

LLC vs. S-Corporation



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LLC vs. S-Corporation



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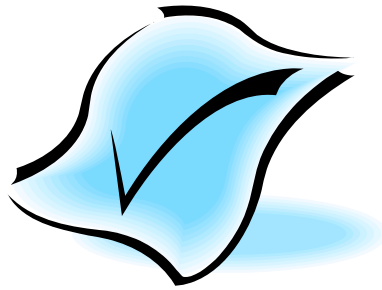
LLC vs. S-Corporation

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JUSTIN S. DANIELS is a shareholder with the firm Wagner Johnston & Rosenthal, P.C. His corporate practice consists of representing businesses and business owners in all aspects of their operations from structuring new ventures, advising on acquisitions and divestitures to reviewing and negotiating key vendor, franchise, employment and customer contracts. He has represented a variety of clients in the manufacturing, retail, professional services, consulting and technology industries. Mr. Daniels' commercial real estate practice consists of representing investor syndicates and commercial developers who acquire, develop, finance and sell commercial real estate. He has advised investor syndicates and commercial developers in the retail, industrial, office, apartment building and residential subdivision market segments. Mr. Daniels is a frequent writer on commercial real estate topics and has published articles that include "Finding the Right Title," "The LLC versus the S-Corp," "Underappreciated Commercial Lease Provisions" and "Breaking Up Is Hard To Do Thinking About Exit Strategies at The Outset." He also practices in the health care industry representing business entrepreneurs and commercial developers servicing the healthcare profession. Mr. Daniels has assisted with the acquisition of medical office buildings and suites as well as the negotiation of key supplier and vendor contracts with health care companies. He also has specific expertise advising healthcare professionals and firms on the enforceability of non-compete covenants and has attended and successfully concluded several mediations to resolve non-compete disputes. Mr. Daniels has been recognized as a Rising Star by the Georgia Super Lawyer in 2006 and 2007. He earned a B.A. degree in political science from Virginia Tech University and a J.D. degree and an M.B.A. degree from Duquesne University.



Polling Question #1

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I. LLC and S CORPORATION BASICS

A. Why Incorporate?

1. **Limited liability.** The most important reason to form an entity is the limited liability protection provided to the owners. Since a corporation or LLC is considered a separate legal entity, the owners have limited liability for the entity's debts. The personal assets of the owners are generally not at risk for satisfying entity debts or liabilities.

2. **Tax treatment.** LLC and S-corporations are typically structured as pass through entities for tax purposes and the entity pays no taxes.

3. **Investment.** The stock structure of an entity makes it attractive to investors and allows them to have an ownership interest in the entity.

4. **Stock, Stock Options and Phantom Stock.** The stock or membership interest structure also allows corporations or LLC's to attract key and talented employees by offering them ownership in the form of stock, stock options or phantom stock.

5. **Owner/employee.** A business owner who works in his or her own business can be an employee and thus be eligible for reimbursement or deduction of many types of expenses, including health and life insurance.

6. **Management Structure.** Corporations and LLC's have a set management structure. The owners are shareholders or members, who elect a Board of Directors or Board of Managers, which then elects officers. Other than the election of directors or a Board of Managers, shareholders/members do not typically participate in the operation of the entity unless otherwise provided for in a shareholder or operating agreement. The Board of Directors or Managers is responsible for managing and exercising the rights and responsibilities of the corporation or LLC. The Board is the steward of the corporation or

LLC and sets the policy and strategy. The Board also elects the officers — usually a CEO, vice president and secretary — to implement the corporate strategy of the board and manage the corporation on a day to day basis. In smaller organizations the same people usually are the owners, board and officers of the entity.

7. **Perpetual existence.** An entity continues to exist until the owners decide to dissolve it or merge with another business.

8. **Freely Transferable Shares or Interest.** Shares of the corporation or a Membership Interest in an LLC, subject to the Federal and state securities laws and shareholder or operating agreements, can be freely transferable to another person or entity. An entity continues to exist as a separate entity, and is not terminated or dissolved even when the owners die or sell their shares.

B. **WORKING OUT OPERATIONAL ISSUES.**

The most important corporate document a corporation or LLC has is its shareholder agreement or operating agreement. The shareholder/operating agreement is typically where operational issues are resolved by the owners of the company. The following is a discussion of the most important issues that the company owners should consider in connection with the operation of the business.

1) Limitations on Corporate Authority. Owners should consider what actions of the entity cannot be authorized without a majority or supermajority approval of the owners. Such decisions may include:

- i. Issuance of additional stock.
- ii. executing any contract binding the entity to expend more than \$100,000.
- iii. Amendment to compensation or other employment terms of the owners.
- iv. Bylaw Amendments in a corporation.
- v. Amendments to the Articles of Incorporation/Organization.
- vi. Merger, consolidation, liquidation or dissolution of the entity.

- vii. Disposition of more than 50% of the company's assets.
- viii. Loans by the company to third parties (including owners)
- ix. Dividends or other distributions to owners.
- x. Making or approving the annual budget.
- xi. Making or authorizing expenditures which exceed a budgeted line item amount.
- xii. changing the company's primary business.
- xiii. Retaining accounting and legal services. and
- xiv. Hiring and firing of non-owner employees

2) Election of Board of Directors/Board of Managers

- i. How many members will be on the board, who elects them, how are such members replaced.
- ii. In the event there are an even number of board members (2, 4 or 6) how are deadlocks resolved? This can be done by the owners agreeing to give the dispute to a neutral third party the owners trust who will render a decision that binds the parties. Where two owners are also members of the board, there can be a Texas shootout provisions where one party has the right to demand a buyout for a certain price and the recipient of this demand can choose to either purchase the other owners' membership interest/shares or sell his or her membership interest to the other owner.

3) Right of First Refusal of the company or other owners to purchase membership interest/shares of the owner who just wants out or prior to the sale of such owner's membership interest/shares to a third party

- i. How long does the company or owners have to exercise such right?
- ii. The third party must make a bonafide offer to purchase such shares.

- iii. What purchase price is used for the buyout?
 - a) the third party purchase price (if applicable).
 - b) the price arrived at by an appraiser or valuation expert hired by the corporation as stated in the shareholder/operating agreement.
 - c) the book value of the assets.
 - d) an agreed upon formula used to calculate the purchase price
- iv. Payment method of purchase price. Cash/Note or combination of the two. Remember, a lump sum cash payment can significantly impact the company's cash flow if a million dollars is set aside for a buyout. That is why you typically see such payments in the form of a promissory note or a small down payment with the remainder paid pursuant to a note.

4) Required redemption of membership interest/shares upon death of an owner by Company or other owners.

- i. Who has the right to redeem the membership interest/shares of the company or the other owners. This is many times driven by the tax ramifications as a result of whether the company or owner purchases the membership interest/shares.
- ii. What purchase price is used for the buyout?
 - the price arrived at by an appraiser or valuation expert hired by the company as stated in the shareholder/operating agreement.
 - the book value of the assets.
 - an agreed upon formula used to calculate the purchase price
- iii. Payment method of purchase price. Cash/Note or combination of the two.

- iv. Defining what a disability is that triggers the mandatory redemption. Many times the definition from the disability policy for such owner is used.

5) Drag Along/Tag Along rights. In many technology companies or other fast growing companies you may want to address Drag Along/Tag Along Rights. Drag along rights is the right of an owner who wishes to sell his membership interest/shares to a third party to “drag along” or require that the other owners sell their membership interest/shares as well on the same terms and conditions. This typically happens if the 75% owner wants to be able to compel the 25% percent owner to also sell his or her membership interest/shares to a buyer who will only acquire 100% of the membership interest/shares of the company. Tag along rights is the opposite, it allows a 25% owner to “tag along” and sell his membership interest/shares as well if the 75% owner is selling his membership interest/shares to a third party on the same terms and conditions as the 75% owner.

6) Restrictive Covenants. State law on non competes and non solicitation can vary greatly from state to state. Georgia law has a middle tier scrutiny for non competition and non solicitation provisions that appear in shareholder/operating agreements as opposed to strict scrutiny (and most difficult to enforce) found in the typical employer employee scenario. Georgia furthermore, will not blue pencil, meaning the provisions on non competes and non solicitation are enforceable or they are completely thrown out. A court will not rewrite them. In Florida, a state statute applies to non competes and non solicitation that is far more friendly to business since Florida does apply the judicial blue pencil to rewrite overbroad provisions. Thus, depending on how your state law is interpreted in this area, your clients must carefully consider whether they wish to add such provisions to the shareholder/operating agreement along with applicable confidentiality and trade secret provisions.

II DRAFTING ENTITY FORMATION DOCUMENTS FOR THE CORPORATION.

- A. Corporation: The typical corporation requires the following formation documents:
1. Articles of Incorporation;
 2. Bylaws;
 3. Statement of the Incorporator;
 4. Subscription Agreement;
 5. Organizational minutes;
 6. IRS form SS-4 (Application for Employer Identification Number);
 7. IRS form 2553 (S Election);
 8. stock certificate(s); and
 9. Shareholder Agreement.
- B. Articles of Incorporation: This document is filed with the appropriate Secretary of State and contains at least the basic incorporation information required under such state law.
- C. Bylaws. This document describes the general operational rules of the corporation. It discusses shareholder meetings and voting, election, voting and powers of the board of directors and officers and other pertinent corporate governance matters.
- D. Statement of the Incorporator. This document is executed by the person who incorporated the incorporation and it authorizes the election of a board of directors who shall complete the organization of the corporation.
- E. Subscription Agreement. This agreement memorializes the issuance of stock to each corporate shareholder. It is signed by the shareholder and an officer of the company. It contains the number of shares to be issued, the purchase price, and representations and warranties of the shareholder related to the shares that must be

made to comply with Federal and state securities laws.

- F. **Organizational Minutes.** These minutes memorialize the initial organization of the corporation. The document is typically executed by the board of directors and authorizes the corporate bylaws, issuance of initial stock to shareholders, the number and members of the board of directors, election of officers and any other pertinent organizational matters.

- G. **IRS Form SS-4.** This is the IRS form that must be filled out in order to receive the corporation's Federal Tax Identification number. This number is critical as it is needed to obtain a bank account and will be asked for anytime the corporation interacts with banks and pays its payroll or other tax obligations. You can obtain your EIN online by filling out the online SS-4 form provided at the IRS website (www.irs.gov). Once you properly complete the form the IRS will automatically issue Employer Identification Number or (EIN) but you should maintain a signed SS-4 for your records.

- H. **IRS form 2553 (S Election).** Many privately held corporations may elect to be treated as a pass through entity for tax purposes, meaning all tax benefits and burdens pass directly to the shareholders while the corporation does not pay any taxes. If your new corporation qualifies for this election, it should be filed no later than two months and fifteen days from its incorporation date. In order to qualify for this election, the corporation must meet certain rules as follows:
 - i. It must be a domestic corporation;
 - ii. There must not be more than 100 shareholders;
 - iii. Its shareholders are individuals, estates or other exempt organizations such as 501(c)(3) corporations or certain trusts;
 - iv. There are no nonresident alien shareholders (i.e. foreign nationals);

and

- v. There is only one class of stock disregarding differences in voting rights.

I. Stock Certificate. Certificate evidencing a shareholder's ownership of corporate stock.

J. Shareholder Agreement. This is the contractual agreement among the shareholders regarding the management of the corporation and restrictions on the transfer of company shares. In a company owned by multiple shareholders, this agreement is the most important corporate document. It addresses who will manage the corporation and how it will be managed. It also contains the key provision regarding the transfer of shares that most business people refer to as the "buy-sell provision".

III Identifying Required Documents for the Limited Liability Company ("LLC")

A. LLC: The typical LLC requires the following formation documents:

1. Articles of Organization;
2. Operating Agreement;
3. Organizational Minutes; and
4. IRS form SS-4 (Application for Employer Identification Number).

B. Articles of Organization: This document is filed with the appropriate secretary of state containing the required incorporation information in your state.

C. Operating Agreement: In a single member LLC, this document is optional since there is only one owner. In the absence of a written operating agreement, many state LLC codes provide default rules for the LLC operations and management. In multi member LLC's, the operating agreement is the most critical document of

- the entity. It essentially combines the corporate bylaws, subscription agreement and shareholder agreement into one document. When you review an operating agreement, the terminology is a little different: shareholder = member and the board of directors = manager or board of managers.
- D. Organizational Minutes. These minutes memorialize the initial organization of the LLC. The document is typically executed by the manager and may authorize the election of officers and any other pertinent organizational matters. This document is found more typically when there is a single member LLC and not when there is a multi member LLC. In the case of the multi member LLC, such organizational matters are treated in the operating agreement.
- E. IRS Form SS-4. This is the same IRS form that is filled out by corporations. LLC's, however, typically choose to be disregarded for tax purposes if there is only one member. In the case of a multi member entity, the LLC is usually taxed as a partnership. Single member LLC's are eligible to be treated as S-corporations for tax purposes, however, you must be very careful in understanding the S election rules because you may inadvertently terminate the S election by actions the LLC takes at a later time. The actions may include adding new members who are not eligible S corporation shareholders or by changing how LLC profits and losses are allocated among the owners. S election termination can result in an IRS audit along with fines and penalties.

IV. Drafting Essentials Corporation

- A. Articles of Incorporation: This public record document usually must contain the following information at a minimum to be accepted for filing by the appropriate secretary of state but you should confirm any additional requirements your state may have.
- 1) corporate name;
 - 2) total number of authorized shares the corporation may issue;
 - 3) name, address and county of registered agent;
 - 4) name and address for each incorporator; and

5) initial principal office mailing address if different from the initial registered office.

- The articles should also contain a provision limiting the liability of directors to the corporation and its shareholders for actions taken as a director except for except for liability (i) for any appropriation, in violation of his duties, of any business opportunity of the corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for any transaction from which the director received an improper personal benefit.

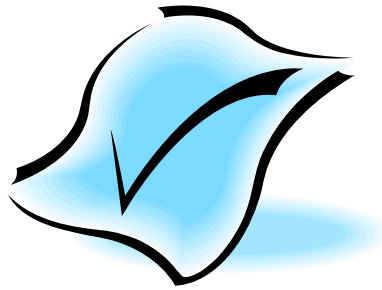
B. Bylaws. This document is typically divided into various categories that describe the operation of the company.

1. Shareholder Meetings: All the rules for the annual and special shareholder meetings are contained here. Properly drafted bylaws should deal with the following shareholder meeting issues:

- Time, place and location of annual and special meetings;
- Who has the power to call special shareholder meetings;
- The method and time period necessary for notifying shareholders of special and annual meetings;
- Specifically describe what constitutes the quorum necessary for the conduct of company business; and
- Language permitting a written consent to be used instead of a meeting where it is signed in writing by all the shareholders eligible to vote (in corporation's with few shareholders this makes it cheaper and unnecessary to call meetings where a consent can be signed).

2. Directors: All the rules for the board of directors are contained here. Properly drafted bylaws should deal with the following director issues:

- Who can serve as a director and the minimum number of members of the board of directors;
- What is the tenure of a board member and what shareholder vote is



Polling Question #2

What do you find to be the biggest challenge in your legal practice?

Press 991 for “meeting client expectations”

Press 992 for “dealing with opposing counsel”

Press 993 for “administrative challenges”

Press 994 for “other”

required to elect or remove a director from office;

- What happens if a vacancy on the board occurs as a result of a resignation, disability or death of a board member;
 - Who can call a special meeting of the board of directors;
 - How are executive committee's of the board created and what are the limitations on such committee's powers;
 - What is the quorum required for the board to transact its business; and
 - Language permitting a written consent to be used instead of a meeting where it is signed in writing by all the board members eligible to vote (in corporation's with few board members this makes it cheaper and unnecessary to call meetings where a consent can be signed).
3. Officers: All the rules for the officers are contained here. Properly drafted bylaws should deal with the following officer issues:
- Who elects the officers;
 - what are the various officer positions and an explanation of the duties of each officer; and
 - Flexibility to add assistant officer positions.
4. Miscellaneous: Bylaws also typically address other miscellaneous issues. Properly drafted bylaws should deal with these following issues:
- Fiscal year;
 - Indemnification for officers; and
 - Vote required to amend the bylaws.

V. Drafting Essentials LLC

A. Operating Agreement. The Articles of Organization for an LLC is a very streamlined document that contains only really basic information. A single member LLC, moreover, may not even need an operating agreement if it is incorporated in a state that provides for default rules and regulations. In a multi member situation, however, the operating agreement is the critical document. The operating agreement is divided into several sections that describe various aspects of the operation of the company.

1. Definitions. The operating agreement should define important concepts used throughout the document. Review the prototype operating agreement provided in the appendix to see these terms.
2. Management. The operating agreement must address the management of the company. A well drafted operating agreement should address these issues:
 - How many managers will the LLC have and the identity of those managers;
 - What powers do the manager(s) have or not have;
 - How are managers nominated, elected, removed and vacancies filled;
 - What constitutes a quorum for manager meetings and how do they vote;
 - What is the manager's standard of care for his duties to the LLC;
 - What decisions must be approved by the members of the LLC; and
 - How are manager's compensated.
3. Members Rights and Obligations. The operating agreement must address the rights and obligations of the Members. A properly drafted operating agreement should address these issues:
 - No member liability for LLC debts or obligations;
 - What management rights, if any, do members have in the LLC;
 - What are the mechanics for calling annual and special member meetings and what constitutes a quorum for member meetings and what percentage vote is required to decide issue brought to the members for a vote; and
 - What decisions must be approved by the members of the LLC.
4. Capital Contributions. These provisions address how cash and property are contributed to the LLC and other issues related to capital contributions. A properly drafted operating agreement should address these issues:
 - Identify the initial capital contributions of the members'
 - Determine the circumstances under which additional capital contributions may be required, if any;

- What is the process for enforcing the member obligations for additional capital contributions if the operating agreement provides for such additional capital contributions.
5. Distributions. These provisions address how cash and property are distributed to members of the LLC. A properly drafted operating agreement should address these issues:
- Who decides when distributions are made (i.e. the managers or the members);
 - What is the method for making the distribution; and
 - Is there a priority in the distributions that may mean members shall receive distributions that will satisfy the capital contributions made by the members first before additional distributions are made? This becomes very important when an LLC is formed by two people, one of whom is supplying the funds and the other the expertise. Refunding capital contributions benefits the member contributing the funds over the person contributing the expertise.
6. Allocating Profits and Losses. These provisions address how the taxable profits and losses of the LLC (not actual distribution of cash proceeds) are allocated among the members. A properly drafted operating agreement should address this issue:
- Are profits and losses allocated according to ownership percentages or what other basis is being used. LLC's taxed as partnerships permit the flexibility to allocate profits and losses on some basis other than ownership percentage but the IRS mandates that such allocation have some basis in the economic reality of the transactions (what is commonly referred to as substantial economic effect). Remember the tax rules here when using some basis for allocating profits and losses other than ownership percentage, they are very complicated and easily misapplied.

7. **Transfer of Membership Interest.** These provisions address the circumstances under which a member may transfer an ownership interest in an LLC. A properly drafted operating agreement should address these issues:
 - General prohibition on transfer of a membership interest;
 - Conditions where a transfer is allowed and the terms and conditions for authorizing the transfer to the new owner;
 - Depending on the business transaction, a right of first refusal for the transfer of the membership interest: this provision should include resolution of issues such as: the time period to exercise the right, the method for calculating the purchase price and the payment method;
 - Depending on the business transaction, a right to transfer the membership interest to a family member or other person based on estate planning considerations;
 - Depending on the business transaction, what will happen in the event of the death of a member, will there be an insurance policy with insurance proceeds to pay out the estate or will the deceased member's estate become an economic interest holder only entitled to the financial benefits and obligations of the LLC without any voting rights.
8. **Dissolution.** These provisions address the circumstances under which an LLC may be dissolved and the assets liquidated. A properly drafted operating agreement should address these issues:
 - Who decides when the LLC will dissolve (managers or members?);
 - What percentage vote is required to dissolve the LLC: unanimous, super majority or majority; and
 - What is the method for winding up the LLC, paying its debts and returning any remaining cash or property to the members.
9. **Miscellaneous.** These provisions address the miscellaneous provisions. A properly drafted operating agreement should address these issues:

- What percentage vote is required to amend the operating agreement: unanimous, super majority or majority; and
- Dispute resolution clause such a mediation or arbitration.

VI. Sample Formation Documents and Forms for the Corporation (See Appendix)

VII. Sample Formation Documents and Forms for the LLC (See Appendix)

VIII Practical Drafting Considerations Corporation

- A. Articles of Incorporation: There are certain other provisions that you should consider adding to the articles given the client's goals for the business. These additional provisions could be any of the following:
1. provision prohibiting dilution of existing shareholders if new shares are issued to new shareholders.
 2. provision allowing the shareholders to act by written consent without holding a meeting if a majority necessary to pass the resolution consent in writing to such action. This reduces the need to call actual shareholder meetings where there is one or two majority shareholders along with minority shareholders and thus can save the company the time and expense of calling the meeting.
 3. The designation of one or more classes or series of shares if the company is being set up in mind to have venture capital funding in the near future.
- B. Bylaws and Shareholder Agreement. Many multi owner corporations contain special provisions in the shareholder agreement about who the shareholders shall elect to the board of directors who in turn elect the corporate officers. Special provisions like these found in the shareholder agreement should also be cross referenced in the bylaws since they also govern the operation of the corporation. These two complementary documents should also deal with important management issues such as what decisions require shareholder approval and how deadlock among the board of directors is resolved.

IX Practical Drafting Considerations LLC

A. General Drafting Considerations. The LLC is a streamlined organization that does not have very many organizational documents and most of them are very basic requiring little practical drafting consideration. All of the sophistication in the LLC comes from the drafting of the LLC operating agreement.

B. Operating Agreement. The real benefit in the LLC structure is the flexibility of its structure. Practical drafting considerations come into play when the parties want to really take advantage of the LLC's organization flexibility. Practical issues can take on the following forms:

1. Distribution of cash from LLC's can be drafted to provide returns on and payments of the initial capital contributions to the LLC before the members are paid any additional distributions. This can be a very useful technique when you represent an owner contributing the bulk of the cash to the venture who wishes to protect his investment. This provision can be substituted in lieu of a typical provision that makes distributions based on ownership percentage.
2. The LLC buy-sell provision may sometimes provide for a Texas shootout provision. In this provision a member may offer his interest to the other member for a certain price. The recipient of this offer may either accept it or sell his shares to the offering member for the same purchase price. This provision may also be used when owner's disagree on a major decision of the business.
3. The nature of the business may require the inclusion of confidentiality, non competition and non-solicitation provisions in the event a member departs and wants to compete against the company. It is critical that you properly assess what interest you wish to protect. Is it important to prevent your prior partner from competing against you or just soliciting your clients. This distinction is important as Georgia non compete law states that an overbroad non compete provision will also automatically invalidate an otherwise enforceable non solicitation provision. As a result, you may be better off having only a non

solicitation clause and foregoing a non-compete clause depending on the circumstances.

4. Sometimes clients want LLC's to look and feel a lot like corporations. You can draft operating agreement to have shares or classes of shares with very different voting rights.

X INDUSTRY SPECIFIC ISSUES IN DRAFTING LLC OPERATING AGREEMENTS OR A CORPORATE SHAREHOLDER AGREEMENT

A. Technology Companies

1. Intellectual Property Rights: The greatest value of these companies is usually its intellectual property rights. I can't tell you how many times I have come across companies who did not realize their patented technology or trademark was still held by an individual owner and not the company. This should be addressed possibly as an initial capital contribution or in an assignment agreement if required.

2. Drag along/tag along rights. As previously noted if a buyer wishes to acquire the stock of the company it will be important to have drag along/tag along rights so a dissident owner can not hold the company hostage or a majority owner cannot sell at a sweetheart price and cut out the minority.

3. Employee Compensation. Many start up technology companies make the mistake of giving equity to employees immediately even if they are only small minority owners. The company owners only later discover that this was a mistake when they wish to make corporate changes in the company only to find out they owe fiduciary duties to these employee minority owners under the applicable state corporate or LLC laws. Phantom stock, stock

options are usually better alternatives for the long term even if they cost more to set up initially. Great care should be given to understanding the tax consequences of such plans especially under Section 409A of the internal revenue code.

B. Family Owned Businesses

1. Succession Planning among family owners. Companies that have multiple family members who work for the company often times have ill defined succession planning in their operating/shareholder agreement. This lack of planning typically results in significant problems for the business as well as the family. Brothers and sisters may not be clear on who will be in what role once dad or mom retires. Dad or mom may intentionally not wish to plan for succession to avoid inevitable family discord if a son or daughter is unhappy with the decision and their place in the company pecking order. Unfortunately, this is a very touchy subject among family members that many wish to put off into the future with disastrous results.

2. Husband and Wife owned businesses. Husband and wives who own a business probably view a well defined buyout in their shareholder or operating agreement much like an pre nuptial agreement which it is. They think that there will not be any marital problems and why jinx a marriage and business by drafting such an agreement. In the current recession, however, financial strains are placing increasing strains on a marriage particularly one where the husband and wife own a struggling business together. The important drafting consideration in these circumstances is that divorce law, depending on the state, usually tries to do what is equitable when determining a property settlement. This means that a divorce court might decline to enforce a buy out

if the court thinks its terms are not equitable. Therefore, the buyout should be drafted as if the parties are arms length business partners.

3. Family owned businesses require that you be part lawyer, part mediator and part psychologist.

Family owned businesses typically have added emotion since the principals are related. You must clearly explain the risks of not having proper succession planning, buyouts, clear responsibilities of the board, etc. Many family businesses wish to leave these type issues unaddressed or vague. When a problem inevitably arises they wish they had been more thorough as the resulting problems in the business can also cause lasting rifts between family members.

C. Real Estate Transactions

1. Investor Issues: When you represent a passive investor in an office building be sure to confirm whether he or she is expected to make additional investments if required by the board or managers/directors. I have reviewed several transactions where the investor was not aware they were obligated to make additional capital contributions if required. You want to make sure the parties are clear on this point and the agreement is drafted appropriately to either permit additional capital calls or make clear the initial contribution is the only contribution.

2. Phantom Income and Tax Allocation Issues. A current trend in healthcare is that developers wish to give physician practice tenant's equity in the building. If you represent the practice, you want review the operating agreement to understand the benefits in ownership. Many physician's may not

realize they may be allocated income on profit of the LLC but not receive distributions from the LLC to pay the tax bill but instead come out of pocket for such liability. Developers may also try and include development fees and preferred returns as distributions to the developer prior to the physician owners receiving any compensation upon a sale. While this may be common, what may be less common are allocation provisions in the profit and loss section that put most of the tax burden upon a sale on the physician owners and not a proportionate share on the developer who also received a development fee and preferred return as well. A provision like this may also invite IRS scrutiny so it is wise to object to this provision and understand if such provision is allowable under the internal revenue code.

3. Management Issues

The operating agreement/shareholder agreement should address if owner approval is required for certain maintenance costs of the property. In a passive investor situation, it will likely be in the total discretion of management to decide how the property is maintained. In other circumstances, a significant investor may wish to be consulted if management wishes to redo the entire look of the shopping center to attract more desirable tenants at a cost of several hundred thousand dollars.

Sample Formation Documents and Forms for the Corporation

**ARTICLES OF INCORPORATION
OF**

_____, **INC.**

I.

The name of the corporation is: _____, Inc.

II.

The corporation is organized pursuant to the Georgia Business Corporation Code for the purpose of engaging in such businesses as may be approved by the Shareholders where permitted by the laws of the State of Georgia, and to do all things necessary and pertinent to such types of business.

III.

The corporation shall have authority to issue not more than _____ shares of common stock, no par value.

IV.

The initial registered office of the corporation shall be at _____ . The initial registered agent of the corporation shall be _____ .

V.

The name and address of the incorporator is: _____ .

VI.

The mailing address of the initial principal office of the corporation is: _____ .

VII.

A Director of this Corporation shall not be personally liable to the Corporation or its Shareholders for monetary damages for breach of fiduciary duty as a Director, except for liability (i) for any appropriation, in violation of his duties, of any business opportunity of the Corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for the type of liability set forth under Section 14-2-832 of the Georgia Business Corporation Code, or (iv) for any transaction from which the Director received an improper personal benefit.

If the Georgia Business Corporation Code is hereafter amended to authorize the further elimination or limitation of the liability of a Director, then the liability of a Director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Georgia Business Corporation Code, as so amended.

Any repeal or modification of the foregoing provisions of this Article Seven by the Shareholders of the Corporation shall not adversely affect any right or protection of a Director of the Corporation existing at the time of such repeal or modification.

The provisions of this Article Seven shall not be deemed to limit or preclude indemnification of a Director by the Corporation for any liability of a Director which has not been eliminated by the provisions of this Article Seven.

IN WITNESS WHEREOF, the undersigned executes these Articles of Incorporation, this ____ day of _____, 2007.

Attorneys for the Incorporator

By: _____

BYLAWS

OF

_____, **INC.**

ARTICLE ONE

CAPITAL STOCK

1.1 Certificates of common stock shall be numbered in the order in which they are issued. They shall be signed by the President or a Vice President and the seal of the Corporation shall be affixed thereto. Stock certificates shall be kept in a book and shall be issued in consecutive order therefrom. On the stub of each certificate shall be entered the name of the person owning the shares, the number of shares, and the date of issue. Certificates of stock exchanged or returned shall be cancelled by the Secretary or an Assistant Secretary and placed in their original place in the stock book.

1.2 Transfers of common stock shall be made on the books of the Corporation only by the direction of the person named in the certificate or by his attorney lawfully constituted in writing, and upon surrender of the certificate or certificates for such shares properly endorsed. The Corporation shall maintain at its principal place of business or registered office a record of the names and addresses of its shareholders and the number of shares held by each.

1.3 The holders of the common stock shall be entitled to one vote for each share of stock standing in their name.

ARTICLE TWO

SHAREHOLDERS' MEETINGS

2.1 The annual meeting of shareholders of the Corporation shall be on the 1st day in May of each year, or, if said day be a legal holiday, then on the next succeeding day not a holiday.

2.2 Annual or special meetings of shareholders may be held within or without the State of Georgia at such place and time as may from time to time be fixed by the Board of Directors or as may be specified in the notice of said meetings.

2.3 Special meetings of the shareholders may be called at any time by the President or any holder or holders of as much as twenty-five percent of the outstanding capital stock of the Corporation upon not less than ten nor more than sixty days notice, either mailed to the last known address or personally given to each shareholder. Notice of a special meeting may be waived by instrument in writing executed before or after the meeting. Attendance at such meeting in person or by proxy shall constitute a waiver of notice thereof. Notice of any special meeting of shareholders shall state the purpose or purposes for which the meeting is called.

2.4 At all meetings of shareholders a majority of the outstanding shares of common stock entitled to vote, represented in person or by proxy, shall constitute a quorum for the transaction of business, and all resolutions adopted and business transacted shall require the favorable vote of a majority of the shares represented at the meeting and entitled to vote. The holders of a majority of the shares of common stock represented at a meeting, whether or not a quorum is present, may adjourn such meeting from time to time.

2.5 Any action required to be, or which may be, taken at a meeting of the shareholders, may be taken without a meeting if written consent, setting forth the actions so taken, shall be signed

by all of the shareholders entitled to vote with respect to the subject matter thereof, except that, with respect to approval of a plan of merger or consolidation by written consent, information as required by the Georgia Business Corporation Code must be delivered to the shareholders prior to their execution of the consent or the consent itself must conspicuously and specifically waive the right to such information. Such consent shall have the same force and effect as a unanimous affirmative vote of the shareholders and shall be filed with the minutes of the proceedings of the shareholders.

ARTICLE THREE

DIRECTORS

3.1 Subject to these by-laws, or any lawful agreement between the shareholders, the full and entire management of the affairs and business of the Corporation shall be vested in the Board of Directors, which shall have and may exercise all of the powers that may be exercised or performed by the Corporation.

3.2 The Board of Directors of the corporation shall consist of at least one natural person of the age of eighteen (18) years or over. At each annual meeting, the shareholders shall fix the number of Directors and elect the Directors, who shall serve until their successors are elected or until resignation is accepted by the Board of Directors; provided that the shareholders may, by the affirmative vote at an election of Directors, increase or reduce the number of Directors and add or remove Directors with or without cause at any time.

3.3 The Directors may fill the place of any Director which may become vacant prior to the expiration of his term, such appointment by the Directors to continue until the expiration of the term of the Director whose place has become vacant.

3.4 The Directors shall meet annually immediately following the annual meeting of the

shareholders. Special meetings of the Directors may be called at any time by the President or by any two Directors, on two days' notice, which may be given personally or by first class mail, telegram or cablegram and shall be deemed given when mailed or when the telegram or cablegram is sent, addressed to the director at his address as it appears on the stock records of the Corporation or if he is not a shareholder, to his business address. Notice of any such meeting may be waived by an instrument in writing. Attendance in person at such meeting shall constitute a waiver of notice thereof. Any meeting of the Board of Directors may be held within or without the State of Georgia at such place as may be determined by the person or persons calling the meeting.

3.5 Any action required or permitted to be taken at a meeting of the Board of Directors or any committee thereof may be taken without a meeting if written consent, setting forth the action so taken, is signed by all of the Directors or committee members and filed with the minutes of the proceedings of the Board of Directors or committee. Such consent shall have the same force and effect as a unanimous affirmative vote of the Board of Directors or committee, as the case may be.

3.6 Any Director may be removed from office, with or without cause, upon the majority vote of the shareholders at a meeting with respect to which notice of such purpose is given.

3.7 The Board of Directors, by resolution adopted by a majority of all of the Directors, may designate from among its members an Executive Committee and/or other committees, each composed of one or more Directors, which may exercise such authority as is delegated by the Board of Directors. Notwithstanding the foregoing, no committee shall have the authority of the Board of Directors with respect to (1) amending the Articles of Incorporation or By-Laws of the Corporation, (2) adopting a plan of merger or consolidation, (3) selling, leasing, exchanging or otherwise disposing of all or substantially all of the property and assets of the Corporation; or (4) voluntarily dissolving the Corporation or revoking same.

ARTICLE FOUR

OFFICERS

4.1 The Board of Directors shall elect a President, a Secretary and a Treasurer and may elect a Chairman of the Board, one or more Vice Presidents, or assistant officers. Any two or more offices may be held by the same person. The above officers shall serve at the pleasure of the Board of Directors.

4.2 The President shall be the chief executive officer of the Corporation and shall have general and active management of the operation of the Corporation. He shall be responsible for the administration of the Corporation, including general supervision of the policies of the Corporation, general and active management of the financial affairs of the Corporation, and shall execute bonds, mortgages or other contracts under the seal of the Corporation.

4.3 The Secretary shall keep minutes of all meetings of the shareholders and Directors and have charge of the minute books, stock books and seal of the Corporation and shall perform such other duties and have such powers as may from time to time be delegated to him by the President or the Board of Directors.

4.4 The Treasurer shall be charged with the management of the financial affairs of the Corporation and shall have the power to recommend action concerning the Corporation's affairs to the President.

4.5 Assistant officers shall have such duties as shall be delegated to them by the President or Board of Directors.

4.6 Any payments made to an officer of the Corporation such as a salary, commission, bonus, interest, or rent, or entertainment expense incurred by him, which shall be disallowed in whole or in part as a deductible expense by the Internal Revenue Service shall be reimbursed by such officer to the Corporation to the full extent of such disallowance. It shall be the duty of the Directors, as a Board, to enforce payment of each such amount disallowed. In lieu of payment by the officer, subject to the determination of the Directors, proportionate amounts may be withheld from his future compensation payments until the amount owed to the Corporation has been recovered.

ARTICLE FIVE

MISCELLANEOUS

5.1 The seal of the Corporation shall be as follows:

If the seal is affixed to a document, the signature of the Secretary or an Assistant Secretary shall attest the seal. The seal and its attestation may be lithographed or otherwise printed on any document and shall have, to the extent permitted by law, the same force and effect as if it had been affixed and attested manually. In the event it is inconvenient to use the seal at any time, the signature of the company followed by the word "Seal" enclosed in parenthesis or scroll, shall be deemed the seal of the Corporation.

5.2 All funds of the Corporation shall be deposited in the name of the Corporation in such bank, banks, or other financial institutions as the Board of Directors may from time to time designate and shall be drawn out on checks, drafts or other orders sign on behalf of the Corporation by such person or persons as the Board of Directors may from time to time designate.

5.3 All contracts, deeds and other instruments shall be signed on behalf of the Corporation by the President or by such other officer, officers, agent or agents as the Board of

Directors may from time to time by resolution provide.

5.4 The fiscal year of the Corporation shall be calendar.

ARTICLE SIX

INDEMNIFICATION

6.1 Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including any action by or in the right of the Corporation), by reason of the fact that he is or was a Director or officer of the Corporation, or is or was serving at the request of the Corporation as a Director or officer of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified by the Corporation against expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation (and with respect to any criminal action or proceeding, if he had no reasonable cause to believe his conduct was unlawful), to the maximum extent permitted by, and in the manner provided by, the Georgia Business Corporation Code.

ARTICLE SEVEN

AMENDMENT

The Board of Directors shall have the power to alter, amend or repeal the By-Laws or adopt new By-Laws, but any By-Laws adopted by the Board of Directors may be altered, amended or repealed and new By-Laws adopted by the shareholders. The shareholders may prescribe that any By-Law or By-Laws adopted by them shall not be altered, amended or repealed by the Board of Directors. Action by the Directors with respect to the By-Laws shall be taken by an affirmative vote of a majority of all of the Directors then in office. Action by the shareholders with respect to the By-Laws shall be taken by an affirmative vote of a majority of all shares outstanding and entitled to vote.

STATEMENT OF THE SOLE INCORPORATOR
OF

_____, **INC.**

The undersigned, the sole incorporator of _____, Inc., a Georgia corporation (the “Corporation”), pursuant to Section 14-2-205 of the Georgia Business Corporation Code, elects _____ as the initial director of the Corporation who shall complete the organization of the Corporation.

Sole Incorporator

SUBSCRIPTION AGREEMENT

To the Board of Directors of _____, Inc.:

The undersigned ("Purchaser") intends to purchase Ten Thousand (10,000) shares (the "Shares") of the Common Stock of _____, Inc., a Georgia corporation (the "Company") at an aggregate price of _____ (\$_____). Purchaser shall not make any sale, transfer or other disposition of the Shares in violation of the Georgia Securities Act of 1973, as amended (the "Georgia Act"), any other state securities act or the Rules and Regulations promulgated thereunder or in violation of the Securities Act of 1933, as amended (the "1933 Act") or the General Rules and Regulations promulgated thereunder by the Securities and Exchange Commission (the "SEC").

Purchaser understands and agrees Purchaser shall not be entitled to certificates for, nor be entitled to vote, the Shares hereby subscribed until the Shares are fully paid.

Purchaser agrees the Company may refuse to permit Purchaser to sell, transfer or dispose of the Shares unless there is in effect a registration statement under the Georgia Act, and any other applicable state act covering such transfer or Purchaser furnishes an opinion of counsel, satisfactory to counsel for the Company, to the effect such registration is not required. Purchaser further agrees the Company may refuse to permit Purchaser to sell, transfer or dispose of the Shares unless there is in effect a registration statement under the 1933 Act covering such transfer or Purchaser furnishes an opinion of counsel, satisfactory to counsel for the Company, to the effect such registration is not required under the 1933 Act.

Purchaser also understands and agrees that there will be placed on the certificates for the Shares, or any substitutions therefor, a legend stating in substance:

The shares evidenced by this certificate have been acquired for investment and have not been registered under the Georgia Securities Act of 1973 (the "Georgia Act") in reliance on the exemption contained in Subsection (13) of Code Section 10-5-9 of the Georgia Act, or under the securities act of any other state where an exemption from registration is available, or under the Securities Act of 1933 (the "1933 Act") in reliance on the exemption contained in Section 4(2) of the 1933 Act. These shares may not be sold or transferred except in transactions (a) registered under the 1933 Act or exempt from registration thereunder, (b) registered under or otherwise in compliance with the Georgia Act and any other applicable state act.

Purchaser represents and warrants to the Company:

1. Purchaser has carefully read this letter and has discussed its requirements and other applicable limitations upon Purchaser's resale of the Shares with Purchaser's counsel (or has been

given the opportunity to do so) and, to the extent Purchaser feels necessary, counsel for the Company.

2. Purchaser has been advised the Shares are not being registered under the Georgia Act on the ground this transaction is exempt from registration under Subsection (13) of code Section 10-5-9 of the Georgia Act, are not being registered under any other state act where an exemption from registration is available, and are not being registered under the 1933 Act on the ground this transaction is exempt from registration under Section 4(2) of the 1933 Act as not involving any public offering, and reliance by the Company on such exemptions is predicated in part on Purchaser's representations set forth in this letter.

3. Purchaser has been informed by the Company that (a) under the Georgia Act, the Shares must be held for at least one year unless they are sold or transferred in a transaction which is exempt under the Georgia Act or pursuant to an effective registration statement under the Georgia Act and (b) under the 1933 Act, the Shares must be held indefinitely unless they are subsequently registered under the 1933 Act or unless an exemption from such registration is available with respect to any proposed transfer or disposition by Purchaser of the Shares.

4. Purchaser represents and warrants Purchaser is acquiring the Shares for Purchaser's own account, to hold for investment, with no present intention of dividing Purchaser's participation with others or reselling or otherwise participating, directly or indirectly, in a distribution of the Shares.

Very truly yours,

Accepted as of the ____ day of _____, 2007.

By: _____
_____, Its President

**WRITTEN CONSENT TO ACTION TAKEN
BY THE BOARD OF DIRECTORS OF
_____, INC.**

July 16, 2007

The undersigned, being the persons appointed by the Sole Incorporator to be the initial directors of _____, Inc., a Georgia corporation (the "Corporation"), acting pursuant to Section 14-2-205 of the Georgia Business Corporation Code, do, in lieu of an organizational meeting, hereby consent to the actions set forth herein as of the above date.

ARTICLES OF INCORPORATION AND AGENT FOR SERVICE OF PROCESS

WHEREAS, the Articles of Incorporation of the Corporation were filed in the office of the Georgia Secretary of State on _____.

NOW, THEREFORE, BE IT RESOLVED that the Articles of Incorporation as set forth in the certified copy presented to the directors be, and the same hereby is, in all respects approved, and that all actions thereby shown to have been taken by the Sole Incorporator be, and the same hereby are, in all respects approved, ratified and confirmed.

FURTHER RESOLVED, that the agent named as the initial agent for service of process in the Articles of Incorporation of the Corporation is hereby confirmed as the Corporation's agent for the purpose of service of process and other lawful purposes.

FURTHER RESOLVED, that the Secretary of the Corporation insert a certified copy of the Articles of Incorporation in the Minute Book of the Corporation.

BYLAWS

WHEREAS, there has been presented to the Board of Directors a form of Bylaws for the regulation of the affairs of the Corporation.

WHEREAS, it is deemed to be in the best interests of the Corporation that said Bylaws be adopted by this Board of Directors as the Bylaws of the Corporation.

NOW, THEREFORE, BE IT RESOLVED, that Bylaws in the form presented to the Board of Directors are adopted and approved as the Bylaws of the Corporation until amended or repealed in accordance with applicable law.

FURTHER RESOLVED, that the Secretary of the Corporation is authorized and directed to execute a certificate of the adoption of said Bylaws, to enter said Bylaws as so certified in the

Minute Book of the Corporation, and to see that a copy of said Bylaws is kept at the principal executive or business office of the Corporation.

BOARD OF DIRECTORS

WHEREAS, the Bylaws of the Corporation authorize the number of directors to be one or more.

WHEREAS, _____ is appointed by the Sole Incorporator to be the initial director of the Corporation.

NOW, THEREFORE, BE IT RESOLVED, that the authorized number of directors shall be one (1) until changed by amendment of the Articles of Incorporation of the Corporation or by a Bylaw duly adopted by the Board of Directors or stockholders or by a resolution duly adopted by the Board of Directors or stockholders.

CORPORATE SEAL

RESOLVED, that a corporate seal is adopted as the seal of the Corporation in the form of two concentric circles, with the name of the Corporation between the two circles and the year of incorporation and the state of incorporation within the inner circle.

ELECTION OF OFFICERS

RESOLVED, that the following persons are unanimously elected to the offices indicated opposite their names:

<u>Title</u>	<u>Name</u>
President	_____
Secretary/Treasurer	_____

PAYMENT OF EXPENSES

RESOLVED, that each of the officers of the Corporation is authorized and directed to cause the Corporation to pay the expenses of its incorporation and organization.

LOCATION OF PRINCIPAL EXECUTIVE OFFICE

RESOLVED, that the principal executive office of the Corporation shall be located at:

ESTABLISHMENT OF FISCAL YEAR

RESOLVED, that the fiscal year of the Corporation shall end on December 31 of each year.

STOCK CERTIFICATE

RESOLVED, that the officers of the Corporation are instructed to prepare or cause to be prepared a form of stock certificate for use by the Corporation, and such stock certificate as is approved by the President of the Corporation is hereby adopted.

FURTHER RESOLVED, that the Secretary of the Corporation insert a sample copy of the stock certificate in the Minute Book of the Corporation immediately following this Written Consent to Action.

ISSUANCE OF STOCK

WHEREAS, it is deemed to be in the best interests of the Corporation to issue and sell shares of common stock to the persons in the amount and for the consideration set forth below:

Name	Number of Shares	Consideration
_____	_____	_____

NOW, THEREFORE, BE IT RESOLVED, that each of the officers of the Corporation is authorized and directed to issue and sell 10,000 shares of common stock of the Corporation to the persons, in the amount and for the consideration set forth above and to accept the Subscription Agreement(s) of _____ presented to the Board for the purchase of such shares.

FURTHER RESOLVED, that the shares issued and sold by the Corporation pursuant to the foregoing resolutions, when the purchase price therefor shall have been received by the Corporation, shall be duly and validly issued, fully paid and non-assessable shares, and the consideration received therefor shall be credited to the appropriate capital account of the Corporation.

TIME AND PLACE OF ANNUAL MEETING OF STOCKHOLDERS

RESOLVED, that the Annual Meeting of Stockholders shall be held on such date and at such time as may be fixed by the Board of Directors or the Bylaws.

GENERAL FILINGS

RESOLVED, that each of the proper officers of the Corporation is authorized and directed to make such filings and applications, to execute and deliver such documents and instruments and to do such acts and things as each such officer deems necessary in order to obtain such licenses, authorizations and permits as are necessary or desirable for the Corporation's business, to fulfill such legal requirements as are applicable to the Corporation or its business or to complete the organization of the Corporation.

BANK RESOLUTIONS

RESOLVED, that the President and Treasurer of the Corporation, acting separately or together, are hereby authorized:

- (a) To designate one or more banks, trust companies, or other similar institutions as depositories of the funds, including, without limitation, cash and cash equivalents, of the Corporation.
- (b) To open, keep and close general and special bank accounts, including general deposit accounts, payroll accounts and working fund accounts, with any such depository.
- (c) To cause to be deposited in such accounts with any such depository, from time to time, such funds, including, without limitation, cash and cash equivalents, of the Corporation as such officers deem necessary or advisable; and to designate or change the designation of the officer or officers and agent or agents of the Corporation who will be authorized to make such deposits and to endorse checks, drafts or other instruments for such deposit.
- (d) From time to time to designate or change the designation of the officer or officers and agent or agents of the Corporation who will be authorized to sign or countersign checks, drafts or other orders for the payment of money issued in the name of the Corporation against any funds deposited in any of such accounts, and to revoke any such designation.
- (e) To authorize the use of facsimile signatures for the signing or countersigning of checks, drafts or other orders for the payment of money, and to enter into such agreements as banks and trust companies customarily require as a condition for permitting the use of facsimile signatures.
- (f) To make such general and special rules and regulations with respect to such accounts as they may deem necessary or advisable.
- (g) To complete, execute and/or certify any customarily printed blank signature card forms in order conveniently to exercise the authority granted by this resolution and any resolutions printed thereon shall be deemed adopted as a part thereof.

FURTHER RESOLVED, that all form resolutions required by any such depository which have been presented to the directors are hereby adopted in such form utilized by the depository, and the Secretary of the Corporation is hereby authorized to certify such resolutions as having been adopted by this Written Consent to Action and is directed to insert the form of such resolutions in the Minute Book of the Corporation with the minutes of this Written Consent to Action.

SUBCHAPTER S ELECTION

RESOLVED, that the officers of the Corporation be, and they hereby are, authorized and directed to do all acts and to execute and file all papers, documents and instruments necessary to cause the Corporation to elect to be taxed as a Subchapter S corporation in accordance with Section 1362 of the Internal Revenue Code of 1986, as amended.

MISCELLANEOUS

RESOLVED, that each of the proper officers of the Corporation is authorized, directed and empowered on behalf of the Corporation and in its name to execute any applications, certificates, agreements or supplements thereto, or to do and to cause to be done any and all other acts and things as such officers may in their discretion deem necessary or appropriate to carry out the purposes of the foregoing resolutions.

IN WITNESS WHEREOF, the undersigned have executed this Written Consent to Action taken as of the date first above written, thereby agreeing that the foregoing resolutions shall be of the same force and effect as if regularly adopted at a meeting of the Board of Directors of the Corporation held upon due notice.

Sample Formation Documents and Forms for the LLC

**ARTICLES OF ORGANIZATION OF
COMPANY NAME**

I.

The name of the Limited Liability Company is _____, L.L.C.

II.

The name and address of the organizer is: _____.

IN WITNESS WHEREOF, the undersigned executes these Articles of Organization, this the
____ day of _____, 20____.

as Attorney for organizer

**CONSENT BY SOLE MEMBER IN LIEU
OF THE ORGANIZATIONAL MEETING OF
NEWCO, LLC.**

The undersigned, being the Sole Member of Newco, LLC, a Georgia limited liability company, by affixing his signature hereto, hereby consents to and hereby takes the following actions and adopts the following Resolutions pursuant to O.C.G.A. 14-10-309.

It appearing that the Articles of Organization of the Company were filed with and approved by the Secretary of State, and that a Certificate of Organization has been issued to the Company, it is resolved that:

(1) the Articles of Organization of the Company are adopted and approved and the Secretary is hereby directed to insert a certified copy of same in the minute book;

(2) the Operating Agreement was approved and the Sole Member shall execute same and the original placed into the minute book immediately following the Articles of Organization;

(3) the Company is authorized to establish a banking relationship with the banking institution designated by the Member;

(4) the officers, Sole Member and agents of the Company are authorized to take and do such further acts and deeds, and to execute and deliver, for and in the name of the Company, such other documents, papers and instruments as are necessary, appropriate, advisable or required in order to effectuate the purpose and intent of these resolutions, and the taking of any such acts, and the execution and delivery of any such documents, papers and instruments is hereby ratified and approved.

(5) The following officer shall serve for a term of one year, or until the successor is named, whichever later occurs:

_____, President and Secretary

Done this _____ day of January, 200_.

**OPERATING AGREEMENT
OF
NEWCO, LLC**

Atlanta, Georgia

_____, 200_

OPERATING AGREEMENT

OF

_____, LLC

THIS OPERATING AGREEMENT OF _____, LLC, is made and entered into effective as of the ___ day of _____, 200_, by and among those individuals listed on the signature page hereto (hereinafter sometimes referred to in the singular as a "Member" and collectively as the "Members").

W I T N E S S E T H:

WHEREAS, the Members have formed a Georgia limited liability company known as _____, LLC (the "Company"); and

WHEREAS, the Members wish to define the rights and obligations of the Members in accordance with the terms and provisions set forth in this Operating Agreement;

NOW, THEREFORE in consideration of the premises, and of the mutual promises, obligations, and agreements contained herein, the parties hereto, intending to be, and being, legally bound, do hereby covenant and agree as follows:

ANY SECURITIES CREATED BY THIS OPERATING AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE GEORGIA SECURITIES OF 1973, AS AMENDED, IN RELIANCE UPON THE EXEMPTION FROM REGISTRATION SET FORTH IN SECTION 10-5-9(13) OF SUCH ACT. IN ADDITION, ANY SECURITIES CREATED BY THIS OPERATING AGREEMENT HAVE NOT BEEN REGISTERED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION IN RELIANCE UPON AN EXEMPTION FROM SUCH REGISTRATION SET FORTH IN THE UNITED STATES SECURITIES ACT OF 1933 PROVIDED BY SECTION 4(2) THEREOF, NOR HAVE THEY BEEN REGISTERED UNDER THE SECURITIES OR BLUE SKY LAWS OF ANY OTHER JURISDICTION. THE INTERESTS IN THE COMPANY CREATED HEREBY HAVE BEEN ACQUIRED FOR INVESTMENT PURPOSES ONLY AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED, OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS OPERATING AGREEMENT, INCLUDING, WITHOUT LIMITATION, ARTICLE 9 HEREOF, AND IN A TRANSACTION WHICH IS EITHER EXEMPT FROM REGISTRATION UNDER SUCH ACTS OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACTS. THEREFORE, PURCHASERS OF THE INTERESTS IN THE COMPANY WILL BE REQUIRED TO BEAR THE RISK OF THEIR INVESTMENTS FOR AN INDEFINITE PERIOD OF TIME.

ARTICLE 1. GENERAL PROVISIONS

1.1 Definitions. Each capitalized term used in this Operating Agreement and not defined in the text hereof shall have the meaning set forth in Article 13 hereof.

1.2 Name. The name of the Company is _____, LLC. The Company may adopt such trade or business names as the Managers shall consider appropriate.

1.3 Purpose of Company. The purpose of the Company shall be to engage in any lawful activities that the Managers, in their sole discretion, deem appropriate. The Company shall have all powers necessary to, or reasonably connected with, the Company's business that may be legally exercised by limited liability companies under the Georgia Act.

1.4 Term. The term of the Company shall commence upon the filing for record of the Articles of Organization of the Company in the office of the Secretary of State of the State of Georgia. The term of the Company shall continue until the Company is dissolved, liquidated and terminated under Article 11 hereof.

ARTICLE 2. CAPITAL

2.1 Initial Capital Contributions by Members. Except as may otherwise be provided herein, or agreed upon by the Managers, upon the last to occur of the formation of the Company or the execution of this Operating Agreement, the Members shall contribute to the Company such amounts as set forth in EXHIBIT "A", attached hereto and made a part hereof.

2.2 Additional Capital Contributions by Members. In the event that at any time or from time to time, the Managers believe the Company is in need of additional capital, the Managers may propose a capital call by delivering a notice to each Member specifying (A) the total amount of the additional capital required, (B) the use to which such capital will be applied and (C) a request for approval of a capital call in such amount. To the extent that all of the Members approve a capital call, then within ten (10) days of such approval, the Managers shall send a notice ("Capital Call Notice") to each Member setting forth (i) the amount of the total capital call, (ii) the date the capital call was approved by the Members and (iii) such Member's pro-rata share of such capital call, such pro-rata share being equal to the Member's Economic Ownership Percentage. Each Member shall contribute in cash such Member's pro-rata share of the approved capital call within twenty (20) days following receipt of the Capital Call Notice.

2.3 Limit on Contributions and Obligations of Members. Except as expressly provided in this Article 2, the Members shall not be required or obligated (i) to make any Capital Contributions to the Company, (ii) to loan any money to the Company, or (iii) to endorse or to guaranty the payment or performance of any obligations of the Company.

2.4 No Third Party Beneficiaries. The obligations of the Members to make Capital Contributions to the Company are only for the benefit of, and are only enforceable by, the Company and the Members and shall not be for the benefit of, or be enforceable by, any other Person.

2.5 Capital Accounts. A Capital Account shall be established and maintained for each Member in accordance with Section 1.704-1(b)(2)(iv) of the Regulations. Except as specifically permitted pursuant to this Operating Agreement, no Member shall have the right to withdraw from the Company or make demand for withdrawal of any part of his Capital Account. No interest shall be paid by the Company with respect to any Capital Contribution or Capital Account balance.

2.6 Allocation of Liabilities. For purposes of determining the income tax basis of each Member's Interest in the Company, the liabilities of the Company shall be allocated among the Members pursuant to Regulations Section 1.752.

2.7 Negative Capital Accounts. The Members shall not be required to pay to the Company or to any other Member any deficit or negative balance that may exist from time to time in their respective Capital Accounts as a result of the provisions hereof for the allocation to the Members of the Company's Loss and for the distribution of Company property to the Members by the Company.

2.8 Member Guarantees. To the extent any lender or lessor to the Company requires that the Company indebtedness or other obligations to such lender or lessor be guaranteed by a Member, the Company shall indemnify such Member guarantying such indebtedness or other obligations against all losses, expenses and liabilities with respect to such guaranty.

2.9 Certificated Interests. In the discretion of the Managers, the Company may issue certificates to the Members of the Company which evidence the Interests in the Company. Any such certificates shall bear all necessary legends, including those regarding restrictions on Transfer in this Operating Agreement and appropriate securities laws.

ARTICLE 3. TAX MATTERS

Profits, Losses and other items of Company income, gain, loss and deduction shall be allocated each Allocation Year among the Members as follows:

3.1 Profits and Losses. After taking into account any special allocations pursuant to Section 3.2 below, Profits and Losses for each Allocation Year shall be allocated among the Members in proportion to their respective Economic Ownership Percentages.

3.2 Special Allocations. Notwithstanding any provision in this Operating Agreement to the contrary, the allocations contained in this Section 3.2 shall be made prior to any other allocations under Section 3.1 hereof and in the following order:

(a) Minimum Gain Chargeback. Notwithstanding any provision in this Article 3 to the contrary, (i) any deduction of the Company that is a "nonrecourse deduction" within the meaning of Section 1.704-2(c) of the Regulations shall be allocated pro rata among the Members in accordance with the respective Economic Ownership Percentage of each Member and (ii) if there is a net decrease in the Company's "minimum

gain" within the meaning of Section 1.704-2(d) of the Regulations for any Allocation Year, items of gain and income shall be allocated among the Members in accordance with the "minimum gain chargeback" rules contained in Section 1.704-2(f) of the Regulations. The Members' respective "interests in the Company's profits for purposes of determining such Members' shares of the nonrecourse liabilities" of the Company, within the meaning of Section 1.752-3(a)(3) of the Regulations, shall be their respective Economic Ownership Percentages. This Subsection 3.2(a) is intended to comply with the "minimum gain chargeback" provisions of the Regulations and shall be interpreted consistently therewith.

(b) Qualified Income Offset Allocation. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d) (4), (5), or (6) of the Regulations, 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 Regulations, the adjusted capital account deficit of such Member as quickly as possible, provided that an allocation under this Subsection 3.2(b) 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 Article 3 have been tentatively made as if this Subsection 3.2(b) were not in the Agreement. This Subsection 3.2(b) is intended to constitute a "qualified income offset" under Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

(c) Built-In Gain or Loss/Section 704(c) Tax Allocations. Any item of income, gain, loss, and deduction with respect to any Company property (other than cash) that has been contributed by a Member to the Company and which is required or permitted to be allocated to the Members for income tax purposes under Section 704(c) of the Code so as to take into account the variation between the tax basis of such property and its agreed upon fair market value at the time of its contribution shall be allocated to the Members solely for income tax purposes in the manner so required or permitted. Any deductions, income, gain or loss specially allocated pursuant to this Subsection 3.2(c) shall not be taken into account for purposes of determining Profits or Losses, or for purposes of adjusting a Member's Capital Account.

(d) Recapture. Ordinary taxable income arising from the recapture of depreciation and/or investment tax credit shall be allocated to the Members in the same manner as such depreciation and/or investment tax credit was allocated to them.

3.3 Reallocation Upon IRS Adjustment. Notwithstanding any provision of this Operating Agreement to the contrary, if any item of income, gain, loss, deduction, or credit is finally allocated for federal income tax purposes in a manner different from that provided by this Operating Agreement, the Capital Accounts of the Members shall be adjusted to reflect that reallocation.

3.4 Adjustment of Economic Ownership Percentages. In the event the Economic Ownership Percentages of the Members are adjusted during an Allocation Year and the effective date of such adjustment is other than on the first day of such Allocation Year, the Company's

Profit or Loss, as the case may be, shall be computed and allocated pursuant to this Article 3, with each of such periods between such variation being treated as a separate Allocation Year. Notwithstanding anything in this Operating Agreement to the contrary, no Member shall be allocated any loss, credit or income attributable to a period prior to his admission to the Company as a Member.

3.5 Tax Consequences. The Members are aware of the income tax consequences of the allocations made by this Article 3 and shall be bound by them in reporting their respective share of Company income, gain, loss, deduction, or credit (or item thereof) for Federal income tax purposes.

3.6 Tax Elections. The Managers shall, without any further consent of the Members being required (except as specifically required herein), make any and all elections for federal, state, local, and foreign tax purposes including, without limitation, any election, if permitted by applicable law: (i) to adjust the basis of Company property pursuant to Code Sections 754, 734(b) and 743(b), or comparable provisions of state, local or foreign law; (ii) with the consent of all of the Members, to extend the statute of limitations for assessment of tax deficiencies against the Members with respect to adjustments to the Company's federal, state, local or foreign tax returns; and (iii) to the extent provided in Code Sections 6221 through 6231 and similar provisions of federal, state, local, or foreign law, to represent the Company and the Members before taxing authorities or courts of competent jurisdiction in tax matters affecting the Company or the Members in their capacities as Members, and to file any tax returns and execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company and the Members.

ARTICLE 4. DISTRIBUTIONS

4.1 Determination of Distributable Cash. The Distributable Cash of the Company shall be determined by the Managers.

4.2 Distribution of Distributable Cash. Except as otherwise provided in Section 4.3 hereof, distributions by the Company of Distributable Cash shall be made to the Members, at such times as determined by the Managers, in proportion to their respective Economic Ownership Percentages.

4.3 Distributions Upon Liquidation. Upon the happening of any event specified in Section 11.1 that requires the Company to be dissolved, liquidated and terminated, or any other event that results in a "liquidation" of the Company (within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations), unless otherwise agreed to by the Managers at such time, the Company's assets shall be converted by the Managers into cash, and all cash held by the Company at the time of the happening of such event (regardless of whether such cash was or would otherwise have been considered Distributable Cash or Net Proceeds under the terms of this Operating Agreement), notwithstanding the terms of Section 14-9-804 of the Act, and all cash received by the Company after the happening of such event and any such other property that the Managers elect not to convert into cash shall be applied and distributed as follows:

- (i) To the repayment of debts and liabilities of the Company, and to the expenses of liquidation in the order of priority as provided by law; then
- (ii) To the establishment of such reserves as the Managers deem appropriate for any contingent or unforeseen liabilities of the Company; provided, however, that at the expiration of such period as the Managers deem advisable, the balance of such reserves shall be distributed to the Members in the manner hereinafter provided; then
- (iii) To the Members, in proportion to, and to the extent of, the positive balances standing in their respective Capital Accounts (as determined after taking into account all Capital Account adjustments for the Company's Allocation Year during which the liquidation occurs); then
- (iv) The balance shall be distributed to the Members, in proportion to their respective Economic Ownership Percentages.

A reasonable time shall be allowed for the orderly liquidation of the Company's assets pursuant to this Section 4.3 to minimize the risk of loss that might be attendant upon such a liquidation. Notwithstanding the foregoing, all distributions pursuant to this Section 4.3 shall be made in accordance with Section 1.704-1(b)(2)(ii)(b)(2) of the Regulations, including applicable time requirements set forth therein.

4.4 Withholding. Notwithstanding anything to the contrary contained in this Article 4, in the event that the Code or any of the Regulations require, then the Managers shall be authorized to withhold and pay over to the Internal Revenue Service cash otherwise distributable to any Member hereunder, which shall be deemed hereunder to have been distributed to such Member, and the Managers shall be authorized to take such other actions as shall be necessary or appropriate to comply with such obligations under the Code and the Regulations.

ARTICLE 5. RESPONSIBILITIES AND LIABILITIES

5.1 Liability of Members. No Member, Manager, agent or employee of the Company shall be liable as such for the liabilities, debts or obligations of the Company. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Operating Agreement or the Act shall not be grounds for imposing personal liability on any Member for any liabilities, debts or obligations of the Company.

5.2 Standard of Care. Each Member and Manager shall act in a manner he believes in good faith to be in the best interest of the Company and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

5.3 Indemnification.

(a) No Member, Manager, agent or employee of the Company shall, in carrying out his duties hereunder, be liable to the Company or to any Member for any actions or course of conduct taken in good faith and reasonably believed to be in the best interests of the Company, or for errors of judgment, but shall only be liable for willful misconduct, gross negligence, willful breach of his obligations under this Operating Agreement, or other willful or grossly negligent breach of fiduciary duty.

(b) Each Member, Manager, agent and employee of the Company shall be indemnified by the Company, to the fullest extent permitted under the Act, against any losses, judgments, liabilities, expenses (including attorneys' fees and amounts paid in settlement of any claims sustained against them) arising out of any action or course of conduct of a Member, Manager, agent or employee in their capacity as such, if such action or course of conduct was not the result of his gross negligence or willful misconduct and if such Member, Manager, agent or employee, in good faith, reasonably believed that such action or course of conduct was in the best interests of the Company; provided, however, that such indemnification and agreement to hold harmless shall be recoverable only out of assets of the Company.

5.4 Other Activities of Members. Each Member (including Members acting as Managers) shall be free to engage in, conduct, or participate in, any business or activity whatsoever, including, without limitation, the ownership and operation of any business, without any accountability, liability, or obligation whatsoever to the Company or to any Member, even if such business or activity competes with or is enhanced by the business of the Company.

ARTICLE 6. MANAGEMENT OF COMPANY

6.1 Powers and Duties of Managers. The Managers shall be responsible for the management of the Company's day-to-day business and affairs. The Managers shall devote such time and effort to the Company as they shall deem necessary for the Company's welfare and success. Any corporate Manager shall act, for purposes hereof, only through its Board of Directors and duly authorized officers. Except for situations in which the approval of all or a portion of the Members is expressly required by the terms and conditions of this Operating Agreement, the Managers shall have, and are hereby granted, full and complete power, authority, and discretion to take such action for and on behalf of the Company, and in its name, as the Managers deem necessary or appropriate to carry out the purposes for which the Company was organized.

6.2 Meetings of Managers; Voting. Meetings of the Managers may be called by any Manager, by delivering written notice to all other Managers at least two and not more than 30 days prior to the scheduled meeting date. At all meetings of the Managers, all Managers represented in person (which may include telephone conference call) or by proxy, shall constitute a quorum for the transaction of business. Unless otherwise agreed by the Managers, each Manager shall be entitled to one vote. Any action of the Managers that is required by this Operating Agreement or by any statute to be taken at a meeting of the Managers may be taken

without a meeting if written consent, setting forth the action so taken, shall be signed by all the Managers entitled to vote with respect to the subject matter thereof. Except as otherwise provided in this Operating Agreement, the taking of any action or the approval of any matter by the Managers shall require the affirmative vote of a majority of the Managers entitled to vote thereon.

6.3 Number of Managers; Election of Managers. The Company shall have eight (8) Managers, or such other number of Managers as may be agreed to from time to time hereafter in writing by a Majority in Interest of the Members. Each Manager shall be elected by the affirmative vote of a Majority in Interest of all of the Members. The Members hereby unanimously elect Jim Smith and Kevin to serve as the initial Managers of the Company. Thereafter, at such intervals as shall be agreed upon by a Majority in Interest of the Members, Managers shall be elected upon a vote of a Majority in Interest of the Members, at any time. Each Manager shall serve until his successor is elected and qualified, or until the earlier death, resignation, incapacity to serve or removal of a Manager.

6.4 Removal or Resignation of Manager. Any Manager may be removed, at any time, by the affirmative vote of a Majority in Interest of the Members. Any Manager may resign at any time by giving written notice to all Members. The resignation of any Manager shall take effect upon receipt of such notice or at such later time as shall be specified in such notice, and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. The removal or resignation of such Manager shall not affect the Manager's rights as a Member and shall not constitute his or her withdrawal as a Member.

6.5 Compensation for Services. The Managers shall supervise and manage the operation of the Company. Except as otherwise agreed to by the Members, the Managers shall not receive any compensation from the Company for their services as Managers of the Company or for other services for the Company.

6.6 Appointment of Officers. The Managers may, but are not required, to appoint such officers of the Company as they shall determine in their sole discretion.

6.7 Authority to Execute Documents. Unless otherwise determined by the Managers, any agreement or other document purporting to bind the Company to any action or course of action may be signed and delivered by any of the Managers for, on behalf of, and in the name of, the Company, and no other signature shall be required.

6.8 Fiduciary Relationship. The relationship of the Managers to the Members is that of a fiduciary, and the Managers have a fiduciary obligation to conduct the business of the Company in such manner as will serve the best interests of the Company and the Members, including the safekeeping and use of all Company funds and assets for the sole and exclusive benefit of the Company. Nonetheless, the liability of Managers, and the standards for indemnification, shall be determined as provided in Section 5.3 hereof.

ARTICLE 7. MEMBERS

7.1 Powers and Duties of Members. Except as otherwise provided in this Operating Agreement, the Members shall not participate in the management of the Company's business and affairs or have any right or authority to act for or to bind the Company. Notwithstanding the foregoing, without the approval of a Majority in Interest of the Members, the Managers shall have no authority to:

- (i) do any act in contravention of this Operating Agreement;
- (ii) do any act that would make it impossible to carry on the ordinary business of the Company;
- (iii) amend this Operating Agreement or the Articles of Organization of the Company;
- (iv) admit additional Members;
- (v) perform any act that would subject any Member to liability for the obligations of the Company in any jurisdiction;
- (vi) cause the Company to sell, exchange, lease, convey or otherwise transfer all or any substantial part of the assets of the Company, other than in the ordinary course of business;
- (vii) cause the Company to merge or consolidate with any other Person; or
- (viii) cause the dissolution of the Company.

7.2 Meetings of Members. Meetings of the Members may be called by any Member, by delivering written notice to all other Members at least 15 and not more than 60 days prior to the scheduled meeting date. Members holding a Majority in Interest entitled to vote, represented in person (which may include telephone conference call) or by proxy, shall constitute a quorum at any meeting of Members. Each Member shall be entitled to one (1) vote for each one percent (1%) of Membership Percentages held by him. Any action of the Members that is required by this Operating Agreement or by any statute to be taken at a meeting of the Members, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the Members entitled to vote with respect to the subject matter thereof. Except as otherwise provided in this Operating Agreement, the taking of any action or the approval of any matter by the Members (or any relevant group of Members) shall require the affirmative vote of a Majority in Interest of those Members entitled to vote thereon.

7.3 Dissenter's Rights. Each Member hereby expressly waives the applicability of the provisions for dissenters' rights set forth in Section 14-11-1002 et seq. of the Act and expressly agrees that he shall not be entitled, under any circumstances, to exercise any such dissenters' rights.

ARTICLE 8. BANKING; ACCOUNTING

8.1 Banking. The funds of the Company shall be kept in one or more separate bank accounts in the name of the Company in such banks or other federally insured depositories as may be designated by the Managers, or shall otherwise be invested in the name of the Company in such manner and upon such terms and conditions as the Managers deem appropriate. No funds shall be deposited in any of such accounts other than funds of the Company, and no funds shall be commingled with the Company's funds. All withdrawals from any such bank accounts or investments established by the Managers hereunder shall be made on such signature or signatures as may be designated by the Managers.

8.2 Financial and Operating Statements and Tax Information. Following the end of each Fiscal Year of the Company, the Managers, at the expense of the Company, shall prepare, or cause to be prepared, and deliver to each Member annual financial statements of the Company for such Fiscal Year. In addition, the Managers, at the expense of the Company, shall prepare and deliver to each of the Members, or shall cause to be prepared and delivered to each of the Members, promptly following the end of each Fiscal Year of the Company, an income tax information return containing sufficient information and data with respect to the operation of the Company for such Fiscal Year to enable such Member to prepare such Member's federal, state, and local income tax returns in accordance with then applicable laws, rules, and regulations. Upon request by any of the Members with respect to any Fiscal Year, the Company shall provide to such Member a copy of the federal and state income tax returns for the Company for such Fiscal Year.

8.3 Location of and Access to Books of Account and Other Information. The Company's books of account shall be kept at such locations as may be designated by the Managers, and each Member shall at all reasonable times during business hours have access thereto and the right to make copies thereof at such Member's expense.

8.4 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 such method of accounting as may be adopted for the Company by the Managers.

8.5 Optional Audit. Any Member, at such Member's expense, may have any of the financial statements furnished to it by the Managers pursuant to Section 8.2 hereof, or the books of account maintained by the Managers, audited by a firm of certified public accountants selected by such Member; provided, however, that if a Majority in Interest of the Members request such an audit, such audit shall be at the expense of the Company. The Managers shall cooperate fully with any such firm of accountants in completing such audit.

ARTICLE 9. TRANSFER OF COMPANY INTERESTS.

9.1 Transfer Limitations. Except for Transfers described in Section 9.3 hereof, no portion of a Member's Interest in the Company may be Transferred except (i) with the prior

written approval of a Majority in Interest of the Non-Transferring Members; and (ii) in compliance with this Article 9.

9.2 Transfer of a Member's Interest in the Company. Notwithstanding any implication to the contrary contained herein (except as provided in Section 9.3 hereof), no Transfer of a Interest in the Company shall be effective unless:

(a) the Transferring Member and the Transferee (i) execute, acknowledge and deliver to the Non-Transferring Members such instruments of Transfer and assignment as are in form and substance satisfactory to the Non-Transferring Members; and (ii) pay all costs, including, without limitation, legal expenses and administrative fees incurred by the Company in connection with such Transfer;

(b) the Transferee accepts and agrees in writing to be bound by all of the terms and provisions of this Operating Agreement;

(c) the Transfer (i) is exempt from the registration requirements of the Federal Securities Act; (ii) will not result in a violation of the Georgia Securities Act, or of any applicable state blue sky or other securities laws; and (iii) will not cause a termination of the Company for federal income tax purposes under Code Section 708(b)(1)(B) (which shall, if requested by the Managers, be based on an opinion of counsel reasonably acceptable to the Managers); and

(d) all debts and obligations (if any) of the Transferring Member to the Company with respect to the Transferred Interest have been paid in full.

9.3 Death or Dissolution. Subject to the Company's rights pursuant to Section 10.1 hereof, in the event of the death or dissolution of a Member, such Member's rights and obligations under this Operating Agreement shall devolve upon such Member's personal representative or successor in interest (the "Successor") as a Transferee, and such Successor shall be an Economic Interest Owner unless and until such Successor becomes a substituted Member pursuant to Section 9.4(a) below. The Successor shall, promptly after any such event, deliver to the Members such documentation as the Members may reasonably require to evidence such succession in interest.

9.4 Treatment of Transferor and Transferee.

(a) Substituted Member. The Transferee of a Transferred Interest shall become a substituted Member of the Company if both of the following conditions are satisfied:

- (i) the Transfer is in compliance with Section 9.2 hereof; and
- (ii) a Majority in Interest of the Non-Transferring Members approve the Transfer in accordance with Section 9.1(a).

(b) Transferee. Upon becoming a substituted Member pursuant to Section 9.4(a), the Transferee shall have the same Interest in the Company, the same rights in and to all distributions made by the Company in liquidation or otherwise, the same duties, including without limitation, duties to make contributions to the capital of the Company, and the same share of the Company's capital, profits, losses and other distributive tax items as the Transferring Member had, prior to such transfer, with respect to the Transferred Interest, and shall thereafter be treated as a "Member" of the Company for all purposes under this Operating Agreement. Unless and until a Transferee becomes a substituted Member, the Transferee shall have no right to exercise any of the powers, rights, and privileges of a Member hereunder, and any such transfer of all or part of a Member's Interest in the Company shall be effective only to give the Transferee the right to receive, as an Economic Interest Owner, the share of tax allocations and distributions to which the Transferring Member would otherwise be entitled.

(c) Treatment of Transferring Member. A Member that has Transferred all of its Interest in the Company shall cease to be a Member upon the Transfer of the Member's entire Interest in the Company and thereafter shall have no further powers, rights, and privileges as a Member hereunder, but shall, unless otherwise agreed by all of the Members or by operation of law, remain liable for all obligations and duties incurred as a Member.

(d) Allocations Upon Transfer. If any Interest in the Company shall be Transferred during an Allocation Year, the Profits and Losses allocable with respect to such Transferred Interest for such Allocation Year shall, as of the date of such Transfer, be allocated between the Transferring Member and the Transferee on the basis of the number of days in such Allocation Year each party was, according to the books and records of the Company, the owner of record of the Transferred Interest. For purposes of this Section 9.4(d), an Allocation Year shall consist of three hundred sixty (360) days.

(e) Ineffective Transfers. Any Transfer not in accord with this Operating Agreement shall be void and ineffective as if such Transfer did not occur.

9.5 Additional Members. No Person shall be permitted to acquire an Interest in the Company directly from the Company as an original issuance or admitted as an additional Member of the Company by reason of such issuance, (a) without the written consent of all of the then-existing Members to the terms and conditions of such issuance and admission, including execution of this Operating Agreement; and (b) unless such issuance would comply with Section 9.2 hereof. Upon any such issuance and admission in accordance with this Section 9.5, the Person acquiring such Interest in the Company shall execute a counterpart of this Operating Agreement and become bound by its terms. Unless otherwise agreed to by all of the then-existing Members, the respective Economic Ownership Percentage of each then-existing Member (and any then-existing Economic Interest Owners) shall be reduced proportionately upon such issuance to reflect the issuance of such Interest in the Company.

9.6 Right of First Refusal. All or any part of a Member's Interest in the Company proposed to be Transferred by a Member shall be subject to the right of first refusal contained in this Section 9.6.

(a) Notice of Proposed Transfer. The Transferring Member, prior to making any proposed Transfer of all or any part of such Transferring Member's Interest in the Company, shall first give Notice to the other Members of the proposed Transfer and the terms of the proposed Transfer (such notice being hereinafter referred to as the "First Offer Notice"). Such First Offer Notice shall constitute an offer by the Transferring Member to sell to the other Members all, but not less than all, of the Interest in the Company that the Transferring Member proposes to Transfer (the "Offered Interest") upon the terms and conditions set forth in the First Offer Notice. The last of the dates on which, pursuant to the provisions of Section 14.2, the First Offer Notice is deemed to be given to the Members is hereinafter referred to as the "Notice Date." Those Non-Transferring Members desiring to purchase all or a portion of the Offered Interest shall agree among themselves as to the portion of the Offered Interest to be purchased by each. In the absence of such an agreement, each Non-Transferring Member desiring to purchase all or a portion of the Offered Interest shall be entitled to purchase a portion of the Offered Interest in the same ratio as the Membership Percentage of such Non-Transferring Member bears to the collective Membership Percentages of all Non-Transferring Members desiring to purchase all or a portion of the Offered Interest.

(b) Notice of Acceptance. The Non-Transferring Members shall have sixty (60) days from the Notice Date to purchase the Offered Interest. Such election shall be exercised by the giving of Notice of such exercise to the Transferring Member. No such exercise shall be valid unless said option to purchase has been exercised with respect to the entire Offered Interest.

(c) Acceptance of Offer; Closing. Upon the acceptance by all or some of the Non-Transferring Members of the Transferring Member's offer, the Transfer of the Offered Interest from the Transferring Member to the purchasing Member(s) (the "Purchasing Member(s)") shall be closed and consummated in the principal office of the Company, on or before 11:00 A.M. local time on the ninetieth (90) day following the Notice Date (or, if such day is not a business day, the business day next following such day). At such closing, the Transferring Member shall execute and deliver all documents and instruments to the Purchasing Member(s) as are reasonably deemed appropriate by counsel to the Company to effectuate the Transfer. The Purchasing Member(s) shall acquire the Offered Interest subject to the Transfer restrictions of this Agreement as to further Transfers of all or any part of such Offered Interest.

(d) Transfer to Third Party; Later Transfer. If the Members fail to give timely notice of their desire to acquire the Offered Interest, then the Transferring Member shall be permitted to Transfer all, but not less than all, of the Offered Interest; provided, however, that such Transfer shall be made substantially in accordance with the terms of the proposed Transfer as described in the First Offer Notice; and provided further that such Transfer must be consummated prior to the one hundred eightieth (180th) day

following the Notice Date; and provided further that such Transfer shall comply with all the terms and conditions of this Article 9. The Transferee shall acquire the Offered Interest subject to all of the terms and provisions of this Agreement, including without limitation, the Transfer restrictions and substitution provisions of this Article 9. In the event the Transferring Member fails, prior to such date, to consummate such proposed Transfer, then prior to any subsequent Transfer of all or any part of the Transferring Member's Interest in the Company, the Transferring Member shall be required to give the Members Notice thereof, and the right of first refusal provisions described in this Section 9.6 shall again be exercisable with respect thereto.

ARTICLE 10. WITHDRAWALS

10.1 Withdrawal of a Member. Each Member hereby covenants and agrees that it will not voluntarily withdraw from the Company and that it will carry out its duties and responsibilities as a Member of the Company until (a) the Company is dissolved, liquidated, and terminated pursuant to Article 11 hereof, or (b) it Transfers its entire Interest in the Company pursuant to Article 9 hereof. Notwithstanding the foregoing, upon an Option Event with respect to a Member (as hereinafter defined), the Company shall have the option to purchase the entire Interest in the Company of such Member (the "Option Interest"), at a price equal to the fair market value thereof (as determined below) as of the date of such Option Event. The Company shall exercise such option by notifying the relevant Member (or, if applicable, its "Successor" as described in Section 9.3), in writing, within 30 days of the Option Event in question, of its election to purchase the Option Interest, which notice shall include reasonable terms and conditions for the consummation of such purchase. If the Company declines to exercise such option, the Company shall provide Notice to the other Members of such decision to decline, which Notice shall be deemed to constitute a "First Offer Notice" under Section 9.6 hereof, pursuant to which the relevant Member shall be deemed to have offered to sell to the other Members the Option Interest, at a price equal to the fair market value thereof (as determined below) as of the date of such Option Event. If both the Company and the other Members decline to purchase the Option Interest as provided in this Section 10.1, then on the effective date of the relevant Option Event, the Member in question (or such Successor) shall become an Economic Interest Owner, unless and until, in the case of any such Successor, such Successor becomes a substituted Member pursuant to Subsection 9.4(a). For purposes hereof, the fair market value of the Option Interest shall be determined by the purchaser(s) and seller thereof. If such parties cannot agree as to such fair market value, it shall be determined by an appraiser selected by the purchaser(s) and seller thereof. If such parties cannot agree on an appraiser within thirty (30) days after the Company or the other Members, as applicable, elect to exercise the option, the purchaser(s) and seller thereof shall each designate an unrelated appraiser and such designated appraisers shall in turn designate a third unrelated appraiser. The determination of such third appraiser as to the fair market value of such Interest in the Company shall be binding upon the parties to the transaction. The cost of obtaining such appraisal shall be divided equally, with the purchaser(s) of the Option Interest paying for one-half of such cost and the seller thereof paying for the other half of such cost. For purposes hereof, an "Option Event" shall mean, with respect to a Member, one or more of the following events:

- (i) a material breach by such Member of the terms of this Operating Agreement (including, without limitation, a failure to make an additional Capital Contribution required pursuant to Section 2.2 hereof); or
- (ii) such Member shall die; or
- (iii) such Member, if an entity, shall dissolve, liquidate or wind up; or
- (iv) the Bankruptcy of such Member.

10.2 Redemption of Withdrawing Member's Interest in the Company. Notwithstanding any provision of the Act to the contrary, a withdrawing Member is not entitled to receive any amount from the Company in connection with such withdrawal except to the extent specifically provided in this Operating Agreement.

ARTICLE 11.
DISSOLUTION, LIQUIDATION, AND TERMINATION OF COMPANY

11.1 Dissolving Events. The Company shall be dissolved, liquidated and terminated in the manner hereinafter provided upon the happening of any of the following events:

- (i) the affirmative vote of the Managers or a Majority in Interest of the Members to terminate the Company;
- (ii) the sale by the Company of all or substantially all of its assets and the collection of all amounts derived from any such sale or sales, including all amounts due or payable to the Company under any promissory notes or other evidences of indebtedness derived by the Company from any such sale or sales;
- (iii) at such time as there shall be only one Member; or
- (iv) the entry of a decree of judicial dissolution of the Company.

11.2 Date of Termination. The Company shall be terminated when all of the Company's assets have been converted into cash, all promissory notes or other evidences of indebtedness derived by the Company from such conversion of its assets have been collected or otherwise converted into cash, and all such cash, together with any other cash held by the Company, has been applied and distributed in accordance with the provisions of Section 4.3 hereof. The establishment of any reserves pursuant to Section 4.3 shall not have the effect of extending the term of the Company, but any such reserves shall be applied and distributed in the manner provided in such Section 4.3 hereof upon expiration of the period of such reserve.

ARTICLE 12. INVESTMENT REPRESENTATIONS

12.1 Investment Intent. Each Member hereby represents and warrants that the Interest in the Company being subscribed for and purchased by the Member is being acquired with the intent of holding the Interest in the Company for investment only and not with the intent of participating directly or indirectly in any distribution thereof.

12.2 Ability To Bear Risk. Each Member represents and warrants that Member is able to bear the economic risk of losing Member's entire investment in the Company, which investment is not disproportionate to Member's net worth, and that Member has adequate means for providing for Member's current needs and personal contingencies without regard to the investment in the Company. Each Member acknowledges that an investment in the Company involves a high degree of risk.

12.3 Informed Investment Decision. Each Member represents that (a) he has consulted with his attorneys and financial advisors regarding all financial, securities and tax aspects of the proposed investment in the Company and that such advisors have reviewed this Operating Agreement on such Member's behalf; (b) both he and his advisors have sufficient knowledge and experience in business and financial matters to evaluate the Company, to make an informed investment decision with respect to the investment in the Company, and to protect the Member's interest in connection with the Member's acquisition of an Interest in the Company without the need for additional information.

12.4 Unregistered Interests in the Company. In addition to the Transfer restrictions set forth in Article 9 above, each Member understands that Member must bear the economic risk of this investment for an indefinite period of time because the Interests in the Company are not registered under the Federal Securities Act, the Georgia Securities Act, or the securities laws of any other state or jurisdiction. Each Member has been advised that there is no public market for the Interests in the Company and that the Interests in the Company are not being registered under the Federal Securities Act on the basis that the transactions involving their sale are exempt from such registration requirements, and that reliance by the Company on such exemption is predicated in part on the Member's representations set forth in this Operating Agreement. Each Member acknowledges that no representations of any kind concerning the future intent or ability to offer or sell the Interests in the Company in a public offering or otherwise have been made to the Member by the Company or by any other Person. Each Member understands that the Company makes no covenant, representation or warranty with respect to registration of securities under the Securities Exchange Act of 1934, as amended, or its dissemination to the public of any current financial or other information concerning the Company. Accordingly, each Member acknowledges that there is no assurance that there will ever be any public market for the Interests in the Company, and that the Member may not be able to publicly offer or sell all or any portion thereof.

ARTICLE 13. DEFINITIONS

For purposes of this Operating Agreement, each of the following terms has the meaning hereinafter provided (such meanings shall also be applicable to the plural use of such terms herein):

"Act" means the Georgia Limited Liability Act (O.C.G.A. § 14-11-100 et seq.), as amended from time to time hereafter.

"Allocation Year" means (i) a Fiscal Year or (ii) any portion of a Fiscal Year for which the Company is required to allocate Profits, Losses and other items of Company income, gain, loss or deduction pursuant to Article 3 hereof.

"Articles of Organization" means the Articles of Organization of the Company, as filed with the Secretary of State of Georgia, as the same may be amended from time to time.

"Bankruptcy" shall mean, with respect to any Member, that such Member (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver or liquidator of the Member or of all or any substantial part of the Member's properties.

"Capital Account" shall mean, with respect to each Member, a capital account established and maintained for such Member in accordance with Section 1.704-1(b)(2)(iv) of the Regulations.

"Capital Call Notice" has the meaning set forth in Section 2.2 hereof.

"Capital Contributions" means, with respect to each Member, the amount of money and the initial fair market value of any property (other than money) contributed to the Company with respect to the Interest in the Company held or purchased by such Member. In the event an Interest in the Company is Transferred in accordance with the terms of this Operating Agreement, the Transferee shall succeed to the Capital Contributions of the Transferring Member to the extent such Capital Contributions relate to the Transferred Interest.

"Code" means the United States Internal Revenue Code of 1986, as amended from time to time. All references herein to specific sections of the Code shall be deemed to refer also to any corresponding provisions of succeeding law.

"Company" means _____, LLC.

"Distributable Cash" means all cash, revenues and funds received by the Company, including any reserves that the Managers deem to be no longer necessary, less the sum of the

following to the extent paid or set aside by the Company: (i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (ii) all cash expenditures incurred incident to the normal operation of the Company's business; and (iii) such reserves as the Managers deem reasonably necessary for the proper operation of the Company's business.

"Economic Interest" means a share of the allocations and distributions pursuant to this Operating Agreement and the Act, but shall not include any right to vote on, consent to or otherwise participate in any decision of the Members or Managers.

"Economic Interest Owner" means the owner of an Economic Interest who is not a Member.

"Economic Ownership Percentage" means, with respect to each Member (or Economic Interest Owner), the ownership percentage of the Economic Interest of such Member (or Economic Interest Owner) divided by the aggregate ownership percentages of all Economic Interests of all Members and Economic Interest Owners. The Economic Ownership Percentage of each Member is listed on EXHIBIT "A" hereto, as may be amended from time to time.

"Federal Securities Act" means the United States Securities Act of 1933, as amended from time to time hereafter.

"Fiscal Year" means the Company's fiscal year, which shall be the calendar year.

"Georgia Securities Act" means the Georgia Securities Act of 1973, as amended from time to time hereafter.

"Interest in the Company" means the ownership interest of a Member in the Company, including all rights, duties and obligations of being a Member in accordance with this Operating Agreement and the Act.

"Losses" has the meaning set forth in the definition of "Profits" and Losses."

"Majority in Interest" of any relevant group of Members, as of any given date, means those Members in such group owning a majority of the Interests in the Company owned by all of the Members in such group, to be calculated in accordance with the respective Membership Percentage of each Member in such group.

"Managers" shall mean the one or more Persons elected by the Members to manage the business and affairs of the Company, as set forth in this Operating Agreement. During the periods when the Company has only one properly elected Manager, references to "Managers" in this Operating Agreement shall be deemed to mean "Manager."

"Member" means each of the parties designated as Members on EXHIBIT "A" hereto.

"Membership Percentage" means, with respect to each Member, the Economic Ownership Percentage of such Member divided by the aggregate Economic Ownership

Percentages of all Members (but not including Economic Interest Owners, it being agreed that, notwithstanding any provision herein to the contrary, the Membership Percentage of each Economic Interest Owner shall be deemed to be zero percent (0.00%) for all purposes hereunder). The Membership Percentage of each Member is listed on EXHIBIT "A" hereto, as may be amended from time to time.

"Non-Transferring Member" is each Member other than the Transferring Member.

"Notice" means a written notice required or permitted by this Operating Agreement that is given in the manner prescribed in Section 14.2.

"Option Event " has the meaning set forth in Section 10.1 hereof.

"Person" means any individual person or any corporation, partnership (general or limited), limited liability company, limited liability partnership, joint venture, association, joint stock company, trust, or other business entity or organization.

"Profits" and "Losses" mean, for each Allocation Year, an amount equal to the Company's taxable income or loss for such Allocation Year, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

- (i) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition of "Profits" and "Losses" shall be added to such taxable income or loss;
- (ii) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this definition of "Profits" and "Losses" shall be subtracted from such taxable income or loss;
- (iii) in the event the book value of any Company asset is adjusted in compliance with Section 1.704-1(b) of the Regulations, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;
- (iv) gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the book value of the Property disposed of, notwithstanding that the adjusted tax basis of such property differs from its book value;

- (v) in lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, whenever the book value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of an Allocation Year, depreciation, amortization or other cost recovery deductions allowable with respect to an asset shall be an amount which bears the same ratio to such beginning book value as the federal income tax depreciation, amortization or other cost recovery deduction for such year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income taxes of an asset at the beginning of a year is zero, depreciation, amortization or other cost recovery deductions shall be determined by reference to the beginning book value of such asset using any reasonable method selected by the Managers; and
- (vi) notwithstanding any other provision in this definition of "Profits" and "Losses," any items which are specially allocated pursuant to Section 3.2 shall not be taken into account in computing Profits or Losses.

"Regulations" means the Income Tax Regulations, including Temporary Regulations, promulgated under the Code, as such Regulations may be amended from time to time. All references herein to specific sections of the Regulations shall be deemed to refer also to any corresponding provisions of succeeding Regulations.

"Transfer" shall mean any action by a Member to sell, exchange, deliver or assign, dispose of, bequeath or gift, pledge, mortgage, hypothecate or otherwise encumber, transfer, or permit to be transferred, whether voluntarily, involuntarily, or by operation of law, all or any portion of the Member's Interest in the Company, now owned or hereafter acquired by such Member.

"Transferee" is a Person to whom a Transferred Interest is Transferred.

"Transferred Interest" is all or any part of a Transferring Member's Interest in the Company that a Transferring Member transfers, or proposes to Transfer.

"Transferring Member" is any Member who Transfers, or proposes to Transfer, all or any part of such Member's Interest in the Company.

ARTICLE 14. GENERAL PROVISIONS

14.1 Waiver of Right of Partition. Each of the Members does hereby agree to and does hereby waive any right such Member may otherwise have to cause any Company property to be partitioned among the Members.

14.2 Notices. Except as otherwise provided hereinbelow with respect to providing Notice to the Company, whenever any Notice is required or permitted hereunder, such Notice shall be in writing and shall be (as elected by the party giving such Notice) (i) delivered in

person, (ii) sent by U.S. registered or certified mail, return receipt requested, postage prepaid, (iii) sent by U.S. Express Mail, postage prepaid, (iv) delivered by Federal Express, UPS or other nationally recognized delivery company, or (v) transmitted by facsimile to the Person to whom such Notice is intended as follows:

(a) If to the Company: By Hand Delivery to any Manager, other than any Manager providing such Notice.

(b) If to the Members: to the address set forth below such Member's name on EXHIBIT "A" hereto, or any such other address that such Member has provided to the Company in writing.

14.3 Amendment; Waiver. Any amendment to this Operating Agreement must be made in writing and signed by all of the Members; provided, however, that the Managers shall amend EXHIBIT "A" to this Operating Agreement upon the occurrence of any event that modifies the information required to be set forth on said EXHIBIT "A", including, without limitation, any addition or withdrawal of a Member or Economic Interest Owner or any change in the respective Membership Percentage or Economic Ownership Percentage of any Member or Economic Interest Owner. No term or condition of this Operating Agreement shall be considered waived by a Member, unless such waiver is in writing and is signed by such Member.

14.4 Binding Effect. This Operating Agreement shall inure to the benefit of and shall be binding upon the Members, their respective legal representatives, Transferees, heirs, successors, and assigns.

14.5 Duplicate Originals. For the convenience of the Members, any number of counterparts hereof may be executed, and each such counterpart shall be deemed to be an original instrument.

14.6 Time of Essence. Time is of the essence of this Operating Agreement.

14.7 Governing Law; Construction. This Operating Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Georgia. The titles of the Articles, Sections, and Subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein.

14.8 Interpretation. Whenever the context may require, any noun or pronoun used herein shall include the corresponding masculine, feminine or neuter forms. The singular form of nouns, pronouns and verbs shall include the plural and vice versa.

14.9 Severability. If any provision of this Operating Agreement or the application thereof to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Operating Agreement, or the application of such provision to parties or circumstances other than those to which it is so

determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

14.10 Entire Agreement. This Operating Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

14.11 Inclusion of Economic Interest Owners. In sections of this Operating Agreement dealing with allocations, distributions, Transfers and other economic matters (but not including matters dealing with consents, voting rights, calculation of Membership Percentage or other matters strictly limited to Members), the term "Member" shall be deemed to also refer to and include Economic Interest Owners and the term "Interest in the Company" shall be deemed to also refer to and include Economic Interests.

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IN WITNESS WHEREOF, the parties hereto have executed, sealed and delivered this Operating Agreement as of the date first above written.

MEMBERS:

_____ (SEAL)
Jim Smith

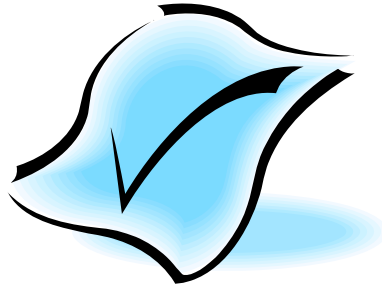
_____ (SEAL)
Kevin Smith

EXHIBIT "A"

NAMES, CAPITAL CONTRIBUTIONS,
AND OWNERSHIP PERCENTAGES OF MEMBERS

The name and address of each Member, the amount of cash agreed to be contributed by each Member, the Membership Percentage of each member, and the Economic Ownership Percentage of each Member is as follows:

<u>Name</u>	<u>Initial Capital Contribution</u>	<u>Membership Percentage</u>	<u>Economic Ownership Percentage</u>
Jim Smith 1000 Smith Street, Atlanta, Georgia 30305	\$50,000	100%	100%
Kevin Smith 1000 Smith Street, Atlanta, Georgia 30305	\$50,000	100%	100%
TOTAL	\$100,000	100.0%	100.0%



Polling Question #3

Press 991 if today's teleconference
met your needs

Press 992 if today's teleconference
did not meet your needs

for attending today's
NBI teleconference for your
continuing education needs.

Please visit our website at
www.nbi-sems.com
for a complete list of
upcoming teleconferences.

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