

Series LLCs in Missouri

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III Series LLCs in Missouri

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III. Series LLCs in Kansas and Missouri

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This paper looks at how to form, maintain, and deal with a series LLC and its various facets. Then our panel will discuss a variety of perspectives on series LLC advantages and disadvantages, how best to tailor a series LLC to a client's goals and needs, and explore a few of the lingering series LLC questions.² A series LLCs can be a good fit for some business owners or entrepreneurs, but they also raise questions and have a number of disadvantages or uncertainties, as we'll discuss more during our panel.

Of LLCs and Series LLCs

For many years, partnerships or corporations were the two best business entity options. The limited liability company (LLC) was born of a desire to enjoy the best of both worlds. LLCs are a vital tool in the corporate lawyer's repertoire.³

A LLC has corporate-style limited liability for its members or manager, flexible management, and partnership-style pass-through tax features. Like corporations and partnerships, LLCs and series LLCs are creatures of state law.⁴ Kansas added LLCs in 1990, and adopted the Kansas Revised Limited Liability Company Act (1999), while using a Delaware lens to view the Sunflower State's LLC landscape.⁵ Missouri added LLCs in 1993, and Missouri now uses a Delaware lens to view the Show Me State's LLC landscape, but Missouri has not adopted the Revised Limited Liability Company Act. At the start of Missouri's LLC journey, "Missouri law followed Illinois law," but now "tend[s]" to follow "Delaware law."⁶

Despite their "relative youth," LLCs are a trusted and reliable business entity, "the most significant development in business law" in a generation.⁷ Like the corporation, the LLC's hallmark is limited liability.⁸ But the LLC often edges out the corporation as the business entity of choice with its great partnership-style tax design and managerial flexibility.

Series LLCs are a type of LLC, introduced in Kansas in 2012 and Missouri in 2013, which take their life breaths from filing articles of organization.⁹ The "evolution" of series LLCs could "further "blur the lines between corporate and partnership law."¹⁰ A

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² We use the terms "master LLC" or "parent LLC" or "umbrella LLC," and "series," "daughter series," "limited liability series," "protected series," "protected cell," or "cell" interchangeably.

³ See Bainbridge, *Agency, Partnerships & LLCs* (2004), Ch. 4, and *Corporate Law* (2009); Hecker, *The Kansas Revised Limited Liability Company Act*, 69 *J. Kan. B.A.* 16 (Nov./Dec. 2000) (Kansas LLC law's contours).

⁴ K.S.A. §17-7662 et seq.; V.A.M.S. §347.010 et seq.; Karambelas, *Limited Liability Companies* (2017).

⁵ K.S.A. §§17-7662 et seq.; Hecker, *The Kansas Revised Limited Liability Company Act*, 69 *J. Kan. B.A.* 16; Karambelas, *LLC*, Ch. 19A; Lacey, *Kansas Corporate Practice*, §3-9; Martin, *Kansas Corporation Law*, Ch. 13; §13.1.2.

⁶ <https://www.courts.mo.gov/file.jsp?id=40802>.

⁷ Martin, *Kansas Corporation Law*, §13.3.2(d)(1); Bainbridge, *Limited Liability*, 200.

⁸ Martin, *Kansas Corporation Law*, §13.3.1(e).

⁹ K.S.A. §17-76,143; V.A.M.S. §347.186.

¹⁰ Kray, Comment, "Respecting the Concept and Limited Liability of a Series LLC in Texas," *St. Mary's L.J.* (2011), 42:501, 518.

series LLC has deep roots in LLC law with a few variations. The national series LLC literature is growing, but local literature is limited, save for a few excellent presentations, including by one of today's speakers (Mr. Quick).¹¹ As with most business law innovations, series LLCs were born in Delaware (in 1996), before debuting in other states.¹² As of June 2017, 15 states, plus Washington D.C. and Puerto Rico, have series LLC laws.¹³ Kansas and Missouri's series LLC laws are each one thread interwoven into the tapestry of the state's LLC law.¹⁴

A series LLC is like a fractal version of an LLC, a group of distinct limited liability ownership interests within an LLC.¹⁵ A master or parent LLC has any number of daughter series under its umbrella. The series LLC can have "separate series of members, managers, or interests, with separate rights, powers, or duties, including rights to profits and losses" as to "specific property or obligations."¹⁶ Each series within the LLC can function as a "distinct" legal entity – one series could have a "separate business purpose or objective" from another series.¹⁷ Each series can "shield [its] property" from "liability incurred in or against other series" in the LLC.¹⁸ This allows a business "to partition its assets and liabilities among various cells or series and . . . have different economic arrangements" for each "series" under the parent LLC.¹⁹ So "different series of properties or operations . . . with diverse business purposes or objectives," can be "compartmentalize[d]" within one LLC.²⁰

The series LLC design allows "multiple series to function as if they were separate LLCs, with separate liability shields around each series and [around] the LLC itself."²¹ Each series' limited liability shield "protect[s]" (1) the series members from liability for the "obligations of the parent LLC and each series," and (2) "the parent LLC and each series against . . . liability . . . [from] each other."²²

So how we start a series LLC?

¹¹ See e.g. Adkisson et al., *When One Is Better than Many: The Series LLC*, assetprotectionbook.com; Goforth, *The Series LLC, and a Series of Difficult Questions*, 60 *Ark. L. Rev.* 385 (2007); Gingerich, Note, *Series LLCs: The Problem of the Chicken and the Egg*, 4 *Entrepreneurial Bus. L.J.* 193 (2009); Gattuso, *Series LLCs: Let's Give the Frog a Little Love*, *Bus. L. Today*, July/Aug. 2008, at 33; Harding, *Series LLCs: A Wave of the Future—Or Not?*, *Mich. Bus. L.J.*, Spring 2007, at 19; Rutledge, *Again, for the Want of a Theory: The Challenge of the "Series" to Business Organization Law*, 46 *Am. Bus. L. J.* 311 (2009); Murray, *A Real Estate Practitioner's Guide to Delaware Series LLCs* (2007).

¹² Kray, Comment, *St. Mary's L. J.* (2011), 42:501, 504.

¹³ Alabama, Delaware, Washington D.C., Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nevada, North Dakota, Oklahoma, Tennessee, Texas, Utah, Wisconsin, and Puerto Rico.

¹⁴ K.S.A. §17-76,143; V.A.M.S. §347.186.1.

¹⁵ A fractal arises when numbers run in an equation yield the same graph pattern whether "zoomed in" or "zoomed out." See Gleick, *Chaos* (1987). The series LLC's parent LLC (zoomed out) and each series (zoomed in) show the limited liability hallmark.

¹⁶ Kehl, *Choice of Entity* (Bloomberg BNA no. 701, 2016), A-15.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Kray, Comment, *St. Mary's L. J.* (2011), 42:501, 503 (internal cites omitted).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

A. Formation

Attorneys help clients to see a business's beginning from its end: how an entrepreneur's vision unfolds on each step of the business' strategic path. T.S. Eliot evokes this journey: "What we call the beginning is often the end/And to make an end is to make a beginning/The end is where we start from."²³

A client forms an LLC to avoid two liability levels.²⁴ First, at the entity level, a business's creditors can levy, attach, claim, or sue upon an individual's assets. Second, a person can be liable for another person's torts or contracts within the business. The LLC design covers these vulnerabilities with a veil of limited liability over the individual's assets, shielding them from the business's creditors, and from liability for other individuals' actions.²⁵ Benefits include separate legal existence, limited liability, the business judgment rule's protection, potential credit score and bankruptcy protection, intellectual property ownership, perpetual life, and the ability to adapt to a changing business vision over time.²⁶

Series LLC Design Paradigms

A series LLC is an LLC with a few wrinkles.²⁷ Two threads run through every series LLC's tapestry: (1) the creation thread (the article of organization) and (2) the operating thread (the operating agreement). The articles of organization give birth to a series LLC, while the operating agreement is the series LLC's DNA and guidebook.²⁸ A series LLC's articles of organization must include certain elements and be filed with the Secretary of State.

The articles of organization or operating agreement may elect options on some management issues; otherwise, the default LLC rules apply.²⁹ The series LLC's operating agreement should unfold its design, including the legal framework for any current or future daughter series.³⁰ The series LLC's operating agreement can have any provision consistent its articles of organization, but is not filed with the Secretary of State. LLC members and managers may have fiduciary duties of care, loyalty, and obedience to uphold.³¹

The corporate counselor should help coordinate filing any necessary business or regulatory permits for the client. Kansas and Missouri articles of organization are included in Exhibit A. Exhibit B has a sample series LLC operating agreement. A series LLC checklist is in Exhibit C.

Kansas' corporate law landscape follows Delaware law, while Missouri corporate law contours initially followed Illinois law and the Model Business Corporation Act, but now

²³ T.S. Eliot, *Four Quartets*, "Little Gidding," (No. 4) (1943), V: 214-216.

²⁴ Karambelas, LLC, §6.4.

²⁵ Presser, *Piercing the Corporate Veil* (2016), §§2.17 (Kansas), 2.26 (Missouri); Bishop et al., *Limited Liability Companies*, ¶5.05[1][e][iv], Ch. 6; Van Dyke, *Missouri Corporate Practice*, Ch. 45; Lacey, *Kansas Corporate Law*, Ch. 46.

²⁶ Bishop, LLCs, ¶10.05.

²⁷ Karambelas, LLC, §7.4.

²⁸ Lacey, *Kansas Corporate Law*, Ch. 6; Karambelas, LLC, §§6.8, 6.14; Bishop, LLCs, ¶¶5.05, 5.06.

²⁹ Martin, *Kansas Corporation Law*, §§13.2.2, 12.3.3.

³⁰ K.S.A. §17-76, 143(a); V.A.M.S. §347.186.

³¹ Hecker, "Fiduciary Duties in Business Entities Revisited," 61 *Kan. L. Rev.* 2013, 923, 931-932; Mantese, et al., "Navigating the World of Fiduciary Duty within the Corporate Context," *J. Mo. Bar.* Sept-Oct 2016; Bishop, LLCs, Ch. 10, §§10.02 (duty of care), 10.03 (duty of loyalty).

trends towards Delaware law. Any variances in law, such as Missouri separate entity status for each series, should be fleshed out in the operating agreement, and the choice of law (Kansas or Missouri law as influenced by Delaware law) should be explicitly stated.

Kansas Series LLC

A Kansas series LLC is formed by filing (1) articles of organization (Form LAO)³² and (2) a certificate of designation (Form LCD) for each series³³ with the Secretary of State, along with executing an operating agreement, which is not filed with the Secretary of State. The series LLC's articles of organization includes: (1) name, (2) resident agent's name and address, (3) mailing address, (4) the tax closing month, (5) the effective date (within 90 days of the filing date)³⁴, (6) the series language, and (7) a verification under oath and penalty of perjury that the information is true and correct plus the filing fee.

A Kansas series LLC's creation is distinct from a regular LLC in four ways: (1) different articles of organization form, (2) the certificate of designation, (3) different fees, and (4) no online filings (mail in person filing only). For each Kansas daughter series, a Form LCD is filed with the Secretary of State.

Missouri Series LLC

A Missouri series LLC is formed by filing articles of organization (Form LLC1) with the Secretary of State.³⁵ A Missouri series LLC's creation is distinct from a regular LLC due to checking the box on Question 7 of Form LLC1. For each Missouri daughter series, a Form LLC1A is filed with the Secretary of State.

To recap, both Kansas and Missouri series LLCs file articles of organization and a notice for each daughter series with the Secretary of State. And both states' series LLCs are governed by an operating agreement, which is not filed with the Secretary of State.

Names and Series LLC Intellectual Property

A name can say it all, communicating about a business' character, quality, or reputation. Check to see if a name is available on the Secretary of State's website. A business name is registered by filing paperwork with the Secretary of State, or can be reserved for a small fee. Also check if the website or domain name is available.

Intellectual property - patents, copyrights, and trademarks - are mainly creatures of federal law. They can be a daunting corporate law no-man's land, fraught with incomplete records and risk: consult an intellectual property attorney as needed. A business name cannot be copyrighted, but a phrase used in business can be trademarked.³⁶ Choose a unique brand: intellectual property infringement leads to costly court battles. And a marketing logo or slogan, or a social media expression could be

³² Form LAO, with the \$250 filing fee.

³³ K.S.A. §17-16, 143 with \$100 filing fee for each series.

³⁴ The "effective date" is the "filing date," which could have tax impacts.

³⁵ Form LLC1, with the \$105 filing fee.

³⁶ Kinney, *Intellectual Property for Business Lawyers* (2017), §9.21; 15 U.S.C.A. §1127.

trademarked.³⁷ A global business can register a trademark internationally under the Madrid Protocol.³⁸

So we've formed a series LLC for a client, but how do we counsel the client to best maintain the series LLC?

B. Maintenance

Let's begin our series LLC maintenance discussion by exploring the comparative architecture, text, and design of Kansas and Missouri's laws.

Architecture of Kansas and Missouri Series LLC Laws

Kansas and Missouri have similar LLC and series LLC laws, but there are distinctions. Let's explore some highlights, where we will encounter many similarities and a few differences. We'll mostly follow the Kansas law's flow.

Section 1: 17-76,143(a) and 347.186.1 – the Operating Agreement

The first section of each state's series LLC law talks about the series LLC's operating agreement.³⁹ The first statutory section does four things and is the same in both states. First, it allows current series to be "establish[ed]" and anticipates the "establishment" of future series within the LLC.⁴⁰ Second, it allows for "designated series" of (1) members, (2) managers, or (3) LLC interests.⁴¹ Third, each of these "designated series" can have "separate" (1) rights, (2) powers, or (3) duties as to (1) a LLC "property or obligation" or (2) "profits or losses" from the "property or obligation."⁴² And four, each "series may have" a (1) "separate business purpose" or (2) "investment objective."⁴³ This language seems broader, and more exact, than a LLC's business purpose.⁴⁴

Section 2: 17-76,143(b) and 347.186.2 – Series LLC Conditions

This section first outlines the conditions for a series LLC.⁴⁵ 5 conditions must exist to create a Kansas or Missouri series LLC: (1) the operating agreement "establishes," anticipates "the establishment of," or "creates" one or more series," (2) maintaining records accounting for a series' assets "separately" "and distinct" from another series or the LLC's assets, (3) per the operating agreement, (4) the article of organization have a "notice" about the series' limited liability, and (5) each "limited liability" series has filed a "certificate of designation" or "separately" identified "each series" with "limited liability."⁴⁶

Second, when the 5 criteria are satisfied, then for the series "the debts, liabilities, and obligations incurred, contracted for, or otherwise existing" as to that series are "enforceable" "against" that series' "assets ... only, and not against the assets" of the

³⁷ Id., Ch. 9.

³⁸ Id., §10.11.

³⁹ K.S.A. §17-76,143(a); V.A.M.S. §347.186.1.

⁴⁰ K.S.A. §17-76,143(a); V.A.M.S. §347.186.1.

⁴¹ K.S.A. §17-76,143(a); V.A.M.S. §347.186.1.

⁴² K.S.A. §17-76,143(a); V.A.M.S. §347.186.1.

⁴³ K.S.A. §17-76,143(a); V.A.M.S. §347.186.1.

⁴⁴ K.S.A. §17-7668; V.A.M.S. §347.035.

⁴⁵ K.S.A. §17-76,143(b); V.A.M.S. §347.186.2. We use Missouri's more readable second section.

⁴⁶ K.S.A. §17-76,143(b); V.A.M.S. §347.186.2(1)(a)-(f).

LLC or another series.”⁴⁷ Third, notice of a series’ limited liability and listing the series in the articles of organization is sufficient notice of the series’ limited liability.⁴⁸ Fourth, the articles of organization control a series’ separate entity status (vis-à-vis other series or the parent/master LLC).⁴⁹ The next sentence expounds separate entity status: a series can “in its own name, contract, hold title to assets, grant security interests, sue and be sued, and otherwise conduct business and exercise” LLC “powers.”⁵⁰ But does separate entity status prevent series collaboration? No: the LLC “and any of its series” can make 4 elections: (1) “to consolidate its operations as a single taxpayer” (accounting or tax simplicity), (2) “to work cooperatively,” (3) “to contract jointly,” or (4) “to be treated as a single business” “to do business” in a state.⁵¹ What’s more: these 4 elections don’t “affect” the series’ “limitation of liability” unless the series “specifically accepted joint liability by contract.”⁵²

Section 3: 17-76,143(c) and 347.186.3 – Series LLC Name

The third section says any domestic series LLC “must contain” (1) the LLC’s “entire name” and (2) be “distinguishable from the names of the other series” listed in the articles of organization.⁵³ A foreign series LLC “must contain” the out-of-state LLC’s “entire name.”⁵⁴

Section 4: 17-76,143(d) and 347.186.4 – Series LLC Administration

The fourth section has six points. First, a timing difference: when does a series start? Kansas says “the series’ existence shall begin” upon filing the certificate of designation, while a Missouri series begins upon filing the articles of organization.⁵⁵ Second, In both states, the filed documents “marked” or “stamped” is “conclusive evidence” the series has begun.⁵⁶ Third, in both states, the filings “shall list” each series’ series members if member-managed or each series’ manager if manager-managed.⁵⁷

A series can be member-managed or manager-managed. Kansas and Missouri appear to allow (1) the master/parent LLC to be manager-managed and a series to be member-managed, or vice versa, or (2) one series to be manager-managed while another series is member-managed, or vice versa. Fourth, a series’ name can be changed easily: by a Kansas certificate of designation or a Missouri articles of amendment.⁵⁸

⁴⁷ K.S.A. §17-76,143(b); V.A.M.S. §347.186.2(2).

⁴⁸ K.S.A. §17-76,143(b); V.A.M.S. §347.186.2(3).

⁴⁹ K.S.A. §17-76,143(b); V.A.M.S. §347.186.2(4). Caveat: a Missouri series’ separate entity status is somewhat uncertain since Missouri first followed Illinois law (which does not treat each series as a separate entity), but Missouri now follows Delaware law (as Kansas does), which does treat each series as a separate entity. Separate entity status should be expressly stated in the operating agreement to make clear intent, and it may help to state Missouri law with the Delaware trend applies, not the Illinois rule on this point.

⁵⁰ K.S.A. §17-76,143(b); V.A.M.S. §347.186.2(4).

⁵¹ K.S.A. §17-76,143(b); V.A.M.S. §347.186.2(4).

⁵² K.S.A. §17-76,143(b); V.A.M.S. §347.186.2(4).

⁵³ K.S.A. §17-76,143(c); V.A.M.S. §347.186.3.

⁵⁴ K.S.A. §17-76,143(c); V.A.M.S. §347.186.3.

⁵⁵ K.S.A. §17-76,143(d); V.A.M.S. §347.186.4(1)(a). We use Missouri’s more readable fourth section.

⁵⁶ K.S.A. §17-76,143(d); V.A.M.S. §347.186.4(1)(b).

⁵⁷ K.S.A. §17-76,143(d); V.A.M.S. §347.186.4(1)(e).

⁵⁸ K.S.A. §17-76,143(d); V.A.M.S. §347.186.4(1)(c).

Fifth, a series can be dissolved: by a Kansas (1) certificate of designation or (2) LLC dissolution form, or by a Missouri articles of amendment.⁵⁹ Sixth, who can execute documents? A Kansas certificate of designation, or a Missouri articles of organization, amendment, or termination, can be signed by the LLC, or a “manager, person, or entity” listed in the LLC’s operating agreement.⁶⁰

Section 5: 17-76,143(e) and 347.186.4(3) – Good Standing

Both states “deem” a series “to be in good standing” if the master/parent LLC “is in good standing.”⁶¹ A series’ good standing depends on proper LLC maintenance: a parent LLC in good standing gives each series good standing too. But if the parent LLC isn’t maintained, each series (and its corporate veil of limited liability) is threatened.

Section 6: 17-76,143(f) and 347.186.4(3) – Registered Agent & Office

Both states require the LLC’s registered agent and office to serve for each series.⁶² This makes sense, as each series (1) qualifies to do business under the parent LLC, (2) mirrors its parent LLC’s limited liability and good standing, and (3) is under the parent LLC’s name.

Section 7: 17-76,143(g) and 347.186.4(3) - Classes

Both states allow the LLC’s operating agreement to have current “classes or groups of members or managers” with diverse “relative rights, powers, and duties,” and for the “future creation of additional classes or groups of members or managers” with varying “relative rights, powers, and duties.”⁶³

Section 8: 17-76,143(h) and 347.186.5(2) - Management

Both states’ default rule says each series is member-managed, but manager-management can be elected in the operating agreement.⁶⁴ This follows both states’ member-managed default rule.⁶⁵ A series’ manager can be (1) a series member or (2) a non-series member chosen by the series members.

Section 9: 17-76,143(i) and 347.186.5(3) – Voting Rights

Both states allow the operating agreement to specify “the right to vote ... on any matter,” and which members or series members (if any) have “no voting rights.”⁶⁶

Section 10: 17-76,143(j) and 347.186.5(4) – LLC Law Applies

Both states apply their LLC law to each limited liability series too.⁶⁷

Section 11: 17-76,143(k) and 347.186.5(5) – Series Manager

⁵⁹ K.S.A. §17-76,143(d); V.A.M.S. §347.186.4(1)(d).

⁶⁰ K.S.A. §17-76,143(e); V.A.M.S. §347.186.4(1)(e).

⁶¹ K.S.A. §17-76,143(e); V.A.M.S. §347.186.4(3).

⁶² K.S.A. §17-76,143(f); V.A.M.S. §347.186.4(4).

⁶³ K.S.A. §17-76,143(g); V.A.M.S. §347.186.5(1).

⁶⁴ K.S.A. §17-76,143(h); V.A.M.S. §347.186.5(2).

⁶⁵ K.S.A. §17-7693; V.A.M.S. §347.079.

⁶⁶ K.S.A. §17-76,143(i); V.A.M.S. §347.186.5(3).

⁶⁷ K.S.A. §17-76,143(j); V.A.M.S. §347.186.5(4).

Both states say that a manager “ceas[ing]” her role as series manager for one series does not affect her role as (1) LLC manager or as (2) series manager for another series.⁶⁸

Section 12: 17-76,143(l) and 347.186.5(6) – Series Member

Both states say that a member “ceas[ing]” her role as a series member for one series does not affect her role as (1) a LLC member or as (2) a series member for another series, even if she was “the last remaining member” of a series.⁶⁹

Section 13: 17-76,143(m) and 347.186.4(1)(d) – Series Dissolution

Both states give the daughter series-parent LLC dynamic an asymmetry: a series may be “dissolved” and “its affairs wound up” without (1) triggering the LLC’s dissolution or (2) affecting the dissolving series’ limited liability, but if the LLC dissolves, a series “is terminated and its affairs” “wound up.”⁷⁰

Section 14: 17-76,143(n) and 347.186.6(1) – Series as Separate Entity Out-of-State

Both states allow a series to register to do business out of state as an LLC, even if the parent LLC or other series are not registered to conduct out of state business.⁷¹ This appears to allow a series to register to do business as a foreign LLC in a state that does not allow domestic series LLCs, but this may be a step too far in the business risk realm.

Section 15: 17-76,143(o) and 347.186.6(2) – Foreign Series LLC

Both states allow a foreign series LLC to register to do business while applying local law and treating the series LLC as a foreign LLC doing business under local law.⁷²

Section 16: 347.186.5(7), .7 – OA Options and Fraudulent Conveyances

Missouri uniquely allows a series LLC’s operating agreement to “impose restrictions, duties, and obligations” on LLC or series members “as a matter of internal governance, including, without limitation”: “choice of law, forum selection, or consent to personal jurisdiction; capital contributions; membership interest transfer restrictions; restrictive covenants, including noncompetition, non-solicitation, and confidentiality provisions; fiduciary duties; and restrictions, duties, or obligations to or for” the LLC or series or affiliates’ “benefit.”⁷³ This Missouri provision supports the spirit of the LLC or series LLC as maximizing flexibility. Perhaps cognizant that some might manipulate a Missouri series LLC for a “fraudulent conveyance” or to illegally avoid taxes or creditors, Missouri gives creditors and victims of such a scheme a chance to “challenge” the series LLC’s limited liability on those limited grounds.⁷⁴

⁶⁸ K.S.A. §17-76,143(k); V.A.M.S. §347.186.5(5)

⁶⁹ K.S.A. §17-76,143(l); V.A.M.S. §347.186.5(6)

⁷⁰ K.S.A. §17-76,143(m); V.A.M.S. §347.186.4(1)(d)

⁷¹ K.S.A. §17-76,143(n); V.A.M.S. § 347.186.6(1)

⁷² K.S.A. §17-76,143(o); V.A.M.S. §347.186.6(2).

⁷³ V.A.M.S. §347.186.6(2).

⁷⁴ V.A.M.S. §347.186.7.

Series LLC Maintenance and Management

Now that we've compared the statutes, let's next talk about some basic series LLC maintenance matters. A Kansas series LLC is maintained like a traditional LLC, by filing an annual report with the Secretary of State. A Missouri LLC need not file an annual report each year.

Proper series LLC maintenance is vital. The attorney and business need access to various key documents: articles of organization, operating agreement, records, tax filings, annual reports, government records, and other relevant legal documents (leases and property deeds, intellectual property documents, policies and procedures, and insurance policies). Throughout the business lifecycle, an attorney should ask various questions and obtain documents. The attorney should use a checklist or work plan to become familiar with the business and its industry; know the LLC members, series members, and managers and their respective business interests; develop a legal history or timeline of the business; look at business and regulatory dynamics and relationships; and develop a detailed list of what legal work needs to be done and proactively communicate and work with the business to get it done.

Let's discuss a few key series LLC management facets.

- *Leadership*

A regular LLC has members, whose status is similar to a corporation's shareholder or a partnership's partner.⁷⁵ A series LLC has two layers of members: (1) the parent LLC's members and (2) the series members of a daughter series. The members and series members could be the same or different people, depending on the series LLC's evolution and business growth and development.

The members or manager oversee and run the series LLC, so they chart the business's direction and pulse. A wise corporate counsel will advise the members or manager to adopt series LLC best practices. Questions of member, series member, or manager selection, replacement, succession, removal, resignation, vacancy, or compensation should be answered by the series LLC's operating agreement.

- *Management*

Kansas and Missouri have member-managed LLCs by statutory default, but the LLC's operating agreement can elect manager-management.⁷⁶ This rule applies to series LLCs too: a series LLC will be member-managed unless the operating agreement elects manager-management.⁷⁷

- *Limited Liability & Veil Piercing*

A series LLC has limited liability: if a series is treated as a separate legal entity, it has limited liability protection distinct from other series or from the parent LLC, unless a series or the parent LLC enter an agreement with joint and several liability. A series LLC's limited liability could be disregarded under one of four theories: agency theory, joint enterprise, veil piercing, and single business enterprise theory.⁷⁸

Witness how crucial proper formation and maintenance are. One series' "liability shield" could be disregarded without veil piercing if the series' members did not provide notice of limited liability for the series when forming the series, or in the operating agreement,

⁷⁵ Martin, Kansas Corporation Law, §13.3.1.

⁷⁶ K.S.A. §17-7693; V.A.M.S. §347.079; Martin, Kansas Corporation Law, §13.3.2.

⁷⁷ Bishop, LLCs, Ch. 7.

⁷⁸ Kray, Comment, St. Mary's L. J. (2011), 42:501, 534.

or if they did not “maintain separate records and accounts for the assets of each series.”⁷⁹ A series LLC must be formed and maintained properly to avoid lurking liabilities. In Kansas, courts will pierce the veil if leaving the veil in place “would work an injustice on third parties.”⁸⁰ In Missouri, veil piercing takes 3 criteria: (1) complete control where the corporate entity lacked a separate will at the time of the transaction; (2) the defendant used control to commit fraud or another bad act; and (3) the control and breach of duty proximately caused the complaining party’s injury.⁸¹

The series LLC’s veil fails if abused or improperly maintained. A Delaware bankruptcy court has pierced an LLC’s veil, yet courts are careful.⁸² But as Delaware business law goes, so goes often Kansas (and increasingly, Missouri) business law. Piercing the corporate veil is “an equitable doctrine,” which the Kansas and Missouri statutes do not specifically address.⁸³

Even if the series LLC “proper[ly] observ[ed]” “the required formalities,” the veil of the series or the parent LLC could be pierced for a claim sounding in contract or tort law, including if public policy concerns were in play.⁸⁴ But the Kansas and Missouri courts are silent (so far) on series LLC veil piercing.⁸⁵ One expects the courts would follow their precedents and pierce the veil of a series LLC if their doctrinal criteria were satisfied on a case’s facts.

- *Asset Protection*

Series LLCs can be used for asset protection – keeping different businesses or assets separate.⁸⁶ A series’ “debts, liabilities and obligations incurred, contracted for, or existing” as to “a particular series are enforceable only against that series,” “not against the assets of the LLC generally or any other series.”⁸⁷ Or a series LLC could be used to hold various real estate properties or business locations, saving an entrepreneur “startup costs” and “administrative and state tax costs.”⁸⁸ A series LLC’s hallmark for an entrepreneur or serial entrepreneur is business flexibility: each series can “operate and make decisions independently” of other series in the series LLC.⁸⁹

- *Bankruptcy*

Some bankruptcy cases exist about LLC debtors.⁹⁰ Bankruptcy courts have not yet decided cases involving series LLCs. One key bankruptcy issue is each series’ legal entity status: if a series LLC filed for bankruptcy, would each series be a separate legal entity (debtor) distinct from the parent LLC?⁹¹ Bankruptcy courts have not spoken on the issue. A bankruptcy court might well “defer to state [law] on the separate entity status of

⁷⁹ Id., 543.

⁸⁰ e.g. *Pemco, Inc. v. Kansas Dept. of Revenue*, 258 Kan. 717 (1995); Presser, *Piercing the Veil*, §2.17.

⁸¹ e.g. *Real Estate Investors Four, Inc. v. Am. Design Group Inc.*, 46 S.W.3d 51, 56 (Mo. Ct. App. 2001); *Collet v. Am. Nat’l Stores, Inc.*, 708 S.W.2d 273 (Mo. Ct. App. 1986); Presser, *Piercing the Veil*, §2.26.

⁸² Bainbridge, *Limited Liability*, 208, 210.

⁸³ Id., 214.

⁸⁴ Kray, Comment, *St. Mary’s L. J.* (2011), 42:501, 544, 546.

⁸⁵ RIA Checkpoint, *Tax Planning for Partnerships*, §112.12.

⁸⁶ Kray, Comment, *St. Mary’s L. J.* (2011), 42:501.

⁸⁷ RIA Checkpoint, *Tax Planning for Partnerships*, §112.21.

⁸⁸ RIA 112.22

⁸⁹ RIA Checkpoint, *Tax Planning for Partnerships*, §112.23.

⁹⁰ Karambelas, LLC, Ch. 17; Bishop, LLCs, ¶1.04.

⁹¹ Kray, Comment, *St. Mary’s L. J.* (2011), 42:501, 529-531.

a series.”⁹² Some commentators think a “substantial risk exists” for one series’ bankruptcy to spill over to other series or the parent LLC and “to jeopardize the assets of the entire series LLC.”⁹³ Moreover, a series LLC could be “more prone to [bankruptcy law’s] ‘substantive consolidation’ doctrine,” where the court “disregard[s] the internal liability shields of entities ... to equitably make creditors whole.”⁹⁴

- Taxes

The series’ entity status also arises in the tax realm.⁹⁵ Various commentators have weighed in⁹⁶, but “despite the lack” of case law, “the trend appears to favor series as separate entities for ... federal and state tax[es].”⁹⁷ Indeed, the Treasury Department issued proposed regulations (on September 13, 2010), where each series would be a separate entity for federal taxes.⁹⁸ Importantly, these proposed regulations have not been finalized as of June, 2017. And a series with two or more series members is taxed as a partnership by default unless corporate tax treatment is elected.⁹⁹ A series treated as a separate entity would file its taxes annual, including identifying information.¹⁰⁰ The series statement must be filed by March 15 of the year after the return’s tax period.¹⁰¹

What if a parent LLC has daughter series which are empty shells without assets – is the empty series a separate entity? Or if only one or two series has assets or business activity? What about a series without series members that has not terminated under state law? What about each series’ employment taxes? Or employee benefits for each series? Treasury’s proposed regulations are silent on these points.¹⁰²

Kansas and Missouri state tax treatment is also largely unclear with series LLCs. For example, if each series will be separately assessed local sales and use taxes, if state withholding and composite return requirements apply to each series, if a series member sells her interest is it an intangible sale or sale of assets for state income taxes, and “more besides.”¹⁰³

⁹² Id., 530.

⁹³ Id., 530.

⁹⁴ Id., 530.

⁹⁵ Kray, Comment, *St. Mary’s L. J.* (2011), 42:501, 531-533.

⁹⁶ e.g. Mooney, *Series LLCs: The Loaves and Fishes of Subchapter K*, 813 P.L.I. Tax 355 (2008); McLoughlin et al., *The Series LLC Raises Serious State Tax Questions but Few Answers Are Yet Available*, *J. Multistate Tax’n & Incentives*, Jan. 2007, at 7, 2007 WL 80567; Shop Talk: California Takes a Stand on Delaware Series LLCs but There’s No News From IRS . . . , 104 *J. Tax’n* 315 (May 2006); Bishop, *Through the Looking Glass: Status Liability and the Single Member and Series LLC Perspective*, 42 *Suff. U. L. Rev.* 459 (2009); PPC’s Tax and Financial Planning Library, *Real Estate Taxation*, 205.21; PPC’s Tax and Financial Planning Library, *Limited Liability Companies*, 403.7-.9, 609.8; PPC’s Tax and Financial Planning Library, *Tax Planning for Closely Held Corporations*, 409;

⁹⁷ Kray, Comment, *St. Mary’s L. J.* (2011), 42:501, 532.

⁹⁸ Prop. Reg. §301.7701-1(a)(5)(i); <http://www.journalofaccountancy.com/news/2010/sep/20103328.html>.

⁹⁹ Prop. Reg. §301.7701-1(a)(5)(iv); PLR 200803004 (cited in RIA Checkpoint PPC’s Tax and Financial Planning Library, §204.9. PLRs are not citable as precedent.)

¹⁰⁰ Prop. Reg. §301.6011-6(a).

¹⁰¹ Prop. Reg. §301.6071-2(a).

¹⁰² RIA Checkpoint, *Tax Planning for Partnerships*, §112.11

¹⁰³ RIA Checkpoint, *Tax Planning for Partnerships*, §112.14; *Henson et al. v. Santander Consumer USA Inc.*, 2017 WL 2507342 (Gorsuch, J.).

- Securities

Series membership interests may trigger securities laws, including disclosures upon sale if a membership interest is deemed to be a security.¹⁰⁴ For securities law purposes, “ensuring full and adequate disclosure of all material risks” in a series could well be “impossible.”¹⁰⁵

- *Dissolution: A Series Finale vs. Winding Down the LLC*

Like diamonds, LLCs are forever, until they are dissolved or wound down – an entrepreneur could retire or the business becomes obsolete.¹⁰⁶ A wise attorney tries to see the end from the beginning.¹⁰⁷ A series LLC has two layers of limited liability, two layers of members, and two layers of dissolution. First, an individual daughter series can be dissolved, or second, the parent LLC can be wound down, which eliminates all daughter series under its umbrella.

Dissolution can involve an asset sale, and be voluntary or court ordered. When and why will the series LLC dissolve? Who cashes in the business poker chips? A well-crafted dissolution or wind down clause in the operating agreement can answer this.

- *Optional Corporate Maintenance for Series LLC*

A series LLC can have regular meetings as part of its ongoing maintenance, but meetings are not required (as they are in a corporation). Likewise, voting is a major corporate law issue, but not formally required in a LLC or series LLC. Both regular meetings and votes on important business decisions may well be series LLC best practices. The operating agreement should specify any voting rules. What’s a quorum of members or series members? Must voting be done in person or is a proxy vote allowed? Does each member get one vote, or do some members have extra sway, or no vote at all? Does a majority win, or is a super majority required for some items?

- *Indemnification*

Members, series members, and managers of a series LLC need to think about indemnification.¹⁰⁸ Attorney fees and other expenses may be advanced or paid for a manager.¹⁰⁹ A manager will seek indemnity for their actions on behalf of the series LLC. They may desire insurance, if available. Members or series members could seek indemnification if a manager makes a mistake that disrupts a series’ limited liability. The series LLC’s operating agreement may indemnify key players and advance related expenses to a manager.

Now that we have discussed some maintenance issues, let’s move on to the labyrinth of series LLC accounting and taxes.

¹⁰⁴ Kray, Comment, St. Mary’s L. J. (2011), 42:501, 533; Karambelas, LLCs, Ch. 18; Bishop, LLCs, Ch. 11; Martin, Kansas Corporation Law, §13.2.5.

¹⁰⁵ Kray, Comment, St. Mary’s L. J. (2011), 42:501, 533.

¹⁰⁶ With apologies to Sean Connery’s James Bond, *Diamonds Are Forever* (1971); Martin, Kansas Corporation Law, §13.5; Bishop, LLCs, Ch. 9.

¹⁰⁷ T.S. Eliot, *Four Quartets*, “Little Gidding,” (No. 4) (1943), V: 214-216.

¹⁰⁸ K.S.A. §17-7670; V.A.M.S. §347.057.

¹⁰⁹ K.S.A. §17-7670(b).

C. Accounting and Tax

We're business lawyers, not accountants or tax lawyers, so we defer to those experts for series LLC accounting and tax matters. We urge you to work closely with a certified public accountant or experienced tax lawyer when you encounter these issues with series LLCs.

Series LLCs are taxed as flow through entities, disregarded for income tax purposes, just like regular LLCs. The IRS' check-the-box entity regulations have encouraged LLC use and made tax elections simple, which is good news for LLC and series LLC clients.¹¹⁰ Accounting and tax issues in a series LLC are similar to regular LLC issues, but can be considerably more complex, as the flow of revenue and expenses between the parent or umbrella and individual daughter series in a series LLC is driven by the operating agreement.

Accounting

Given the potential complexities of handling accounting or bookkeeping for a series LLC, a certified public accountant's services should be retained. The author has frequently discussed accounting nuances or questions with his clients' accountants. Likewise, the author's co-panelists have discussed these issues with tax lawyers at their law firm. A small sampling of issues follows.

Series Integrity

To maintain a series as a separate entity, a separate EIN and bank account is likely required for accounting and tax records. The client's accountant can take the lead on keeping separate accountings and records for purchases and expenses, but the accountant and lawyer need to be clear on how the series LLC works to preserve the integrity of various accounts. Even if the various series are owned by the same person or doing business with each other, keeping bona fide, good, clean records of all transactions for accounting and tax purposes is vital. Keeping good records for each series' income and expenses is an easy, proactive practical step a client can take to preserving the series' limited liability. Remember the old chestnut: document everything and show your work.

LLC Tax – Single Member or Multi Member LLC

A LLC blends a corporation's limited liability with a partnership's flexibility and tax benefits. The LLC tax landscape provides that by default, an LLC is treated as a disregarded entity for federal income tax purposes, so the IRS views an LLC through the sole proprietorship lens, with direct income or loss flowing through to the individual member. An LLC can elect to be taxed as an S or C corporation under federal law. A single member LLC is a disregarded entity, so income and expenses before and after the LLC's organization are reported on Schedules C and SE (Form 1040). If an LLC has 2 or more members, by default the LLC will be taxed as a partnership, unless it elects to be treated as an S or C corporation. A single member LLC can become a multi member LLC – if so, it needs a new EIN.

¹¹⁰ Bishop, LLCs, Ch. 2.

If a member or series member sells her interest, the sales price is reported on his or her Form K-1, representing the flow through to the member of the LLC's bounty. Purchased goodwill of an LLC or series LLC is an intangible asset.¹¹¹

Series LLC Taxes

Series LLC taxes, like calculus, may seem simple conceptually, but turns out to be quite complex.¹¹² Depending on the operating agreement and tax elections, a daughter series' taxes could be treated as a single- or multi-member LLC, or it may be treated as part of the LLC, contributing revenue and expenses to the LLC's balance sheet. One key tax election is whether to treat a daughter series as a (1) separate entity or (2) part of the parent LLC. This choice will substantially affect the series LLC's tax situation and complexity.

Converting to a Series LLC

A partnership, corporation, or LLC could become a series LLC, but an accountant should be consulted to confirm or flesh out the accounting and tax details of the contemplated entity conversion.

S or C Corporation Tax Treatment

An LLC or series LLC can elect to be taxed as an S or C corporation via Form 2553, but need not file Form 8832.¹¹³ The multi-member LLC is seen as contributing all its assets and liabilities to the S corporation in return for the S corporation's stock, and immediately the multi-member LLC liquidates by distributing the S corporation's stock to its members. As an electing S corporation, the LLC would file a Form 1120S return, and each shareholder (LLC member) would receive a Schedule K-1 (for Form 1120S) reflecting their respective share of income or loss from the S corporation.

Series LLC's Payroll

A series LLC must do payroll for its employees to avoid various penalties, including failure to file, failure to deposit, failure to pay income taxes, potential failure to deposit taxes electronically, potential fraudulent failure to pay, and a potential trust fund recovery penalty. A series LLC with employees must keep a payroll, calculate and make appropriate withholdings from employees' compensation, and pay appropriate income taxes. A series LLC is not responsible for withholding or paying taxes on amounts paid to independent contractors, but if the series LLC is calling workers employees - and their duties are those of employees - the series LLC must do payroll.

Now that we've explored a few accounting and tax issues with series LLCs, let's move on to transactions with series LLCs.

¹¹¹ Code §197. The buyer must amortize §197 intangibles over a 15 year period. §197 intangible amortization deductions are depreciable. Code §1245. Goodwill sold at a gain is a §197 intangible, reported on Form 4797, Part III.

¹¹² e.g. Limited Liability Companies (BNA no. 725-3rd), A-88 – A-89.

¹¹³ The S corporation election deadline and criteria governs. Code §1361. An S corporation election is effective upon filing Form 2553, until terminated or revoked.

D. M&A and Buy-Sell: Transactions with Series LLCs

An entrepreneur or serial entrepreneur can use a series LLC to consolidate her business holdings from a number of corporations or partnerships or LLCs to a single series LLC. Since a series LLC is usually a separate legal and tax entity, it can participate as a party to a merger or acquisition, or enter into a buy-sell agreement. A merger or acquisition could be used if the parent LLC or a daughter series was merging with, acquiring, or being acquired by another business.

Mergers and acquisitions are possible with series LLCs. Since LLCs and series LLCs are almost always privately-held companies, compliance and regulatory hurdles that public companies may encounter in a M&A situation will rarely, if ever, arise. Still, comprehensive due diligence and careful planning and review of any proposed transaction with experienced professionals is needed.

Future Series LLC Law Developments

State law does not appear to allow one daughter series to merge with or acquire another daughter series within the same series LLC, even if the series members for one daughter series were legally distinct from the series members of another daughter series. State law also does not allow a series LLC to act like a fractal: a series cannot birth a series itself – grandchild series are not allowed.

Likewise, a series LLC buy-sell agreement could be used if the parent LLC or a daughter series was buying or selling another business. But alas, state law does not appear to allow one daughter series to buy or sell another daughter series within the same series LLC, even if the series members for one daughter series were distinct from the series members of another daughter series.

While series LLCs are fairly new to the corporate and securities law landscape, one or more daughter series within a series LLC could be pledged as collateral or become qualified as a security for potential investors. And while the intricacies and strategic considerations of Kansas and Missouri blue sky laws and federal securities laws are beyond our scope, an LLC or series LLC interest could qualify as a security under federal or state law.¹¹⁴ Usually a client would want to avoid this, but a business owner or prospective investor could want to treat an LLC or series LLC interest as a security.

Conclusion

We have explored series LLCs in Kansas and Missouri. Next, we move to Session 4, the question of tailoring the series LLC to your client, and we'll have a panel discussion with diverse practice experiences, insights, and perspectives, and pros and cons of using a series LLC for your client situations.

Attorneys practicing the corporate law should ensure compliance with Kansas or Missouri law throughout the series LLC's life cycle. May your work as a corporate lawyer make a satisfying difference in your life, serve your clients well, and help add value to businesses and our community. Careful planning with a series LLC by a corporate lawyer can help a client, to as the great Scottish poet wrote, avoid traps of the "best laid schemes o' mice an' men."¹¹⁵

¹¹⁴ e.g. K.S.A. §§17-12a101 - 17-12a703; V.A.M.S. 409.1-101 – 409.7-703; Securities Act of 1933, §18(b).

¹¹⁵ Robert Burns, "To a Mouse" (Nov. 1785), Harvard Classics ed., 6:119-120.

OPERATING AGREEMENT

of

_____ LLC,

A _____-Managed Kansas/Missouri Series LLC with Daughter Series

SECTION I - Explanatory Statement

SECTION II - Organizational Matters

SECTION III - Definitions

SECTION IV - Capital Contributions

SECTION V - Allocations and Distributions

SECTION VI - Business Management and Operation

SECTION VII - Members and Series Members' Rights and Obligations

SECTION VIII - Books, Records, Accounting, and Reports

SECTION IX - Tax Matters

SECTION X - Transfer of Units or Series Units

SECTION XI - Admission of Substitute and Additional Members

SECTION XII - Withdrawal or Removal of the Manager or Members

SECTION XIII - Dissolution and Liquidation

SECTION XV - Miscellaneous Provisions

OPERATING AGREEMENT

of

_____ LLC,

A _____-Managed Kansas/Missouri Series LLC with Daughter Series

THIS OPERATING AGREEMENT is entered into by and among the Members of _____ LLC, a Kansas/Missouri limited liability company (the “Company” or the “parent LLC”) is entered into as of the ____ day of _____, 2017, by and among the “daughter series” listed on Exhibit A, _____ (the “Manager”) and _____ (the “Members”). The Members agree that the Operating Agreement’s (“Agreement”) terms governing this limited liability company shall be as follows:

SECTION 1 - Explanatory Statement

The parties to this Agreement have agreed to organize and operate a limited liability company, which shall include limited liability series (“Series”), under this Agreement’s terms and the Missouri Act. Unless otherwise stated, each Series shall operate wholly within the Company and under this Agreement’s terms and the Missouri Act.

SECTION 2 - Organizational Matters

2.1. Formation. The Company shall be formed as a limited liability company under the Missouri Act. The Members’ and Series Members’ rights and obligations and the Company’s and each Series’ affairs shall be governed and any conflict resolved by, first, the Missouri Act’s mandatory provisions, second, the Company’s Articles of Organization, third, this Agreement, and fourth, the Missouri Act’s optional provisions.

2.2. Name. The Company’s name shall be “_____ LLC.” The Company may operate under that name, a variation of that name, or any other name the Manager deems advisable. The names of the daughter series operating within the Company under this Agreement shall be as listed on Exhibit B. The initial daughter series shall be _____ LLC, a daughter series of _____ LLC. The Series may operate under those names, a variation of those names, or any other names the Manager deems advisable. The Members shall not utilize any Company or Series name that may result in the personal liability of any Manager, Member, or Series Member under the Missouri Act or any other statute. The Company is a legal entity separate and distinct from its Members. Each Series is legally separate and distinct from the Company and/or the Series’ Series Members. The Company owns all its assets and the Members have no direct interest in the Company’s assets. The Members shall have no personal liability to any third party for any Company debt, obligation, or liability solely by reason of being the Manager or a Member.

2.3. Purpose. The Company’s purpose and each Series’ purpose shall be to _____ owned by the Company and/or a Series and any other purpose allowed by the Kansas/Missouri Act.

2.4. Registered Office, Resident Agent, and Principal Office. The Company’s registered

office in the State of Missouri and the Company's resident agent for service of process at that address shall be set forth in the Articles of Organization, as amended. The Company may also maintain offices at another place or places as the Manager deems advisable.

2.5. Power of Attorney. Each Interest Holder hereby irrevocably appoints and empowers the Manager, and the Manager's authorized officers and attorneys in fact with full power of substitution, as the Interest Holder's true and lawful agent and attorney-in-fact, with full power and authority in his or her name, place, and stead to accomplish the following:

2.5.1. Execute Documents. Make, execute, acknowledge, publish, and file in the appropriate public offices the following documents: (a) Articles of Organization, duly approved amendments to the Articles of Organization, and any duly approved amendments to this Agreement, filed pursuant to the Missouri Act or the laws of any state in which such documents are required to be filed; (b) any certificates, instruments, or documents as may be required by or may be appropriate under the laws of any state or other jurisdiction in which the Company is doing or intends to do business; (c) any other instrument that may be required to be filed by the Company under the laws of any state or by any governmental agency or that the Manager deems advisable to file; or (d) any documents that may be required to effect the Company's continuation; the admission, withdrawal, or substitution of any Member under this Agreement's Sections 10, 11, or 12; the Company's dissolution and termination under the Articles of Organization or this Agreement; or the surrender of any rights or the assumption of any additional responsibilities by the Manager; and

2.5.2. Ratify Actions. Sign, execute, swear to, and acknowledge all ballots, consents, approvals, waivers, certificates, and other instruments appropriate or necessary, in the sole discretion of the Manager, to make, evidence, give, confirm, or ratify any vote, consent, approval, agreement, or other action, which is made or given by the Members hereunder or is consistent with the terms of this Agreement or appropriate or necessary, in the sole discretion of the Manager, to effectuate the terms or intent of this Agreement; provided, however, that when required by Sections 7 or 14 or this Agreement's other provisions that require the approval of the Members, or a Majority Vote of the Members, to take any action, the Manager may exercise the power of attorney given in this Section 2.5 only after the necessary vote, consent, or approval by the required Members.

2.6. Term. The Company shall commence upon filing of the Company's Articles of Organization with the Missouri Secretary of State according to the Missouri Act, and shall continue in perpetual existence until the Company's dissolution according to the Missouri Act and this Agreement. Each daughter series shall commence upon filing of a Certificate of Designation with the Missouri Secretary of State according to the Missouri Act, and shall continue in perpetual existence until the daughter series' dissolution according to the Missouri Act and this Agreement.

2.7. Series of Members and Interests. The Company, with the Manager's approval, may establish separate Series. The Members currently contemplate that the Company's business shall include but not be limited to the daughter series listed on Schedule A, unless the Manager otherwise approves. Each Series may have separate Series Members and each Series

(a) will own separate assets, (b) will have the separate rights and powers as herein provided, and (c) may have separate investment and business purposes. A particular Series' debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing from time to time shall be enforceable against that Series' assets only, and not against the assets of any other Series or of the Company. Unless the Manger agrees otherwise, none of the Company's or any other Series' debts, liabilities, obligations and expenses incurred, contract for, or otherwise existing shall be enforceable against a Series' assets. The Company shall file a certificate complying with the Act so limiting each Series' liability.

A Company Member may separately be a Series Member of more than one Series. Each Series Member shall have the respective rights, duties and powers. Series Members will be designated by the Manager. No Member shall have the right to vote on any matter pertaining to a particular Series, or as to the Company generally, except as herein expressly provided.

2.8. Jointly Held Units. [H and W] may have jointly held interests, held individually or in trust, and [H] may jointly hold interests in the Company or a Series of the Company with a family member and that interest shall also be considered a jointly held unit. In any of these cases, or if two persons are listed as a single Member holding the Units representing their Interest as husband and wife, husband and wife as joint tenants, or otherwise jointly, the following shall apply:

2.8.1. Joint Owners as Single Member. Where not otherwise required by law, those persons shall be considered a single Member. To the extent required by law, those persons shall be considered as separate Members. For that purpose, each person shall be deemed to have contributed $\frac{1}{2}$ of the capital contribution attributable to the Units, and each person shall be deemed to have a $\frac{1}{2}$ Interest in the Units.

2.8.2. Voting. The vote or consent of either person shall be deemed the vote or consent of both, unless both are present and voting or both submit written consents or refusals. If both are present and voting or both submit written consents or refusals, then each shall vote $\frac{1}{2}$ of the interest that may be voted by both.

2.8.3. Membership Rights and Obligations. Each person shall have the rights and obligations under Section 7.

2.8.4. Joint Owner's Death. Upon either person's death and the passing of the decedent's interest to the surviving joint tenant, the right to be a substituted Member shall vest in the survivor and shall not be subject to any other Member's consent.

2.8.5. Transfer. Any proposed transfer and notification under Section 10 shall be of a joint interest, if made by both persons. But if the proposed transfer and notification is by only one person, then the transfer shall be of only $\frac{1}{2}$ of their joint interest, and the other $\frac{1}{2}$ shall belong solely to the other person.

2.8.6. Notice. Any notices given to either person shall be deemed notice to and be

binding on both persons, unless the Company receives a written advisement otherwise.¹

2.9. Managers’s Right to Expense Reimbursement. If the Manager reasonably incurs an expense on the Company’s and/or a Series’ behalf while forming the Company and/or a Series or otherwise and reasonably documents the expense for the Company and/or Series, the Company and/or Series shall promptly reimburse the Manager for the expense upon receipt of the documentation.

SECTION 3 - Definitions

3.1. “Affiliate” means any Person that directly or indirectly controls, is controlled by, or is under common control with, the Person in question. The term “control” means either (1) possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract, or otherwise; or (2) a direct or indirect equity interest of 5% or more in the entity.

3.2. “Agreement” means this Operating Agreement, as it may be amended or supplemented.

3.3. “Articles of Organization” means the articles of organization, as amended, filed by the Company under the Kansas/Missouri Act.

3.4. “Assignee” means (1) a Person to whom one or more Units have been transferred, assigned, or who has otherwise acquired a Member's Interest in the Company, as permitted by this Agreement, and who has agreed to be bound by this Agreement’s terms but who has not become a Substitute Member; or (2) an Assignee under Section 10.1.2.

3.5. “Business Day” means Monday through Friday of each week, except legal holidays recognized by the United States and/or Missouri Governments.

3.6. “Capital Account” means a capital account established for each Member (or transferee of a Member who is not admitted to the Company as a Member, provided that the maintenance of the Capital Account will not constitute the transferee’s admission as a Substituted Limited Member as defined in Section 10.1.2), which shall be maintained under Section 4.

3.7. “Capital Contribution” means, as to any Member, the amount of cash or the fair market value of all property or services contributed to the Company by the Member, which is set forth opposite the Member’s name on attached Exhibit A.

3.8. “Cash Available for Distribution” means, as to any period, all cash receipts and funds received by the Company (except for Capital Contributions), including proceeds of refinancing Company Property, minus (1) all cash expenditures; and (2) any amounts deposited in the Company’s management fund (as reasonably determined by the Manager) and representing working capital or other reserves.

3.9. “Certificate of Designation” means the document filed with the Missouri Secretary of

¹ Married Company/Series Members only

State to designate a limited liability series.

3.10. “Code” means the Internal Revenue Code of 1986, as amended, or any future federal tax law. **“Regulation”** means Tax Regulations, including Temporary Regulations, promulgated by the United States Treasury Department and the Internal Revenue Service, under the Code as amended (including corresponding provisions in succeeding regulations). **“Code §”** or **“Regulation §”** means that section of the Internal Revenue Code of 1986, as amended, or Regulations, or any future corresponding section of federal tax law.

3.11. “Company” means the Kansas/Missouri limited liability company, _____ LLC, formed by filing the Company’s Articles of Organization.

3.12. “Company Property” means all property acquired or owned by the Company from time to time. **“Series Property”** means all property acquired or owned by a Series of the Company from time to time. Only the Manager or his agent shall have any right to partition Company Property or Series Property. Company Property or Series Property shall include all intellectual property rights owned by the Company or the Series, including (a) all inventions (whether or not patentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all re-issuances, divisions, continuations, continuations-in-part, revisions, renewals, extensions, and reexaminations thereof, (b) all works of authorship, including all mask work rights, database rights and copyrightable works, all copyrights, all applications, registrations and renewals in connection therewith, and all moral rights, (c) all trade secrets, (d) all registered and unregistered trademarks, service marks, trade dress, domain names, logos, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith, (e) all derivative works of any of the foregoing; (f) any other similar rights or intangible assets recognized under any laws or international conventions, and in any country or jurisdiction in the world, as intellectual creations to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations or reissues of the foregoing now or hereafter in force, and (g) all copies and tangible embodiments of all of the foregoing (a) through (f) in any form or medium throughout the world.

3.13. “Family” means an individual's lineal or adopted descendants, his or her parents, spouse, siblings, siblings’ spouses and lineal or adopted descendants of any thereof, and any family limited partnership or family limited liability company (“FLP”), trust or other fiduciary or other entity solely for the benefit of (a) the individual, (b) the individual's lineal or adopted descendants, or (c) the individual's parents, spouse, siblings or lineal or adopted descendants of any thereof.

3.14. “Income” and “Loss” mean an amount equal to the Company’s taxable income or loss (including capital loss) for each taxable year, determined according to Code § 703(a) (for this purpose, all items of income, gain, loss, deduction, or credit required to be stated separately under Code § 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

3.14.1. Any Company income that is exempt from federal income tax and not otherwise taken into account in computing Income or Loss shall be added to the Income or Loss.

3.14.2. Any Company expenditures described in Code § 705(a)(2)(B) or treated as Code § 705(a)(2)(B) expenditures under Regulation § 1.704-1(b)(2)(4)(i), and not otherwise taken into account in computing Income or Loss, shall be subtracted from the Income or Loss.

3.14.3. Upon the Company's distribution of property to a Member, gain or loss attributable to the difference between the property's fair market value and its basis shall be treated as recognized.

3.15. "Interest" means an Interest Holder's share of income, gains, losses, deductions, credit or similar items of, and to receive distributions from, the Company or a Series.

3.16. "Interest Holder" means any Person who holds an Interest in the Company or a Series, whether as a Member, Series Member, or as an assignee of a Member or Series Member that has not been admitted to the Company as a Member or a Series as a Series Member.

3.17. "Missouri Act" means the Missouri Limited Liability Company Act, V.A.M.S. §347.010 et seq., as amended, and any successor act or future Missouri LLC law.

3.18. "Majority Vote of the Members" means the affirmative vote of the holders of a majority of the Outstanding Units held by the Members. Each Unit shall be entitled to one vote.

3.19. "Manager" means _____ or his/her/its successor.

3.20. "Missouri Act's Mandatory Provisions" means the Missouri Act's provisions that may not be supplanted by this Agreement or unanimously waived by the Members.

3.21. "Members" means _____ and his/her/its successor. Each Member may be a Member of one or more Series as herein provided. The Manager shall be a Member.

3.22. "Outstanding Units" are Units issued by the Company as shown on the Company's books and records, less any Units held by the Company. **"Outstanding Series Units"** are Series Units issued by a Series as shown on the Series' books and records, less any Series Units held by the Series.

3.23. "Person" means an individual, sole proprietorship, joint venture, partnership, corporation, company, firm, bank, association, cooperative, trust, estate, government, governmental agency, regulatory authority, or other entity of any nature.

3.24. "Record Holder" means the Person in whose name a Unit is registered on the Company's books and records as of the close of business on a particular Business Day.

3.25. "Series" means each separate limited liability series of the Company established under

V.A.M.S. _____ of the Missouri Act (or K.S.A. _____ of the Kansas Act). The Manager may establish various Series with separate Series Members, assets, and liabilities in his sole discretion.

3.26. “Series Member” means a Member of a Series of the Company. A Series Member who is not a Company Member shall not have a Company Member’s duties, powers, or rights.

3.27. “Sharing Ratios” means the percentages in which Members participate in, and bear the risk of, the Company’s or a Series’ business. Sharing Ratios shall be established separately for each Series and for each Series Member in the Manager’s sole discretion, with each Series Member having the Series Sharing Ratio as to that Series or in the Supplement establishing that Series. The Company will initially have ___ Series operating under this Agreement, as listed in Exhibit A. The Sharing Ratios for each Series shall be as listed on Exhibit A and related documentation. Additional daughter series may be added to operate under this Agreement upon the Manager’s approval and execution of a Supplement, and filing the Supplement with the Missouri Secretary of State or other appropriate agency. The Interest Holders or Series Members of each Series may be changed a written Supplement executed by the Manager.

3.28. “Substitute Member” means a transferee of a Unit who is admitted as a Company Member to the Company under Section 11.1 in place of and with all rights of a Member.

3.29. “Supplement” means a supplement to this Agreement establishing a daughter series of _____ LLC, substantially in the form of Exhibit C, executed by the Manager and, where required hereunder, the Series Members of the applicable daughter series of _____ LLC, the parent LLC. Exhibit C is subject to modification as approved by the Manager to establish daughter series, to admit new Members to a daughter series, or to modify an existing daughter series’ structure. Each Supplement is incorporated into this Agreement.

SECTION 4 - Capital Contributions

4.1. Units.

4.1.1. Company Units. There shall be ___ Units in the Company (“Unit”) and each Unit shall be entitled to 1 vote. Each duly issued Outstanding Unit when shall have the rights and obligations of Units.

4.1.2. Series Units. There shall be ___ Series Units in each Series of the Company (“Series Unit”). Each duly issued Outstanding Series Unit when shall have the rights and obligations of Series Units. Each Series Unit shall be entitled to a pro rata share of that Series’ profits and losses as described in Section 3.27 or duly executed and filed Supplement for a Series.

4.2. Initial Capital Contributions. Each Member or Series Member shall contribute the property, cash, or services set forth opposite the Member’s or Series Member’s name on attached Exhibit A, in exchange for the number of Units or Series Units set forth thereon. If any Member or Series Member transfers the Member’s or Series Member’s respective Interest in the Company or a Series, the transferee shall succeed to the transferring Member’s or Series Member’s Capital Account to the extent the Capital Account relates to the Interest transferred. In determining the amount of any liability for purposes of this paragraph, Code §752(c) and any

other applicable Code or Regulations provisions shall be taken into account.

4.3. Additional Capital Contributions. Members or Series Members may be requested to make additional contributions to the Company's or the Series' capital in excess of their initial Capital Contributions, upon written approval by the Manager. The Manager shall determine the aggregate amount of additional capital to be contributed and the aggregate number of additional Units or Series Units to be issued to the Members or Series Member (respectively the "New Units" or the "New Series Units") who choose to participate. If one or more of the Members or Series Member does not contribute the required additional capital in the required time and manner, the Member or Series Member shall have their ownership interest in the Company or Series diluted in proportion to their ownership interest and the New Units or New Series Units issued.

4.4. Membership Records. Each Member or Series Member's name and business address, Capital Contributions, and Interest are set forth in Exhibit A.

4.5. Member Guaranties. No Member or Series Member shall guarantee or otherwise become liable for any obligation of the Company, a Series, or an investment entity, without the Manager's prior written approval.

4.6. Capital Accounts. The Company and each Series shall maintain a separate Capital Account for each Interest Holder as follows:

4.6.1. Capital Contributions. Each Member or Series Member's Capital Account will be credited with the Member or Series Member's Capital Contributions, the Member or Series Member's distributive share of profits, any allocated income or gain, and the amount of any liabilities that are assumed by the Member or Series Member or secured by any Company or Series property distributed to the Member or Series Member;

4.6.2. Distributions. Each Member or Series Member's Capital Account will be debited with the amount of cash and the fair market value of any Company or Series property distributed to the Member or Series Member under this Agreement, the Member or Series Member's distributive share of losses, any deduction or loss allocated to the Member or Series Member, and the amount of any Member or Series Member's liabilities assumed by the Company or Series or secured by property contributed by the Member or Series Member to the Company or Series.

4.6.3. Transfer. If any Interest is transferred under this Agreement, the transferee shall succeed to the transferor's Capital Account.

4.6.4. Modifications by Manager. This Agreement's Capital Account maintenance provisions shall be interpreted to comply with Code §704(b) and its Regulations. The Manager may modify Capital Account maintenance to comply with tax laws.

4.6.5. Fair Market Value. The Manager shall determine any asset's fair market value contributed (or deemed contributed under Code §§704(b), 752 and the Regulations) by a Member to the Company or by a Series Member to a Series as of the contribution date.

4.6.6. Value Adjustment. The respective fair market values of all Company assets or Series assets will be adjusted by the Manager, as of (1) the acquisition of an additional interest in the Company or a Series by any new or existing Member or Series Member in exchange for more than a de minimis capital contribution, (2) the distribution by the Company to a Member

or by a Series to a Series Member of more than a de minimis amount of Company or Series property as consideration for an interest in the Company or Series if an adjustment is necessary or appropriate to reflect the relative economic interests of the Members or Series Member in the Company or Series, and (3) the Company's or a Series' liquidation under Regulation §1.704-1(b)(2)(2)(g).

4.6.7. In-Kind Contributions. If in-kind contributions are made, the Capital Account of the Member or Series Member shall be increased by the fair market value of the property contributed by the Member or Series Member.

4.6.7. Compliance with Regulations. This Agreement is intended to comply with Regulation §1.704-1(b), including but not limited to Regulation §1.704-1(b)(2)(4)(g), and shall be so interpreted and consistently applied. Regulation §1.704-1(b) contains additional capital account maintenance rules that this Agreement does not address.

4.6.8. Transfer of a Unit or Series Unit. An assignee of a Unit or Series Unit will succeed to the Capital Account relating to the Unit or Series Unit transferred. But if the transfer causes a termination of Company or a Series for tax purposes under Code §708(b)(1)(B), the Company or Series Property shall be deemed to have been distributed in liquidation of the Company to the Members or a Series to the Series Members (including the transferee of an Interest) under Section 13.2 and re-contributed by the Members or Series Members and transferees in constitution of the Company or Series. The Capital Accounts of the reconstituted Company or Series shall be maintained according to this Section's principles.

4.6.9. Revaluation. At times as may be permitted or required by Code §704 and its Regulations, the Members or Series Members' Capital Accounts shall be revalued and adjusted to reflect the then fair market value of Company or Series Property and the Capital Accounts shall be maintained to comply with Regulation §1.704-1(b)(2)(4)(f). All gain allocations resulting from the revaluation shall be made consistently with that Regulation and, to the extent not inconsistent therewith, the income allocation provisions of Section 5.2.

4.7. Interest. No interest shall be paid by the Company or a Series on Capital Contributions, on balances in a Member's or Series Member's Capital Account, or on any other funds distributed or distributable under this Agreement.

4.8. Loans. Upon the Manager's approval, any Member or Series Member may, at any time, make or cause a loan to be made to the Company or a Series in any amount and on terms as the Company or Series and the Member or Series Member shall agree, but a loan by a Member to the Company or by a Series Member to a Series shall not be considered a Capital Contribution.

4.9. Investment Representation. Each Interest Holder hereby represents and warrants to the Company or Series that the acquisition of Units of the Company or Series Units of a Series is made as a principal for the Interest Holder's own account for investment purposes only and not for the resale or distribution of the Units or Series Units or any interest therein.

SECTION 5 - Allocations and Distributions

5.1. Distribution of Excess Cash. All Cash Available for Distribution for each taxable year shall be distributed to the Interest Holders no later 90 days after the taxable year's end. Subject to any other express provisions hereof, the Company and its Series shall distribute Cash Available

for Distribution pro rata according to the number of Units or Series Units held by each Interest Holder, with all Outstanding Units and Outstanding Series Units treated alike.

5.2. Distributions to Series Members. By each calendar year's end, the Excess Cash derived from the business and operations of each Series (the "Source Series") shall be distributed as follows: (a) first, if the Source Series has previously benefited by distributions derived from another Series in payment of the unpaid preferred return and/or unreturned Capital Contributions attributable to the Source Series by way of distributions made on its behalf, then to the Series which made the distributions on the Source Series' behalf in repayment of the distributions made, together with a return at the rate of 10% per annum from the date the Series made the distributions until the distributions have been repaid; and (b) second, to the Series Members of the Source Series according to their Sharing Ratios.

All distributions made to Series Members shall be made according to their Sharing Ratios for the Series. If a Series receives distributions of funds under Section 5.2(a), then the Series receiving the distribution shall be a "Source Series" for determining the further distribution thereof.

5.3. Withholding. The Company or a Series may withhold distributions or portions thereof if it is required to do so by any applicable rule, regulation, or law, and each Member or Series Member hereby authorizes the Company or a Series to withhold from or pay on behalf of or as to the Member or Series Member any amount of federal, state, local or foreign taxes that the Manager reasonably determines that the Company or Series is required to withhold or pay as to any amount distributable or allocable to the Member or Series Member under this Agreement. Any amounts so paid or withheld as to a Member or Series Member shall be treated as having been distributed to the Member or Series Member and shall reduce any amounts otherwise distributable currently or in the future to the Member or Series Member under Section 5.2 or Section 13.1.

5.4. Allocation of Income and Loss. Except as otherwise provided, all items of income, gain, loss, deduction, and credit shall be allocated equally by Unit or Series Unit among all Interest Holders.

5.5. Compensation or Reimbursement. Authorized amounts payable as compensation or reimbursement to the Members, Series Members, or to any Person other than in the Person's capacity as a Member of the Company or Series Member of a Series, such as for services rendered, goods purchased, or money borrowed, shall not be treated as a distribution.

SECTION 6 - Business Management and Operation

6.1. Manager's General Authority. The Manager shall have complete and exclusive discretion in the management and control of the Company's daily operations and ordinary business and shall possess all powers necessary to carry out the Company's ordinary purposes and business; but the Manager shall not act contrary to any express decision of the Company adopted by a Majority Vote of the Members at a meeting of the Members so called. The

Manager shall direct the day-to-day affairs of each Series.

6.2. Daughter Series.

6.2.1. **Establish Daughter Series and Admit Series Members.** The Company may from time to time, with the Manager's prior written approval, establish a daughter series and admit to each daughter series as Series Members any Persons as the Manager approves. Only the Manager shall have any right to establish a daughter series or admit any Person as a Series Member of any new Series. From time to time, the Manager may amend a Supplement without the consent of any other Member.

6.2.2. **New Series Procedure.** The Manager shall establish new Series by completing and executing a Supplement therefore and causing each Series Member of the Series to execute a Supplement, and if any Series Member is a married individual, causing each Series Member's spouse to execute a Consent of Spouse ("Consent") in the form of Exhibit D. Upon completion and execution of each Supplement and Consent, a new Series shall be established with the Series Members, each of which shall have the rights, duties and obligations established by this Agreement as supplemented by the Supplement.

6.2.3. **Series Member Admissions.** After a Series has been established and the initial Series Members are admitted to the Series (the admission to be effective upon the Series Members' execution of the Supplement and, if applicable, the Consent), no additional Series Members may be admitted to the Series without the Manager's prior approval. If the Manager so approves, additional Series Members may be admitted to the Series and each Series Member's Sharing Ratio therein shall be subject to dilution to reflect the admission of the new Series Member under the terms and conditions approved by the Manager. Unless a Series Member agrees otherwise, any dilution shall be prospective only, and the Series Member shall continue to share in distributing of funds derived for any accounts receivable or reserves of the Series existing on the date the new Series Members are admitted thereto according to their Series Sharing Ratios preceding the dilution. The admission may be reflected as an amendment to the applicable supplement which shall be valid (and the admission shall be effective) if executed by the Manager and the new Series Members.

6.2.4. **Membership or Series Membership.** In addition to establishing a Series, additional Membership Interests may be created and issued to existing Members, Series Members, or to other Persons, and those other Persons may be admitted to the Company as Members or to a Series as Series Members in one or more classes, upon the Manager's approval. The creation of new Membership Interests, the admission of any new Members or Series Members, or the creation of any new class or group of Members or Series Members under this Agreement may (a) result in the dilution of the Sharing Ratios of existing Members or Series Members, and (b) be reflected as an amendment to this Agreement or a Supplement which shall be valid if executed by the Manager and the new Member or Series Member. Any new Member or Series Member that is a married individual shall also, as a condition to becoming a Member or Series Member, cause his or her spouse to execute a Consent.

6.3. Manager's Specific Duties and Authority. The Manager shall have the full, complete, and absolute power, right, and duty to conduct the day-to-day affairs of the Company and each Series of the Company, in the Manager's own discretion, subject only to the limitations set forth in Sections 3, 6.1, and 6.4 (or elsewhere expressly herein), including, but not limited to, the right to: (a) acquire, hold, develop, lease, improve, operate, encumber, sell, dispose of, dissolve, and otherwise deal with Company Property and/or Series Property at a price and upon terms as the

Manager deems to be in the Company's or a Series' best interests; (b) acquire by purchase, lease, exchange, or otherwise, any real or personal property; (c) borrow money and issue evidence of indebtedness and to secure the same by mortgage, deed of trust, pledge, or other lien on any assets of the Company and/or a Series; (d) employ agents, employees, managers, accountants, attorneys, consultants, and other persons necessary or appropriate to carry out the Company's and/or a Series' business and operations, and to pay fees, expenses, salaries, wages, and other compensation to those persons; (e) pay, extend, renew, modify, adjust, submit to arbitration, prosecute, defend, or compromise, upon terms as the Manager may determine and upon evidence as the Manager may deem sufficient, any obligation, suit, liability, cause of action, or claim, including taxes, either in favor of or against the Company and/or a Series; (f) determine the appropriate accounting method or methods to be used by the Company and/or a Series, (1) including selecting accounting methods and making various decisions regarding treatment and allocation of transactions for federal and state income, franchise or other tax purposes, and (2) determination of the terms and conditions of all borrowings of the Company and/or a Series and the identity of the lender thereof; (g) make or revoke the Company's federal, state, or local tax elections; (h) establish and maintain cash reserves for purposes and in amounts as the Manager deems appropriate from time to time; (i) with the consent of a Majority Vote of the Members or Series Members, sell all or substantially all of the Company's and/or a Series' assets (which shall be deemed part of the Company's and/or a Series' ordinary business), except if any license or franchise agreement is in effect, the consent of the licensor or franchisor to the transfer of any interest in the license or franchise agreement shall be obtained as required; (j) with the consent of a Majority Vote of the Members or Series Members, cause the Company and/or a Series to cease operations; (k) engage in any kind of activity and to perform and carry out contracts of any kind necessary to or in connection with or identical to the accomplishment of the Company's and/or a Series' purposes; (l) cause the Company or a Series to enter into any agreement which would subject the Company or a Series or its assets to any recourse liability for borrowings, or for capital contributions to any Person; (m) cause the Company or a Series to grant any interests in the Company or Series' assets, profit, and income; (n) determine any Capital Contributions to be made and sent notice to Members, Series Members, and Interest Holders of those capital requirements; (o) handle any Company and/or Series operations, approval of insurance coverage, the underwriters thereof and claims related thereto, the settlement of any litigation that is not fully covered by insurance, enter into any contract which obligates the Company and/or a daughter series or which cannot be cancelled without payment of a cancellation fee or other premium on not more than 30 days prior notice; and lease office space; (p) file or consent to filing bankruptcy for the Company and/or a Series; and (q) any other action which, considered before the taking thereof, could reasonably be expected to have a material effect upon the Company's and/or a Series' business or affairs.

6.4. Time Devoted to Business; Manner of Conduct. The Manager shall devote time to the Company as shall be reasonably required, in the Manager's judgment, to discharge the Manager's obligations to the Company and each Series. The Manager shall always conduct the Company's business in a manner consistent with the Members' best interest and each Series' business in a manner consistent with the Series Members' best interest. The Manager shall be reimbursed on a fiscal period basis for all direct reasonable and necessary out of pocket expenses incurred on the Company's or a Series' behalf. This reimbursement shall be in addition to any of indemnification reimbursement.

6.5. Documents. The Manager shall cause to be filed all documents he reasonably deems required for the Company's and/or a Series' formation, qualification and/or operation as a limited liability company or a limited liability series in Missouri or any other state where the Company or a Series may elect to do business.

6.6. Outside Activities. The Manager and each Member (and Affiliates of the Manager and/or any Member) may have business interests and engage in business activities in addition to those relating to the Company and/or a Series, including, but not limited to, business interests and activities in direct competition with the Company and/or a Series for its own account and for the account of others, and this Agreement shall not be deemed to prohibit any Member, Series Member, Member's Affiliates, Series Member's Affiliates, Manager, or Manager's Affiliates from conducting those businesses and activities. Neither the Company and/or a Series nor the other Members or Series Members shall have any rights under this Agreement or the relationship contemplated herein in any business ventures of any Member, Member's Affiliates, Series Member, Series Member's Affiliates, Manager, or the Manager's Affiliates.

6.7. Contracts with Affiliates. The Company and/or a Series may enter into contracts with Affiliates only if approved by an affirmative vote to that effect by the holders of at least 80% of the Outstanding Units held by Members or Series Members who are not Affiliates with the contracting party or by 80% of all Outstanding Units if all Members or Series Member are Affiliates.

6.8. Company Funds. The Company funds shall be deposited in an account or accounts designated by the Manager and shall not be commingled with any other funds except as the Members may unanimously approve. All withdrawals from or charges against these accounts shall be made by the Manager's officers or agents. Company funds may be invested as determined by the Manager, except in connection with acts this Agreement otherwise prohibits.

6.9. Series Funds. Each Series' funds shall be deposited in an account or accounts designated by the Manager and shall not be commingled with any other funds except as the Series Members may unanimously approve. All withdrawals from or charges against these accounts shall be made by the Manager's officers or agents. The Series' funds may be invested in the Manager's discretion, except in connection with acts this Agreement otherwise prohibits.

6.10. Indemnification.

6.10.1. General Rule. The Company and/or a Series, to the fullest extent permitted by law, shall indemnify and hold harmless each Member; each Member's Affiliates; each Series Member; each Series Member's Affiliates; the Manager; the Manager's Affiliates; and all officers, directors, trustees, members, employees, and agents of these parties (individually, an "Indemnitee") from and against any and all losses, claims, demands, costs, damages, liabilities, expenses of any nature (including attorneys' fees and disbursements), judgments, fines, settlements, and other amounts arising from any claims, demands, actions, suits, or proceedings (whether civil, criminal, administrative, or investigative) in which an Indemnitee may be involved or threatened to be involved, as a party or otherwise, arising out of or incidental to the Company's and/or a daughter series' business, including, but not limited to, liability under

federal or state securities laws, regardless of whether an Indemnitee continues to be a Manager, Member, Series Member, Affiliate, or an officer, director, trustee, partner, employee, or agent of a Manager or Member or Series Member or Officer or of an Affiliate at the time any liability or expense is paid or incurred, if (1) the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in, or not opposed to, the Company's and/or a Series' interests, and, as to any criminal proceeding, had no reason to believe the Indemnitee's conduct was unlawful; and (2) the Indemnitee's conduct did not constitute actual fraud, gross negligence, or willful or wanton misconduct. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a nolo contendere plea, or its equivalent, shall not, in and of itself, create a presumption or otherwise constitute evidence that the Indemnitee acted in a manner contrary to that specified in (1) or (2) above.

6.10.2. Payment of Expenses. Expenses, including legal fees and expenses, incurred in defending any proceeding specified in section 6.11 shall be paid by the Company and/or a Series in advance of the final disposition of the proceeding upon receipt of an undertaking (with or without security) by or on behalf of the Indemnitee to repay the amount if it shall ultimately be determined, by a court or otherwise, that the Indemnitee is not entitled to be indemnified by the Company and/or the respective Series as applicable hereunder.

6.10.3. Non-Exclusivity and Duration. Indemnification shall be in addition to any other rights to which each Indemnitee may be entitled under any agreement or Majority Vote of the Members, as a matter of law or otherwise, both as to action in the Indemnitee's capacity as a Manager, Member, Series Member, an Officer, an Affiliate, or as an officer director, trustee, partner, employee, or agent of the Manager or Member or Series Member, an Officer, or an Affiliate, and to action in another capacity, and shall continue as to an Indemnitee who has ceased to serve in that capacity and shall inure to the benefit of the heirs, successors, assigns, administrators, and personal representatives of the Indemnitee.

6.10.4. Insurance. The Company and/or a Series may purchase and maintain insurance on behalf of any one or more Indemnitees and other Persons as the Manager shall determine against any liability which may be asserted against or expense which may be incurred by the Person in connection with the Company's and/or a Series' activities, whether or not the Company and/or Series would have the power to indemnify the Person against liability under this Agreement.

6.10.5. Satisfaction. Any indemnification hereunder shall be satisfied solely out of the Company's and/or the respective Series' assets and no Manager or Interest Holder shall be subject to personal liability by reason of these indemnification provisions.

6.10.6. Interested Transactions. An Indemnitee shall not be denied indemnification in whole or in part solely because the Indemnitee had an interest in the transaction as to which the indemnification applies if the transaction was otherwise permitted by this Agreement.

6.10.7. Exclusive Benefit. Indemnification is for the exclusive benefit of the Indemnitees and the heirs, successors, assigns, administrators, and personal representatives of the Indemnitees and shall not be deemed to create any rights for any other Persons' benefit.

6.11. Manager's Liability. The Manager and its Affiliates and all officers, directors, members, partners, employees, and agents of the Manager and its Affiliates shall not be liable to the Company, a Series, or to any Interest Holder for any losses sustained or liabilities incurred as a result of any act or omission of the Manager or its Affiliates or any officers, directors, members, partners, employees, or agents of the Manager or its Affiliates if (1) the Manager or its

Affiliate or the directors, members, partners, employees, or agents of the Manager or its Affiliate acted in good faith and in a manner reasonably believed to be in, or not opposed to, the interest of the Company or a Series; and (2) the conduct of the Manager or its Affiliate or the directors, members, partners, employees, or agents of the Manager or its Affiliate did not constitute actual fraud, gross negligence, or willful or wanton misconduct. Any act or omission, if done or omitted to be done in reliance on the advice of counsel or public accountants selected by the Manager or its Affiliate or the directors, members, partners, employees, or agents of the Manager or its Affiliate with reasonable care, will be conclusively presumed to have been done or omitted to be done in good faith and not to constitute gross negligence or willful or wanton misconduct.

6.12. Other Manager Matters.

6.12.1. Reliance on Opinions, Reports, and Other Documents. The Manager may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document believed by the Member or Series Member to be genuine and to have been signed or presented by the proper party or parties.

6.12.2. Consultation with Experts. The Manager may consult with legal counsel, accountants, appraisers, management consultants, investment bankers, and other advisers selected by the Manager (“Experts”), and any Expert’s opinion as to matters that the Manager believes to be within the Expert’s professional competence shall be full and complete authorization regarding any action taken or suffered or omitted by the Manager hereunder in good faith and in accordance with such opinion.

SECTION 7 - Members and Series Members’ Rights and Obligations

7.1. Limitation of Liability. Anything herein to the contrary notwithstanding, a Member or Series Member shall not be personally liable for any debts, liabilities, or other obligations of the Company and/or a Series solely by reason of the Member’s or Series Member’s status as a Member or Series Member, whether to the Company and/or a Series, any of the other Members or Series Members, or the Company and/or a Series’ creditors, and a Member or Series Member shall not be obligated to restore any deficit in the Member or Series Member’s capital account. Except as required by the Missouri Act, no Member or Series Member, solely by reason of being a Member or Series Member, shall be liable for the Company or a Series’ debts, obligations, or liabilities.

7.2. Return of Capital. Subject to the Kansas/Missouri Act’s Mandatory Provisions, a Member or Series Member shall not be entitled to the withdrawal or return of any Capital Contribution, except to the extent, if any, distributions made under this Agreement or upon the Company and/or a Series’ termination as a Return of Capital by the Kansas/Missouri Act.

7.3. Compensation for Personal Service. No Member or Series Member shall be required to perform personal services for the Company and/or a Series solely by virtue of being a Member or Series Member. Unless approved by the Manager, no Member or Series Member shall be entitled to compensation for services performed for the Company and/or a Series. However, upon substantiation of the amount and purpose thereof, the Members or Series Members shall be

entitled to reimbursement for expenses reasonably incurred in connection with the Company's and/or a Series' activities.

7.4. Company Members' or Series Member's Rights.

7.4.1. Amendment of Agreement. This Agreement shall not be amended unless the amendment is approved by a Majority Vote of the Members; but no amendment shall be valid if it is contrary to Sections 7.4 or 14.2.

7.4.2. Information. In addition to other rights under this Agreement or applicable law, a Member or Series Member shall have the unrestricted right upon demand and at the Member or Series Member's own expense to receive the following regarding each Company or Series in which the Member or Series Member is an Interest Holder:

7.4.2.1. Any and all information regarding the Company and/or a Series business status and financial condition;

7.4.2.2. Promptly after becoming available, a copy of the Company's and/or a Series' federal, state, and local income tax returns for each year, except that each Member or Series Member shall merely be entitled to receive the Member or Series Member's own Form K-1 and not the K-1s delivered to any other Member or Series Member;

7.4.2.3. Upon notification to the Manager, a current list of each Member or Series Member's name and last known business, residence, or mailing address;

7.4.2.4. Information about each Member or Series Member's Capital Contributions;

7.4.2.5. Upon notification to the Manager, a copy of this Agreement and the Articles of Organization, including all amendments and relevant Series supplements thereto, together with copies of any written powers or attorney pursuant to which this Agreement, the Articles of Organization, all relevant Series supplements, and all amendments thereto have been executed;

7.4.2.6. For purposes of inspection and copying, any of the Company's and/or a Series' books and records and other information regarding the Company's and/or a Series' affairs without restriction; and

7.4.2.7. Any other information legally required to be furnished to the Members or the Series Members.

7.4.3. Ratification of Manager's Actions. The Manager's actions shall not be ratified except by a Majority Vote of the Members.

7.5. Restriction of Powers. Except as otherwise provided or required by the Missouri Act's mandatory provisions, a Member or Series Member shall not have the authority or power to act on behalf of or to bind the Company and/or a Series, the Members or Series Members collectively, or any Member or Series Member individually. Further, a Member or Series Member shall not have the right or power to take any action which would change the Company and/or a Series to a general partnership, change the limited liability of a Member or Series Member, or affect the Company's and/or a Series' federal income tax status.

7.6. Waiver of Fiduciary Duties. To the maximum extent permitted by law, each Member or Series Member absolutely and irrevocably waives any and all claims, actions, causes of action, loss, damage and expense including any and all attorneys' fees and other costs of enforcement arising out of or in connection with any breach of any fiduciary duty by any other Member, or

Series Member, or Manager or any of its Affiliates in the nature of actions taken or omitted by any such other Persons, which actions or omissions would otherwise constitute the breach of any fiduciary duty owed to the Members or Series Member (or any of them), except a breach of any specific term of this Agreement. The Members or Series Members expressly intend that each Member, Series Member, Manager and each and all of their Affiliates shall be and hereby are relieved of any and all fiduciary duties which might otherwise arise out of or in connection with this Agreement to the Members or Series Member or any of them.

SECTION 8 - Books, Records, Accounting, and Reports

8.1. Records and Accounting. The Manager shall keep or cause to be kept appropriate books and records regarding the Company's and each Series' business, including, without limitation, all books and records necessary to provide to the Members or Series Member any information, lists, and copies of documents required to be provided under Section 7.4, which books shall at all times be kept at the Company's principal office and at each daughter series' principal office or at other places as the Manager deems reasonable and appropriate to carry out the Company's and each Series' business. Any records maintained by the Company and each Series in the regular course of its business may be kept on, or in the form of, electronic data, magnetic tape, photographs, micrographics, or any their information storage device, provided that the records so kept are convertible into clearly legible written form within a reasonable period of time. The Company's books and each daughter series' books shall be maintained, for regulatory and financial reporting purposes, on an accounting basis as determined by the Manager; but absent the Manager's direction, the books shall be kept on the cash method. The Company's and each Series' books for purposes of maintaining and determining the Company's and each Series' Capital Accounts shall be maintained according to this Agreement's provisions and similar tax and accounting principles. The Manager shall also keep the following documents on hand: (a) a current list of the full name and last known business or residence address of each Member and Series Member, together with the Capital Contribution and the share in profits and losses of each Member or Series Member; (b) a copy of the Certificate of Designation, as amended, for each Series; (c) executed counterparts of this Agreement, as amended, for each Series; (d) executed Supplements and Consents, if any; (e) separate and distinct records for each Series and all Series Property, Series Members, Series Sharing Ratios, and the Membership Interests attributable to each Series under the Act. The separate books and records kept for each Series shall be maintained under this Section; (f) any powers of attorney under which the Company or a Series takes action; (g) copies of the Company's and each Series' federal, state, and local income tax or information returns and reports, if any, for the 6 most recent taxable years; (h) financial statements of the Company and each Series for the 6 most recent fiscal years; and (i) all Company's, for each Series' records regarding the Company's for each Series' internal affairs for the current and past 4 fiscal years.

8.2. Title to Company or Series Property. All real and personal property acquired by the Company shall be acquired and held by the Company in its name. All real and personal property acquired by a Series shall be acquired and held by the Series in its name.

8.3. Fiscal Year. The Company's and each Series' fiscal year shall be the calendar year, unless otherwise determined by the Manager.

8.4. Reports. Within 75 days after the end of the Company's and each Series' taxable year, the Manager shall cause to be sent to each Person who was a Member or Series Member at any time during the taxable year: (a) an annual compilation report, prepared by the Company's independent accountants according to standards issued by the American Institute of Certified Public Accountants; and (b) a report summarizing the fees and other remuneration paid by the Company to any Member, Series Member, the Manager, or any Affiliate for the taxable year. At any Member or Series Member's request, and at the Member or Series Member's expense, the Manager shall cause an audit of the Company's books and records to be prepared by independent accountants for the period requested by the Member or Series Member.

SECTION 9 - Tax Matters

9.1. Preparation of Tax Returns. The Manager shall arrange for the preparation and timely filing of all returns of Company and/or Series income, gains, deductions, losses, and other items necessary for federal and state income tax purposes, including allocation to Members of the Company and/or Series Members of a Series. Subject to this Agreement's provisions, the Manager shall have the authority to make all Company and/or Series elections permitted under the Code, including, but not limited to, elections of methods of depreciation and elections under Code §754. The decision to make or not make an election shall be at the Manager's sole and absolute discretion. The Company's or a Series' taxable year shall be the calendar year, unless the Manager shall determine otherwise.

9.2. Taxation as a Partnership. No election shall be made by the Company and/or Series or any Member for the Company and/or Series Member for a Series to be excluded from the application of any provision of the Code, Subtitle A, Chapter 1, Subchapter K from any similar provisions of any state tax laws.

9.3. Tax Controversies. Under this Agreement, _____, is designated the "Tax Matters Partner" (under Code §6231)², and is authorized and required to represent the Company and/or Series at the Company's and/or Series' expense in connection with all examinations of the Company's and/or Series' affairs by tax authorities, including resulting administrative and judicial proceedings. Each Member or Series Member agrees to cooperate with the Tax Matters Partner and to do or refrain from doing any or all things reasonably required by the Tax Matters Partner to conduct the proceedings. The Tax Matters Partner shall have sole and absolute discretion to make all tax elections and cause all tax returns to be prepared and filed for the Company and its Series as he shall deem appropriate.

SECTION 10 - Transfer of Units or Series Units

10.1. Transfer Generally.

10.1.1. Definition. The term "transfer" shall refer to a transaction by which the Member or Series Member assigns all or a portion of the Member's Units or Series Member's Series Units, or any portion thereof, to another Person or by which an Interest Holder assigns the Interest to another Person as the Assignee, and includes a sale, assignment, gift, pledge,

² Must be an LLC member – cannot be outside counsel or CPA.

encumbrance, hypothecation, mortgage, transfer by will or intestate succession, exchange, or any other disposition.

10.1.2. Manner of Transfer. No Units or Series Units shall be transferred, in whole or in part, except according to this Section 10. Any transfer or purported transfer of any Units not made according to this Section 10 shall be null and void. If for any reason any transfer is not null and void, then the assignee shall not be a Substitute Member, and shall have no right to participate in the Company's affairs as a Member thereof or a Series' affairs as a Series Member thereof, but instead shall be entitled to receive only the share of profits or other compensation by way of income and the return of contributions to which the transferring Member would otherwise be entitled at the time said transferring Member would be entitled to receive the same, and shall be deemed a "Substitute Limited Member." This provision is intended to limit the rights an assignee might otherwise acquire under Kansas/Missouri law, and a Substitute Limited Member's rights shall not exceed those rights. No Units of the Company or Series Units of a Series may be transferred except upon the Manager's prior written approval, and the transfer shall occur under this Section 10 and in the Manager's sole discretion.

10.2. Transfer of Units by a Member.

10.2.1. Transfer Conditions. No Unit may be transferred by a Member unless the following conditions are first satisfied:

10.2.1.1. The holders of 80% of the Units in the Company not owned by the transferring Member consent to the transfer, which consent may be granted or withheld in each Member's sole and absolute discretion and may be arbitrarily withheld; and

10.2.1.2. The transferor, transferee, each Member, and the Company each executes and files all documents necessary for the transferee to be bound by the terms hereof.

10.2.1.3. All transfer restrictions on Company Units shall be conspicuously noted in an appropriate legend on any Unit certificates issued.

10.2.1.4. A Member may not make an assignment, transfer or other disposition (voluntarily, involuntarily or by operation of law) (a "Transfer") of all or any portion of its Membership Interest, nor pledge, mortgage, hypothecate, grant a security interest in, or otherwise encumber all or any portion of its Membership Interest, except with the consent of the Manager, which it may grant or withhold in its sole and absolute discretion. Any attempted Transfer of all or any portion of a Membership Interest, other than in strict accordance with this Section, shall be void. A Person to whom a Membership Interest is Transferred may be admitted to the Company as a Member only as provided in this Section with the Manager's consent in his sole and absolute discretion. In connection with any Transfer of a Membership Interest or any portion thereof and any admission of an assignee as a Member, the Member making such Transfer and the Assignee shall furnish the Manger with the documents regarding the Transfer as the Manager may request including a copy of the Transfer instrument, a ratification by assignee of this Agreement (if the assignee is to be admitted as a Member) and a legal opinion that the Transfer complies with all applicable federal and state securities laws and will not cause the Company to be terminated under Code §708.

10.2.2. Transfers to Minors. No Unit shall be transferred to a minor or incompetent person, except by a Member's estate plan or intestate succession.

10.2.3 Instrument of Assignment. The Company need not recognize, for any purpose, any transfer of all or any fraction of an Interest unless there shall have been filed with the Company and recorded on the Company's books a duly executed and acknowledged counterpart

of the instrument making the assignment. The instrument must (1) evidence the written acceptance by the assignee of all of this Agreement's terms and provisions; (2) represent that the assignment was made in accordance with all applicable laws and regulations; and (3) in all other respects be satisfactory in form and substance to the Members.

10.2.4. Operating Agreement Binding. Any holder of an Interest (including a transferee thereof) conclusively shall be deemed to have agreed to comply with and be bound by all terms and conditions of this Agreement, with the same effect as if the holder had executed an express acknowledgment thereof, whether or not the holder, in fact, has executed an express acknowledgment.

10.3. Allocations on Transfer of Interests. The Company income, gain, loss or deduction allocable to any Member as to any interest in the Company which may have been transferred shall be allocated during such year based upon an interim closing of the Company's books as described in the first sentence of Regulation §1.706-1(c)(2)(2), taking into account the actual results of Company operations during the portion of the year in which such Member was the owner thereof, and the date, amount and recipient of any distribution which may have been made with respect to such interest.

10.4. Notice of Transfer. If a Member or Assignee (the "Offeree") intends to transfer any Units, the Offeree shall give written notice of the intent to transfer Units to the Managers and to each of the other Members, and the written notice shall state (1) the intention to transfer Units, (2) the interest to be transferred (the "Offered Interest"), (3) the name, business, and residential address of the proposed transferee, (4) and whether the transfer is for valuable consideration, and if so, the amount of the consideration and the other material terms of the transfer (the "Notice"). If the transfer is an involuntary transfer, Notice shall be deemed received when the Members have active notice of the involuntary transfer, if the Offeree does not provide the written Notice.

10.5. Restrictions on Transfer. Notwithstanding the other provisions of this Section 10, no transfer of any Member's Units in the Company shall be made if the transfer (1) would violate applicable federal and state securities laws or rules, including Securities and Exchange Commission regulations, any state securities commission, or any other governmental authority with jurisdiction over the transfer; or (2) would affect the Company's qualification as a limited liability company under the Missouri Act.

10.6. Rights of First Refusal. Before any Company Interests may be Transferred, those Interests (the "Interests to be Transferred") must first be offered for sale or transfer under this Section. The Member proposing the transfer (a "Selling Member") must first obtain a bona fide written offer (the "Offer") for the Transfer of the Interests to be Transferred, which contains all of the terms and conditions relating to the offer, including all contracts, exhibits, and side agreements relating thereto. The Offer shall be signed by the prospective transferee and shall state the name, home address, office address, and principal employment or occupation of the prospective transferee, together with the price (if any) that the prospective transferee is willing to pay for the Interests as of the Offer date. The Offer shall include a current personal financial statement of the prospective transferee. The Selling Member shall indicate his conditional acceptance of the Offer in writing on the Offer itself, which acceptance shall be conditioned solely upon the provisions of this Agreement first being complied with and no option being

exercised hereunder. Acceptance shall constitute a conditional acceptance of the offer.

The Selling Member shall thereupon give notice of the Offer (the "Notice of Offer") to all other Members (the "Other Members"). The conditionally accepted Offer shall also be sent, by certified mail, to the prospective transferee at the same time the Notice of Offer is given to the Other Members. The Notice of Offer shall state that the Selling Member has received a bona fide Offer that he has accepted conditioned solely upon the provisions of this Agreement being complied with and no options being exercised hereunder. The Offer, with the conditional acceptance indicated thereon, shall be enclosed with and shall form part of the Notice of Offer. The Notice of Offer shall otherwise be invalid.

10.6.1. Company's 30 Day Option. The Company shall have 30 days after the Notice of Offer is given in which to exercise an option to acquire all, but not less than all, of the Interests to be Transferred. This option shall be exercised by delivering a check in the amount of the price (if any) to be paid for the Interests to be Transferred pursuant to the Notice of Offer as determined on the date of the Offer, to the Selling Member or to a third-party escrow agent, which may be any federally chartered bank operating in Missouri. A written notice stating that the Company is exercising its rights hereunder shall accompany the check. The Company shall simultaneously send a copy of notice to the Other Members.

Upon receiving notice, the Selling Member shall endorse in blank his certificate(s) representing the Interests to be Transferred and deliver them to the Company, free and clear of all liens, claims, and encumbrances. Upon delivering the certificates, the escrow agent (if any) shall pay the purchase price to the Selling Member.

10.6.2. Other Members' 20 Day Option. If the Company fails to exercise its option within the 30 day period, the Other Members shall have an additional 20 day period after the Company's 30 day period expires in which to exercise an option to purchase all, but not less than all, of the Interests to be Transferred for the price (on a per-unit basis) and terms set forth by the prospective purchaser in the Notice of Offer. Each such Other Member shall be entitled to acquire a portion of the Interests to be Transferred that bears the same ratio to all of the Interests to be Transferred as the amount of Interests in the Company owned by such Other Member bears to all of the Interests in the Company owned by the Other Members. The option may only be exercised by the payment of the price (on a per unit basis, determined as of the date of the Offer) specified in the Notice of Offer to either the Selling Member or with an escrow agent meeting the above requirements retained by the Company for the purpose of receiving funds hereunder.

10.6.3. Other Members' Additional 15 Day Option. If fewer than all of the Other Members exercise the option set forth in section 10.6.2, then the Other Members exercising that option shall be forthwith notified of that fact by the Company and shall have an additional 15 days after giving such notice to exercise an option to acquire all of the Interests to be Transferred as to which no option has been exercised pursuant to the rights of first refusal set forth above. Unless otherwise agreed among them, each such Other Member previously exercising his or her option shall be entitled to acquire a portion of the remaining Interests to be Transferred that bears the same ratio to all of the remaining Interests to be Transferred as the amount of Interests in the Company owned by such Other Member bears to all the Interests in the Company owned by the Other Members previously exercising their options. The option may only be exercised by payment of the price (on a per-unit basis determined as of the date of the Offer) specified in the Notice of Offer the Selling Member or escrow agent set forth above.

If the option(s) are not exercised in the option period(s), so that all of the Interests to be

Transferred are acquired, then no option for any of the Selling Member's units shall be deemed to have been exercised hereunder, and the Selling Member shall be free to Transfer said Interests under this Agreement's other provisions. The Selling Member or third-party escrow agent shall refund to the Company or any Other Member depositing money hereunder the amount he, she, or it deposited. If option(s) are so exercised for all of the Selling Member's Interests, then the Selling Member shall forthwith endorse his certificates in blank and deliver them to the Company free and clear of all liens, claims, and encumbrances, for transfer to the Company or any Other Members acquiring the same, and any escrow agent shall thereupon disburse any portion of the option price held by the escrow agent to the Selling Member.

Any Member may, without complying with this Section's previous provisions of, transfer an interest in the Company if such transfer is made to (1) a Family Member; (2) any trust primarily for the Member's benefit and/or for the benefit of a Family Member; or (3) a limited liability company owned exclusively by one or more Family Members. Upon the death of a Family Member, such term shall also include a trust that is (1) irrevocable; (2) provides for an interest for the surviving spouse of such Family Member that terminates no later than the death of such spouse; and (3) provides for a gift of the interest in the Company to a Family Member no later than when the spouse's interest in the trust terminates.

10.7 Terms of Sale.

10.7.1. Purchase Price. The purchase price for Units purchase under this Article 10 shall be equal to the fair market value of the Units. The fair market value shall be determined by an appraisal performed by a certified public accountant regularly employed to prepare the Company's tax returns, or by a certified public accountant selected by the Manager. But a purchase under the right of first refusal shall be the amount in the Notice, if less.

10.7.2. Payment in Cash or Note. The purchase price for the Units purchased under this Article 10 shall be payable in cash, or at the purchaser's option, 20% in cash, and the purchase price balance by a negotiable promissory note of the purchase for a term determined by the purchaser, not to exceed 5 years after the sale closes. The promissory note shall bear interest at the prime rate, plus 1%, in effect on the first day of each calendar year at a bank selected by the purchaser. Principal and accrued interest shall be payable in equal quarterly payments, with the first payment due at the end of the quarter first occurring after the closing. But if the Notice specifies that the transfer is for valuable consideration, the purchaser has the option to use the Notice's terms.

10.7.3. Closing and Effective Date of Purchase. The closing of any purchase shall be the date and place determined by the purchaser, but no later than 100 days after the receipt by the Managers of the Notice, at 10:00 a.m. at the Company's registered office.

10.8. Issuance of Certificates. At the Manager's discretion, the Company or a Series may, but shall not be required to, issue one or more Certificates in a Member or Series Member's name evidencing the number of Units or Series Units issued to that Member or Series Member. Upon the transfer of a Unit or Series Unit under Section 10, the Company or a Series shall, if certificates have been issued, issue replacement Certificates according to procedures established by the Manager in the Manager's sole discretion. All Certificates must contain legends required by this Agreement or otherwise required by law.

10.9. Lost, Stolen, or Destroyed Certificates. The Company shall issue a new Certificate in

place of any Certificate previously issued if the Record Holder of the Certificate: (a) makes proof by affidavit, in form and substance satisfactory to the Manager, that a previously issued Certificate has been lost, stolen, or destroyed; (b) requests the issuance of a new Certificate before the Company receives notice that the Units evidenced by the lost, stolen, or destroyed Certificate have been acquired by a purchaser for value, in good faith, and without notice of an adverse claim; (c) if requested by the Manager, delivers to the Company a bond, in form and substance satisfactory to the Manager, with surety or sureties and with fixed or open penalty as the Manager may direct in the Manager's sole discretion to indemnify the Company against any claim that may be made on account of the alleged loss, destruction, or theft of the Certificate; and (d) satisfies any other reasonable requirements imposed by the Manager.

The Company shall be entitled to treat each Record Holder as the Member or Assignee in fact of any Units and, accordingly, shall not be required to recognize any equitable or other claim or interest in or with respect to the Units on the part of any other Person, regardless of whether it has actual or other notice thereof.

10.10. Distributions and Allocations in Respect of a Transferred Ownership Interest. If any Member or Series Member sells, assigns, or transfers any part of the Member's Interest in the Company or Series Member's Interest in a Series during any accounting period in compliance with the provisions of Section 10, Company or Series income, gain, deductions, losses, and credits attributable to the interest for the respective period shall be divided and allocated between the transferor and the transferee by taking into account their varying Interests during the applicable accounting period according to Code § 706(d), using the daily proration method. All Company or Series distributions on or before the effective date of the transfer shall be made to the transferor, and all the Company or Series distributions thereafter shall be made to the transferee. The Company or Series shall recognize a transfer on the day following the day of transfer only for making Company or Series tax allocations and distributions. Neither the Company, its Members, a Series, or its Series Member shall incur any liability for making Company or Series allocations and distributions under this Section's provisions, whether or not the Company's Members or Series' Series Members has knowledge of any transfer of any interest in the Company or Series or part thereof where the transferee is not admitted as a Substituted Member or Substituted Series Member.

SECTION 11 - Admission of Substitute and Additional Members

11.1. Admission of Substitute Members. Upon transfer by a Member of an Interest in the Company or by a Series Member of an Interest in a Series according to Section 10 (but not otherwise), the transferor shall have the power to give, and by transfer of any Certificate issued shall be deemed to have given, the transferee the right to apply to become a Substitute Member with respect to the Interest acquired, subject to the conditions of and in the manner permitted under this Agreement. A transferee of a certificate representing an Interest shall be a mere assignee with respect to the transferred Interest (whether or not such transferee is a Member, Series Member, Substitute Member, or Substitute Series Member as to other previously acquired Interests), unless and until all of the following conditions are satisfied: (a) the instrument of assignment sets forth the intentions of the assignor that the assignee succeeds to the assignor's Interest as a substituted Member or Series Member in the assignor's place; (b) the assignor and

assignee shall have fulfilled all other requirements of this Agreement; (c) the assignee shall have paid all reasonable legal fees and filing costs incurred by the Company or Series in connection with its substitution as a Member or Series Member; and (d) Members or Series Members holding 80% of the Interests in the Company or a Series not held by the assignor shall have approved the substitution in writing, which approval may be granted or withheld by each the Member or Series Member in its sole and absolute discretion and may be arbitrarily withheld, and the Members or Series Members shall have modified the books and records of the Company or a Series to reflect the admission.

The admission of an Assignee as a Substitute Member as to a transferred Unit or Series Unit shall become effective on the date the Members or Series Members give their unanimous written consent to the admission and the Manager modifies the Company's or Series' books and records to reflect the admission. Any Member or Series Member who transfers all of its Units or Series Units as to which it has been admitted as a Member or Series Member shall cease to be a Member of the Company or Series Member of a Series upon a transfer of the Units or Series Units under Section 10 and the execution of an acceptance form for this Agreement by the transferee and shall have no further rights as a Member of the Company or a or Series Member of a Series regardless of whether the Assignee of the former Member or Series Member is admitted to the Company or Series as a Substitute Member or Substitute Series Member.

11.2. Admission of Additional Members. Additional Units or Series Units may be authorized and issued by the Company or Series upon the terms and conditions as may be approved by a vote of Members or Series Members holding at least 80% of all Outstanding Units or Outstanding Series Units. There shall be no preemptive rights upon the issuance of any new Units or Series Units.

SECTION 12 - Withdrawal or Removal of the Manager or Members

12.1. Withdrawal of a Member. No Member shall have the right to withdraw from the Company without the consent of all remaining Members.

12.2. Removal of a Member. No Member shall be involuntarily removed. If _____ holds at a least 1% Interest in the Company, _____ shall not be voted out of their Interest or otherwise caused to give up their Interest by any present or future Member(s) of the Company or any Series Member of any Series within the Company. This protection of a minority Member's Interest in the Company shall be consistent with any rights of first refusal.

12.3. Withdrawal of the Manager. If the Manager desires to withdraw as Manager of the Company, the Manager shall give written notice to each Member. Thereupon, a meeting of the Members shall be called by the Manager, at which time the Members by a Majority Vote of the Members shall: (a) name a replacement manager, and the necessary papers shall be executed and filed reflecting the substitution; or (b) decide by unanimous vote of the Members to amend the Articles of Organization to provide for the Company's direct management by the Members, and the necessary papers shall be executed and filed reflecting the amendment; or (c) decide by a unanimous vote of the Members to dissolve the Company. These procedures shall also be followed if the Manager dies, or is permanently or temporarily disabled for more than 90 days.

SECTION 13 - Dissolution and Liquidation

13.1. Voluntary Dissolution. The Company may be voluntarily dissolved only upon the Members' unanimous written consent. A Series may be voluntarily dissolved upon the Series Members' unanimous written consent or upon the Manager's written approval.

13.2. Continuation of Business Upon Termination of the Last Remaining Member. Upon termination of membership of the last remaining Member of the Company, the Company will not be dissolved if, within 75 days of the termination, that Member's personal representative ("Representative") agrees to continue the Company's business and the Representative admits the Representative or the Representative's nominee or designee as a Member of the Company, effective as of the date the last remaining Member's membership terminated.

13.3. Liquidation. Upon the Company's or a Series' dissolution, the Manager or, if the Manager is unwilling or unable to serve, a liquidator or liquidating committee approved by a Majority Vote of the Members shall be responsible for the liquidation. The Liquidator (if other than the Manager) shall be entitled to receive compensation for the Liquidator's services as may be approved by the Members. The Liquidator shall agree not to resign at any time without 15 days prior written notice to the Members and may be removed at any time, with or without cause, by notice of removal approved by the Members. Upon dissolution, removal, or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all the original Liquidator's rights, powers, and duties) shall within 30 days thereafter be selected by a Majority of the Members. The right to appoint a successor or substitute Liquidator in the manner provided herein shall be recurring and continuing for so long as the functions and services of the Liquidator are authorized to continue under the provisions hereof, and every reference herein to the Liquidator will be deemed to refer also to any such successor or substitute Liquidator appointed in the manner herein provided. Except as expressly provided in this Section 13, the Liquidator appointed in the manner provided herein shall have and may exercise without further authorization or consent of any of the parties hereto, all of the powers conferred upon the Manager under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of those powers) to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during the period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the Company's and/or a Series' winding up and liquidation. The Liquidator shall, subject to all of the limitations placed on the powers and rights of the Manager herein, liquidate the assets of the Company and/or a Series and apply and distribute the proceeds of the liquidation, together with any remaining Cash Available for Distribution, in the following order of priority, unless otherwise required by law: (a) first, to creditors' liabilities, in the order of priority provided by law, except those liabilities to Members or Series Members on account of their capital contributions; (b) second, to the establishment of any reserves for any contingent liabilities or obligations of the Company or a Series, as deemed necessary by the Members, Series Members, or the Liquidator; and (c) third, the balance, to the Members or Series Members according to their Units or Series Units after taking into account their Capital Accounts.

Unless the Members shall unanimously otherwise determine, all distributions shall be made in

cash, and assets may be distributed in kind to the Members.

13.4. Deficit Capital Accounts. No Member shall be required to pay to the Company, to any other Member or to any third party any deficit balance which may exist from time to time in the Member's Capital Account.

13.5. Return of Capital. The Members shall not be personally liable for the return of any Member's Capital Contribution or any portion thereof. The return of Capital Contributions shall be made solely from Company or a Series' assets.

SECTION 14 - Amendment of Agreement; Meetings; Record Date

14.1. Amendments.

14.1.1. Authority of the Manager to Amend. The Manager, without the approval of any Interest Holder, may amend any provision of this Agreement and execute, swear to, acknowledge, deliver, file, and record whatever documents may be required in connection therewith to reflect any of the following: (a) a change in the Company's or a Series' name or the location of the Company's or a Series' principal place of business; (b) admission or substitution of Members or Series Members; and (c) a change that is required or contemplated by this Agreement or is otherwise herein permitted to be made by the Manager acting alone.

14.1.2. Amendments Requiring Member Approval. Except as otherwise expressly provided herein, all amendments to this Agreement shall be made if, but only if, the Members approve the amendment either by unanimous consent in writing or by a Majority Vote of the Members at a meeting of the Members.

14.2. Limitations on Amendments. Notwithstanding Section 14.1 or this Agreement's other provisions, no amendment to this Agreement may, without the unanimous approval of all the Members accomplish the following: (a) enlarge a Member or Series Member's obligations; (b) modify the rights of any indemnitee hereunder or the right of the Members, Series Members, Officers, and their Affiliates and others to engage in other activities without the consent of the Members; or (c) amend this Agreement's Sections 14.2, 14.1, 6.3, 6.8, or 7.3.

14.3. Meetings. Meetings of the Members may be called by Members owning 25% or more of all Outstanding Units and otherwise as set forth in the Missouri Act.

14.4. Notice. The Members calling a meeting shall give written notice of the meeting to each Member entitled to vote at the meeting. The notice shall be delivered not less than 10 and not more than 90 days before the appointed meeting date and shall state the time, place, and purposes of the meeting.

14.5. Waiver of Notice; Consent to Meeting; Approval of Minutes. Notwithstanding Section 14.4, the transactions of any Company or Series' meeting, however called and noticed and whenever held, are as valid as though they occurred at a meeting held after regular call and notice, if (1) a quorum is present either in person or by proxy; and (2) either before or after the meeting, each of the Members entitled to vote but not present at the meeting in person or by proxy approves by signing a written waiver of notice or an approval to the holding of the

meeting or an approval of the minutes thereof. All waivers, consents, and approvals shall be filed with the Company or Series' records or made a part of the minutes of the meeting. Attendance of a Member at a meeting shall constitute a waiver of notice of the meeting, except when the Member objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice of the meeting but not so included, if the objection is expressly made at the meeting.

14.6. Adjournment. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting, if the time and place thereof are announced at the meeting at which the adjournment is taken, unless such adjournment shall be for more than 45 days. At the adjourned meeting, the company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 45 days, a notice of the adjourned meeting shall be given according to Section 14.4.

14.7. Quorum. The holders of more than 50% of the Units or the Series Units entitled to vote, represented in person or by proxy, shall constitute a quorum at any meeting of the Members. The Members present at a duly called or held meeting at which a quorum is present may continue to participate at the meeting until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, if any action taken (other than adjournment) is approved by the requisite percentage of Units specified in this Agreement. In the absence of a quorum, any meeting of Members may be adjourned from time to time by the affirmative vote of a majority of the units entitled to vote and represented either in person or by proxy, but no other matters may be proposed, approved, or disapproved, except as provided in Section 14.8.

14.8. Action by Unanimous Consent. Any action that may be taken by a vote of the Members may be taken without a meeting if consent to the action is signed by all Members entitled to vote on the action.

SECTION 15 - Miscellaneous Provisions

15.1. Addresses and Notice. Unless contrary provisions are expressly set forth herein, all notices of any kind shall be in writing and shall, at the option of the party giving the notice, be (1) personally delivered; (2) delivered by reputable overnight carrier; (3) sent by facsimile if evidence of receipt is obtained and retained; (4) sent by email if return receipt is obtained and retained; or (5) sent by certified or registered mail, postage prepaid, return receipt requested, to the person entitled to receive the notice at the last address provided in writing by the person to the other signatory hereto. All notices shall be deemed given on the date the notice is actually received. By giving written notice thereof, each Member shall have the right from time to time to change its address pursuant hereto.

15.2. Titles and Captions. All article and section titles or captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend, or describe the scope or intent of any provisions hereof. "Article" and "Section" refer to this Agreement's Articles and Sections.

15.3. Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns, pronouns, and verbs shall include the plural and vice versa. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word “including” does not limit the preceding words or terms.

15.4. Further Action. The parties to this Agreement shall execute and deliver all documents, provide all information, and take or refrain from taking action as may be necessary or appropriate to achieve this Agreement’s purposes.

15.5. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assignees.

15.6. Integration. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto. Except as otherwise provided, no amendments to this Agreement shall be binding upon any Member unless set forth in a document duly executed by such Member.

15.7. Creditors. None of this Agreement’s provisions shall be for the benefit of or enforceable by any creditors of the parties hereto.

15.8. Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any breach or any other covenant, duty, agreement, or condition.

15.9. Counterparts; Place of Execution; Facsimile or PDF Signature. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed to be an original, all of which together shall constitute one and the same agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement This Agreement and any business that may be transacted hereunder may be executed and sent by PDF or fax or email and a PDF or fax or email signature shall be deemed valid and binding on any party hereto.

15.10. Applicable Law. This Agreement shall be construed according to and governed by Kansas/Missouri law, without regard to its choice of law or conflicts of law provisions.

15.11. Severability. If any of this Agreement’s provision(s) is or becomes invalid, illegal, or unenforceable, and if the rights and obligations of the parties to this Agreement will not be materially and adversely affected thereby, (1) the provision will be fully severable; (2) this Agreement will be construed and enforced as if the illegal, invalid or unenforceable provision had never comprised a part hereof; (3) this Agreement’s remaining provisions will remain in full force and effect and not be affected by the illegal, invalid, or unenforceable provision or by its

severance here from; and (4) in lieu of any illegal, invalid, or unenforceable provision, there shall be added automatically to this Agreement a legal, valid, and enforceable provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible.

15.12. Forum Selection and Personal Jurisdiction. The parties agree that in any dispute to enforce the terms hereof exclusive jurisdiction and venue shall be in the District Court of Jackson County, Missouri or in the United States District Court in which Jackson County, Missouri is located, and in no other court or jurisdiction. The parties further agree and expressly consent to the exercise of personal jurisdiction in the court(s) set forth above in connection with any dispute or claim involving this Agreement.

15.13. Indemnification. If any Member becomes involved in legal proceedings unrelated to the Company's business in which the Company is required to provide books, records, an accounting, or other information, the Member shall indemnify the Company from all expenses incurred in conjunction therewith.

15.14. Drafting. This Agreement provisions shall not be interpreted for or against any party on the basis that the party drafted the provision, and no presumption or burden of proof shall arise disfavoring or favoring any party by virtue of the authorship of any of this Agreement's provisions.

15.15. Exhibits. All this Agreement's exhibits are incorporated by reference and shall be made a part of this Agreement as though fully set forth in this Agreement in their entirety.

15.16. Attorneys' Fees. If any legal action is brought under this Agreement for litigation, arbitration or otherwise, the prevailing party shall be entitled to receive its reasonable attorneys' fees and court costs in addition to any other relief it may receive.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this ____ day of _____, 2017.

EXHIBIT A

Name	Membership Units	Contribution
_____	100	All assets, which are a part of the business known as _____ LLC

EXHIBIT B

_____ LLC, a Kansas/Missouri manager-managed parent LLC shall include the following initial daughter series:

(1) _____.

The Manager may add additional daughter series, amend, revoke, or otherwise modify existing daughter series by a Supplement for each applicable daughter series as he sees fit in his sole and absolute discretion, without notice to third parties except to Series Members of the applicable Series. The Manager may also amend, revoke, or otherwise modify the initial Sharing Ratios by a Supplement for each applicable daughter series as he sees fit in his sole and absolute discretion, without notice to third parties except to Series Members of the applicable Series.

The initial Sharing Ratios and Series Members of the initial daughter series shall be:

Series 1: _____ LLC series, a daughter series of _____ LLC:

<u>Name</u>	<u>Title</u>	<u>Sharing Ratio</u>
_____		100%

EXHIBIT C

Supplement for _____ LLC, a daughter series of _____ LLC, a Missouri LLC

THIS SUPPLEMENT (“Supplement”) is entered into by and among the undersigned to create a Series under the Limited Liability Company Agreement of _____ LLC, dated _____, 2017, as amended and supplemented from time to time (the “LLC Agreement”), Unless otherwise specified, all capitalized terms shall have the meanings assigned to them in the LLC Agreement. The _____ LLC Series and the rights and obligations of the Series Members shall be governed by the LLC Agreement as supplemented.

Name of Series: _____ LLC, a daughter series of _____ LLC

Purpose: The purpose of this Series is to _____.

Series Members and Series Sharing Ratios:

Name	Role	Series Sharing Ratio:
_____	_____	_____

Note: These percentages are subject to change if additional Series Members are admitted to the Series, either at formation or later; see Section ____ of the LLC Agreement.

Distributions: Distributable funds shall be distributed according to the Series Sharing Ratios.

Member Vesting Provisions: _____

Special Tax Provisions (if any): _____

Other Provisions Pertaining to Series: _____

SERIES MANAGER: _____ Series Member: _____



Series LLCs

William E. Quick

Overview

- “Series LLCs are a form of entity that require a half bottle of aspirin and a full bottle of Scotch to comprehensively understand, if that human endeavor is achievable at all. Those of you living in states with liberal compassionate use laws, or who have access to mescaline, may be able to understand Series LLCs more easily.”
– Jay Adkisson, “Series LLC And The Abyss Of The Unknowns,” Forbes Magazine Online, December 26, 2013
- “The series arose in Delaware in the context of business (now statutory) trusts utilized for asset securitization and the organization of investment companies [. . .] In Delaware, from the statutory trust realm, the series concept was adopted, albeit in modified form, and incorporated into the limited liability company and the limited partnership acts.” – Thomas E. Rutledge, “The Man Who Tells You He Understands Series Will Lie to You About Other Things As Well,” CCH State Law & State Taxation Corner, March-April 2013

Overview of Series LLC Concept

- A good way of thinking about a Series LLC is that they can be a vehicle to segregate assets, ownership and/or control under common management.
- However, all of these attributes, including the liability shield benefits, created by the series could also be gained by forming multiple parent and subsidiary LLCs. Thus, the primary draws of the Series LLC form are the same ultimate effect of multiple LLCs, which can be gained with fewer administrative costs and fees. Reduction of costs of operations, which is often cited as a reason for selecting the series LLC form, is in almost all instances a fallacy.

Delaware Series LLCs

- 6 Del.C. § 18-215
- First Series LLC Statute (enacted 1996)
- Provides the model for most other Series LLC statutes
- Under the Delaware model, although each Series has many of the capabilities of a legal entity, a series is not a separate legal entity from its master LLC

DE Series LLC (Cont.)

- “Any such series may have separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and any such series may have a separate business purpose or investment objective.” § 18-215(a).
- “A Series established in accordance with subsection (b) of this section may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of banking as defined in § 126 of Title 8. Unless otherwise provided in a limited liability company agreement, a series established in accordance with subsection (b) of this section shall have the power and capacity to, in its own name, contract, hold title to assets (including real, personal and intangible property), grant liens and security interests, and sue and be sued.” § 18-215(c).

DE Series LLC (Cont.)

- “A limited liability company agreement may provide that any member or class or group of members associated with a series shall have no voting rights.” § 18-215(e).
- “A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create under the provisions of the limited liability company agreement a class or group of the series of limited liability company interests that was not previously outstanding.” § 18-215(e).
- “A limited liability company agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter. Voting by members or managers associated with a series may be on a per capita, number, financial interest, class, group or any other basis.” § 18-215(f).

Illinois Series LLCs

- 805 ILCS 180/37-40
- Does not follow the Delaware model (enacted 2005).
- Differs from Delaware in several respects, most notably that each series can elect to be treated as a separate legal (juridical) entity from the master LLC

IL Series LLC (Cont.)

- “An operating agreement may establish or provide for the establishment of designated series of members, managers or limited liability company interests having separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and to the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective.” § 180/37-40(a).
- “A series with limited liability shall be treated as a separate entity to the extent set forth in the articles of organization. Each series with limited liability may, in its own name, contract, hold title to assets, grant security interests, sue and be sued and otherwise conduct business and exercise the powers of a limited liability company under this Act. The limited liability company and any of its series may elect to consolidate their operations as a single taxpayer to the extent permitted under applicable law, elect to work cooperatively, elect to contract jointly or elect to be treated as a single business for purposes of qualification to do business in this or any other state. Such elections shall not affect the limitation of liability set forth in this Section except to the extent that the series have specifically accepted joint liability by contract.” § 180/37-40(b).
- “Except to the extent modified in this Section, the provisions of this Act which are generally applicable to limited liability companies, their managers, members and transferees shall be applicable to each particular series with respect to the operation of such series.” § 180/37-40(j).

Kansas Series LLCs

- K.S.A. 17-76,143
- Follows the Illinois model. Most notably, it uses the Illinois “separate entity to the extent set forth in the articles of organization” language.
- Must file a Series Limited Liability Company Certificate of Designation form for the creation of each series

KS Series LLC (Cont.)

- (a) An operating agreement may establish or provide for the establishment of one or more designated series of members, managers or limited liability company interests having separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and to the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective. Kan. Stat. Ann. § 17-76, 143 (West)
- (b) Notwithstanding anything to the contrary set forth in this section or under other applicable law, in the event that an operating agreement establishes or provides for the establishment of one or more series, and if the records maintained for any such series account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof, and if the operating agreement so provides, and if notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the articles of organization of the limited liability company and if the limited liability company has filed a certificate of designation for each series which is to have limited liability under this section, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and, unless otherwise provided in the operating agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such series. Kan. Stat. Ann. § 17-76, 143 (West)

KS Series LLC (Cont.)

- The fact that the articles of organization contain the foregoing notice of the limitation on liabilities of a series and a certificate of designation for a series is on file in the office of the secretary of state shall constitute notice of such limitation on liabilities of a series. A series with limited liability shall be treated as a separate entity to the extent set forth in the articles of organization. Each series with limited liability may, in its own name, contract, hold title to assets, grant security interests, sue and be sued and otherwise conduct business and exercise the powers of a limited liability company under this act. The limited liability company and any of its series may elect to consolidate their operations as a single taxpayer to the extent permitted under applicable law, elect to work cooperatively, elect to contract jointly or elect to be treated as a single business for purposes of qualification to do business in this or any other state. Such elections shall not affect the limitation of liability set forth in this section except to the extent that the series have specifically accepted joint liability by contract. Kan. Stat. Ann. § 17-76,143 (West)

KS Series LLC (Cont.)

- “An operating agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter.” (Kan. Stat. Ann. § 17-76, 143)
- “An operating agreement may provide that any member or class or group of members associated with a series shall have no voting rights.” Kan. Stat. Ann. § 17-76, 143)

Missouri Series LLCs

- V.A.M.S. 347.186
- Follows the Illinois Model
- Must file a Form LLC-1A for the creation of each series
- 347.186.7 is unique to the Missouri Series LLC Act
 - Sponsored by Representative Noel Torpey of District 029
 - Similar provision not found in any other Series LLC Act
 - Not clear what it will mean or how it will be interpreted and no guidance thus far.
 - How will RSMo 347.186.7 interact with the liability shield?
 - “Nothing in sections 347.039, 347.153, or 347.186 shall be construed to alter existing Missouri statute or common law providing any cause of action for fraudulent conveyance, including but not limited to Chapter 428, or any relief available under existing law that permits a challenge to limited liability.”

MO Series LLC (Cont.)

- “An operating agreement may establish or provide for the establishment of a designated series of members, managers, or limited liability company interests having separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations. To the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective.” Mo. Ann. Stat. § 347.186 (West)
- “Notwithstanding any other provisions of law to the contrary, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof.” Mo. Ann. Stat. § 347.186 (West)

MO Series LLC (Cont.)

- “An operating agreement may grant to all or certain identified members or managers, or to a specified class or group of the members or managers associated with a series, the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter. An operating agreement may provide that any member or class or group of members associated with a series shall have no voting rights or ability to otherwise participate in the management or governance of such series, but any such member or class or group of members are owners of the series.”
Mo. Ann. Stat. § 347.186(5)(3)

Overview of Requirements to Qualify for Series Liability Shield in Missouri

- 1. Provide for each series in the Operating Agreement
- 2. Maintain separate and distinct records
- 3. Account for assets for each series separately
- 4. Provide for the limitation on liability of a series in the Operating Agreement
- 5. Separately identify each series of the LLC in the Articles
- 6. Provide notice of the limitation on liabilities of each series in the Articles

Series LLC Tax Treatment

- Federal
 - Proposed Rg. §30.7701-1, 75 Fed. Reg. 55,699 (2010)
 - Treat each series within a series LLC as a separate juridical entity for federal income tax purposes
 - Each series would be classified as a partnership, disregarded entity, or an association taxable as a corporation (follows the “check the box” approach)
 - Each series must file a statement for each taxable year

- State
 - DE
 - (1) each “series” of the LLC will be disregarded for purposes of Delaware taxation since a series is merely a segregation of assets and liabilities within a Delaware limited liability company, and each series will be wholly-owned by the Taxpayer for purposes of federal income taxes; and (2) any transfer of assets among the series will be treated as assets among or within the same entity, triggering no Delaware taxes so long as the assets remain within the LLC. (Delaware Department of Finance, Division of Revenue Private Letter Ruling dated September 16, 2002)
 - KS
 - The LLC and any of its series may consolidate their operations as a single taxpayer, without affecting the limitation of liability. (Kan. Stat. Ann. § 17-76,143(b))
 - MO
 - The stem LLC and any of its series may consolidate their operations as a single taxpayer, without affecting the limitation of liability. (Mo. Ann. Stat. § 347.186(4))

Corporate Formalities Series LLCs

- Need to consider the following requirements (vary by state)
 - Certificate of Formation/Articles
 - LLC Agreement
 - Notice* (some states require you make it clear that a contracting party knows they are dealing with a Series LLC via a legend in the LLC agreement)
 - Accounting
 - Name* (some states require that each series name contain the entire name of the stem LLC)
 - Registered Agent

Just A Few Unanswered Questions Regarding How Series LLCs Will Operate

- How will veil piercing interact with the liability shield?
- What about diversity jurisdiction?
- Tax treatment?
- Employment law implications?
- Bankruptcy?
- Securities?
- Who is the Client?

Final Thoughts

- Every single time you deal with an LLC you have not previously dealt with, check the organizational documents, especially the Articles of Organization, to see if there are series associated with that LLC.
 - Be aware that in some states there are no public filings associated with forming a series (such as Delaware). Thus, it is important to ask whether an LLC that you have not previously dealt with is a Series LLC
 - In Delaware, the Certificate of formation must include a general limitation on Series liability, but no specific series must be mentioned.
- If creating a Series LLC, go line-by-line through the Series LLC statute of the state in which you are creating the series to ensure you have met ALL of the requirements to qualify for the liability shield.

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- IV **Tailoring the Series LLC to Your Client: Who Needs a Series LLC?**
- A Advantages
- B Disadvantages
- C Future Horizons

V. Tailoring the Series LLC to Your Client: Who Needs a Series LLC?

Panelists – Bill Quick, Tara Cyr, and Steve Johnson¹

Now that we've explored how to form, maintain, and deal with a series LLC, let's move on to our panel discussion. I trust we'll have a lively discussion as we hear a variety of perspectives on series LLCs, we explore the advantages and disadvantages, the pros and cons, how best to tailor a series LLC to your client (assuming it's a good fit for your client's goals and needs), and look at some lingering issues which hopefully will be resolved in the future. Our goal this afternoon is to have a good, provocative discussion and to stimulate your thinking by working through some ideas, not necessarily to convince you that series LLCs are a great innovation or a menace to business law.

A. Advantages

Series LLCs have several potential advantages. They:

- avoid the cost of forming multiple LLCs or subsidiaries
- may reduce administrative expenses and state filing fees, like franchise tax fees
- may be able to add new series within the LLC without additional filings with the Secretary of State
- can dissolve a series within an LLC without affecting the other series within the LLC
- can have different managers for the assets of each series
- can make tax-free transfers within the LLC, and
- can separate or segregate liabilities within a series.²

Series LLCs originated in Delaware with landlords or real estate developers wanting to own multiple buildings safely while having a simpler accounting, management, and tax picture. Some of this historic lineage can be seen in their use by entrepreneurs, business owners, and serial entrepreneurs. For the right client, a series LLC can have advantages. Now let's transition to looking at some series LLC caveats.

B Disadvantages

So we've talked about some of the upsides and benefits of series LLCs. So should we all now go and recommend them to each of our clients? Not so fast: there are some major

¹ Mr. Quick and Ms. Cyr are a shareholder and an associate, respectively, with Polsinelli PC. Mr. Johnson is a member of Johnson Law KC LLC.

² RIA Checkpoint, Tax Planning for Partnerships, §112.20.

question marks and downsides to think about. These “known unknowns” create some confusion and uncertainty for lawyers and other professionals encountering series LLCs.³

Series LLCs have some potential disadvantages too, which may “continue to hinder [their] widespread acceptance”:

- Uncertainties about the series LLC given state-by-state variances⁴
- No clear model or prototype of *what* a series is, except for limited liability⁵
- Uncertainty for business owners – traditional LLC treatment or not⁶
- What if the series conduct business in other states
- What if the series files proceed in bankruptcy
- Tax and securities laws compliance
- Too good to be true?

To resolve these questions, practitioners may need “binding decisions,” before enthusiastically embracing series LLCs as a good match for a client’s needs.⁷ We don’t know yet if series LLC will be the “new entity of choice,” or if it’s the “right” choice “only limited circumstances.”⁸ Indeed a good number of practitioners counsel that creating separate LLCs could be “prudent” without an “overriding business purpose or cost justification” in favor of using a series LLC.⁹

While we wait for answers to these questions, here are some practice pointers:¹⁰

- Advise the client about series LLC formation requirements
- Advise client about maintaining separate accounts and records for the LLC and each series’ operating agreements for the LLC and each series and include notice of the liability limitations in each of them, as well as in contracts and any other documents with third parties
- For the limited liability notice, track the statute – LLC name in each series’ name, series designations, have series sign contracts “in the capacity of” or “as a series of” the LLC
- Properly document any asset transfers between series

³ Kray, Comment, “Respecting the Concept and Limited Liability of a Series LLC in Texas,” *St. Mary’s L. J.* (2011), 42:501, 504, n. 10.

⁴ Kray, Comment, 42:501, quoting n. 16, citing Goforth, *The Series LLC, and a Series of Difficult Questions*, 60 *Ark. L. Rev.* 385, 405–06 (2007) (implying that Illinois’ series LLC approach better addresses issues, but at the expense of some advantages).

⁵ Kray, Comment, 42:501, n. 16.

⁶ Kray, Comment, 42:501, 548-549.

⁷ Kray, Comment, 42:501, 504, n. 10, citing Sargent et al., *Limited Liability Company Handbook*, §3:85 (2009) (practitioners will resist using series LLCs until there is more certainty about how their liability shields will be respected in non-series states, and how series LLCs are treated in bankruptcy).

⁸ Kray, Comment, 42:501, 504, n. 10, quoting Harding, *Series LLCs: A Wave of the Future—Or Not?*, *Mich. Bus. L.J.*, Spring 2007, at 19, 23.

⁹ Kray, Comment, 42:501, 504, n. 10, quoting Murray, *A Real Estate Practitioner’s Guide to Delaware Series LLCs* (2007),

¹⁰ Kray, Comment, 42:501, 548-549.

- Ensure each series acts independently – no commingling assets, preparing consolidated financial statements, obtaining joint financing, or entering into loan guarantees with other series.
- Avoid cross-collateralization of assets among series
- Operating agreement way to designate unallocated property to a series
- Avoid appearance of “evading taxes or perpetrating fraud”
- Series LLC may work best for a single owner or very few owners who have multiple businesses or investments with the same ownership structure

C Future Horizons

Future horizons include various series LLC statutory amendments or clarifications we discussed before. But we also need answers to many series LLC questions that linger, and should give us pause as thoughtful professionals counseling our clients.

Here is Bill Quick’s working list of questions that mostly remain unanswered right now:

- Who is your client?
- Consider the securities law implications: federal and Blue Sky laws
- How do you get FEINs and open bank accounts for series?
- “Know your customer” (KYC) requirements
- Public vs. confidential business information (and required state filings)
- Fiduciary considerations
- Limited liability “veil piercing” implications
- Adequate capitalization of each Series
- Can one series be the member of another series? Be its manager?
- Guarantees and guarantors (so much for isolating liability)
- Professional association law
- Series operated without a written operating agreement
- Liquidation/dissolution/mechanics/implications series and master
- Post-liquidation liability and statutes or repose implications
- Asset transfer between series
- Filing and annual fees (by jurisdiction)
- Complex articles of organization, certificates of designation and operating agreement structures, fraught with peril

We’ve looked at some of the major advantages and disadvantages of using series LLCs, how to evaluate if they may (or may not) be a good fit for clients, and explored some of the unresolved issues.

As we’ve seen, Series LLCs are complex and are not for the faint at heart. For some clients, they may be a good fit, and just need some a bit of tailoring. For other clients, they may be unwise or too risky, with all the unanswered questions, the known unknowns still lingering. As corporate lawyers, let’s strive to do our best in wisely advising each client, and tailoring legal solutions to their business, whether a series LLC or another business entity, since our work as business lawyers can be a “pattern of timeless moments,” of great opportunities to serve each client’s best interests.¹¹

¹¹ T.S. Eliot, Four Quartets, “Little Gidding,” (No. 4) (1943), V: 235.