder of the Company or in the event the Company ceases to be an ‘S’ corporation, such Stockholder’s share of income, loss and other items shall be determined pursuant to Section 1377(a)(1) of the Internal Revenue Code of 1986, as amended.

8. Transferred Shares. Any Shares transferred by any Stockholder other than _______ shall be subject to all of the terms and conditions of this Agreement as such terms apply to the transferring Stockholder, and, prior to such transfer, the transferee shall agree in writing to be bound by and subject to all of the terms and conditions of this Agreement (unless such person is
already a party to this Agreement). For the avoidance of doubt, any transferee acquiring Shares from ________ shall be free from the transfer restrictions of this Agreement with respect to such Shares in the same manner as ________ is free from such restrictions.

9. **Unauthorized Transfers.** If any Stockholder other than ________ transfers, whether voluntarily or involuntarily, any shares of Common Stock now or hereafter owned by such Stockholder or in which such Stockholder has any interest, legally or beneficially, without fully complying with the terms and conditions of this Agreement, such transfer shall be null and void, and the Company and ________, or either of them, shall have the right to compel the holder and/or purported transferee of such shares to transfer the shares in accordance with the terms and conditions of this Agreement.

10. **Termination.** This Agreement shall terminate upon the happening of any one or more of the following: (i) the consummation by the Company of an offer and sale of Shares to the public pursuant to the registration thereof under the Securities Act of 1933, as amended; (ii) the adjudication of the Company as a bankrupt, the execution by the Company of an assignment for the benefit of its creditors, or the appointment of a receiver of the Company; (iii) the voluntary or involuntary dissolution of the Company; (iv) the occurrence of any event that causes the Shares to be owned by a single Stockholder; or (v) the voluntary, written agreement of all the Stockholders.

11. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, legatees, distributees, heirs, successors and assigns, and except as otherwise herein expressly provided, transferees. The executors, administrators or legal representatives of a deceased Stockholder shall execute and deliver any and all instruments and documents and do or cause to be done such other acts or things as shall be necessary or appropriate to carry out the terms and conditions of this Agreement.

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

13. **Notices.** All notices required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, or sent by express mail service that provides for confirmation of delivery, telecopy, telefax, or other electronic transmission to the extent receipt is confirmed, or mail first class, postage prepaid, registered or certified mail, addressed as set forth on the books of the Company, as such addresses may be updated from time to time.

14. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed one and the same instrument.

15. **Entire Agreement.** This Agreement constitutes an entire agreement between the parties hereto relating to the subject matter hereof, and no party hereto shall be bound by any communication between them on the subject matter hereof unless such communications are in writing and bear a date contemporaneous or subsequent to the date hereof. Any prior written agreements relating to the subject matter hereof between any of the parties hereto shall, upon execution of this Agreement, be null and void. This Agreement may be amended only by a written amendment duly executed by the Company and every Stockholder who is a party to the Agreement at the time of the Amendment.
16. **Inability of the Company to Perform Its Obligations.** If the Company is unable to consummate any obligation of the Company hereunder to purchase Shares of a Stockholder because of the limitations contained in the General and Business Corporation Law of Missouri, including but not limited to, limitations relating to insufficient surplus, the parties hereto shall use their best efforts to take all reasonable actions as may be necessary to allow the Company to carry out its obligations hereunder.

**In witness whereof,** the parties hereto have executed this Agreement on the day and year first above written.

____________________, Inc.

By:____________________

______________, President

____________________

Name:__________

____________________

Name:__________