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Best Practices for Busy Attorneys: Business Formation

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Speaker Biographies

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Best Practices for Busy Attorneys: Business Formation

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BEST PRACTICES FOR BUSY ATTORNEYS: BUSINESS FORMATION

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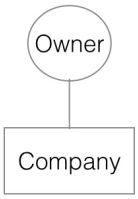
BUSINESS STRUCTURE

The first step in business formation, and one often overlooked by lawyers, is determining the best structure for the business. The structure of a business incorporates details such as the number of entities, function of each entity in the overall business concept, and ownership. Each detail should be examined as part of the overall strategy of setting up the business.

Single Entity Structure

The most basic business structure is one entity carrying out all the functions of the business. A large majority of small businesses are structured this way. A single-entity structure is simple, the least expensive option, and sufficient in most cases.

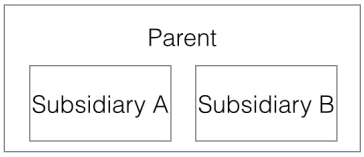


Complex Business Structures

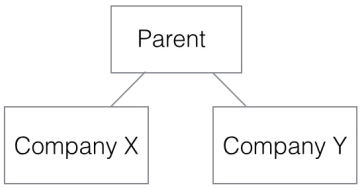
There are instances though where a more complex business structure will benefit the owners. Such structures can range from simply using a separate fictitious or trade name (DBAs) for each activity the business conducts to having multiple inter-related entities with disparate owners.

Fictitious and Trade Names. The simplest structure is separating activities the business conducts using fictitious or trade names (cumulatively referred to as DBAs). This can be used where there is no liability benefit to be gained by having separate entities, but for branding or internal reasons, such as accounting, it makes sense to separate the activities. As an example, an architectural firm may want to create a DBA for the 3D-drafting component of its business so it can market that service to other architects. Because they are still the same entity though, all income and liability from the 3D-drafting part of the business will go to the architectural firm.

Parent-Subsidiary. There are times where rather than just creating a DBA for a specific activity within the overall business, it may make sense to create a separate, wholly owned subsidiary company. If the architectural firm wanted to be able to sell off the 3D-drafting part of the business, having it as a separate entity makes it much easier to do that. A parent-subsidiary structure can also provide the parent with some liability protection. For entities such as an LLC or corporation, the owners are generally not responsible for the liabilities of the company. A parent company can use this liability protection to provide some insulation from a high-risk subsidiary activity that is a small part of its overall business.



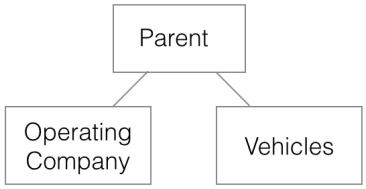
Multiple Entities with Common Ownership. The next step up in complexity is creating multiple entities with common ownership. This could be two, three, four, or more entities depending on the needs of the situation. The owners of each entity could be individuals or could be a parent “holding” company with its own set of owners.



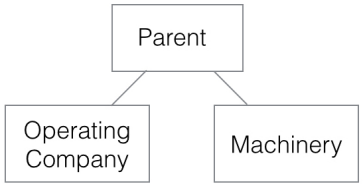
One reason you may want to use multiple entities is when there are multiple, distinct sub-businesses within the overall business. These sub-businesses could be unrelated, like a person who owns a law practice and also drives for Uber in the evenings. For various reasons, including liability protection, you would want to keep the law firm separate from the Uber driving. The sub-businesses could be related though, such as a lawyer with a law practice who also owns a title agency. Beyond the regulatory and ethical reasons, having multiple entities here would help to isolate the liabilities of the law practice from those of the title agency.

Structuring a business with multiple entities can also be beneficial for asset protection. As was mentioned before, one of the reasons to form an entity such as an LLC or corporation is that it protects the assets of the owners from the liabilities of the business (and vice versa). Similarly, the assets of one entity are generally protected from the liabilities of another entity. Small businesses can take advantage of this by using one entity to own the assets and another to conduct the operations of the business. If the operating entity is sued and gets a judgment against it, the creditor can't get to the major assets. If the judgment is large enough or there are multiple judgments against it, the operating entity can be dissolved and the owners still have the assets to sell or use to start a new business later.

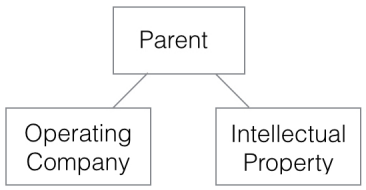
Transportation. Because vehicle accidents are common and can be expensive, a business that owns a fleet of vehicles can protect them by setting up one entity to own the vehicles and another to operate them. When an accident occurs, the responsible party would be the operating entity, and the vehicles themselves would be protected.



Manufacturing. Small manufacturing companies often have large pieces of specific machinery that they couldn't operate their business without. By keeping the machinery in a separate entity, the business can ensure the machinery will be available regardless of the liabilities of the business as a whole.

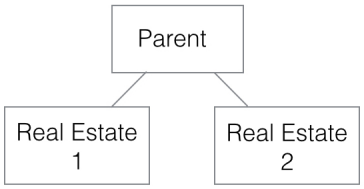


Intellectual Property. For some businesses, their intellectual property, including trademarks, copyrights, and patents, has significant value. Placing this IP in a separate entity and then licensing it to the operating entity protects the IP from lawsuits. It also makes it easier to sell or license to third parties. An example of a larger business using this is Wendy's restaurants. Wendy's has various entities for different parts of its business, but its trademarks and IP rights in the Wendy's name and logos are held by Oldemark LLC.

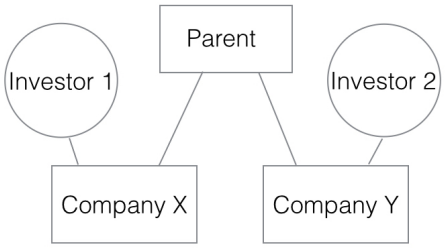


Real Estate. Real estate holdings should almost always been held in separate entities (normally LLCs). For a business that owns the land and/or building it operates out of, having a separate real estate holding company protects the real estate from the

liabilities of the business. If the real estate is for investment purposes only, such as a rental property, having separate entities for the real estate and management operations protects the real estate from the operational liabilities, such as a slip-and-fall claim. And if there are multiple pieces of real estate, each should be owned in a separate entity to insulate them from the lenders of each other.



Multiple Entities with Disparate Ownership. Sometime there are different parts of a business, and each has its own set of owners. As an example, two individuals may own a real estate investment company. Each property may have different investors. Each piece of real estate could be its own entity, with its individual investors as owners. The management company, owned by the two individuals, would have an ownership interest in each of the different real estate entities. In this example, each piece of real estate is protected from the others, and each investor is only an owner of the real estate they specifically invested in.



Disadvantages. The greatest disadvantage of these structures is their complexity. The cost to set up and maintain such a structure will increase exponentially as the complexity of the structure increases. At some point the administrative costs may outweigh the benefits of the complexity. Therefore it is usually advisable to only make

the structure of a business as complex as it needs to be to accomplish its purpose. It can be easy to get lost creating complexity merely for the sake of complexity.

Entity Selection

Only once you have determined the appropriate structure for the business can you select the proper entity type.

Entity Types.

While there are many different types of entities recognized in Ohio, there are four you will be most likely to consider.

Sole Proprietorship. If there is a single owner, the default entity type is sole proprietorship. More accurately, a sole proprietorship is the absence of an entity — there is no separation between the business and the individual owner. The owner is 100% responsible for all the liabilities of the business. Similarly, all income and allocations of profits and losses go directly to the owner.

There are no filing requirements to become a sole proprietorship. If the owner wishes to use a name other than his or her own, they can file for a fictitious or trade name with the Ohio Secretary of State (non-lawyers will often speak of this as "being a DBA"). The filing fee for either of these name registrations is $50.00, making a name registration cheaper than setting up an entity.

Often an individual owner will ask if it is worth setting up an entity or just being a sole proprietorship. There are four reasons why it is beneficial for an owner to choose an actual entity: 1) the cost to create an entity is low; 2) a sole proprietorship is not seen as professional as a formal business entity, and some third parties may not be willing to deal with a sole proprietorship; 3) having an entity shows that the person is serious about their

business, and that it is more than just a hobby, which can impact how they operate it; and 4) most importantly, the only way an owner can get any liability protection is through forming an entity.

Partnerships. To be a partnership, there must by definition be more than one member. The most common type of partnership is the general partnership. Where the default for a single owner business with no formal entity is a sole proprietorship, the default for multiple owners is the general partnership. Often a general partnership is unintentionally created when two or more people start to do business together, even if they have no desire to entire into any formal business [ORC §1776.22(A)]. A general partnership can also be registered with the Secretary of State [ORC §1776.05].

In a general partnership, each partner is jointly and severally liable for the debts and liabilities of the partnership, as well as of the other partners [ORC §§1776.35-36]. This means that if one partner incurs liability, the other partners may be equally responsible for the entire liability. Because of this, there are few instances where a general partnership is advisable.

A limited partnership is one where there is a general partner and at least one limited partner. The limited partner is not liable for the debts and obligations of the partnership [ORC §1782.19]. However, in exchange the limited partner may not have operational control of the business. In this sense, the limited partner is essentially an investor. The general partners have the ability to control the operations of the business, and just like with a standard general partnership they are liable for the partnership's obligations. Limited partnerships are sometimes used in joint ventures where the general partner is an entity with liability protection for its owners.

The final type of partnership is the limited liability partnership (LLP). In this entity, all the partners have limited liability from the partnership as well as the other partners [ORC §1776.36(C)]. In addition, unlike the limited partnership all partners are

able to actively participate in the operations of the business. This type of entity was very common prior to the establishment of LLCs in Ohio in 1994, including with law firms. Since then, most businesses tend to choose the LLC over the LLP if they don't want to be formed as a corporation.

Corporation. A corporation is simply a group of people authorized to act as a single entity. The owners of a corporation are shareholders, who are not responsible for the liabilities of the corporation. The shareholders elect and vest control of the business in a board of directors [ORC §1701.59]. The directors may allocate the day-to-day operations of the business to officers (e.g., President, CEO) [ORC §1701.64]. Corporations have strict formality requirements and must have annual meetings (both shareholders as well as directors) and keep meeting minutes [ORC §1701.37].

A corporation is often overkill for a small business, where there are only a few owners who are also the directors and officers. However there are some circumstances where a corporation would be the best entity type. One such situation is where the owners intend to seek outside venture capital or take the company public (register the company on a stock exchange). Often venture funds will require the companies they invest in to be corporations for tax purposes and because they are more familiar and comfortable with the laws and protections of corporations over other types of entities. If either of these is a goal for the owners, it is usually easier and much cheaper to set up as a corporation from the beginning rather than change entity types midway later.

Limited Liability Company. The most common type of entity right now for small businesses is the limited liability company (LLC), based largely on its flexibility. LLCs give you the best of both corporations and partnerships. Like a corporation, the members (what the owners of an LLC are called) are not liable for the debts, obligations, or liabilities of the company solely because of their being a member [ORC §1705.48]. However, like a partnership there are few formalities that need to be followed — an LLC does not have to hold annual meetings, and while it is advisable to do so, an LLC does

not need to keep accurate meeting minutes. Because an LLC is based on the principles of contract, you can set it up more like a corporation, with a board of directors and officers, like a general partnership with all owners having the same responsibilities, or anywhere in between.

Since the majority of small businesses being set up by lawyers right now are LLCs, the remainder of the materials will be focused on them.

Tax Treatment

The Internal Revenue Service (IRS) does not recognize an "LLC" for tax purposes. Instead, it has adopted the "check the box" rule, whereby an LLC can choose how it would like to be taxed [Treas. Dec. 8697 (1996)].

Types of Tax Treatments. By default, a single-member entity will be treated like a sole proprietorship (considered a disregarded entity) with all allocations of income, profits, and losses passing through to the individual owner. This is recorded on Schedule C of their personal income tax return. The disregarded entity itself does not file a tax return or pay taxes (on the federal level — state and local law may vary).

If there are multiple owners, by default the LLC will be treated like a partnership. This means that, like with the sole proprietorship, the income, profits, and losses pass directly to the members. This is usually done in proportion to each member's percentage ownership interest, but can be modified through the operating agreement. Each member's share is recorded on Schedule C of their personal income tax returns. Like a partnership, the entity itself does not pay taxes (again, state and local law may vary). However, it does file an informational return with the IRS that shows the allocations of income, profits, and losses to each member.

If the members don't want to go with the default tax treatment for the LLC, they can select another type of tax treatment. The two types available are S-corporation and C-corporation treatment. C-corp tax treatment is how large corporations such as Microsoft and Apple are taxed. The company files its own return and must pay tax on its income. If profits are distributed to shareholder as distributions, each owner then pays tax on what they received. This is the famed "double taxation," since the income is taxed when the company receives it and when the individual receives it.

The members can also choose S-corporation tax treatment. The "S" in this case stands for "small business." Similar to partnership tax treatment, the company itself does not pay tax; the income, profits, and losses pass through to the members. For an S-corp though, these allocations must be proportional to the members' percentage interests. To qualify for S-corp treatment, there must be 100 or fewer owners, the owners must be natural persons (not entities) who are U.S. citizens or residents, and there can only be one class of stock/membership interest.

As a side note, someone will often ask whether they should be an LLC or an S-corp. This is not a valid question, since they are trying to compare apples and oranges. One of these — an LLC — is a type of entity. The other — S-corporation — is a tax treatment. There is no S-corporation entity; you can be an LLC or a corporation, and then choose S-corp tax treatment. And LLC is not a tax treatment nor recognized for (federal) tax purposes. As an LLC you are either taxed as a disregarded entity/partnership, S-corp, or C-corp. So it is impossible for you to choose between the two. Unfortunately, this point is often confused or misstated by lawyers, including those who regularly do business formation.

Selecting a Tax Treatment. There are usually two related considerations when determining what type of tax treatment to choose for an LLC. The first is member payment. Only employees of a business can be paid a salary. Owners of partnerships and disregarded sole proprietorship cannot be employees. Payments to them are normally

considered to be out of the profits of the business and called “draws” or distributions. If the owners of partnerships and disregarded sole proprietorships want to get a regular payment, this is called a “guaranteed payment.” If the entity is taxed like an S-corp, the owners *can* be considered employees of the company, and therefore can be paid a salary. This salary must be reasonable based on their job in relation to the overall income of the business.

The other consideration is self-employment tax. When an employee is paid a salary (or wages), employment taxes are withheld by the employer and remitted to the government. At the end of the year, the employee gets a W-2 tax form that lists the amount of employment tax withheld. Owners of partnerships and disregarded sole proprietorships do not withhold employment tax. Instead, they pay self-employment tax on their share of profits. With S-corp treatment, if the owners are considered employees and take a salary, the company must withhold and remit employment taxes on that salary. Payments beyond the salary are considered distributions of profits and are subject to self-employment tax.

The tax treatment decision is important because self-employment tax is often more than the employment tax withheld from an employee salary. So a person can save money by being an employee with a salary and withholding as opposed to everything being subject to self-employment tax. However, there are administrative costs associated with having employees; namely that you must run payments through a payroll system and take care of the associated accounting. The threshold where the self-employment tax savings outweigh the administrative costs of payroll, and therefore make it advantageous to select S-corp tax treatment, will vary from business to business. The best advice is to bring in an accountant who can look at the owners’ complete income and tax picture and help the client determine which tax treatment would be best.

Registering the Business

Registering with the Secretary of State. Once it has been decided that an LLC is the best type of entity for the business, it must be registered with the Ohio Secretary of State. An LLC is formed through the filing and acceptance of its articles of organization. There are only three main requirements that the articles must address in order to be valid. The Ohio Secretary of State has a form set of articles that complies with the minimum legal requirements necessary.

Requirements.

1. Name of company. The name of an LLC must include the words "limited liability company" or one of the following abbreviations: "LLC," "L.L.C.," "limited," "ltd.," or "ltd" [ORC §1705.05(A)]. It must also be distinguishable on the records of the Secretary of State from another entity or trade name [ORC §1705.05(B)].

2. Duration of existence. By default, the period of duration of an LLC is perpetual [ORC §1705.04(B)]. There are a few instances where it may be preferable to state a fixed period, such as where the company is created for a specific purpose, such as a joint venture, and then dissolved once the purpose has been either accomplished or frustrated.

3. Statutory agent. Every LLC must continuously maintain a statutory agent to accept service of process on its behalf [ORC §1705.06(A)]. Normally this is a natural person, but it can also be an entity. Traditionally a corporation was the only type of entity that could serve as a statutory agent. However, Senate Bill 98 of the 130th General Assembly, effective May 2014, expanded the types of entities that can serve as statutory agent to essentially include any type of entity that is formed or registered to conduct business in Ohio and has an Ohio business address.

4. Optional provisions. The articles may include a statement of the purpose of the company. If none is provided, the purposes is assumed to be "any purpose or purposes for which individuals lawfully may associate themselves…" [ORC §1705.02]. Similar to a statement of the duration of existence, this is often unnecessary and limiting to the company. The articles may also include any other provision not inconsistent with applicable law that the members desire, including the date the company enters into existence, so long as the date is within 90 days of the date of filing [ORC §1705.04(A)(3)].

Execution. The articles must be signed by at least one member, manager, or other person authorized to file the articles on behalf of the company. Signers are also known as incorporators. If the incorporator is an entity, then the articles may be signed on behalf of the entity by an authorized representative. By signing, the incorporator certifies that they have the requisite authority to execute the document.

Filing. Articles may be filed by mail, in person at the Secretary of State's office, or online via the Secretary of State's Ohio Business Central system. The current filing fee for articles of organization is $125.00. The stated processing time for articles is 3-7 business days. The filing may also be expedited for an additional fee. Filings may be expedited to be processed within 2 business days, within 1 business day, or within 4 hours if received by 1:00pm. If the articles otherwise comply with all the requirements of Section 1705 of the Revised Code (also known as the "Ohio Limited Liability Company Act" or the "Act"), the Secretary of State must accept them [ORC §1705.07(A)].

EIN Registration. Once the articles have been approved, the entity is official. The next step is obtaining a federal tax ID number, also known as an Employer Identification Number (EIN). This number is used to identify the business and is similar to a personal social security number. The EIN is necessary to open a bank account for the business, as well as being required for employment tax purposes.

The EIN application can be completed online through the IRS website (http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Apply-for-an-Employer-Identification-Number-(EIN)-Online). There is no cost to obtain an EIN, and it is issued immediately at the end of the process. Alternatively, an EIN can be obtained via fax or mail using form SS-4.

Requirements. The EIN application requires the name and address of the business. It also asks for the industry and when the business was established. One owner must be identified as the "responsible party." This is the person or entity that the EIN will be associated with.

An EIN can be applied for either by an owner of the entity or a third party representative. To obtain an EIN on behalf of your client, you must follow the rules for third party representatives. This includes having a signed, paper copy of the EIN application on file as well as written authority from an owner of the company giving you permission to obtain the EIN on their behalf.

Securities Law Issues

Not just an issue for large corporations, securities law issues can come up with LLCs as well.

Determining if an Interest is a Security. The offer and sale of securities is regulated by the Securities Act of 1933. An interest in an LLC isn't specifically mentioned in the Securities Act (LLC weren't created until about 40 years later). However, the U.S. Supreme Court in *SEC v. W.J. Howey Co.*, 328 US 293 (1946), defined a security as an investment with an expectation of profits solely from the efforts of a third party. This definition has been extended to LLCs. Therefore, the interest of a passive "investor" member in an LLC would be a security and subject to federal securities law. An interest in an LLC is not a security under this definition, though, if the owner is active in the business.

In Ohio, the securities laws are found in Section 1707 of the Revised Code. The Ohio Securities Act broadly defines securities and specifically includes membership interests in limited liability companies [ORC §1707.01(B)]. There is no distinction of whether the member is active in the business or not, so technically every membership interest in an LLC is a security under state law.

Licensing Requirements. Both federal and state laws require dealers and salespersons of securities to be registered. Provided that the LLC is selling its own membership interests and not using a third party, these licensing requirements generally will not apply.

Registration and Transfer Requirements. Unless otherwise exempt, a security must be registered or the subject of a notice filing under both Ohio and federal law. There are several exemptions that a membership interest in an LLC may qualify for.

Intra-State Offerings. Under Section 3(a)(11) of the Securities Act of 1933, any company that 1) is organized in the state where it is offering securities, 2) carries out a significant amount of its business in that state, and 3) makes offers and sales of its securities only to residents of that state is exempt from federal registration. There is no limit on the size of the offering or the number of purchasers. Most LLCs that are local businesses will likely qualify for this exemption.

Ohio's intra-state exemption is located in ORC §1707.03(O). It exempts from registration the sale of a security by the issuer where there are 10 or fewer purchasers for a period of one year from the date of the sale. It is important to note that a sale which qualifies under the federal Act may still be subject to state registration if there are more than 10 purchasers.

Assuming the company you are setting up has 10 or fewer members and they are all Ohio residents, the initial set-up will normally qualify for this exemption. There would

therefore be no further securities requirements. If the initial set-up does not qualify for the intra-state exemption, you will most likely turn to the private placement exemption.

Private Placement Offerings. A private placement offering under Section 4(a)(2) of the Securities Act of 1933 is a transaction by an issuer where there is no public offering. A qualifying offering that meets the requirements of the section are exempt from registration. Rule 506 of Regulation D of 17 CFR 230 sets out objective "safe harbors" for a sale under Section 4(a)(2). Under Rule 506(b), a sale is exempt if the issuer:

1. Does not generally solicit or advertise the securities;
2. Does not sell to more than 35 sophisticated non-accredited investors;
3. Gives non-accredited investors disclosure documents similar to those given under a registered sale;
4. Is available to answer questions from prospective non-accredited purchasers; and
5. Provides financial statements to non-accredited investors.

An accredited investor includes: 1) executive officers, directors/managers, or general partners of the company; 2) any person whose individual net worth, or net worth with spouse, exceeds $1,000,000; and 3) any person with an individual income exceeding $200k in each of last two years, or joint income exceeding $300k, and has reasonable expectation of reaching the same income level in the current year [17 CFR §203.215]. The initial members of an LLC are likely to be considered either managers or general partners, and therefore be accredited.

The Rule 506(c) exemption was created as a result of the 2012 Jumpstart Our Business Startups (JOBS) Act. It removes the general advertisement limitation. However, all investors must be accredited, and the issuer must take reasonable steps to verify the accredited status.

Any sale conducted under a Rule 506 exemption must be reported, although not registered, with the Securities Exchange Commission on Form D within 15 days of the first sale of securities in the offering.

If a sale is brought under federal Rule 506, the federal exemption preempts state law. However, Rule 506(b) generally corresponds with the exemption in ORC §1707.03(X). Section 1707.03(X) requires a copy of the federal Form D to be filed with the Ohio Department of Commerce Division of Securities, along with the required filing fee.

OPERATIONS AND MANAGEMENT

If there is to be a disagreement between the members of an LLC, it is likely going to be over the operations and management of the company. It is imperative these topics are discussed and determined at the start of the business, and put down on paper for future use.

Management Structure

An LLC must have at least one member, who can be either a natural person or entity [ORC §1705.01(G) & (K)]. The management of an LLC can be either reserved for the members or put into the hands of managers.

Member-Managed. Unless otherwise provided in the operating agreement, by default the management of an LLC is vested in the members in proportion to their capital contributions [ORC §1705.24]. This is generally the simpler form of the two and is akin to the management structure of a partnership. This option is often used when all of the members are natural persons who will be active in the business and therefore want to have a voice in the day-to-day operations of the business.

Each member of a member-managed LLC is deemed an agent of the company [ORC §1705.25(A)]. The act of any member in carrying out the business of the company in the usual course of business binds the LLC, unless the member in fact did not have the authority to act on behalf of the company in the particular matter and the person the member is dealing with has knowledge of that fact. It is important to note that this authority is limited to actions done in the apparent carrying on in the usual way the business of the company. Whether an action is in the usual way of the business of the LLC will be a factual determination. However, if the business of the company is to own real estate, for example, and a member enters into a contract to purchase an ice cream truck to operate, that would likely be seen as outside the usual way of the business.

In addition, unless a member is authorized to do so or if the other members have abandoned the business, the following actions require the unanimous consent of the members:

1. Assigning the property of the company in trust for creditors or on the assignee's promise to pay the debts of the company;
2. Disposing of the good will of the business of the company;
3. Doing any other act that would make it impossible to carry on the ordinary business of the company;
4. Confessing a judgment; or
5. Submitting a claim or liability of the company to arbitration or reference.

Generally, any decisions regarding the operations of the company will require at least a majority of either the members or membership interests. The exact percentage and whether it is of the members or membership interests should be stated in the operating agreement, and if not is assumed to be a simple majority of the membership interests. Individual members can be given control, through the operating agreement, of certain aspects of the day-to-day operations much like officers of a corporation to facilitate efficiency.

Manager-Managed. The management of an LLC can also be given to a single or group of managers [ORC §1705.29(A)]. Limited liability companies with passive "investor" members often are set up this way. An LLC can only be manager-managed if it is set out in the operating agreement; otherwise management by the members is assumed.

A manager-managed form is similar to the board of directors/shareholder dichotomy of a corporation in that the authority to run the company is in the hands of the managers, with certain voting rights over major issues that impact the essence of the company reserved to the members. There can be any number of managers, and a manager can be a natural person or entity. A manager need not be a member, but can be.

Except as provided in the operating agreement, every manager is an agent of the company and the act of any manager in carrying out the business of the company in the usual course of business binds the LLC, unless the manager in fact did not have the authority to act on behalf of the company in the particular matter and the person the manager is dealing with has knowledge of that fact [ORC §1705.25(B)]. Similar to member-management, the authority of the managers to bind the LLC is limited to actions done in the apparent carrying on in the usual way the business of the company.

Unless a manager is authorized to do so or the LLC is dissolved, a manager cannot do any of the following:

1. Assign the property of the company in trust for creditors or on the assignee's promise to pay the debts of the company;
2. Dispose of the good will of the business of the company;
3. Do any other act that would make it impossible to carry on the ordinary business of the company;
4. Confess a judgment; or
5. Submit a claim or liability of the company to arbitration or reference.

A person who is both a manager and member of an LLC has the rights, powers, restrictions, and liabilities of both a manager and member [ORC §1705.25(C)].

In a manager-managed LLC, the sections in the operating agreement relating to the managers are very important. The powers and authority of the managers should be clearly described, particularly if they are to be either more restrictive or more expansive than what the Revised Code sets out. Similarly, the operating agreement should state how managers may be removed and the process for electing and replacing them.

Operating Agreement

The operating agreement is the most important document for an LLC. It is similar to a partnership agreement and governs the relations between the members, managers, and company [ORC §1705.081(A)]. While binding on it, the LLC entity does not have to sign the operating agreement. In many cases the terms of the operating agreement will supersede the statutory default, and this can be used to provide more favorable terms to the members and/or managers. An operating agreement can be entered into at any time after the formation of the LLC — although as a practical matter, the best time to achieve the unanimous agreement of the members is soon after the LLC is formed. A written operating agreement is recommended; however oral agreements of the members can be enforceable [ORC §1705.01(J)].

An operating agreement may not do any of the following [ORC §1705.081(B)]:

1. Vary the rights and duties relating to the articles of organization;
2. Unreasonably restrict the right of access of a member to the books and records of the company;
3. Eliminate the duty of loyalty, although the operating agreement may identify activities that do not violate the duty or authorize or ratify a specific act or transaction that would otherwise violate the duty;
4. Eliminate the duty of care, although the operating agreement may prescribe

the standards against which the duty is to be measured;

5. Eliminate the duty of good faith and fair dealing required of members, although the operating agreement may prescribe the standards against which the duty is to be measured;
6. Eliminate the duties of a manager as described in ORC §1705.29, although the operating agreement may prescribe the standards against which the duty is to be measured;
7. Vary the requirements for a judicial dissolution of the company; or
8. Restrict the rights of third parties as described in Chapter 1705 of the Revised Code.

Structure and Control. In putting together a comprehensive operating agreement, the first issues to decide relate to the structure and control of the LLC.

Management. An LLC can be managed by the members or by managers. See the section above for a discussion regarding the two options. If all of the members of the LLC are active in the business, it is common for the company to be member-managed. If there will be any passive "investor" members, then the LLC is usually structured to be managed by managers — often consisting of one or more active members.

It is sometimes advisable to structure the company to be manager-managed even when all the members intend to be active in the business. An example of when this may be appropriate is when one or more of the members, often holding significant or majority interests, will be acting as officers or executives and conducting the business operations of the company. The remaining members simply provide services or work in the production of products, acting similar to employees. A manager-managed structure is also preferred if the company intends to give equity interests to its employees.

When it comes to being manager-managed, there are various ways to structure the management including a single member as manager, a management team (similar to a board of directors), a non-member manager (similar to an executive director), and a

corporate officers and directors format. Which method is best is mainly determined by the preferences of the members.

Restrictions on and Replacement of Management. If the LLC is manager-managed, then the operating agreement should include provisions for determining, terminating, and replacing managers. Without these provisions, there is no mechanism for the members to oversee the conduct of the managers outside of legal action or to replace managers who have been terminated or resign. Some common reasons for removing a manager include:

1. For cause;
2. The failure of the manager to maintain the required standards of care;
3. Upon the death, disability, or incapacity of the manager;
4. Malfeasance;
5. In some instances where the managers are required to be members, if the manager transfers all of its membership interest; and
6. Any act of moral turpitude that might affect the company.

The exact process for removing the manager should be laid out to minimize issues during the transition.

The authority and limitation of the powers of the managers should also be specified, particularly if the company wishes to deviate from the defaults of ORC §1705.25(B). Some common restrictions, particularly in a closely-held LLC, include:

1. Entering into long-term contracts;
2. Indebtedness over a specified amount;
3. Confessing judgment or filing a petition of bankruptcy;
4. Admitting or removing members or other managers; and
5. Selling the assets of the company so as to make it impractical to carry on the business company, or otherwise dissolving it.

For the most part, the managers can be given as much or as little power to act on behalf of the company as the members want.

Membership Percentage vs. Units. Due to their historical roots limited liability companies share many of the same characteristics as partnerships, and traditionally one of those is the idea of percentage interest. In a partnership where there are three partners with an equal interest, for example, each partner is said to own a 1/3 interest in the partnership (or simply 1/3 of the company). The interest can be expressed as a fraction of the total (e.g., 1/2, 2/3, 3/5) or a numeric percentage (e.g., 50%, 25%, 62%). This partnership model is the default, and so the majority of LLCs designate membership interest as percentage interest.

As a hybrid form of entity, an LLC can also follow a corporate structure issuing membership units as opposed to shares of stock. Treating the interests as units rather than percentages can be helpful if the LLC is intending to have many members, seek outside funding, or where the members are more familiar and comfortable with the corporate structure. Unlike with corporations, the filing fees with the Secretary of State do not increase as the number of membership units authorized increases.

Voting. Voting by the members may be on a per person or per interest basis. In an LLC where members have one vote per person, each member is equal to every other member, regardless of their ownership interest. One-person-one-vote is favorable to minority interest holders as it gives them a say in the affairs in the company that they would likely otherwise not be entitled to. Conversely, one-person-one-vote is generally disfavored by majority interest holders as it gives an equal vote to those who may not have as much of a financial interest in the company.

In per interest voting, each member gets a vote proportional to their interest in the business. So the vote of a member with a 35% interest in the company would be weighted 35%, and a 65% interest holder would have their vote weighing 65%. To make it easier to understand, the percentages are often turned into whole numbers of votes — a 35%

interest would entitle the member to 35 votes. If percentages are converted to whole numbers of votes, the operating agreement can specify if the votes of the same member need to be the same or can be different (e.g., if a 35% interest holder can vote 20 votes for one candidate and 15 for another).

The percentage required for votes on various issues should be stated as part of the operating agreement. The most common is a simple majority, defined as 50%+1. Simple majority voting is used for ordinary operational issues. Supermajority is a percentage greater than 50%+1 but less than unanimous. It is normally used for major actions of the business, such as adding or removing a member. Exactly what percentage a supermajority requires should be specified in the operating agreement, and it can vary from issue to issue. Additionally, care should be taken to ensure that a supermajority vote isn't really a unanimous one in disguise. Unanimous decisions should be reserved for issues that impact the structure or continuation of the business, since any member, no matter how small their membership interest, has a veto. A vote to dissolve the business often requires a unanimous vote.

Whenever the operating agreement states the percentage of votes needed on an issue, the language that should be used when voting is done on a percentage basis is "the affirmative vote of ___% of the membership interests of the company." This makes it clear it is not one-person-one-vote. If the intention is to have one-person-one-vote, then "of the membership interests" can be replaced with "of the members."

Meetings. Unlike a corporation, under Ohio law an LLC is not required to have meetings of the members. If the members wish for mandatory member meetings, however, that can be accomplished through a requirement in the operating agreement. Even if member meetings are not mandatory, and in particular if there are passive members, the company may want the operating agreement to include rules for meetings if and when called.

If the operating agreement is to allow for member meetings, the rules for calling meeting should be specified. Without such rules, a minority member could become a nuisance by calling for unnecessary meetings. An important part of these rules are the notice provisions. The provisions should provide for how meetings can be called, the length of time in advance notice must be given, how and if notice can be waived, and the specific requirements management must follow in providing notice to the members. The rules may also specify if meetings may be held telephonically/over the internet and the proxy and quorum rights. The latter can protect majority interest holders from action being taken in their absence.

Capital Contributions. The initial buy-in of a member requires a capital contribution of some kind, whether it is through cash, property, the performance of work, or a promise to contribute cash, property, or future work. During the life of the LLC, however, it may require additional capital for operations or even expansion. Additional contributions of capital by members can be either mandatory or discretionary.

If mandatory contributions are allowed, provisions should be put in place for a member who is unable to make the additional contribution. Options can range from the member's percentage interest being reduce proportionally, to the LLC loaning the member the money to be paid through distributions the member is otherwise entitled to, to the member being in default of the operating agreement. Reasonable requirements should be put in place for when and how a call for a mandatory contribution can be made. The decisions regarding mandatory contributions should have the involvement of all members.

If there will be no mandatory contributions, or if cash is needed by the LLC but a request for mandatory contribution is not approved, the operating agreement should include the ability for discretionary contributions of capital. If a member makes a discretionary contribution, their percentage interest in the company should be adjusted accordingly.

Dissolution. The Revised Code provides for four events that can lead to the dissolution of an LLC [ORC §1705.43(A)]:

1. The expiration of the stated period of existence of the company;
2. One or more events specified in writing in the operating agreement;
3. The unanimous consent of the members; and
4. Upon entry of a decree of judicial dissolution under ORC §1705.47.

Point number two essentially allows the members to designate any triggering event for dissolution they want. This can be beneficial if, for example, the LLC is created for a specific purpose such as a real estate purchase and subsequent sale. The operating agreement can provide that the sale of the real estate and distribution of profits is an event that triggers the dissolution of the company.

Distributions and Allocations. Normally tax provisions of some sort will be included in the operating agreement. There are differing tax consequences for distributions and allocations depending on the type of tax treatment that is selected by the company. While details of the tax consequences of each treatment is beyond the scope of this topic, having a basic understanding of how distributions and allocations are handled is important in being able to properly draft and understand these provisions — and to know when to consult with an accountant or tax professional.

Distributions and Dividends. For an LLC taxed as a C-corporation, payments made to a member with respect to the member's interest in the company are considered dividends under Section 301 of the Internal Revenue Code. A member pays no tax on the cash or fair market value of property received up to the member's basis in the company — it is deemed a return of their capital contribution. Once all the member's capital contributions have been returned, any additional distributions they receive will be considered a taxable event, normally as a capital gain. Any payments made to the extent

of earnings and profits of the company are considered dividends instead of distributions, and are taxable to the recipient member.

For an LLC taxed as an S-corporation, most payments will be considered distributions. As with C-corporations, payments up to the value of the member's capital contribution will be tax-free returns of capital, and payments exceeding the contributions are taxable [I.R.C. §1638].

For an LLC taxed as a partnership, there is generally no tax on payments up to the value of the basis of the member's interest in the company [I.R.C. §731]. Payment in excess of the basis of the member's interest is taxable.

Guaranteed Distributions. Even when the members intend to invest all profits back into the company, it is a good idea to provide for distributions to cover each member's tax liability from the profits of the LLC. If S-corporation tax treatment has been chosen, the distributions must be in proportion to each member's interest in the company in order for the LLC to maintain its tax status. If the members have chosen C-corporation taxation for the company, this will be unnecessary since profits and losses are not allocated to the members.

Tax Allocations. For an LLC taxed as a C-corporation, the members do not recognize the profits and losses of the business. The business itself recognizes these on its corporate return.

For an LLC taxed as an S-corporation, the profits and losses of the business are allocated in proportion to the membership interest of each member in the company.

For an LLC taxed as a partnership, the allocation of profits and losses is where things get tricky. Under I.R.C. §702, each member is allocated profits and losses based on the owner's distributive share. By default, the distributive share of each member is

equal to their percentage interest in the company [I.R.C. §704(a)]. However, this may be changed by the language of the operating agreement, and is often done so to provide for a more equitable tax effect for the members. To be effective, any such special allocation based on the operating agreement must have "substantial economic effect" [I.R.C. §704(b)(2)]. Guidance on whether a special allocation meets that requirement can be found in Section 704-1(b)(2) of the Treasury Regulations.

Transfers of Interest and Valuation. Whether the LLC is a closely-held company or an entity with outside investors, the provisions in the operating agreement relating to the sale and transfer of membership interests are important ones. The various provisions below are some of the more common ones used in operating agreements. Some of these provisions can also be used in a buy-sell agreement to help with business transitions.

Withdrawal Rights. Restrictions on the ability of a member to withdraw is fairly common in LLCs, especially when the operating agreement contains mandatory contributions or when members have personally guaranteed company debts. Withdrawing members have the right to receive the fair market value of their interest [ORC §1705.12], so without a restriction on withdrawals a member, on a whim, could force a liquidation of company assets to fulfill the obligation. If members are allowed to withdraw, the operating agreement should allow the company and/or the other members to acquire the withdrawing member's interest. Particularly with closely-held LLCs, the members may wish to tightly regulate who is a member. Including valuation and payment terms, as well as what happens if neither the company nor members wish to acquire the interest, will help ensure a smoother transition.

Right of First Refusal. A right of first refusal allows the owner of the right the opportunity to match any bona fide offer made by a third party to purchase the interest of a member. The right can be in the company and/or the other members of the LLC; if both company and members have the right, an order of priority should be established. This is

another way that the company and other members can control who can become a member.

Push-Pull Provisions. Push-pull provisions are sometimes found in the operating agreement of two-member LLCs. They provide each member the right to make an offer to purchase the other member's interest. That member may either accept the first member's offer, or they may instead purchase the first member's interest at the same price per interest as the original offer. As an example of this, a member with a 60% interest in the company may make an offer to buy out the minority member at $10,000 per interest. The minority member may either accept the offer and sell their interest for $400,000, or they must pay the majority owner $600,000 ($10,000 x 60%) for their interest. Either way, one member must sell their interest to the other.

Push-pulls can create a disadvantage when one member — usually the majority owner — has a significant financial advantage over the other. The majority member can set the purchase price per interest high enough so that they know the minority member can't afford to decline the offer and purchase the majority interest, but it still be lower than a third-party purchaser would be willing to pay for the interest. The minority interest holder ends up with less value for their interest than they would otherwise get.

If the members of the LLC have a similar percentage interest in the company and both members have substantial financial resources, the initial offeror may be forced to make an offer that is above what a third party purchaser would pay for the interest to ensure that the other member would not decline the offer and instead purchase the offering member's interest. This can occur if the offering member believes that the value of the company will be much greater in the future than it is now. In this situation, the seller can obtain a greater value for their interest than they would otherwise get, and the purchaser gets the full value of the company in the future – which could be much greater than the price paid for the interest.

Redemption and Interest-Purchase Rights. Redemption rights may be placed on an interest in an LLC to allow the company the opportunity to purchase the interest from the member at current fair market value. Similarly, interest purchase rights allow another member to purchase the interest of another member. The redemption or purchase right can be available at any time, or triggered by a specified event, and the method of determine the value of the interest should be clearly set out. This is a method of getting rid of an unwanted member by forcing their involuntary withdrawal. However, these rights encumber the membership interest and so will reduce the value of the interest to a third-party purchaser.

Anti-Dilution Rights. Anti-dilution rights are provisions in an operating agreement that permit an existing member to match all or a portion of an offering made to a third-party investor. This protection allows a member to prevent their membership interest from being diluted when the company is seeking outside capital. Once an offer is made to and accepted by a third party, the member may make their own contribution of capital to the company so that their percentage interest does not change despite the new contribution from the investor. In the alternative, the member may make a small contribution that minimizes the decrease in their percentage interest.

Anti-dilution protection is often given as enticement to investors who want to make sure that they have a guaranteed rate of return on their investment. Conversely and for the same reason, having anti-dilution rights in place can be a deterrent to future investors seeking similar guarantees.

Tag-Along and Drag-Along Rights. If a member is negotiating the sale of all or part of their membership interest in the LLC to a third party, tag-along rights allow the members of the company holding those rights the ability to participate in the sale as well. Normally each member is allowed to participate on a pro-rata basis among those members wanting to participate in the sale. Tag-along rights can be a way to reward the existing or founding members of the LLC.

Drag-along rights provide that if a majority interest holder wants to sell their interest to a third party, and the third party desires to purchase all of the shares of the company, the minority interest holders must sell their interests to the third-party purchaser. The minor benefit for those members is that the third party must purchase their interests upon the same terms and conditions as the selling member. Drag-along rights benefit the majority interest holder who would not be able to otherwise sell their interests in the LLC.

Mandatory Sale Triggering Events. The operating agreement can contain provisions that tie membership interests to certain artificial requirements or events. Requirements could include continued employment with the company or the member not having a conviction for certain crimes. Once a triggering event occurs — such as the member no longer being employed by the company or being convicted of one of the specified offenses — the member is forced to sell their membership interest back to the company and/or other members.

Mandatory triggering events like this can be useful to a small LLC in particular. However, the provisions must clearly define the trigger event and the procedure to relieve the member of their interest.

Involuntary Transfers. Often in a closely-held LLC the members do not want to become a co-member with someone they did not initially intend. Certain events such as the death or divorce of a member can effectuate a transfer of the member's interest that contradicts this intent. An operating agreement (or buy-sell agreement) can contain provisions to force an heir or successor-in-interest to sell the interest back to the company and/or the other members upon an involuntary transfer event such as the member's death. The operating agreement should contain directions on how the interest is to be valued.

Valuation Methods. There are three major methods of determining the value of a membership interest in an LLC. The first is predetermined valuation. In this method,

agreed upon values for either the interest or the entire company is agreed upon by the members. The values are then stated either in the operating agreement or another document (such as a buy-sell). This method only works if the values are frequently updated, which does not often occur in most LLCs. It also requires the agreement of all the members, which can be challenging the more members there are.

The second method is formula valuation. Instead of a set value being stated, a formula is agreed upon by the members to use to determine the value of the company or interests. This formula should also be frequently reviewed to ensure it takes into account changes in the company. A good tip when using such a formula is to ensure that if a measurement device is to be used, such as a book value, it should be selected by a disinterested third party such as the company's accountant.

The final method is appraisal valuation. This method requires an appraiser to be brought in to determine value. To avoid animosity, the appraiser should be agreed upon by the involved parties — ideally at the time the operating agreement is drafted. Best practices here would be to select an appraiser or firm and have an appraisal when the operating agreement is drafted. This valuation is a baseline to ensure consistent standards are used. This same appraiser or firm would then be called on for any subsequent valuations, utilizing the same standards as were used previously. Many feel the appraisal method provides for the most fair and accurate valuation of a business.

Value Premiums and Discounts. The value of a membership interest can be increased or decreased based on the amount of control that comes with it. A majority interest, for example, may command a premium because with it would come control of the affairs of the business. A minority interest, on the other hand, may be valued lower by a third party since the interest holder will have less of a voice in the decision-making of the LLC. It is possible to make accommodations for these premiums and discounts in the operating agreement or other documents that sets out the valuation method to be used.

Payment Terms. Specific payment terms can also be included in the operating agreement. These payment terms can specify the method of payment, lengths of time for payments (e.g., payment due 6 months after the interest is transferred), the number of payments, interest rates, and whether a promissory note is to be used. Having payment terms can allow a company or members who are unexpectedly forced to purchase a membership interest to successfully do so without having to liquidate the assets of the company.

Sample Drafting Checklist. There is no one "right" way to draft an operating agreement, but the following is an example checklist of the areas that a good operating agreement will address. Additional topics may be necessary depending the circumstances and needs of the particular LLC. Remember that while the goal is to be comprehensive in covering all the areas that need to be addressed by the operating agreement, it must be easy for the members and managers to use and understand.

Definitions (may or may not be a separate section)

Formation and Organization

- Name of company
- Purpose
- Principal place of business
- Effective date
- Term of existence

Member Contributions

- Initial capital contributions
- Additional capital contributions
- Loans to the company

- No right to receive return of property

Allocations and Distributions

- Determination of offering of distributions
- Liquidation distribution
- Allocation of distributions among members
- Allocation of profits and losses among members
- Partnership tax issues (if partnership tax treatment)
- Guaranteed payments to cover liabilities

Managers (if manager-managed)

- Number and election of managers
  - Determination of the number of managers
  - Minimum number of managers
  - Initial managers
  - How managers are elected
  - Qualifications of managers
- Power and authority of managers
  - Power and authority to conduct the affairs of the business
  - Percentage vote required to take action
  - No non-manager has the ability to bind the company or act on its behalf
- Restrictions on authority
- Duties of managers
- Resignation
- Removal
  - Reasons for removal
  - Removal process

  - Replacing removed managers
- Indemnification of managers
- Insurance (optional)
- Meetings of managers (optional)
  - Required meetings
  - Calling meetings
  - Place and time
  - Notice and waiver of notice
  - Quorum and voting
  - Proxy rights
  - Action without a meeting

Members

- Limited liability of members
- Voting rights
- Duties of members
- Addition of members
  - If permitted
  - Process of admission
- Transfers of interest
  - Restriction on transfer
  - Transfer rights of members
  - Sales to third parties
  - Voluntary withdrawal
  - Involuntary removal
  - Death, divorce, disability

- Valuation of interest
- Payment terms

Member Meetings (if desired)

- Required meetings
- Calling meetings
- Place and time
- Notice and waiver of notice
- Quorum and voting
- Proxy rights
- Action without a meeting

Dissolution

- Dissolution events
- Winding up

Books and Records

- Record keeping requirements
- Member right to examine records
- Confidential information
- Tax information

Amendments

- Clarification amendments
- Amendments to satisfy changes in law
- Amendments generally

Miscellaneous

- No partnership for non-tax purposes

- Rights of creditors and third parties
- Designation of tax matters member
- Waiver of default
- Severability
- Binding effect
- Governing law
- Prevailing party
- Entire agreement
- Counterparts
- Effectiveness

Schedule of Members and Capital Contributions

Form 534A Prescribed by:
JON HUSTED
Ohio Secretary of State
Central Ohio: (614) 466-3910
Toll Free: (877) SOS-FILE (767-3453)
www.OhioSecretaryofState.gov
Busserv@OhioSecretaryofState.gov

Mail this form to one of the following:

Regular Filing (non expedite)
P.O. Box 670
Columbus, OH 43216

Expedite Filing **(Two-business day processing time requires an additional $100.00).**
P.O. Box 1390
Columbus, OH 43216

Name Registration

Filing Fee: $50

CHECK ONLY ONE (1) Box

☐ Trade Name
(167-RNO)

Date of first use: _____

MM/DD/YYYY

☐ Fictitious Name
(169-NFO)

_____
Name being Registered or Reported

_____
Name of the Registrant

Note: If the registrant is a partnership, please provide the name of the partnership. Individual partner names are not permitted but are required on page 2 of the form.

Registrant's Entity Number (if registered with Ohio Secretary of State): _____

All registrants must complete the information in this section

The general nature of business conducted by the registrant:

_____

_____

Business address:

_____
Mailing Address

_____ _____ _____
City State Zip Code

Complete the information in this section if registrant is a partnership NOT registered in Ohio pursuant to ORC 1776, if partnership is registered, provide registration number on page one.

Provide the name and address of at least one general partner:

Name	Address

NOTE: Pursuant to OAG 89-081, if a general partner is a foreign corporation/limited liability company, it must be licensed to transact business in Ohio; if a general partner is a foreign corporation/limited liability company licensed in Ohio under an assumed name, please provide the assumed name and the name as registered in its jurisdiction of formation.

By signing and submitting this form to the Ohio Secretary of State, the undersigned hereby certifies that he or she has the requisite authority to execute this document.

Required
Application must be signed by the registrant or an authorized representative.

If authorized representative is an individual, then they must sign in the "signature" box and print their name in the "Print Name" box.

Signature

By (if applicable)

Print Name

If authorized representative is a business entity, not an individual, then please print the business name in the "signature" box, an authorized representative of the business entity must sign in the "By" box and print their name in the "Print Name" box.

Instructions for Name Registration

This form should be used to register a trade name or report the use of a fictitious name.

To register a trade name, please select box 1. Pursuant to Ohio Revised Code §1329.01(B)(4), please provide the date on which the registrant first used the trade name, which must be prior to the date of filing. Examples of "use" include opening a business account in the trade name, placing the trade name on products, advertisements using the trade name or business cards and letterhead.

To report the use of a fictitious name, please select box 2. Pursuant to Ohio Revised Code §1329.01(D), any person who does business under a fictitious name not registered as a trade name must report the use of that name to the Secretary of State.

A trade name is a name used in business or trade to designate the business of the user and to which the user asserts a right to exclusive use. A trade name must be distinguishable upon the record from other previously registered business names. See our Name Availability Guide at www.OhioSecretaryofState.gov, for more information regarding name requirements and restrictions.

A fictitious name is a name used in business or trade that the user has not registered as a trade name or is not entitled to register as a trade name. Registration of a fictitious name does not give the user any exclusive right to use the name.

Name Being Registered or Reported
State the trade name or fictitious name to be registered or reported. Pursuant to Ohio Revised Code §1329.02 a trade name cannot indicate or imply that the registrant is incorporated unless the registrant is incorporated. Specifically, only a corporation can file a trade name which includes entity words such as: "company," "co.," "corporation," "corp.," incorporated," or "inc."

Registrant Information
State the name of the registrant on the line provided. If the registrant is a foreign corporation licensed in Ohio under an assumed name, the assumed name must be provided as well as the corporation's name as registered in the jurisdiction of formation. If the entity is registered with our office, it must provide the charter/registration/ license number.

Provide the complete business address of the registrant. Also, please provide the general nature of business conducted by the registrant.

Information if Registrant is a General Partnership
Pursuant to Ohio Revised Code § 1329.01(B)(1)(a), if the registrant is a general partnership, please provide the registration number assigned to the partnership by our office. If the general partnership is not registered in our office, please provide the name and address of at least one general partner.

Additional Provisions
If the information you wish to provide for the record does not fit on the form, please attach additional provisions on a single-sided, 8 1/2 x 11 sheet(s) of paper.

Signature(s)
After completing all information on the filing form, please make sure that the form is signed by an authorized representative.

****NOTE: Our office cannot file or record a document that contains a social security number or tax identification number. Please do not enter a social security number or tax identification number, in any format, on this form.**

Form 533A Prescribed by:
Ohio Secretary of State
JON HUSTED
Ohio Secretary of State
Central Ohio: (614) 466-3910
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P.O. Box 670
Columbus, OH 43216

Expedite Filing **(Two-business day processing time requires an additional $100.00).**
P.O. Box 1390
Columbus, OH 43216

Articles of Organization for a Domestic Limited Liability Company

Filing Fee: $125

CHECK ONLY ONE (1) BOX

(1) ☐ Articles of Organization for Domestic For-Profit Limited Liability Company (115-LCA)

(2) ☐ Articles of Organization for Domestic Nonprofit Limited Liability Company (115-LCA)

Name of Limited Liability Company

Name must include one of the following words or abbreviations: "limited liability company," "limited," "LLC," "L.L.C.," "ltd., "or "ltd"

Effective Date **(Optional)** mm/dd/yyyy (The legal existence of the limited liability company begins upon the filing of the articles or on a later date specified that is not more than ninety days after filing)

This limited liability company shall exist for **(Optional)** Period of Existence

Purpose **(Optional)**

****Note for Nonprofit LLCs**
The Secretary of State does not grant tax exempt status. Filing with our office is not sufficient to obtain state or federal tax exemptions. Contact the Ohio Department of Taxation and the Internal Revenue Service to ensure that the nonprofit limited liability company secures the proper state and federal tax exemptions. These agencies may require that a purpose clause be provided.

ORIGINAL APPOINTMENT OF AGENT

The undersigned authorized member(s), manager(s) or representative(s) of

Name of Limited Liability Company

hereby appoint the following to be Statutory Agent upon whom any process, notice or demand required or permitted by statute to be served upon the limited liability company may be served. The name and address of the agent is

Name of Agent

Mailing Address

City | Ohio (State) | ZIP Code

ACCEPTANCE OF APPOINTMENT

The undersigned, _____ named herein as the statutory agent

Statutory Agent Name

for _____

Name of Limited Liability Company

hereby acknowledges and accepts the appointment of agent for said limited liability company

Statutory Agent Signature _____

Individual Agent's Signature / Signature on Behalf of Business Serving as Agent

By signing and submitting this form to the Ohio Secretary of State, the undersigned hereby certifies that he or she has the requisite authority to execute this document.

Required
Articles and original appointment of agent must be signed by a member, manager or other representative.

If authorized representative is an individual, then they must sign in the "signature" box and print their name in the "Print Name" box.

If authorized representative is a business entity, not an individual, then please print the business name in the "signature" box, an authorized representative of the business entity must sign in the "By" box and print their name in the "Print Name" box.

Signature

By (if applicable)

Print Name

Signature

By (if applicable)

Print Name

Signature

By (if applicable)

Print Name

Instructions for Articles of Organization for a Domestic Limited Liability Company

This form should be used if you wish to file articles of organization for a for-profit or nonprofit limited liability company.

If you wish to organize a for-profit limited liability company, please select box 1. If you wish to organize a nonprofit limited liability company, please select box 2. Please complete the entire form (as required) whether you have selected box 1 or box 2.

Name of Limited Liability Company
The name of the limited liability company must be provided. Pursuant to Ohio Revised Code §1705.05, the name must include one of the following: "limited liability company," "limited," "LLC," "L.L.C.," "ltd." or "ltd".

Effective Date
An effective date may be provided but is not required. Pursuant to Ohio Revised Code §1705.04(A), the legal existence of a limited liability company begins upon filing the articles of organization with our office or on a later date specified in the articles. The effective date cannot (1) precede the date of filing with our office or (2) be more than ninety (90) days after the date of filing. If an effective date is given that precedes the date of filing, the effective date of the limited liability company will be the date of filing. If an effective date is given that exceeds the date of filing by more than ninety (90) days, our office will return the filing to you and request that a proper effective date be provided.

Period of Existence
A period of existence may be provided but is not required. Pursuant to Ohio Revised Code §1705.04(B), if a period of existence is not provided the limited liability company's period of existence is perpetual.

Purpose Clause
A purpose clause may be provided but is not required. As stated in Ohio Revised Code §1705.02, a limited liability company may generally "be formed for any purpose or purposes for which individuals lawfully may associate themselves."

Additional Provisions
If the information you wish to provide for the record does not fit on the form, please attach additional provisions on a single-sided, 8 ½ x 11 sheet(s) of paper.

Original Appointment of Statutory Agent and Acceptance of Appointment
Pursuant to Ohio Revised Code §1705.06, an Ohio limited liability company must appoint and maintain a statutory agent to accept service of process on behalf of the company. We cannot accept articles of organization unless the statutory agent information is provided. The statutory agent must be one of the following: (1) A natural person who is a resident of this state; or (2) A domestic or foreign corporation, nonprofit corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited partnership association, professional association, business trust, or unincorporated nonprofit association that has a business address in this state. If the agent is a business entity then the agent must meet the requirements of Title XVII of the Revised Code to transact business or exercise privileges in Ohio. The statutory agent must also sign the Acceptance of Appointment at the bottom of page 2.

Signature(s)
After completing all information on the filing form, please make sure that page 3 is signed by at least one member, manager or other authorized representative of the limited liability company.

****Note: Our office cannot file or record a document which contains a social security number or tax identification number. Please do not enter a social security number or tax identification number, in any format, on this form.**

Note: Form SS-4 begins on the next page of this document.

Change to Domestic Employer Identification Number (EIN) Assignment by Toll-Free Phones

Beginning January 6, 2014, the IRS will refer all domestic EIN requests received by toll-free phones to the EIN Online Assistant. You can access the Assistant by going to www.irs.gov, entering “EIN” in the “Search” feature and following instructions for applying for an EIN online.

Attention
Limit of one (1) Employer Identification Number (EIN) Issuance per Business Day

Effective May 21, 2012, to ensure fair and equitable treatment for all taxpayers, the Internal Revenue Service (IRS) will limit Employer Identification Number (EIN) issuance to one per responsible party per day. For trusts, the limitation is applied to the grantor, owner, or trustor. For estates, the limitation is applied to the decedent (decedent estate) or the debtor (bankruptcy estate). This limitation is applicable to all requests for EINs whether online or by phone, fax or mail. We apologize for any inconvenience this may cause.

Change to Where to File Address and Fax-TIN Number

There is a change to the Instructions for Form SS-4 (Rev. January 2011). On page 2, under the "Where to File or Fax" table, the address and Fax-TIN number have changed. If you are applying for an Employer Identification Number (EIN), and you have no legal residence, principal place of business, or principal office or agency in any state or the District of Columbia, file or fax your application to:

Internal Revenue Service Center
Attn: EIN International Operation
Cincinnati, OH 45999
Fax-*TIN*: 859-669-5987

This change will be included in the next revision of the Instructions for Form SS-4.

Form **SS-4**
(Rev. January 2010)
Department of the Treasury
Internal Revenue Service

Application for Employer Identification Number

(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.)

► **See separate instructions for each line.** ► **Keep a copy for your records.**

OMB No. 1545-0003

EIN

Type or print clearly.

1 Legal name of entity (or individual) for whom the EIN is being requested

2 Trade name of business (if different from name on line 1) | **3** Executor, administrator, trustee, "care of" name

4a Mailing address (room, apt., suite no. and street, or P.O. box) | **5a** Street address (if different) (Do not enter a P.O. box.)

4b City, state, and ZIP code (if foreign, see instructions) | **5b** City, state, and ZIP code (if foreign, see instructions)

6 County and state where principal business is located

7a Name of responsible party | **7b** SSN, ITIN, or EIN

8a Is this application for a limited liability company (LLC) (or a foreign equivalent)? . . . . . ☐ **Yes** ☐ **No**

8b If 8a is "Yes," enter the number of LLC members . . . . ►

8c If 8a is "Yes," was the LLC organized in the United States? . . . . . ☐ **Yes** ☐ **No**

9a **Type of entity** (check only one box). **Caution.** If 8a is "Yes," see the instructions for the correct box to check.

- ☐ Sole proprietor (SSN) ___
- ☐ Partnership
- ☐ Corporation (enter form number to be filed) ►___
- ☐ Personal service corporation
- ☐ Church or church-controlled organization
- ☐ Other nonprofit organization (specify) ►___
- ☐ Other (specify) ►
- ☐ Estate (SSN of decedent) ___
- ☐ Plan administrator (TIN) ___
- ☐ Trust (TIN of grantor) ___
- ☐ National Guard ☐ State/local government
- ☐ Farmers' cooperative ☐ Federal government/military
- ☐ REMIC ☐ Indian tribal governments/enterprises

Group Exemption Number (GEN) if any ►

9b If a corporation, name the state or foreign country (if applicable) where incorporated | State | Foreign country

10 **Reason for applying** (check only one box)

- ☐ Started new business (specify type) ►___
- ☐ Hired employees (Check the box and see line 13.)
- ☐ Compliance with IRS withholding regulations
- ☐ Other (specify) ►
- ☐ Banking purpose (specify purpose) ►___
- ☑ Changed type of organization (specify new type) ►___
- ☐ Purchased going business
- ☐ Created a trust (specify type) ►___
- ☐ Created a pension plan (specify type) ►___

11 Date business started or acquired (month, day, year). See instructions.

12 Closing month of accounting year

13 Highest number of employees expected in the next 12 months (enter -0- if none).

If no employees expected, skip line 14.

Agricultural	Household	Other

14 If you expect your employment tax liability to be $1,000 or less in a full calendar year **and** want to file Form 944 annually instead of Forms 941 quarterly, check here. (Your employment tax liability generally will be $1,000 or less if you expect to pay $4,000 or less in total wages.) If you do not check this box, you must file Form 941 for every quarter. ☐

15 First date wages or annuities were paid (month, day, year). **Note.** If applicant is a withholding agent, enter date income will first be paid to nonresident alien (month, day, year) . . . . . ►

16 Check **one** box that best describes the principal activity of your business.

☐ Construction ☐ Rental & leasing ☐ Transportation & warehousing ☐ Health care & social assistance ☐ Accommodation & food service ☐ Wholesale-agent/broker ☐ Wholesale-other ☐ Retail ☐ Real estate ☐ Manufacturing ☐ Finance & insurance ☐ Other (specify)

17 Indicate principal line of merchandise sold, specific construction work done, products produced, or services provided.

18 Has the applicant entity shown on line 1 ever applied for and received an EIN? ☐ **Yes** ☐ **No**

If "Yes," write previous EIN here ►

Third Party Designee

Complete this section **only** if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.

Designee's name | Designee's telephone number (include area code) ( )

Address and ZIP code | Designee's fax number (include area code) ( )

Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.

Name and title (type or print clearly) ► | Applicant's telephone number (include area code) ( )

Signature ► Date ► | Applicant's fax number (include area code) ( )

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 16055N Form **SS-4** (Rev. 1-2010)

Do I Need an EIN?

File Form SS-4 if the applicant entity does not already have an EIN but is required to show an EIN on any return, statement, or other document.[1] See also the separate instructions for each line on Form SS-4.

IF the applicant...	AND...	THEN...
Started a new business	Does not currently have (nor expect to have) employees	Complete lines 1, 2, 4a–8a, 8b–c (if applicable), 9a, 9b (if applicable), and 10–14 and 16–18.
Hired (or will hire) employees, including household employees	Does not already have an EIN	Complete lines 1, 2, 4a–6, 7a–b (if applicable), 8a, 8b–c (if applicable), 9a, 9b (if applicable), 10–18.
Opened a bank account	Needs an EIN for banking purposes only	Complete lines 1–5b, 7a–b (if applicable), 8a, 8b–c (if applicable), 9a, 9b (if applicable), 10, and 18.
Changed type of organization	Either the legal character of the organization or its ownership changed (for example, you incorporate a sole proprietorship or form a partnership) [2]	Complete lines 1–18 (as applicable).
Purchased a going business [3]	Does not already have an EIN	Complete lines 1–18 (as applicable).
Created a trust	The trust is other than a grantor trust or an IRA trust [4]	Complete lines 1–18 (as applicable).
Created a pension plan as a plan administrator [5]	Needs an EIN for reporting purposes	Complete lines 1, 3, 4a–5b, 9a, 10, and 18.
Is a foreign person needing an EIN to comply with IRS withholding regulations	Needs an EIN to complete a Form W-8 (other than Form W-8ECI), avoid withholding on portfolio assets, or claim tax treaty benefits [6]	Complete lines 1–5b, 7a–b (SSN or ITIN optional), 8a, 8b–c (if applicable), 9a, 9b (if applicable), 10, and 18.
Is administering an estate	Needs an EIN to report estate income on Form 1041	Complete lines 1–6, 9a, 10–12, 13–17 (if applicable), and 18.
Is a withholding agent for taxes on non-wage income paid to an alien (i.e., individual, corporation, or partnership, etc.)	Is an agent, broker, fiduciary, manager, tenant, or spouse who is required to file Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons	Complete lines 1, 2, 3 (if applicable), 4a–5b, 7a–b (if applicable), 8a, 8b–c (if applicable), 9a, 9b (if applicable), 10, and 18.
Is a state or local agency	Serves as a tax reporting agent for public assistance recipients under Rev. Proc. 80-4, 1980-1 C.B. 581 [7]	Complete lines 1, 2, 4a–5b, 9a, 10, and 18.
Is a single-member LLC	Needs an EIN to file Form 8832, Classification Election, for filing employment tax returns and excise tax returns, or for state reporting purposes [8]	Complete lines 1–18 (as applicable).
Is an S corporation	Needs an EIN to file Form 2553, Election by a Small Business Corporation [9]	Complete lines 1–18 (as applicable).

[1] For example, a sole proprietorship or self-employed farmer who establishes a qualified retirement plan, or is required to file excise, employment, alcohol, tobacco, or firearms returns, must have an EIN. A partnership, corporation, REMIC (real estate mortgage investment conduit), nonprofit organization (church, club, etc.), or farmers' cooperative must use an EIN for any tax-related purpose even if the entity does not have employees.

[2] However, do not apply for a new EIN if the existing entity only (a) changed its business name, (b) elected on Form 8832 to change the way it is taxed (or is covered by the default rules), or (c) terminated its partnership status because at least 50% of the total interests in partnership capital and profits were sold or exchanged within a 12-month period. The EIN of the terminated partnership should continue to be used. See Regulations section 301.6109-1(d)(2)(iii).

[3] Do not use the EIN of the prior business unless you became the "owner" of a corporation by acquiring its stock.

[4] However, grantor trusts that do not file using Optional Method 1 and IRA trusts that are required to file Form 990-T, Exempt Organization Business Income Tax Return, must have an EIN. For more information on grantor trusts, see the Instructions for Form 1041.

[5] A plan administrator is the person or group of persons specified as the administrator by the instrument under which the plan is operated.

[6] Entities applying to be a Qualified Intermediary (QI) need a QI-EIN even if they already have an EIN. See Rev. Proc. 2000-12.

[7] See also *Household employer* on page 4 of the instructions. **Note.** State or local agencies may need an EIN for other reasons, for example, hired employees.

[8] See *Disregarded entities* on page 4 of the instructions for details on completing Form SS-4 for an LLC.

[9] An existing corporation that is electing or revoking S corporation status should use its previously-assigned EIN.

Operating Agreement of _____, LLC

THIS OPERATING AGREEMENT of _____, LLC, (the "Company"), dated as of _____ has been adopted by the original Members of the Company. This Agreement, as it may be amended from time to time, is binding on every Member, regardless of whether or not the person has executed this Agreement or any amendments.

Recitals

A. The Company has been organized as an Ohio limited liability company by the filing a certificate of organization with the Ohio Secretary of State under and pursuant to the Act.

B. The Members desire to memorialize their agreement regarding management of the Company, restrictions on the transfer of Membership Interests and other related matters.

In consideration of the mutual agreements set forth below, the Members agree as follows:

Definitions

The following definitions, when used with an initial capital letter or letters, will apply throughout this Agreement:

1.1 "Act" means the Ohio Revised Code Chapter 1705, and any successor statute, as amended from time to time.

"Capital Account" means an account to be maintained for each Member which complies with the requirements of Section 1.704-1(b)(2)(iv) of the regulations under the Code, and which, as of any date shall be an amount equal to the sum of the following:

The aggregate amount of cash and the agreed value of any property other than cash contributed to the capital of the Company by such Member, plus the aggregate amount of Net Profit allocated to such Member; minus
The aggregate amount of Net Loss allocated to such Member and the aggregate amount of cash and the agreed value of all other property distributed to such member by the Company.

"Code" means the Internal Revenue Code of 1986 as amended, the applicable Treasury Regulations there under, and any comparable laws and regulations enacted or promulgated in place thereof.

"Distributable Cash," as of any date, means all cash from all sources held by the Company as of such date less any amounts reasonably deemed necessary by the Management Committee to be reserved for normal working capital requirements, contingent liabilities, and such other purposes as the Management Committee determines to be necessary or advisable for the conduct of the Company's business.

"Net Profit" or "Net Loss" means, for each fiscal year of the Company, the Company's taxable income or loss for such fiscal year, as determined under Section 703(a) of the Code, with the following adjustments:

Any income except from tax, as described in Section 705(a)(1)(B) of the Code, which is not otherwise taken into account in computing Net Profit or Net Loss, shall be added;
Any expenditures which are not deductible in computing taxable income, which are not properly chargeable to a capital account, as described in Section 705(a)(2)(B) of the Code, and which are not otherwise taken into account in computing Net Profit or Net Loss, shall be deducted; and
The amount of any gain or loss required to be recognized by the Company by reason of a sale or other disposition of any capital assets and any depreciation, cost recovery, or amortization in any property contributed to the Company by any Member for income tax purposes as of the date of the contribution were equal to the agreed value of such property. For purposes of computing the amount of any capital gain or loss required to be recognized by the Company by reason of the sale or disposition of any Company assets, the amount realized by the Company from such sale or other disposition of any Company assets, the amount realized by the Company from such sale or other disposition shall be fairly and reasonably allocated among the components of such assets so as to reflect, insofar as is practical, the relative fair market values thereof.

"Members" means _____.

"Company" means _____, LLC, the Ohio limited liability company, which is the subject of this Agreement.

"Membership Interest" means a Member's interest in the Company stated as a percentage as set forth in Annex A hereof.

"Secretary" means the Secretary of the State of Ohio.

II. Formation of the Company

2.1 Organization. The Members hereby form _____, LLC as a limited liability company pursuant to the Act in accordance with the Articles of Organization to be filed with the Secretary.

2.2 Operating Agreement. This Operating Agreement, including any provisions of the Code incorporated herein by reference, shall be the sole agreement of the Members with respect to the operation of the Company, and shall become effective upon the filing of the Articles of Organization with the Secretary.

III. The Company

3.1 Name. The name of the Company shall be _____, LLC, and the business of the Company shall be conducted under that name.

3.2 Principal Office. The principal office of the Company shall be located at 941 North High Street, Columbus, OH 43201 or at such other place as the Manager may designate from time to time, which need not be in the State of Ohio. The Company may have such other offices as the Manager may designate from time to time.

3.3 Purpose. The object, purpose of, and nature of the business to be conducted and promoted by, the Company is engaging in any lawful act or activity for which limited liability companies may be organized under the Act and engaging in any and all lawful activities necessary, convenient, desirable, or incidental to the foregoing.

3.4 Term. The existence of the Company shall commence on the date its Articles of Organization are filed with the Secretary, and the Company shall continue in existence until terminated as provided by this Agreement.

3.5 Capital Contributions. The Members shall not be required to contribute cash to the capital of the Company by either the Manager or any third parties.

IV. Membership Interests

4.1 Initial and Subsequent Members. The Members of the Company are the Persons listed on Annex A. A Person who is not already a Member and who acquires a previously outstanding Membership Interest in accordance with this Agreement shall automatically be admitted as a Member; other Persons may be admitted as Members from time to time on such terms as are fixed by the Manager. It shall not be necessary for Persons who are subsequently admitted as Members or who acquire any or all of an existing Member's Membership Interest to execute this Agreement either by counterpart or amendment. When any Person is admitted as a Member or ceases to be a Member, the Manager shall prepare a revised version of Annex A and distribute it to all the Members.

V. Transfers and Assignments of Membership Interests

5.1 Restrictions on Transfer. No Member shall voluntarily or involuntarily sell, assign, transfer, give, bequeath, devise, donate or otherwise dispose of, or pledge, deposit or otherwise encumber, in any manner, any of the Membership Interest now or hereafter owned by such Member except as expressly provided in this Agreement and in accordance with its terms and conditions.

5.2 Member's Limited Right to Dispose of Membership Interest During Lifetime. If any Member shall at any time during such Member's lifetime desire to sell all or any of such Member's Membership Interest, such Member (hereinafter sometimes called the "Selling Member") shall first obtain a bona fide written offer which such Member desires to accept (hereinafter called the "Offer") to purchase all or any of such Member's Membership Interest for a fixed cash price (which may be payable over time). The Offer shall set forth its date, the proposed price per Membership Interest, and the other terms and conditions upon which the purchase is proposed to be made, as well as the name and address of the prospective purchaser. The Selling Member shall transmit copies of the Offer to the Company and to the other Members within seven (7) days after such Member's receipt of the Offer.

5.3 Legal Proceedings Against Member. The parties agree that the interests of the Company and the Members would be seriously affected by any sale or disposition of any Member's Membership Interest as a result of any legal or equitable proceeding against such Member. Accordingly, it is hereby agreed that in the event of a Proceeding (as hereinafter defined) with respect to any Member, the Company and the other Members shall have options to purchase all, but not less than all, of such Member's Membership Interest in accordance with the provisions of Section VI in the same manner as if the Company and the other Members had received notice of an Offer under Section VI on the date that the Company receives notice of a Proceeding. The price payable shall be the Fair Market Value of the Membership Interest determined in accordance with the terms of Annex C ("Fair Market Value") and terms of purchase pursuant to the exercise of options granted in this Section VI shall be those set forth in Annex B. If all Proceedings with respect to the Member terminate and the Member retains record and beneficial ownership of some or all of such Member's Membership Interest (the "Retained Membership Interest"), (i) Founding Members and the other Members shall terminate with respect to the Retained Membership Interest, and (ii) if the options have been exercised but settlement has not yet occurred with respect to the Retained Membership Interest, the exercise shall be void and settlement shall not occur with respect to the Retained Membership Interest. A "Proceeding" means that (a) any judgment is obtained in any legal or equitable proceeding against a Member, such judgment has become final, cannot be appealed, and the sale of any of such Member's Membership Interest is contemplated or threatened under legal process as a result of such judgment, (b) any execution is issued on a judgment

against a Member, (c) any of the Membership Interest of a Member are attached, (d) there is instituted by or against a Member any other form of legal proceeding or process by which the sale or transfer of any of the Membership Interest of such Member becomes imminent (i.e., such Membership Interest may be sold or transferred either voluntarily or involuntarily within sixty (60) days), (e) a Member makes an assignment for the benefit of creditors, (f) a Member admits such Member's inability to pay such Member's debts as they mature, or commences a voluntary case or proceeding under any Bankruptcy Law (as hereinafter defined), or consents to the entry of an order for relief against such Member in an involuntary case or proceeding under any Bankruptcy Law, or consents to the appointment of a receiver, trustee, liquidator or similar official for such Member or for all or substantially all of such Member's property, or (g) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law for relief against a Member in an involuntary case or proceeding and the order or decree remains unstayed and in effect for 60 days. The term "Bankruptcy Law" means Title 11 of the U.S. Code or any similar federal or state law for the relief of debtors.

5.4 Offeree Member Provisions. Notwithstanding anything foregoing to the contrary, no Member may exercise an option to purchase Membership Interest pursuant to this Agreement at a time when such Member (a) has initiated the process of selling Membership Interest pursuant to Section VI, (b) has ceased service to the Company as an independent contractor or employee or has given or received notice of termination of such service to the Company or (c) is involved in a Proceeding, as defined in Section VI.

5.5 Capital Account of Transferee. Upon the valid transfer of a Membership Interest, the transferee shall succeed to the corresponding portion of the Capital Account of the transferor as provided in Section B.2(b) of Annex D.

5.6 Distribution Upon Dissociation. A Member who is dissociated from the Company except pursuant to a transfer of the Membership Interest of the Member shall have the right under to receive any distribution declared but not paid prior to the date of dissociation and, within a reasonable time after dissociation, to be paid the fair value of the Membership Interest of the Member based upon the right of the Member to Membership Interest in distributions from the Company.

VI. Buy-Sell Agreement

6.1 Death of an Investor Member.

Upon the death of an Investor Member, then the Company and the remaining Members shall have the exclusive right and option to purchase all or any portion of the Membership Interest owned by such Investor Member. The purchase price of the Membership Interests shall be Fair Market Value. Upon the exercise of such option,

the Investor Member's personal representative shall be obligated and bound to sell such Membership Interest to the Company and the remaining Members upon such terms. Notice of the exercise of the option granted pursuant to this Section shall be given to the Investor Member (or the personal representative) within 30 days after the Company receives notice of the qualification of Member's personal representative.
As between the Company and the remaining Members, their options shall follow the procedure set forth in Section 5.2.
If, and to the extent that, the Company and the remaining Members do not purchase all of such Membership Interest, then each successor of such deceased Investor Member shall be entitled to require the Company to transfer the appropriate portion of the deceased Member's Membership Interest to such successor upon the provision to the Company of such documentation as may be requested by the Company to evidence the rightful ownership interest of such Successor in and to the Investor Member's Membership Interest.

6.2 Divorce of Investor Member and Spouse. If any Investor Member or his spouse shall file a petition for divorce or institute any other legal proceedings for the termination of their marriage, then the following procedures shall apply:
Investor Member's interest in the Membership Interest and spouse's spousal interest in the Membership Interest shall be reflected on their respective inventories of marital and separate assets.
Member shall negotiate and seek, and spouse agrees to accept, an order for the division of marital and separate property such that Investor Member receives the entire spousal interest in the Membership Interest in exchange for awarding to spouse other marital and separate assets in which Member has an interest that have a value approximately equal to the spousal interest.
If the marriage of the Investor Member and his spouse is terminated by divorce or annulment, and Member does not obtain all of his spouse's interest in the Membership Interest incident to the divorce or annulment, then Investor Member and his spouse shall simultaneously give written notice to the Company within 30 days after the effective date of the final, non-appealable divorce decree or of the annulment. The written notice shall specify the effective date of termination of the marriage and the number of Membership Interest to which any interest retained by the Investor Member's former spouse relates. For a period of 60 days after the effective date of termination of the marriage, the Investor Member shall have an exclusive option to purchase all or any portion of his former spouse's retained interest in the Membership Interest. The purchase price of the Membership Interests shall be the amount of the Call Option. The Member's 60 day option shall be exercised by delivering to his former spouse and the Company a written notice specifying the number of Membership Interest as to which the option is being exercised. If the Member does not purchase all of his former spouse's Membership Interest, then for a period of 60 days after the lapse of the Member's 60 day option period, the Company and the remaining Members shall have the option (exercisable pursuant to the procedure set forth in 5.2 to purchase all or any portion of the former spouse's remaining Membership Interest. The purchase price of the Membership Interests shall be their Fair Market Value payable in accordance with the terms set forth in Annex B.

Member and Spouse each agree that the Company may intervene in their divorce or annulment proceeding without their objection for the purpose of enforcing the Company's and the other Member's rights under this Section.

6.3 Disability of an Investor Member. In the event an Investor Member becomes disabled as determined under the Code as an employee or independent contractor of the Company, the Company and the remaining Members shall have the option to purchase all or any portion of the Membership Interest owned by such disabled Investor Member. The purchase price of the Membership Interests shall be the amount of the Call Option. Upon the exercise of such option, the Investor Member (or the personal representative) shall be obligated and bound to sell his Membership Interest to the Company and the remaining Members upon such terms. Notice of the exercise of the option granted pursuant to this Section shall be given to the Investor Member (or the personal representative) within 30 days of the date on which the Investor Member is determined disabled by the Manager.

6.4 Termination of Employment or Competition.

In the event an employee Member voluntarily terminates his employment or independent contractor relationship with the Company by retirement, resignation or otherwise, then the Company and the remaining Members shall have the exclusive right and option to purchase all or any portion of the Membership Interest owned by such employee Member (excluding Membership Interests still subject to the Right of Repurchase, which shall be purchased solely by the Company). The purchase price of the Membership Interest shall be their Fair Market Value.

In the event the Manager terminates an employee Member's employment or independent contractor relationship (whether with or without cause) or a Member becomes interested (directly or indirectly) as an employee, officer, director, member, partner, consultant or advisor with a competitor of the Company (as determined by the Manager), then the Company and the remaining Members shall have the exclusive right and option to purchase all or any portion of the Membership Interest owned by such employee Member (excluding any Membership Interest still subject to the Right of Repurchase, which shall be purchased solely by the Company). The purchase price of the Membership Interests shall be their Fair Market Value.

6.5 Settlement.

Settlement for the purchase of Membership Interest by the Company or by a Member pursuant to the options granted herein shall be made within sixty (60) days following the date of exercise of the last option exercised.

All settlements for the purchase and sale of Membership Interest under this Section shall, unless otherwise agreed to by all of the purchasers and sellers, be held at the principal executive offices of the Company during regular business hours. The precise date and hour of settlement shall be fixed by the purchaser or purchasers (within the time limits allowed by the provisions of this Agreement) by notice in writing to the seller given at least five (5) days in advance of the settlement date specified.

VII. Distributions to Members

7.1 The Company will distribute Distributable Cash to the Members in proportion to their respective Membership Interests at such times as the Manager determines; provided, however, that to the extent Distributable Cash is available therefore, the Company will distribute proportionally to the Members sufficient Distributable Cash to enable each member to pay any taxes payable by such Member which are based on Company income attributable to such Member.

VIII. Tax Provisions

Allocation of Net Profit and Net Loss. For income tax purposes, Net Profit or Net Loss for each fiscal year shall be allocated to the Members in proportion to their respective Membership Interests, except as provided in Section 8.2.

8.2 Differing Tax Bases; Tax Allocation. Notwithstanding Section 8.1, any income, gain, loss, and deduction recognized by the Company for income tax purposes in any fiscal year that is required to be allocated among the Members in accordance with Section 704(c) of the Code so as to take into account the variation, if any, between the adjusted tax basis of property contributed to the Company by a Member at the time of its contribution and the fair market value of such property at the time of its contribution, shall be allocated to the members for income tax purposes in the manner so required.

8.3 Tax Matters. All tax returns of the Company shall be prepared under the direction of the Manager. The Manager shall have the right to make any and all elections available under applicable tax laws.

8.4 Tax Partner. _____ is hereby designated as the "Tax Matters Partner" for the Company (as such term is defined in Section 6231(a)(7) of the Code).

8.5 Tax information. Promptly after the close of each fiscal year of the Company, the Manager shall have prepared and delivered to the Members, at the Company's expense, information with respect to the Company for such fiscal year in sufficient detail to enable the Members to prepare their required income tax reports and returns in accordance with applicable laws, rules, and regulations. The Manager shall also cause to be prepared, at the expense of the Company, all tax returns required to be filed by the Company.

IX. Management

9.1 Manager. Responsibility for managing the operations of the Company shall reside in a manager, which shall be _____ (the "Manager").

9.2 Authority of the Manager. Except as expressly provided otherwise herein, the Manager shall have the sole and exclusive authority to manage the business of the Company and shall have all of the management rights granted to Members under the Act including, without limitation, the following rights, each of which may be exercised in such manner and upon such terms and conditions as the Manager, in his judgment, determines to be in the best interests of the Company:

to acquire real, personal, tangible and intangible property for the operation of the Company's business;
to sell or otherwise dispose of the Company's property;
to borrow money to finance the Company's activities and to pledge, mortgage, grant security interests in or otherwise encumber Company property to secure the repayment of such loans;
to employ, retain, or otherwise secure the services of any employees, attorneys, accountants, advisers, and others deemed necessary by the Management Committee to facilitate the conduct of the Company's business or affairs.
to take any and all other action as is permitted by law and customary in or reasonable related to the conduct of the Company's business or affairs.

9.3 Exclusive Responsibility. The business and affairs of the Company shall be managed by or under the direction of the Manager. A Member, as such, shall not take part in, or interfere in any manner with, the management, conduct, or control of the business and affairs of the Company, and shall not have any right or authority to act for or bind the Company. The Company may act only by actions taken by or under the direction of the Manager in accordance with this Agreement.

9.4 Delegation. The Manager may delegate the right, power, and authority to manage the day-to-day business, affairs, operations, and activities of the Company to any officer, employee, or agent of the Company, subject to the ultimate direction, control, and supervision of the Manager. If the Manager appoints an officer of the Company with a title that is commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made by the Manager. Any number of offices may be held by the same Person. The salaries and other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Manager.

9.5 Limitation. Notwithstanding Section 9.3, the Manager shall not, without first receiving the affirmative vote of 51% of the votes cast by all Members:

issue additional Membership Interests; or

sell or otherwise transfer, in one transaction or a series of related transactions, all or substantially all of the Company's business, property or assets, by way of merger, consolidation, asset sale, stock sale or otherwise.

9.6 Non-exclusive Service. The Manager need not devote services to the Company on a substantially full-time basis and need only devote so much time to the Company's activities as the Manager determines to be necessary for the efficient conduct thereof.

9.7 Removal of the Manager. At any meeting of Members at which a quorum of Members is present called expressly for that purpose, or pursuant to a written consent adopted pursuant to this Agreement, the Manager may be removed from the position of Manager (but not as a Member), with or without cause, by vote of the Members holding at least 66% of the outstanding Percentage Interests. Action to remove the Manager shall not be effective until a replacement Manager has been elected by the Members.

9.8 Conflicts of Interest.

Other Business Opportunities. Subject to the other express provisions of this Agreement, the Manager may engage in and possess interests in other business ventures of any and every type and description, independently or with others, except ones in competition with the Company, with no obligation to offer to the Company or any Member or Manager the right to participate therein.

Interested Transactions. A contract or transaction between the Company and the Manager or one or more of its officers or between the Company and another domestic or foreign association in which the Manager or one or more of its officers have a management role or a financial or other interest, shall not be void or voidable solely for that reason, or solely because the Manager or officer participates in the authorization of the contract or transaction, if:

if the Manager is not a party to the contract or transaction, the material facts as to the relationship or interest and as to the transaction are disclosed or known to the Manager and the Manager authorizes the contract or transaction;

the material facts as to the relationship or interest and as to the transaction are disclosed or known to the Members entitled to vote thereon and the contract or transaction is specifically approved in good faith by vote of those Members; or

the contract or transaction is fair to the Company as of the time it is authorized, approved, or ratified by the Manager or the Members.

X. Voting and Action by Members

10.1 Voting Rights of Members. Each Member shall be entitled to cast that number of votes on each action to be taken by vote of the Members as shall equal the Percentage Interest of the Member times 100 (for example, a Member whose Percentage Interest is 35% shall be entitled to cast 35 votes).

10.2 Action by Members. Except as otherwise provided in the Act, the Certificate or this Agreement, whenever any action is to be taken by vote of the Members, it shall be authorized upon receiving the affirmative vote of a majority of the votes cast by all Members entitled to vote thereon. Recording the fact of abstention does not constitute casting a vote.

10.3 Meetings of Members.

Quorum. A meeting of the Members shall not be organized for the transaction of business unless a quorum is present. The presence of Members entitled to cast at least a majority of the votes that all Members are entitled to cast on a particular matter to be acted upon at the meeting shall constitute a quorum for the purposes of consideration and action on the matter. The Members present at a duly organized meeting can continue to do business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum. If a meeting cannot be organized because a quorum has not attended, the Members present may adjourn the meeting to such time and place as they may determine. Those Members entitled to vote who attend a meeting of Members:

at which Managers are to be elected that has been previously adjourned for lack of a quorum, although less than a quorum, shall nevertheless constitute a quorum for the purpose of electing Managers.

that has been previously adjourned for one or more periods aggregating at least 15 days because of an absence of a quorum, although less than a quorum, shall nevertheless constitute a quorum for the purpose of acting upon any matter set forth in the notice of the meeting if the notice states that those Members who attend the adjourned meeting shall nevertheless constitute a quorum for the purpose of acting upon the matter.

Location. All meetings of the Members shall be held at the principal place of business of the Company or at such other place as shall be specified or fixed in the notice thereof.

Adjournment. The chairman of the meeting or the Members present and entitled to vote shall have the power to adjourn a meeting from time to time, without any notice other than announcement at the meeting of the time and place at which the adjourned meeting will be held.

Call of Meetings. The Manager may call a meeting at any time for any proper purpose. Only business within the purpose or purposes described in the notice of the meeting

may be conducted at a meeting of the Members. The notice shall specify the time and location of the meeting.

Notices. Notice of a meeting of Members shall be given to the Members either personally or by sending a copy thereof:

by first class or express mail, postage prepaid, or courier service, charges prepaid, to the postal address of each Member appearing on the books of the Company. Notice is deemed given when deposited in the United States mail or with the courier service.

by facsimile transmission, e-mail, or other electronic communication to the facsimile number or address for e-mail or other electronic communications supplied by a Member to the Company for the purpose of notice. Notice pursuant to this paragraph is given when sent.

Waiver of Notice. A waiver of notice of a meeting signed by the Member entitled to the notice, whether before or after the meeting, shall be deemed equivalent to the giving of the notice. Attendance of a Member at a meeting constitutes a waiver of notice of the meeting, except where a Member attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

10.3 Proxies.

General Rule. Every Member entitled to vote at a meeting of the Members or to express consent or dissent without a meeting may authorize another Person to act for the Member by proxy. The presence of, or vote or other action at a meeting of Members by, or the expression of consent or dissent by, a proxy of a Member shall constitute the presence of, or vote or action by, or consent or dissent of the Member.

Minimum Requirements. Every proxy shall be executed by the Member or by the duly authorized attorney-in-fact of the Member and filed with the Manager. A telegram, telex, cablegram, or other electronic transmission by the Member, or a photographic, photostatic, facsimile, or similar reproduction of a writing executed by the Member shall be treated as properly executed for purposes of this section if it sets forth a confidential and unique identification number or other mark furnished by the Company to the Member for the purposes of a particular meeting or transaction.

Revocation. A proxy, unless coupled with an interest, shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until written notice thereof has been given to the Manager. An unrevoked proxy shall not be valid after three years from the date of its execution unless a longer time is expressly provided in the proxy. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of the death or incapacity is given to the Manager.

10.4 Conduct of Meetings. All meetings of the Members shall be presided over by the Manager, an individual designated by the Manager or, in the absence of the Manager or an individual designated by the Manager, an individual chosen by the Members present. The Person presiding at the meeting shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him or her in order.

10.5 Action by Consent. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting, without prior notice, and without a vote, upon the consent of Members who would have been entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all Members entitled to vote thereon were present and voting. The consents shall be in writing or in electronic form and shall be filed with the Manager. An action taken by less than unanimous consent of the Members shall not become effective until after at least ten days' written notice of the action has been given to each Member entitled to vote thereon who has not consented thereto.

10.6 Action by Remote Participation. The presence or participation, including voting and taking other action, at a meeting of Members, by conference telephone or other electronic means, including without limitation the Internet, shall constitute the presence of, or vote or action by, the Member.

10.7. Voting by Joint Holders. Where a Membership Interest is held in any form of joint or common ownership by two or more Persons:

if less than all of those Persons are present in person or by proxy at a meeting of the Members, the entire Membership Interest held in joint or common ownership shall be deemed to be represented at the meeting and the Company shall accept as the vote of that Membership Interest the vote cast by a majority of those Persons present; and

if the Persons are equally divided upon whether the Membership Interest held by them shall be voted or upon the manner of voting the Membership Interest, the voting of the Membership Interest shall be divided equally among the Persons without prejudice to the rights of those Persons among themselves.

XI. Insurance and Indemnification

Insurance. The Manager shall cause the Company to obtain and maintain comprehensive general insurance, casualty insurance covering the Company's insurable property, and insurance covering such other risks as are normally insured in comparable businesses as the Management Committee determines to be appropriate to protect the interests of the Company.

Limited Liability. No Manager or other officer of the Company shall be liable, responsible, or accountable in damages or otherwise to the Company or the Members for any action taken on behalf of the Company within the scope of authority of the Manager or such officer, or reasonably believed by such person to be within the scope of his authority, or for any omission, unless such action or omission was performed or omitted fraudulently or in bad faith or constituted gross negligence, or wanton and willful misconduct.

Indemnification. The Company shall reimburse, indemnify, defend, and hold harmless each Manager and each officer from and against any loss, expense, damage, or injury suffered or sustained by the Company or the Members by reason of any acts or omissions arising out of such person's activities on behalf of the Company or in furtherance of the interests of the Company, including, without limitation, any judgment, award, settlement, reasonable attorneys' fees and other costs and expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, but excluding loss, expense, damage, or injury caused by or resulting from any acts or omissions performed or omitted fraudulently or in bad faith or which constitute gross negligence or wanton and willful misconduct.

XII. Banking

12.1 The funds of the Company shall be kept in a separate account or accounts in the name of the Company in such bank or banks as the Manager shall designate or shall be invested in the name of the Company in such manner and upon such terms and conditions as the Manager deems appropriate. No funds other than funds of the Company shall be deposited in any such accounts. All withdrawals from any such bank accounts or investments shall be made on such signature or signatures as are designated by the Manager.

XIII. Accounting

13.1 Fiscal Year. The fiscal year of the Company shall be the calendar year.

13.2 Method of Accounting. The Company's books of account shall be maintained, and its income, gains, losses and deductions shall be determined and accounted for, in accordance with the cash method of accounting pursuant to generally accepted accounting principles.

13.3 Financial Statements. The Company's books of account and records shall be maintained at the Company's principal office and shall be reviewed annually by such internal auditor or independent auditor or accountant as is selected for such purpose by the Manager. The Manager shall furnish a copy of the annual

financial report to the Members promptly after it has been prepared. Any Member shall have the right to inspect and make copies of the Company's books and records from time to time during normal business hours at such Member's sole cost and expense.

XIV. Other Activities

14.1 Each Member may own or engage or invest in any other business, venture, or activity independent of the Company or other Member without any obligation to offer any interest or the right to participate therein to the Company or the other Members, and neither the Company nor other Members shall have the right by virtue of this Agreement with respect to any such independent business, venture or activity; provided, however, that no Member shall have the right to take advantage of any situation or opportunity to the detriment of the Company without the prior consent of the other Members if such situation or opportunity would constitute a "corporate opportunity" if the Company were a corporation.

14.2 Any Member may transact business with the Company at arms length and on the same terms and conditions upon which non-members may transact business with the Company.

XV. Arbitration

15.1 Controversies. Any controversy between the Members relating to this Agreement or the transactions contemplated hereby shall be submitted to arbitration in Columbus, Ohio in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect.

15.2 Costs. The arbitrator(s) may award the costs of the arbitration proceeding including, without limitation, reasonable attorneys' fees, arbitrators' fees and out-of-pocket expenses incurred in connection with the arbitration hearing and all pre-hearing proceedings between the parties in such manner as the arbitrator(s) may determine to be reasonable and equitable in light of the out come of the arbitration proceeding.

XVI. General Provisions

16.1 Liability of Members. Except as otherwise provided under the Act, (a) the debts, obligations, and liabilities of the Company, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the Company, and (b) none of the Members, Managers or officers shall be personally liable for any judgment, decree, or order of a court, or in any other manner of any debt, obligation, or liability of, the Company solely by reason of

being a Member, Manager, or officer.

16.2 Partnership ONLY Intended for Tax Purposes. The Members have formed the Company under the Act, and expressly do not form a partnership under any Ohio Partnership Acts. The Members do not intend to be partners with one another or partners as to any third party. To the extent any Member represents to another person in any manner that any Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to the Company and to such other Members for any loss, damage, or liability caused by such wrongful representation.

16.3 Amendments. This Agreement may be amended by written approval of a majority of the membership interests.

16.4 Severability. Every provision of this Agreement is severable. If any term or provision hereof is illegal, invalid, or unenforceable for any reason, such illegality, invalidity, or unenforceability shall not affect the validity, legality, or enforceability of the remainder of this Agreement.

16.5 Governing Law. This agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

16.6 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Members and their respective successors and assigns.

16.7. Captions. The captions contained in this Agreement are for reference purposes only and are not intended and shall not be deemed to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

IN WITNESS WHEREOF, the initial Members of the Company have caused this Agreement to be executed as of the day and year first above written.

_____, LLC

By:_____ Date:_____
Name
Title: Manager & Founding Member

ANNEX A

Name and Address of Each Member	Membership Interest	Percentage Interest

ANNEX B

PAYMENT TERMS

Payment of the purchase price shall be as follows:

(i) On the closing date of the purchase, the purchasers shall deliver to the selling Member a cash down payment equal to 20% of the total purchase price.

(ii) The balance of the total purchase price shall be paid in accordance with the terms of a 4-year promissory note with the following payment terms:

(1) interest only shall be payable on each of the first 8 quarterly installments following the closing date.

(2) the next 8 quarterly installments shall be comprised of a principal payment equal to one-eighth of the original principal balance of such promissory note and all accrued and unpaid interest thereon.

ANNEX C

FAIR MARKET VALUE

(a) Fair Market Value of the Company's shares will be determined by an independent appraiser of recognized standing (an "Appraiser"), the identity of which shall be mutually agreed upon by the selling Members and purchasing Members (or their respective personal representatives). In the event that the parties are unable to agree upon the identity of the Appraiser for a period of fifteen (15) days following an

event requiring a valuation of Membership Interests, the American Arbitration Association in Columbus, Ohio shall appoint the Appraiser.

(b) The Appraiser shall arrive at the Fair Market Value of the Membership Interests being transferred, which value shall be determined as of the date of the event triggering the purchase and sale of Membership Interests under the Agreement. Notwithstanding the foregoing, the Appraiser may consider the effect, if any, that the triggering event has had or will in the foreseeable future have on the value of the Membership Interests.

(c) In reaching his or her determination of Fair Market Value, the Appraiser shall rely on the accounting records or related financial statements of the Company for the period as of the date on which the determination is made. The Appraiser may make appropriate adjustments to such records and statements to reflect:

(i) corrections or errors; and

(ii) the application of sound accounting principles which have been consistently followed.

The Appraiser may further adjust such records and statements up or down, as the case may be to reflect:

(i) the current market value of all securities then owned by the Company as compared with the book value thereof;

(ii) unrealized capital gains or losses;

(iii) appropriate accruals for all taxes (including all taxes based on income), bonuses and all other employee compensation (including compensation determined and payable after the end of the then current fiscal year);

(iv) reserves for contingent liabilities and any other reserves which the Appraiser may deem proper, and all other items of income and expense attributable to the period ending on the date as of which the determination is made;

(v) any value which may have been fixed by the Appraiser of the Company for customers' lists, records and files and goodwill pertaining to the name or business of the Company;

(vi) the elimination as an asset of the Company the proceeds of any key-may life insurance policy held by the Company.

In determining Fair Market Value, the Appraiser may also include discounts in the value of the Membership Interests due to lack of marketability, minority ownership and any other factor commonly used to discount shares of a closely held corporation

similarly situated to the Company.

(d) The Appraiser may rely on the advice of the Company's financial advisors, accountants, legal counsel and other advisors in reaching its determination. The Appraiser may also, to the extent that he deems such reliance to be prudent, rely upon the valuation methods approved by the Company in past activities where a valuation of Membership Interests was performed.

(e) The determination of Fair Market Value by the Appraiser shall be conclusive and binding upon the Members and the Company, their successors, assigns, heirs, executors and administrators.

ANNEX D

FINANCIAL AND TAX MATTERS

B.1. Definitions. In addition to the terms defined in other provisions of this Agreement, including without limitation section 1.01, the following terms shall have the meanings set forth below:

"Adjusted Capital Account Deficit" shall mean with respect to any Member, the deficit balance, if any, in the Member's Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments (i) increasing the Capital Account by any amounts that the Member is obligated to restore or is deemed to be obligated to restore pursuant to Treas. Reg. §§ 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1), and 1.704-2(i)(5); and (ii) reducing the Capital Account by the items described in Treas. Reg. §§ 1.704-1(b)(2)(ii)(d)(4), (5), and (6). The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treas. Reg. § 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Business Day" means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of Ohio are closed.

"Company Minimum Gain" has the same meaning as "partnership minimum gain" set forth in Treas. Reg. §§ 1.704-2(b)(2) and 1.704-2(d).

"Depreciation" shall mean for each taxable year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such year or other period, 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 year or other period, 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 year or other period bears to

such beginning adjusted tax basis; provided, however, that if the federal income tax depreciation, amortization, or other cost recovery deduction for such year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager, and if the Company uses the "remedial allocation method" under Treas. Reg. § 1.704-3(d) with respect to any asset, Depreciation for that asset shall be computed in accordance with Treas. Reg. § 1.704-3(d)(2).

"Excess Non-recourse Liabilities" has the same meaning as set forth in Treas. Reg. § 1.752-3(a)(3).

"Gross Asset Value" with respect to any asset shall mean the asset's adjusted basis for federal income tax purposes, except as follows:

(1) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of the asset, as determined by the contributing Member and the Company.

(2) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Manager, as of the following times:

(i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis contribution of money or other property;

(ii) the distribution by the Company to a Member of more than a de minimis amount of money or other property as consideration for an interest in the Company;

(iii) the liquidation of the Company for federal income tax purposes within the meaning of Treas. Reg. § 1.704-1(b)(2)(ii)(g);

except that the adjustments pursuant to clauses (i) and (ii) above shall be made only if the Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company.

(3) The Gross Asset Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution.

(4) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of those assets pursuant to Code § 734(b) or Code § 743(b), but only to the extent that the adjustments are taken into account in determining Capital Accounts pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(m) and section B.2, except that Gross Asset

Values shall not be adjusted pursuant to this paragraph (4) to the extent the Manager determines that an adjustment pursuant to paragraph (2) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (4).

(5) If the Gross Asset Value of an asset has been determined pursuant to paragraphs (1), (2), or (4), that Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to that asset for purposes of computing Profits and Losses.

"Member Non-recourse Debt" has the same meaning as "partner Non-recourse debt" set forth in Treas. Reg. §§ 1.704-2(b)(4) and 1.704-2(i).

"Member Non-recourse Debt Minimum Gain" shall have the same meaning as "partner Non-recourse debt minimum gain" set forth in Treas. Reg. § 1.704-2(i) and shall be determined in accordance with the principles of that section.

"Member Non-recourse Deductions" has the same meaning as "partner Non-recourse deductions" set forth in Treas. Reg. §§ 1.704-2(i)(1) and 1.704-2(i)(2).

"Non-recourse Deductions" are deductions having the meaning set forth in Treas. Reg. §§ 1.704-2(b)(1) and 1.704-2(c).

B.2. Preparation and Maintenance of Capital Accounts.

(a) The Capital Account for each Member shall:

(1) be increased by (i) the amount of money contributed by that Member to the Company, (ii) the fair market value of property contributed by that Member to the Company (net of liabilities secured by the contributed property that the Company is considered to assume or take subject to under section 752 of the Code), and (iii) allocations to that Member of Profits and any other Company income and gain (or items thereof), including income and gain exempt from tax and income and gain described in Treas. Reg. § 1.704-1(b)(2)(iv)(g), and

(2) be decreased by (i) the amount of money distributed to that Member by the Company, (ii) the fair market value of property distributed to that Member by the Company (net of liabilities secured by the distributed property that the Member is considered to assume or take subject to under section 752 of the Code), and (iii) allocations of Losses and any other Company loss and deduction (or items thereof), including loss and deduction described in Treas. Reg. § 1.704-1(b)(2)(iv)(g).

(b) The Members' Capital Accounts also shall be maintained and adjusted as permitted by the provisions of Treas. Reg. § 1.704-1(b)(2)(iv)(f) and as required by the other provisions of Treas. Reg. §§ 1.704-1(b)(2)(iv) and 1.704-1(b)(4), including

adjustments to reflect the allocations to the Members of depreciation, depletion, amortization, and gain or loss as computed for book purposes rather than the allocation of the corresponding items as computed for tax purposes, as required by Treas. Reg. § 1.704-1(b)(2)(iv)(g). On the transfer of all or part of a Membership Interest, the Capital Account of the transferor that is attributable to the transferred Membership Interest or part thereof shall carry over to the transferee Member in accordance with the provisions of Treas. Reg. § 1.704-1(b)(2)(iv)(1).

B.3. Profits. After giving effect to the special allocations set forth in sections B.5 and B.6, Profits for any taxable year shall be allocated to the Members in proportion to their Percentage Interests.

B.4. Losses. After giving effect to the special allocations set forth in sections B.5 and B.6, Losses for any taxable year shall be allocated as set forth in paragraph (1) below, subject to the limitation in paragraph (2) below.

(1) Losses for any taxable year shall be allocated to the Members in proportion to their Percentage Interests.

(2) The Losses allocated pursuant to paragraph (1) will not exceed the maximum amount of Losses that can be so allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any taxable year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to paragraph (1), the limitation set forth in this paragraph (2) will be applied on a Member-by-Member basis so as to allocate the maximum permissible Losses to each Member under Treas. Reg. § 1.704-1(b)(2)(ii)(d).

B.5. Special Allocations. The following special allocations will be made in the following order:

(1) Minimum Gain Chargeback. Notwithstanding any other provision of this Annex B, if there is a net decrease in Company Minimum Gain during any Company taxable year, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in accordance with Treas. Reg. § 1.704-2(f). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. This section B.5(1) is intended to comply with the minimum gain chargeback requirement in Treas. Reg. § 1.704-2(f) and is to be interpreted consistently therewith.

(2) Member Minimum Gain Chargeback. Notwithstanding any other provision of this Agreement except section B.5(1), if there is a net decrease in Member Non-recourse Debt Minimum Gain attributable to a Member Non-recourse Debt during any Company taxable year, each Member who has a Membership Interest of the Member Non-recourse Debt Minimum Gain attributable to such Member Non-recourse Debt, determined in accordance with Treas. Reg. § 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in

accordance with Treas. Reg. § 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Reg. § 1.704-2(i)(4). This section B.5(2) is intended to comply with the minimum gain chargeback requirement in Treas. Reg. § 1.704-2(i)(4) and shall be interpreted consistently therewith.

(3) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treas. Reg. § 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) that would create an Adjusted Capital Account Deficit for such Member, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this section B.5(3) shall be made if and only to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Agreement have been tentatively made as if this section B.5(3) were not in the Agreement.

(4) Gross Income Allocation. In the event any Member has an Adjusted Capital Account Deficit at the end of any Company taxable year, each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this section B.5(4) shall be made if and only to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Agreement have been tentatively made as if section B.5(3) and this section B.5(4) were not in the Agreement.

(5) Non-recourse Deductions. Non-recourse Deductions for any taxable year or other period shall be allocated among the Members in proportion to their respective Percentage Interests.

(6) Member Non-recourse Deductions. Any Member Non-recourse Deductions for any taxable year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Non-recourse Debt to which such Member Non-recourse Deductions are attributable in accordance with Treas. Reg. § 1.704-2(i).

(7) Excess Non-recourse Liabilities. The Excess Non-recourse Liabilities of the Company shall be allocated among the Members in accordance with their respective Percentage Interests.

B.6. Curative Allocations. The allocations set forth in section B.4(2) and in section B.5 (the "Regulatory Allocations") are intended to comply with certain requirements of Treas. Reg. § 1.704-1(b). Notwithstanding any other provisions of this Agreement (other than the Regulatory Allocations), the Regulatory Allocations will be taken into account in allocating Profits, Losses, and items of income, gain, loss, and

deduction among the Members so that, to the extent possible, the net amount of such allocations of Profits, Losses, and other items and the Regulatory Allocations to each Member will be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred. Notwithstanding the preceding sentence, Regulatory Allocations relating to (i) Non-recourse Deductions shall not be taken into account except to the extent that there has been a reduction in Company Minimum Gain, and (ii) Member Non-recourse Deductions shall not be taken into account except to the extent that there has been a reduction in Member Non-recourse Debt Minimum Gain.

B.7. Tax Allocations: Code Section 704(c).

(a) In accordance with Code § 704(c) and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value.

(b) In the event the Gross Asset Value of any Company asset is adjusted pursuant to paragraph (2) of the definition of Gross Asset Value, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code § 704(c) and the Treasury Regulations thereunder.

(c) Any elections or other decisions relating to allocations pursuant to this section B.7 shall be made by the Manager in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this section B.7 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or Membership Interest of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

B.8. Miscellaneous Allocation Provisions.

(a) For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Manager using any permissible method under Code § 706 and the Treasury Regulations promulgated thereunder.

(b) Except as otherwise provided in this Agreement, all items of Company income gain, loss, deduction, and any other allocations not otherwise provided for shall be divided among the Members in the same proportions as they Membership Interest Profits or Losses, as the case may be, for the year.

B.9 Allocations on Dissolution. Notwithstanding any other provision of this Agreement to the contrary, in the event of a dissolution of the Company, a sale or exchange of all or substantially all of its assets, or a conversion of the Company to a corporation, Profits and Losses for the taxable year that includes such event shall be allocated among the Members in such manner as to cause their Capital Accounts, as closely as possible, to be proportionate to their Percentage Interests.