OPERATING AGREEMENTS

UNDER THE

IOWA LIMITED LIABILITY

COMPANY ACT

Frank Carroll

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EXHIBITS

OPERATING AGREEMENTS UNDER THE IOWA LIMITED LIABILITY COMPANY ACT[1] BY

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I. Preliminary Actions Preceding Drafting of Operating Agreement - Ethics Issue.

1.1 One of the initial issues to be resolved in connection with the preparation of an Operating Agreement for a limited liability company ("LLC") consisting of two or more members is deciding who the lawyer should represent. Can the lawyer represent a newly formed LLC and all of the members? Can the lawyer represent just the LLC? Can the lawyer represent just one of the members and not the LLC?

1.2 The Iowa Rules of Professional Conduct (the "**Rules**"), do not directly address these questions. It is generally understood, however, that a lawyer may, subject to the normal rules regarding conflicts of interest, represent the LLC that is being formed and/or one or more of the individual members of the LLC.

1.3 To avoid confusion and misunderstandings about whom a lawyer represents during the organization of a LLC, lawyers organizing LLCs should reach an understanding with the parties involved at the outset of the engagement. That understanding should be documented in a written engagement letter. If necessary, conflict waivers should also be obtained. Sample engagement letters are attached hereto as **Exhibit A**.

1.4 In many cases, lawyers may choose to represent the LLC that is being formed. Representing the LLC from the outset avoids conflicts of interest that would result from representing one or more of the members during the formation process and the LLC thereafter.

1.5 This means that the lawyer's duties run to the LLC and not to its members. As a result, the lawyer will have to put the interests of the LLC ahead of its members and the lawyer's ability to represent the individual members of the LLC on future matters could be impaired.

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[1] Portions of this outline are based on a series of articles entitled *Drafting Partnership and LLC Agreements* by Terence Floyd Cuff which appeared in Business Entities Vol. 3 No. 3 p. 22-29 (May/June, 2001); Vol. 3 No. 4 p. 6-13 (July/August, 2001); Vol. 3 No. 5 p. 38-48 (September/October, 2001); Vol. 3 No. 6 p. 12-21 (November/December).

1.6 The Rules limit a lawyer's ability to represent clients with differing interests. The Rules provide, in part, as follows:

RULE 32:1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

1.7 The Rules do, however, provide that in certain circumstances, a lawyer may accept the representation of an individual member of an LLC and continue to represent the LLC. The Rules provide, in pertinent part, as follows:

RULE 32:1.13 ORGANIZATION AS CLIENT

. . .

> (g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 32:1.7. If the organization's consent to the dual representation is required by Rule 32:1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

1.8 While it is clear, under the provisions set forth above, that accepting the representation of an LLC does not automatically prevent a lawyer from representing any of its individual members in matters related to the LLC, it is equally clear that any such dual representation must be approached with care. Lawyers have, in the past, been sued for legal malpractice, lost their fees, and been disbarred for actions in situations involving dual representation of an entity and its constituents. To avoid these problems, lawyers should consider taking the following steps when deciding whether to accept an engagement:

- Determine whether the engagement would involve a potential conflict of interest;
- Determine whether the lawyer's ability to represent the interested parties would be adversely affected by accepting the new engagement; and
- If not, obtain the consent of the interested parties after consulting with the same.

1.9 When determining whether an engagement involves a potential conflict of interest and whether the lawyer's ability to represent the interested parties would be adversely affect by accepting the new engagement, all of the facts and circumstances should be explored and the lawyer's experience should be drawn upon. Common situations that result in conflicts of interest include the negotiation and preparation of buy-sell agreements or provisions, calls for additional capital, guaranties of LLC debt, and the valuation of property and services transferred to or rendered on behalf of the LLC.

1.10 When obtaining an interested party's consent, a lawyer must first consult with the party about the advantages and disadvantages of accepting the lawyer's dual representation. The scope of that consultation depends upon the facts and circumstances, but generally should cover:

- The nature of the potential conflicts between the member in question and the LLC itself;
- The risk that the representation may foreclose courses of action that might be suitable for the circumstances of one client, but not for the other;

- The risk that the lawyer may favor the interests of one client because, for example, the lawyer has a preexisting relationship with that client, the lawyer expects the client to be an ongoing source of business, or the lawyer's fees are to be paid by that client;
- The impact of the proposed joint representation of the client's confidential information, such as whether there will be unrestricted disclosure of information about one client to the other; the possibility that the clients may not be as candid with the lawyer as they might be if they were separately represented, and the possible need to share one client's information to obtain the informed consent of the other; and
- The risk that the representation might have to be terminated if an actual conflict of interest arises, and the consequences of that termination.

The consent should take the form of a writing, signed by the interested parties.

1.11 Accepting representation of the LLC may also impact the scope of the attorney-client privilege.

1.12 As a general rule, communications between lawyers and their clients may not be disclosed to third parties without the client's consent. The Rules provide, in part, as follows:

RULE 32:1.6 CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b) or required by paragraph (c).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) To prevent reasonably certain death or substantial bodily harm;

(2) To prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property or another and in furtherance of which the client has used or is using the lawyer's services;

> (3) To prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
>
> (4) To secure legal advice about the lawyer's compliance with these rules;
>
> (5) To establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or
>
> (6) To comply with other law or a court order.
>
> (c) A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent imminent death or substantial bodily harm.

1.13 Because LLCs can only act or speak through their members and agents, who, as noted above, may not be clients, questions arise as to whether communications with these individuals are protected from disclosure.

1.14 While a full discussion of this issue is beyond the scope of this outline, it is important to note that some guidance is given in the comments to Rule 32:1.13. The comments provide, in pertinent part, as follows:

> [2] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 32:1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 32:1.6. This does not mean, however, that the constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation as otherwise permitted by Rule 32:1.6.

1.15 It appears, therefore, that an LLC lawyer has an obligation to keep information obtained from the LLC's members during the course of his or her representation of the LLC confidential. This does not, however, mean that information obtained from one member may be kept from the LLC or its members. In fact, quite the opposite is true. An LLC lawyer that obtains information from a member relevant to the LLC may be obligated to present that information to the LLC and its various members or constituents.

1.16 It is important to note that these issues cannot be ignored once the representation is undertaken. Lawyers should continue to evaluate the situation and, if necessary clarify or change their role. If, for example, an issue arises between an LLC and one or more of its members, the lawyer should be certain to disclose that he or she is acting on behalf of and in the interest of the LLC and not its members.

II. Preliminary Matters Preceding Drafting of Operating Agreement - Articles of Organization.

2.1 Prior to entering into or in conjunction with entering into the operating agreement, parties must file Articles of Organization with the Office of the Iowa Secretary of State. Section 490A.303 provides that Articles of Organization must address the following items:

- Name of the LLC.
- Name and street address of initial registered agent.
- Principal office of the LLC.
- Period of duration.

2.2. The Articles of Organization can address other matters not inconsistent with the law, such as the limitations of the members to bind the LLC, purposes of the LLC, if restricted (Section 490A.201 of the Iowa Code), power of the LLC, if restricted (Section 490A.202 of the Iowa Code), management of the LLC by managers (Section 490A.702.3 of the Iowa Code).

2.3 If the LLC is to be a manager-managed LLC, the Articles of Organization should affirmatively indicate that it is to be manager-managed and should further provide that none of the members can act as an agent for or by the LLC.

2.4 The Articles of Organization should also address the indemnification and limitation of liability of the managers or members.

III. Operating Agreement-General Matters.

3.1 Section 490A.703 of the Iowa Code provides, in pertinent part, as follows:

> 1. The members of a limited liability company may enter into an operating agreement to establish or regulate the affairs of the limited liability company, the conduct of its business and the relations of its members. An operating agreement may contain any provisions regarding the affairs of a limited liability company and the conduct of its business to the extent that such provisions are not inconsistent with law or the articles of organization.
>
> 2. An operating agreement must initially be agreed to by all of the members. Unless the articles of organization specifically permit otherwise, an operating agreement shall be in writing.

3.2 Chapter 490A is drafted in large part as a default statute. In other words, the statute provides that, unless otherwise provided in the Articles of Organization or the Operating Agreement, the statute will dictate the relationship by and among the members and the LLC. Attached as **Exhibit B** is a list of substantially all of the default provisions contained in Section 490A. Unless each of the items set forth in **Exhibit B** is addressed in the Articles of Organization or the Operating Agreement, the provisions as set forth in Section 490A and summarized in **Exhibit B** will control the relationship.

3.3 As a result of the above, it is obvious that the Operating Agreement is the document that can and should define the relationship of the members with the LLC and the relationship of the members to and with each other.

3.4 Most lawyers (and for that matter most clients) dislike creating documents out of old cloth. As a result, most lawyers will rely on some standard form to be used as a "drafting aid." It is extremely important to determine the source of the "drafting aid" and the state law on which the "drafting aid" was based.

3.5 Since the limited liability acts are not uniform acts, they can vary significantly from state-to-state. For example, the limited liability company act in Minnesota is uniquely and strangely different than Iowa. This outline and the comments made therein are based on Iowa's Limited Liability Company Act.

IV. Purpose of the Venture.

4.1 Section 490A.201 of the Iowa Code provides as follows regarding the purpose of an LLC:

> 1. A limited liability company organized under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of organization.
>
> 2. A limited liability company engaging in a business that is subject to regulation under another statute of this state

> may organize under this chapter only if permitted by, and subject to all limitations of, the other statute.

4.2 The purpose provision of the Operating Agreement is generally stated very broadly so that the LLC can conduct any and all business that can be conducted by an LLC in the state of Iowa. In some instances, generally involving more highly negotiated LLC's with minority investors, the purpose of the entity may be very narrowly defined and may be changed only with the approval of the majority or more vote of the members.

4.3 The Operating Agreement should provide a mechanism for determining how to amend the purpose provision of the Articles of Organization. See Section 490A.701.3 (unanimous vote of members required to amend the Articles of Organization).

4.4 It is unclear under Iowa law whether a LLC can be formed for nonprofit purposes.

V. Power of the Venture.

5.1 Section 490A.202 of the Iowa Code provides as follows regarding the powers of the limited liability company:

> Unless its articles of organization provide otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power to do all of the following…

5.2 Similar to the provision relating to the purpose of the LLC, the power provision of the LLC is generally drafted in broad terms to cover all powers allowed under the laws of the State of Iowa. However, once again, if the LLC is highly negotiated or there are minority members, the purposes provision of the Articles of Organization may be more restricted.

VI. Term of the Limited Liability Company.

6.1 Section 490A.303(l)(d) of the Iowa Code states that the Articles of Organization must set forth in the term of the LLC. The term of the LLC can be perpetual or for a specific term of years.

6.2 In some instances, it may be worthwhile to review older LLCs that were formed prior to the "check the box" regulations, which were issued in 1997, since those LLCs were required to have a specific term of years, sometimes as short as 25-30 years.

6.3 Generally, the Operating Agreement should be effective as of the same date that the Articles of Organization are filed with the Secretary of State. If there is a gap between the filing of the Articles of Organization and the effective date of the

Operating Agreement, the default provisions set forth in **Exhibit A** may control some or all of the activity that occurred during the intervening period of time.

VII. Member Relationships.

7.1 Sections 490A.601 through 490A.603 of the Iowa Code address the relationship of the LLC and its members to third parties and the liability of the members to third parties. The Operating Agreement generally reiterates that no member is liable for the acts or debts of the LLC.

7.2 Sections 490A.701 through 490A.712 of the Iowa Code describe the relationship of the members to each other and provide as follows:

- Voting rights
  - based on capital contributions (Section 490A.701.1).
  - majority votes of certain actions (Section 490A.701.2).
  - unanimous vote to amend Articles of Organization or Operating Agreement (Section 490A.701.3).
- Management
  - by members (Section 490A.702.1).
  - members may act as agents of the LLC (Section 490A.702.2).
- Operating Agreement - must be an entity (Section 490A.703).
- Resignations or withdrawal of members - no withdrawals (Section 490A.704A).
- Standards of Conduct for Manager - general standards of good faith and in best interest of the LLC (Section 490A.706).
- Limitation of Liability of Managers - must be addressed in the Articles of Organization (Section 490A.707).

Each of the above items needs to be addressed to determine if and how it should be addressed in the Operating Agreement to override the statutory presumptions.

VIII. Member Interests - Classes and Series.

8.1 Section 490A.307 generally provides in part regarding member classes and voting:

> 1. An operating agreement may provide for classes or groups of members and the relative rights, powers, and duties of such members… An operating agreement may provide that any member or class or group of members has no voting rights.
>
> 2. An operating agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of members of

> managers on any matter. Voting by members may be on a per capita, number, financial interest, class, group, or any other basis…

8.2 By using various class member interests, the Operating Agreement can provide a preferred return to some members and residual returns to others.

8.3 Section 490A.305 provides in part regarding the issuance of a series of member interests:

> 1. An operating agreement may establish or provide for the establishment of designated series of members, managers, or membership 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.
>
> 2. Notwithstanding contrary provisions of this chapter, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and not against the assets of the limited liability company generally…"

8.4 The use of one or more series of member interests allows for the certain assets of the LLC to be treated as a separate business unit having separate members and not being subject to the liability of the acts or assets of the other business units of the LLC.

IX. Representations and Warranties.

9.1 The Operating Agreement or a separate Contribution Agreement may contain a number of representations and warranties regarding the members, securities matters and property, if any, transferred to the LLC.

9.2 With respect to the members, the Operating Agreement or Contribution Agreement may contain representations and warranties regarding, among other things, the following:

- Identity or organization status.
- Authority of the member to act.
- Authorization of the member to act.
- Compliance of the member with all laws.
- Absence of litigation involving the member.

9.3 The Operating Agreement or the Contribution Agreement may also contain representations and warranties relating to the particular securities exemption matters such as the following:

- Accredited investor status.
- Sophisticated investor status.
- Opportunity of investor to review the LLC documents and ask questions.
- Ability of the investor to bear economic risk of loss.
- Representation by the investor that the investment was acquired for investment purposes and not with a view for distribution or resale.
- Representation that the investor has been advised to consult an attorney regarding legal and tax matters associated with the investment.

9.4 The Operating Agreement or the Contribution Agreement may also contain representations and warranties relating to any property transferred to the LLC such as the following:

- Description of property.
- Ownership of property.
- Liens on property.
- Compliance with environmental law.
- Compliance with laws.
- Other representations as might be contained in a typical Purchase Agreement.

Additionally, the Operating Agreement or Contribution Agreement may contain indemnification provisions in the event that there is a breach of a representation or warranty or a breach of a pre-existing condition.

X. Initial or Additional Capital Contributions.

10.1 Section 490A.801 of the Iowa Code provides in part as follows regarding capital contributions:

> 1. The contributions of a member to a limited liability company may be in cash, property, or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services.
>
> 2. Unless otherwise provided in the articles of organization or an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to

> perform because of death, disability, or any other reason. If a member does not make the contribution, the member is obligated at the option of the limited liability company to contribute cash equal to that portion of the value of the contribution that has not been made as stated in the limited liability company records required to be kept by section 490A.709. A promise by a member to contribute to a limited liability company is not enforceable unless set out in a writing signed by the member.
>
> 3. Unless otherwise provided in the articles of organization or an operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit or otherwise acts in reliance on the original obligation may enforce the original obligation…

10.2 The Operating Agreement should address the following with respect to initial capital contributions:

- How much?
- When?
- Where?
- Recourse if not timely made?

10.3 The Operating Agreement should also contain provisions relating to additional capital contributions such as the following:

- Who can make demand for additional capital contributions?
- Will additional capital contributions will be mandatory or discretionary?
- If discretionary, what the impact on noncontributing members will be?
- If mandatory, what happens if contribution is not made? (See Section XI)
- Will there is or should be a cap on the amount of the contribution?
- Will the contribution should be in cash or in kind?

10.4 If the initial capital contribution or additional capital contribution is to be made in kind, the Contribution Agreement or Operating Agreement should address the following:

- Description of the property.
- Ownership of property.

- Value of the property and tax basis.
- Representations and warranties regarding the contributor and the property.
- Title opinion.
- Survey.
- Legal and regulatory compliance.
- Other items normally addressed in a typical purchase agreement.

10.5 If in kind contributions are being made, it will be necessary to address Section 704(c) of the Internal Revenue Code and allocation rules relating to contributions of appreciated property.

10.6 If appreciated property is contributed, attention must also be directed to the disguised sale and anti-mixing bowl rules. Where a contribution of property is followed by distribution of other property, the contribution and distribution could cause the transactions to be taxable.

XI. Default on Capital Contributions.

11.1 Section 490A.801.4 of the Iowa Code provides in part regarding defaults on capital contributions:

> 4. An operating agreement may provide that the interest of any member who fails to make a contribution that the member is obligated to make is subject to specified penalties for, or specified consequences of, such failure. The penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating the member's membership interest to that of a nondefaulting member, a forced sale of the member's membership interest, forfeiture of the member's membership interest, the lending by other members of the amount necessary to meet the member's commitment, a fixing of the value of the member's membership interest by appraisal or by formula and redemption, or sale of the member's membership interest at such value or other penalty or consequence…

11.2 Initial capital contributions will generally be made in a timely fashion or the venture will not proceed. Additional capital contributions are another matter. Not only does there need to be a mechanism for providing for a fair capital call with respect to additional capital contributions, but there also needs to be a remedy in the event that additional capital contributions are not made.

11.3 As stated in the Iowa Code, some of the remedies that can be used include, but are not limited to, the following:

- Reduction in or elimination of interest of the defaulting member.
- Subordinating the member's interest to that of the nondefaulting member's interests.
- Permitting the other members to make a deemed loan to the defaulting member with the funds of the deemed loan being treated as a capital contribution to the LLC.
- Loss of voting rights.
- Legal action for specific performance on the obligation to contribute.
- Forfeiture of the membership interest of the defaulting member.
- Buyout of the interest of the defaulting member at the fair market value, discounted fair market value, capital account balance or other amount.

11.4 Whatever the remedy or combination of remedies that are provided in the Operating Agreement, it is important to consider the enforceability of the particular remedy under Iowa law as well as the tax implications associated with the proposed remedy.

XII. **Management**.

12.1 Section 490A.702 of the Iowa Code provide in part regarding the management of an LLC:

> 1. Unless the articles of organization or an operating agreement provides for management of a limited liability company by a manager or managers, management of a limited liability company shall be vested in its members…
>
> 3. If the articles of organization provide that management of the limited liability company is vested in a manager or managers the following apply:
> a. A member, acting solely in the capacity as a member, is not an agent of the limited liability company.
> b. Every manager is an agent of the limited liability company for the purpose of its business or affairs, unless otherwise provided in the articles of organization or an operating agreement. The act of any manager with agency authority, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the ordinary course the business or affairs of the limited liability company shall bind the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the

particular matter, and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

12.2 Management of the LLC is one of the most important and sometimes hotly debated issues that must be resolved by the members.

12.3 If the LLC is to be managed by its members, many of the day-to-day issues relating to management will be resolved by the members. Even under such circumstances, the members may desire to appoint one of the members or another party to handle the day-to-day operations of the business.

12.4 If the LLC is to be managed by one or more managers, decision making power can be vested in managers who do not need to seek member approval on many items or in managers that need to seek member approval on a regular basis.

12.5 If the Operating Agreement may provide that the members shall provide a budget and business plan. The manager or managing member would then have the responsibility for implementing the business plan and making expenditures fall within the limits set forth by the budget.

12.6 The Operating Agreement may also provide the type of decisions that are characterized as day-to-day decisions and those that are reserved for the members including, among other things, the approval of the following:

- Annual budget and business plans.
- Transactions between any member and the LLC.
- Additions capital contributions.
- Loans and guarantees.
- Amendments to Articles of Organization or Operating Agreement.
- Sale of all or substantially all of the assets of the LLC.
- Mergers.
- Liquidation or dissolution.
- Insurance of additional member interests.
- Redemption of member interests.
- Purchase of major assets.
- Commence litigation.
- Employment or discharge of certain employees.
- Accountant or lawyer.
- Leases or certain contracts.

12.7 If the LLC is managed by a manager, the Operating Agreement should also contain a provision outlining under what circumstances a manager may be removed and provisions relating to the compensation of the manager or officer.

12.8 The Operating Agreement and Articles of Organization should specifically address the powers of the members in a nonmember managed LLC. In most instances, the Articles of Organization or Operating Agreement will provide that the nonmanaging members have no authority to act on behalf of or to bind the LLC.

XIII. Cash Distributions.

13.1 Section 490A.803 provides the following with respect to distributions:

> Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement do not so provide in writing, distributions shall be made on the basis of their respective capital contributions, as adjusted from time to time to reflect any additional contributions or withdrawals.

13.2 The Operating Agreement should address the following with respect to cash distributions:

- When the distributions are to be made?
- How much cash flow could be distributed?
- Who makes the determination?
- What standards should be used in determining the amount of the cash flow distribution?

13.3 Cash distributions generally fall into three general categories: cash from operations, cash from capital events, i.e. sales, refinancing, etc. and cash from liquidations. Cash distribution provisions should distinguish between cash flow distributions being made as a distribution of profits and those being made as a return of capital.

13.4 If liquidating distributions are to be made in accordance with positive capital accounts so as to comply with the Income Tax Regulations, it is very important to understand the Income Tax Regulations and the effect that distributions and allocations have on capital accounts. If you do not, the agreement may not result in the economic returns that the members expected.

13.5 Cash distributions may also reflect preferred returns. If there are cash distributions that are preferred returns, the following issues need to be considered:

- Whether the preferred returns are cumulative or noncumulative.
- Whether the preferred returns are compounded or noncompounded.

- Whether the preferred returns will be considered guaranteed payments.

XIV. Assignment of Interest.

14.1 Section 490A.902 provides in part regarding the assignment of a member interest:

> Unless otherwise provided in the articles of organization or an operating agreement, a membership interest in a limited liability company is assignable in whole or in part. An assignment of an interest in a limited liability company does not dissolve the limited liability company. Except as provided in the articles of organization or an operating agreement, an assignment does not entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights of a member. Except as provided in the articles of organization or an operating agreement, an assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the articles of organization or an operating agreement, a member ceases to be a member upon assignment of the member's entire membership interest.
>
> Unless otherwise provided in the articles of organization or an operating agreement, the pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of the membership interest of a member shall not cause the member to cease to be a member and shall not deprive the member of the power to exercise any rights or powers of a member.
>
> Unless otherwise provided in the articles of organization or an operating agreement and except to the extent assumed by agreement, until an assignee of a membership interest becomes a member, the assignee shall have no liability as a member as a result of the assignment except for liability for a wrongful distribution to the assignee described in section 490A.808.

14.2 The Operating Agreement, in most instances, will contain provisions restricting the transfer the members' interests.

14.3 Any transfer restriction needs to address both the transfer of the economic interests as well as the transfer of the member interests. Transfer of the economic interest generally provides the transferee with economic right, i.e. right to receive cash distribution but does not provide the transferee with any management or information rights. The transfer of the full membership interests provides the transfer of both the

economic rights as well as management and information rights. Transfer of the membership interest generally requires the consent of some or all of the members in order for the assignee to become a member.

14.4 With respect to LLC transfer restrictions, it may be necessary to consider among other things:

- Securities law issues.
- Tax status.
- Regulatory or licensing issues.
- Termination of the LLC for tax purposes under Section 708 of the Internal Revenue Code.
- Transfers to persons or entities who are competitors with or hostile to the LLC or its members.

14.5 In addition to certain above restrictions, it will be necessary to determine if certain types of transfers will be permitted or if transfer restrictions should be imposed on:

- Voluntary transfers.
- Involuntary transfers.
- Transfers as a result of death.

14.6 When transfer restrictions are imposed, special care must be taken if the member interest is owned by an entity since not only may the entity transfer the interest directly, but also the transfer may also occur indirectly by a change of control in the entity.

XV. Rights of First Refusal.

15.1 The Operating Agreement may provide restrictions on voluntary or involuntary transfers by way of rights of first refusal.

15.2 A right of first refusal requires the member who intends to sell his interest to find a buyer and to negotiate a sale agreement with the buyer. Once that agreement has been reached, the selling member, before he can transfer the interest to the potential buyer, must offer his interest either to the LLC or the other members.

15.3 The right of first refusal provision should contain some or all of the following:

- Will the right of first refusal be granted to the venture as well as to the members?
- What is the period of time that the LLC or members have to exercise the option to purchase?

- Will the right of first refusal must be with respect to 100% of the interest to be transferred or only a portion of the interest to be transferred?
- How is the purchase price determined (e.g. the amount offered by third party or some other specified dollar amount or formula)?
- If the agreement provides for a match of the third-party price, does that relate to the dollar amount or also the form and the timing of the payment?
- Should all third-party offers be in cash?
- What happens if the venture and members failed to exercise their option and the sale of the third-party does not take place?

XVI. Buy-Sell Provisions

16.1 Many negotiated Operating Agreements contain buy-sell provisions in order to address (i) an exit strategy for members or (ii) a method to resolve disputes regarding the operation of the LLC.

16.2 The buy-sell provision may be triggered by a number of events. The price for the member's interest may be determined by various methods such as by designating a gross value of the assets of the LLC or by attempting to value the interest of the member. Valuing the interest of the member may be difficult since many discounts may be involved. In order to avoid these issues, the "price" may be stated by reference to the gross value of the assets of the LLC followed by a deemed liquidation (including the payment of all debt, contingent liabilities, reserves, etc.) of the LLC to determine the value of the members interest.

16.3 Some of the issues that need to be addressed in drafting buy-sell provisions are as follows:

- What events will trigger the buy-sell provision?
- What form of notice should be issued to the LLC or other members?
- How is the price determined?
- What period of time should be given to the other members to exercise their option?
- The procedure for converting the gross asset value to the purchase price of the member's interest.
- Who makes the computation regarding the purchase of the members interest based on the "deemed" liquidation and what "audit" procedures are available?
- How and when the purchase price will be paid?
- Terms of purchase closing conditions and timing.

XVII. Mandatory Purchase Provision.

17.1 Some Operating Agreements also address situations in which there will be a mandatory buy-out of a member's interest. These situations may include the death of a member, permanent incapacity of a member, violation of a legal or regulatory requirements, bankruptcy, etc.

17.2 On the occurrence of one of these events, the LLC has the obligation to buy and the member has the obligation to sell his membership interest at a designated purchase price. The purchase price is generally based on an appraisal of either of the gross assets of the LLC or the value of the member's interest.

17.3 As stated in the prior section, if the appraisal is of the value of the member's interest, the agreement should specify what, if any, discounts the appraiser should take into account, (i.e. minority discount, marketability discount, etc.).

17.4 If the appraisal is to be made regarding the gross assets, the agreement should indicate whether the assets should be valued on a liquidation basis or a going concern basis. In either case, the Operating Agreement should also provide for the deemed liquidation of the LLC after the payment of all liabilities, and address whether contingent obligations should be reflected in the deemed liquidation as well as the "cost" of selling the assets.

17.5 The Operating Agreement should also indicate the procedure for the appraisals, number of appraisers, qualifications for appraisers, procedure to appointment of appraisers' time limitations, etc.

17.6 The Operating Agreement should also address the terms of the purchase and the closing procedures.

XVIII. Admission of New Members.

18.1 The Operating Agreement should specifically provide whether or not new members may be admitted and, if so, who has the authority to admit new members.

18.2 If the Operating Agreement provides that new members may be admitted, the Operating Agreement should provide how the consideration for the new members' interest is to be determined and what type of consideration will be accepted. The Operating Agreement should also specify the procedures by which the new member will become a party to the Operating Agreement.

XIX. Standard of Conduct and Fiduciary Duties of Managers and Members.

19.1 Section 490A.706 provides in part regarding the standard of conduct for managers:

> 1. A manager shall discharge that manager's duties as a manager in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner the manager believes to be in the best interests of the limited liability company…
> 3. A manager is not acting in good faith if the manager has knowledge concerning the matter in question that makes reliance otherwise permitted…unwarranted.
> 4. A manager is not liable for any action taken as a manager or any failure to take any action, if the manager performed the duties of the manager's office in compliance with the section, or if, and to the extent that, liability for any such action or failure to act has been limited by the articles or organization pursuant to section 490A.707.

19.2 The fiduciary - like standards of Section 490A.706 apparently only applies to managers of manager-managed LLC. There are no similar provisions imposing fiduciary - like duties on members. However, fiduciary duties may be judicially imposed on members of a member-managed LLC.

19.3 Since the Iowa Code is silent regarding the fiduciary duties of members, the Operating agreement should address whether a member of the LLC may compete with the LLC and whether the member has a duty to submit competitive business opportunities to the LLC.

19.4 In many instances, the members as well as the LLC may not want the members competing with the business of the LLC. In such case, the Operating Agreement should specifically prohibit the member from competing with the business of the LLC.

19.5 Likewise, there are a number of LLCs whose members intended to compete either directly or in a limited manner with the LLC and also will desire to pursue independently any business opportunities that they may have. In such a case, the Operating Agreement should specifically provide that a member has the right to compete with the LLC subject to any exceptions that may be addressed in the Operating Agreement and it further provides that a member is not required to divulge any competitive business opportunity to the LLC.

XX. Withdrawal and Expulsion of Members.

20.1 Section 490A.704A of the Iowa Code provides in part with respect to the withdrawal of a member of an LLC formed on or after July 1, 1997:

> …2. A member may resign or withdraw from a limited liability company only at the time or upon the happening of an event

specified in an operating agreement and pursuant to the operating agreement.

3. Unless an operating agreement provides otherwise, a member may not resign or withdraw from a limited liability company prior to the dissolution and winding up of the limited liability company. However, if the articles of organization or an operating agreement do not specify the time or the events upon the happening of which a member may resign or withdraw, a member may resign or withdraw from the limited liability company in the event any amendment to the articles of organization or operating agreement that is adopted over the member's written dissent adversely affects the rights or preferences of the dissenting member's membership interest…

20.2 With respect to an LLC formed prior to July 1, 1997, Section 490A.704 provides that a member may resign at the time or upon the happening of events specified in the Articles of Organization or Operating Agreement. If there are no such events, the member can resign upon six (6) months notice.

20.3 The Operating Agreement should address whether members can resign or withdraw and under what circumstances and the buy-out mechanism, if any.

20.4 Similarly, the Operating Agreement may contain provisions for expulsion of a member. If an expulsion provision is necessary (professional service entities), the expulsion needs to address the causes for expulsion, what vote is necessary for expulsion, the buyout right of the expelled partner, confidentiality, etc.

XXI. <u>Indemnification</u>.

21.1 Iowa Code 490A.202.17 provides an LLC may:

> Indemnify and hold harmless a member, manager or other person against a claim, liability or other demand, as provided in the Operating Agreement.

21.2 Generally, the Operating Agreement will indemnify managers and members. The indemnification provision should address some or all of the following issues:

- Who is indemnified?
- What expenses are indemnified?
- What Evidence of expenses is required in order to be indemnified?
- When is the indemnified party entitled to indemnification?
- Does the indemnified party have a right to require the LLC to advance expenses prior to final disposition?

- Who controls the defense?
- Who controls settlement or compromise?
- Must the indemnified party seek compensation from insurance carriers prior to indemnification?

XXII. Dissolution Procedures.

22.1 Section 490A.1301 of the Iowa Code provides as follows regarding the dissolution of an LLC:

> A limited liability company organized under this chapter is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:
> 1. At the time or on the happening of an event specified in this chapter or in the articles of organization or an operating agreement to cause dissolution.
> 2. Upon the unanimous written consent of the members.
> 3. The entry of a decree of judicial dissolution under section 490A.1302.

22.2 As permitted in Section 490A.1301, the Operating Agreement can specify the events that may cause the dissolution of the LLC. These events may include the following:

- Sale or exchange of substantially all of the assets.
- Bankruptcy.
- Occurrence of an event which makes it unlawful or illegal to continue the business of the LLC.

22.3. Upon an event of dissolution, the LLC commences the process of winding up its affairs. The Operating Agreement should address this wind-up process including the following:

- Sale of the assets as soon as practicable.
- Discharge of liabilities.
- Establishment for reserves for contingent liability.
- Allocation of liquidation profits and losses.
- Distribution of remaining assets in accordance with the positive capital accounts of the members or as otherwise provided in the Operating Agreement.

22.4. Section 490A.1305 of the Iowa Code provides upon completing the winding up, Articles of Dissolution are to be filed with the Secretary of State.

XXIII. Meetings.

23.1 Since the Iowa Code is silent on the requirement of meetings, the Operating Agreement can designate the meeting requirements. In circumstances where there is a manager who virtually handles all of the operations of the LLC it may not be necessary to provide for meetings except as may be required upon the written notice of a member holding a certain percent of the member interest in the LLC. In situations where the management of the LLC is not handled by a manger who is handling the day-to-day operations of the LLC, the necessity for meetings may be more of a concern.

23.2 If meetings of the members are desired, following the procedures set forth in the bylaws of a corporation will provide a good point of reference for common issues (e.g. who can call a meeting, notice requirements, waiver of notice, place of meeting, quorum, proxy, etc.).

XXIV. Financial Statements and Tax Returns.

24.1 The Operating Agreement should also provide whether or not an annual audit of the financial statements will be required.

24.2 The Operating Agreement should also provide, if appropriate, for the delivery of certain financial reports to its members.

24.3 The LLC is generally required to file federal information income tax returns as well as state income tax returns. The Operating Agreement should designate a member who will be responsible for making tax elections on behalf the LLC as well as signing the tax return.

24.4 The Operating Agreement may require, in some instances, that the tax return be submitted to the members for their review and approval prior to filing. In such case, the Operating Agreement needs to provide precise parameters as to when the return must be delivered to the members, when they must respond and how to handle any disputes. In all cases, the LLC must have the ability to file the return in a timely manner.

24.5 The Operating Agreement should designate a Tax Matters Partner who would take the lead role in representing the LLC in the event of an audit by the Internal Revenue Service.

XXV. Dispute Resolutions.

25.1 Many negotiated Operating Agreements contain provisions to deal with disputes between members.

25.2 As previously seen, one dispute resolution technique is the buy-sell provision. A less ominous method of resolving disputes is arbitration or litigation.

25.3 Some litigators prefer litigation to arbitration because more certain rules apply and the fact that using arbitrators in dispute can be costly. One advantage of arbitration is that is can be confidential.

25.4 If arbitration is used, some of the issues that need to be addressed in the arbitration provision are as follows:

- Who may initiate arbitration and how is arbitration initiated?
- Where is the arbitration to be undertaken?
- How many arbitrators are required and how are they selected?
- What substantive law applies?
- What are the qualifications for arbitrators?
- Who pays the expenses for arbitration?
- What matters are arbitratable and who decides whether matters are arbitratable?
- What procedural rules apply?
- What discovery rules apply and what are the procedures, if any, regarding depositions, interrogatories, requests for admissions, etc.?
- What are the rules of evidence?
- What are the limitations of damages?
- Can the parties seek enforcement of judgment in the courts?
- Who is responsible for attorney's fees and expenses?
- Is the arbitrary reward appealible?

XXVI. Taxation of LLCs and Members - Generally.

26.1 LLCs are, as a general rule, not subject to federal income taxes. They are, instead, conduits. As such, they must compute their income, gain, loss, deduction and credit and then pass that income, gain, loss, deduction and credit through to their members.

26.2 An LLC's income is computed in the same manner that an individual computes his or her income, except that LLCs are not allowed certain deductions, such as the standard deduction and personal exemption, and they must separately state any item that could be subject to special tax treatment, depending on which member such item is allocated to.

26.3 The amount of income, gain, loss, deduction and credit allocated to each member ("**distributive share**") must be included in his or her income for the year in which, or with which, the LLC's tax year ends, regardless of whether any amounts are distributed to him or her by the LLC.

26.4 A member's distributive share of LLC income, gain, loss, deduction and credit is generally governed by the LLC's Operating Agreement. Therefore, members

generally have great leeway in determining how the tax burden generated by LLC's activities will be allocated amongst them.

26.5 Because an LLC is a legal entity separate and distinct from its owners, a transfer of property from a member to an LLC in exchange for an interest in that LLC will be treated as a realization event. However, as a general rule, no gain or loss is recognized in this situation. As noted in § 721:

> No gain or loss shall be recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

26.6 The recognition of gain or loss inherent in the contributed property is, instead, deferred. The LLC, rather than taking a fair market value basis in the contributed property, takes a basis equal to the contributing member's basis in the contributed property. And, the contributing member takes a basis in his or her interest that is equal to the amount of money contributed to the LLC and the basis that he or she had in any contributed property other than money. Therefore, any gain or loss that is inherent in property contributed to an LLC by a member will generally be recognized upon the sale or exchange of that property by the LLC or the member's sale of his or her interest in the LLC.

26.7 As a general rule, neither an LLC nor its members recognize gain or loss on the distribution of LLC property. The recognition of gain or loss on the distributed property is, instead, deferred. In the case of an operating distribution, the reduction in the member's basis of his LLC interest is generally equal to the amount of money distributed to the member and the LLC's basis in other distributed property. In the case of a liquidating distribution, the reduction in the member's basis of his LLC interest is generally equal to the amount of money distributed and any basis that the member has remaining in his or her LLC interest and is allocated among distributed property other than money. Therefore, any gain or loss that is inherent in property distributed from an LLC member to a member will generally be recognized upon the sale or exchange of that property by the distribute member.

26.8 Gain or loss will, however, be recognized in situations in which it is impossible to defer it through the partnership tax regime. For example, a member will recognize gain on a distribution to the extent that a distribution of money exceeds his or her basis in his or her LLC interest.

26.9 As a general rule, a member who sells or exchanges his or her interest in an LLC recognizes gain or loss on the sale of his or her interest in an amount equal to the difference between the amount realized in the sale or exchange and the partner's basis in his or her LLC interest. In most cases, that gain or loss will be characterized as capital gain.

XXVII. Allocations of Income.

27.1 Allocations of income and loss should not be considered as mere boilerplate. Allocations of income and loss are used to establish capital accounts. Capital accounts are important because most Operating Agreements provide that liquidation proceeds will be distributed in accordance with positive capital account balances in order to meet the substantial economic test effect set forth in the Section 704(b) Income Tax Regulations.

27.2 The Operating Agreement should contain separate provisions relating to the allocation of income and loss and distributions of cash. Cash flow and income allocations are separate and distinct matters.

27.3 To be respected, allocations of LLC income and loss must either be made in accordance with each "member's interest in the LLC" or have "substantial economic effect."

27.4 A "member's interest in an LLC" refers to the manner in which the members have agreed to share the economic benefits or burden (if any) of the LLC's operations. In determining a member's interest in an LLC, all facts and circumstances relating to the relationship of the LLC's members must be taken into account including, but not limited to:

- The members' relative contributions to the LLC.
- The members' interests in economic profits and losses (if different than their interest in taxable profits in losses).
- The members' interests in cash-flow and other non-liquidating distributions.
- The rights of the members to distributions of capital upon liquidation.

27.5 Because the determination of a "member's interest in the LLC" is an ambiguous standard, many Operating Agreements are drafted so as to comply with the "substantial economic effect" safe harbor.

27.6 In order to have substantial economic effect, the allocations must meet four requirements:

- The allocations must be substantial (i.e. the allocations affect the dollars that are to be received by the member.)
- Capital accounts must be maintained in accordance with the Section 704(b) Income Tax Regulations.
- Liquidating distributions must be made in accordance with positive capital accounts of the members.
- Members must have an obligation to restore any deficit in their capital account at the time of liquidation.

27.7 The concept of an unlimited deficit restoration provision is diametrically opposed to the concept of limited liability protection for the members. A deficit restoration provision is an enforceable obligation by not only the LLC, but also creditors of the LLC. In order to avoid the concept of an unlimited deficit restoration provision, the regulations provide for what is called the "alternative test" for economic effect. Under this "alternative test", an allocation is considered to have economic effect as long as:

- The allocation is substantial.
- The Operating Agreement satisfies the capital account test and the liquidation requirements set forth above.
- The agreement contains a "qualified income offset" provision.
- Allocation does not create or increase a deficit in a member's capital account in excess of the member's obligation to restore a deficit which is generally zero.

27.8 Regardless of whether the basic test or the alternative test for economic effect are relied upon, capital accounts must be maintained in accordance with Section 704(b) Income Tax Regulations. The Section 704(b) Income Tax Regulations begin with the concept that if assets are contributed in kind, capital accounts are credited with the fair market value of the contributed assets. The capital accounts are then adjusted by taxable income or loss (with special allocations in the case of property with an agreed value that is different than adjusted tax basis).

27.3 Capital accounts are increased by income and decreased by losses, increased by cash contributions and decreased by cash distributions. Capital accounts are the difference between assets and liabilities. Capital accounts should equal liquidation proceeds when all assets have been converted to cash and all liabilities have been paid.

27.10 The following income and loss allocation provisions are almost always addressed in Operating Agreements:

(a) Net Operating Income:

- Net operating income should be book income, adjusted by excluding specially allocated items. The specially allocated items are nonrecourse deductions, partner nonrecourse deductions, minimum gain, partner minimum gain, income gained from capital events, income and loss from liquidation and any other specially allocated items.
- Allocations of net operating income are generally allocated based on a specific percent to each of the members as set forth in the Operating Agreement but may be allocated based on preferential return.

(b) Net Gains From Capital Events:

- Net gains from capital events represent net gain on the sale of capital assets or involuntary conversion.

(c) Net Operating Loss:

- Net operating losses generally result from depreciation, interest expense and operating losses.
- Net operating loss is a book loss after excluding specially allocated items. Once again, the specially allocated items are nonrecourse deductions, member nonrecourse deductions, minimum gain charge back, member minimum gain charge back, income or loss from capital events, income or loss from liquidating events.
- Net operating loss allocations are generally allocated based on a specific percent as set forth in the Operating Agreement but in some instances may remain special allocations to the members.
- Net operating loss allocations adjust the capital account and therefore will affect not only the amount to be received upon liquidation but may also affect the character of gain, i.e. a net ordinary loss deduction versus a capital gain liquidating deduction.
- Generally, unless the operating agreement contains a deficit restoration provision, losses will be allocated to a member only to the extent of the member's positive capital account. The losses must be reallocated to these that have positive capital accounts.

(d) Net Gain or Loss From Liquidation:

- The allocation of net gain or loss from liquidations will adjust the capital accounts prior to any liquidating distribution so that the positive balance of the capital accounts will equal the amount of the liquidating distributions to the members.

27.11 If the members of the LLC will not have unlimited deficit restoration obligation, the allocation provisions should include a qualified income offset.

27.12 If property is contributed to the LLC or may be contributed to the LLC, it is also important to have an allocation provision dealing with Section 704(c)(l)(A) of the Internal Revenue Code.

(a) Where appreciated [or depreciated] property is contributed to the LLC, special rules apply for the allocation of tax items attributable to such property.

(b) Rules allocating tax items from appreciated property effects only tax items. The rules do not affect the allocations of book items under Section 704(b) of the Income Tax Regulations. Allocations of pre-contribution gain under Section 704(c) do not affect capital accounts, which are maintained under Section 704(b) . The Operating Agreement should make specific reference to the regulations regarding the Section 704(c) allocations and specifically designates one of the three allocation methods set forth in the Section 1.704-3 of the Income Tax Regulations.

27.13 If the LLC is going to have nonrecourse debt (i.e. debt for which no member is personally liable), it is also important to have allocation provisions that deal with nonrecourse deductions and minimum gain chargebacks.

(a) Nonrecourse Deductions:

- Nonrecourse deductions are generally depreciation deductions attributable to nonrecourse finance (i.e. financing in which no member has any economic risk of loss). Nonrecourse debt is debt to which a lender cannot get a deficiency judgment against either any other property of the LLC or against any member.
- Nonrecourse deductions are generally depreciation deductions associated with property in which the adjusted book value of the property for capital account purposes is less than the amount of the nonrecourse debt.
- Nonrecourse deductions do not affect the economics of the LLC since the deductions are automatically reversed as a result of the "minimum gain charge back."
- Nonrecourse deductions are generally allocated separate and distinct from operating deductions.

(b) Minimum Gain Charge Back:

- In order to have nonrecourse deductions, the Section 704(b) Income Tax Regulations require that the Operating Agreement contain a minimum gain charge back provision. The minimum gain charge back allocates income from the sale of property subject to nonrecourse debt to the members who received nonrecourse deductions. The nonrecourse deductions are, once again, depreciation deductions where the adjusted book value of the property for capital account purposes is less than the amount of secured debt. The minimum gain charge back is an allocation of income to the member at the time of sale of an amount equal to the difference between the secured debt and the adjusted bases of the property.
- An increase in the amount of minimum gain permits the deduction of non-recourse allocations. A decrease in the

amount of minimum gain requires that items of partnership income and gain be allocated to the member equal to the amount of the decrease in partnership minimum gain.

(c) Member Nonrecourse Deductions:

- As indicated above, nonrecourse deductions are allocated to all members provided that no member has an economic risk of loss. If a member (or an affiliate) makes a nonrecourse loan to the LLC, that member bears an economic risk of loss. As a result, the Section 704(b) Income Tax Regulations allocate the nonrecourse deductions to that member.
- Member nonrecourse deductions are specially allocated items and should be excluded from allocations of net operating loss.

(d) Member Minimum Gain Charge Back:

- Similar to the minimum gain charge back provision discussed above, the member partner minimum gain charge back is the allocation of income where the member has provided the nonrecourse financing and there is a decrease in the amount of minimum gain.

27.14 It is also important to provide rules applicable when there is a transfer of a member's interest during the year.

(a) Income or loss allocations for the LLC will be affected if a member transfers his entire interest in the middle of the year. Allocations of income or loss will also be affected if the member interest is increased or decreased during the year by transfer of less than all of the member's interest or by the admission or withdrawal of other members.

(b) The taxable year closes with respect to a member whose entire interest is terminated.

(c) The taxable year does not close, however, if the member's transfer is less than his entire interest in the LLC or his interest is increased or decreased during the year as a result of the admission of a new member. Where the member interest is increased or decreased during the year, the Section 1.706-1(c)(2)(ii) of the Income Tax Regulations provide two methods for allocation of income or loss as a result of such increase or decrease:

- Constructive interim.
- Day-to-day allocation.

The Operating Agreement should specifically designate the method that will be used when the partner's interest is increased or decreased during the year.

27.15 If the allocation provisions in the Operating Agreement are complex, it may be a good idea to include a curative allocation provision. This provision generally authorizes the manager or some other person to make offsetting allocations in order that after the regulatory allocations are made, each of the capital account balances will equal what the capital account balances would have been if the regulatory allocations had not been made.

XXVIII. Allocation of Liabilities.

28.1 The regulations provide that recourse liabilities are allocated to the members based on who ultimately bears the economic risk of loss based on a constructive liquidation of the partnership. Section 1.752-2 (b)(6) of the Income Tax Regulation. The Regulations further provide that nonrecourse debt (debt for which no member bears the economic risk of loss) can be allocated to the members in accordance with and to the extent of (i) the member's share of partnership a minimum gain, (ii) the amount of Section 704(c) minimum gain (the amount of gain that would be allocated to the member under Section 704(c) if the property was disposed of for the amount of the debt) and (iii) finally, in accordance with the members profits interest in the entity. Typically the member's profits interest in the entity will be determined by the Operating Agreement.

28.2 The allocation of liabilities is important for several reasons. First, the allocation of liabilities is important because it is used in determining the basis of a member's interest in the LLC. The basis of a member's interest is important because distributions of cash may be made tax free to the extent of the basis with any distributions in excess of basis subject to capital gains. Second, the basis is important because a member may deduct losses from the LLC to the extent of his basis.

XXIX. Section 754 Election.

29.1 Generally, if a member's interest is transferred by sale or exchange or as a result of death, the transferee member receives a step-up in basis of the member's interest but that does not effect the basis of property within the LLC.

29.2 If a Section 754 election has been made by the LLC, it is possible, in connection with a sale or exchange or transfer of a member's interest by reason of death, that a member's interest in the assets of the LLC, may also be stepped up. The adjustments usually result in an increase depreciation and decreased gain on the sale of the future assets by the purchasing partner.

29.3 Normally, these adjustments can be highly beneficial to the purchasing partner while other members of the LLC may be reluctant to make an election because of the accounting expense.

XXX. <u>Accounting Methods</u>.

30.1 Generally, the partnership will need to determine the method of accounting that it will be using. These accounting methods are generally limited to the accrual method and the cash method of accounting.

30.2 While this appears to be a relatively simple matter, the Internal Revenue Code has a number of provisions in which the LLC will be required to use accrual method of accounting. See Sections 447, 448 and 461 of the Internal Revenue Code.

30.3 The Operating Agreement should provide the method of accounting that will be used.

FORM A-1

CONFLICT WAIVER

As you know, you have engaged the law firm (the "**Firm**") to represent all of you individually and to represent (the "**Company**") in connection with the formation, organization and initial capitalization (the "**Formation**:) of the Company. After the Formation of the Company, the Firm will represent only the Company and will no longer be representing any of you individually.

Joint Representation in Connection with Formation of the Company

Since the Firm will be representing all of you in connection with Formation of the Company and you may have differences of opinion, it is possible that conflicts may arise between you concerning how you would like to proceed. The purpose of this letter is to point out the existence of potential conflict of interest and to obtain your consent to represent all of you at the same time notwithstanding the potential conflicts of interest.

The Firm is required to obtain your consent in order to comply with the Iowa Rules of Professional Conduct and other law applicable to Iowa lawyers (collectively the "**Ethical Rules**"). Under the Ethical Rules, Iowa attorneys have duties to each client of undivided loyalty, to maintain the confidence and secrets of the client, and to render legal services with vigor and competence. Since the performance of these duties might be adversely affected when there is a potential conflict of interest between or among the clients that an attorney is representing simultaneously in the same matter, the Ethical Rules provide that the Firm must obtain the informed written consent of each client before proceeding.

The Firm's joint representation of you in connection with Formation of the Company is undertaken on the understanding that none of you believes that you currently have any actual conflict of interest (such as an existing dispute or disagreement). Nonetheless, it is possible that a conflict of interest may arise as a result of differences of opinion or because your interests vary. For example, your rights under agreements may vary; the terms of agreements to which you are requested to be parties may differ as between or among you; and you may have different opinions about what is important, what should be conceded, and what strategies or tactics should be followed or avoided in dealing with other parties. In other words, although your interests may generally be aligned, they may vary on certain issues and you may have differences of opinion on how to approach these issues.

If your contributions to the Company are different, then your legal rights and obligations and the relevant tax and other considerations can differ or even be at odds. For example, the interests of a person who will be employed by the Company will vary considerably from the interests of a person who contributes cash and will not be involved in daily operations. Special concerns arise when a person contributes property to the Company, including intellectual property. Areas of potential difference or conflicts include the number and class of Company units to be issued to each person; the rights, preferences and privileges of each member including, but not limited to: voting power and veto rights; anti-dilution provisions; registration rights and other investor protections; operating distributions; liquidation preferences; employment terms for service providers; ownership of intellectual property and improvements; participation in competing ventures; and many other issues.

EXHIBIT A

The law is complex, especially as applied to actual facts and circumstances, and the factual circumstances themselves may also be complicated. Accordingly, as a practical matter it is not possible to anticipate and describe, or to advise each of you about, all potential conflicts of interest between or among you, about the pros and cons of any particular item from the point of view of each of you, or of the adverse effects of those conflicts upon our representation of any one or more of you.

Although joint representation may have the advantage of convenience, efficiency or reduced legal expense, joint representation also has the following disadvantages that you must acknowledge and accept as a condition to our engagement;

1. Joint representation may result in less vigorous assertion or protection of one person's individual or separate interests than if we were to represent only that person.

2. Joint representation has the further disadvantage that no attorney-client privilege would apply to communications between or among you or with us in any dispute between or among you. In other words, the Firm cannot keep confidential from one of you any communication with another one of you in the course of the joint representation, and the Firm could be compelled to testify concerning any such communication. Also, the Firm's possession of confidential information from any other representation of one of you may work to your advantage or disadvantage. If one of you provides the Firm with material information under the direction that it not be communicated to another, then the Firm may be required to withdraw and, in the course of withdrawal, each of you agrees that the Firm will have discretion to give a limited warning to any other joint client to the effect that a matter that may materially affect the interests of the other joint client has come to light which the communicating client refuses to permit us to disclose. Each of you also agrees that, even if the Firm ceases to represent you, we may continue to represent any other joint client.

3. When the Firm communicates with you concerning matters of potential conflict or the pros and cons of any particular item, the Firm may rely on communication with only one of you. For this reason and possibly others, joint representation may have the disadvantage of communication that is less complete or effective than if the Firm represented only one person.

4. You should not assume that the Firm will advise each of you of the substance of every communication received by us from any other joint client.

If you sign this letter, you waive the potential conflict of interest arising from the joint representation and acknowledge that, if any actual dispute arises between or among you concerning the subject of the joint representation, absent further consent from each of you the Firm may be required to withdraw as counsel to one or more of all of you. If we withdraw, a client who then is required to or does engage independent counsel may incur legal costs that would be avoided by separate representation throughout the matter.

Representation of the Company After Formation

As indicated above, after the Formation of the Company the Firm will be representing only the Company. In this connection, each of you acknowledges and agrees as follows:

1. After Formation of the Company, the Firm will no longer be representing you individually; only the Company will be the Firm's client at that point.

2. The Firm will be permitted to represent the Company if a conflict arises between the Company and any of you individually. This means that the Firm may appear on behalf of the Company adverse to you in a dispute between you and the Company, including a lawsuit or arbitration.

3. As indicated above, communications to the Firm from one of you in connection with Formation of the Company are not confidential from the other joint clients or from the Company. Therefore, information that you disclose to the Firm in connection with the Formation of the Company, as well as information you disclose to the Firm thereafter, may be disclosed to the Company and may be used by the Firm in representing the Company after its Formation, including representation of the Company where its interests may be adverse to the interests of one of you. Thus, if a dispute arises between one of you and the Company after the Formation, information disclosed by that person to the Firm or the Company will be available to the Company in connection with that dispute.

Please feel free to call if you have any questions. Of course, you should feel free to consult separate legal counsel about any matter at any time, including whether to sign this conflict waiver. If you agree to the joint representation and waiver as described above, please sign this conflict waiver where indicated below and return it to the Firm.

Date: _____ _____

By:

FORM A-2

ACKNOWLEDGEMENT

Dear :

The law firm (the "**Firm**") has been engaged to represent in connection with formation of , LLC, an Iowa limited liability company (the "**Company**"). As a result, the Firm will represent in connection with the negotiation and preparation of all the company's organizational documents including the Company's Articles of Organization, Operating Agreement and Unit Transfer Restriction Agreement (the "**Organizational Documents**") and all transactions related thereto.

Your interests and the interests of the Company's other members may not be aligned with 's interests. Areas of potential differences or conflicts include, but are not limited to: the number and class of Company units to be issued to each person; each member's voting and veto rights; anti-dilution provisions; operating distributions; liquidation preferences; employment terms; ownership of intellectual property and improvements; and participation in competing ventures.

Because the form and content of the company's Organizational Documents will affect your individual rights on the matters described above and on other important legal and tax matters, and because your interests may not be aligned with 's, you are strongly encouraged to seek other counsel to advise you on the preparation of the Company's Organizational Documents and the transactions contemplated thereby.

If you have any questions or concern, please contact , the attorney handling this matter on behalf of the Firm. Otherwise, please be kind enough to signify your acknowledgment of the foregoing by executing this letter in space provided below and returning the same to the address set forth above.

Date: _____ _____

By:

FORM A-3

ACKNOWLEDGEMENT

Dear :

The law firm (the "**Firm**") has been engaged to represent , LLC, an Iowa limited liability company (the "**Company**"). As such, the Firm will not, unless otherwise stated in a written engagement letter, be representing you or any other member, manager or officer of the Company in an individual capacity.

Because the Company will be our client, we will be obligated to place the Company's interest ahead of your interests. While, in many cases, your interests may be aligned with the interests of the Company, that will not be true in every case. In a number of situations, the Company's interests may be directly or indirectly adverse to your interests. Examples of situations in which your interest may not be aligned with the interests of the Company include, but are not limited to: (i) the valuation of property and services contributed to the Company; (ii) calls for additional capital; (iii) the avoidance of individual liability on Company borrowings; (iv) buy-sell agreements or provision; and (v) employment matters. In situations where your interests are not aligned with the interests of the Company, our actions on behalf of the Company may cause you serious harm.

Our representation of the Company will also affect the scope of our duty of confidentiality. As a general rule, communications between a lawyer and his or her client is privileged and may not be disclosed to a third party without the client's consent. Because the Company will be our client, and not the individual members, managers or officers of the Company, communications between the Firm and you as an individual may not be privileged. We may, in fact, be required to disclose information concerning the Company obtained from you to the other members, managers or officers of the Company. Such disclosure may cause you harm.

The Firm's representation of the Company is undertaken in reliance on the fact that you have engaged independent legal counsel, identified below, or have, after thoughtful consideration, and with full understanding of the risks associated therewith, chosen not to engage independent legal counsel. If independent legal counsel is not identified below, the Firm will assume that you have chosen to not to engage independent legal counsel.

To acknowledge your understanding of the matters set forth above, please execute this letter in space provided below and return the same to the address set forth above.

Date: _____ _____

By:

Independent Legal Counsel

Name:
Address:
Telephone Number:
Fax:

Default Provisions of the Iowa Limited Liability Company Act That May Be Varied in [2]Either the Articles of Organization or an Operating Agreement

ILLCA SECTION NO.	DEFAULT PROVISION
490A.201	Unless a more limited purpose is set forth in the articles of organization ("articles"), a limited liability company has the purpose of engaging in any lawful business.
490A.202	Unless otherwise provided in the articles, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including but not limited to those specifically set forth in I.C.A. § 490A.202.
490A.601	Unless expressly provided in the articles, no member or manager of a limited liability company is personally liable for the acts or debts of the limited liability company.
490A.701(1)	Unless otherwise provided in the articles or an operating agreement, the members of a limited liability company vote in proportion to their capital contributions to the limited liability company, as adjusted from time to time to reflect any additional contributions or withdrawals.
490A.701(2)	Unless otherwise provided in the articles or an operating agreement, a majority vote is required to approve the following matters: (1) The dissolution and winding up of the limited liability company. (2) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company. (3) Merger of the limited liability company with another entity.
490A.702(1)	Unless the articles or an operating agreement provides for management of the limited liability company by a manager or managers, management of a limited liability company shall be vested in its members.
490A.702(2)	Unless otherwise provided in the articles, every member is an agent of the limited liability company for the purpose of its business or affairs, unless the articles provide that management of the limited liability company is vested in a manager or managers, in which case the members are not agents of the limited liability company.
490A.703(2)	Unless otherwise provided in the articles, the operating agreement must be in writing.
490A.704	For limited liability companies whose articles were filed on or prior to June 30, 1997, if the articles or an operating agreement does not specify in writing the time or the events upon the happening of which a member may withdraw, a member may withdraw upon not less than six months' prior written notice to each member at the member's address on the books of the limited liability company. See also I.C.A. §

[2] MATTHEW G. DORÉ, IOWA PRACTICE: BUSINESS ORGANIZATIONS (VOL. 5), § 13.10, 2003

EXHIBIT B

	490A.805 regarding distributions to a withdrawing member.
490A.704(4)	For limited liability companies whose articles were filed after June 30, 1997, or whose operating agreement provides that the limited liability company is subject to this section, a member may resign or withdraw only as permitted by the operating agreement or upon the dissolution and winding up of the limited liability company. However, if neither the articles nor an operating agreement specifies when a member may resign or withdraw, the member may resign or withdraw if certain fundamental changes are made to the articles or operating agreement over the member's dissent.
490A.705(4)	Unless otherwise provided in the articles or an operating agreement, managers are elected by the majority vote of the members.
490A.705(5)	Unless otherwise provided in the articles or an operating agreement, any vacancy occurring in the office of manager shall be filed by a majority vote of the members.
490A.705(6)	If neither the articles nor an operating agreement provide for the removal of managers, then all managers or any lesser number may be removed with or without cause by a majority vote of the members.
490A.705(7)	Unless otherwise provided in the articles or an operating agreement, if the limited liability company has more than one manager, all decisions of the managers shall be by majority vote of the managers.
490A.705(8)	Unless the articles or an operating agreement require a different number, a quorum for a meeting of managers consists of a majority of the managers.
490A.707	The articles may contain a provision limiting the monetary liability of the persons who manage a limited liability company for certain breaches of fiduciary duty.
490A.709	Unless contained in a written operating agreement, each limited liability company shall keep at its principal office a writing setting out: (1) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each member and which each member has agreed to contribute. (2) The times at which or events on the happening of which any additional contributions agreed to be made by each member are to be made. (3) Any right of a member to receive, or the limited liability company to make, distributions to a member which include a return of all or any part of the member's contribution. (4) Any events upon the happening of which the limited liability company is to dissolve and its affairs be wound up.
490A.710	Unless otherwise provided in an operating agreement, members or managers of a limited liability company may delegate their management powers to others.
490A.711	An operating agreement may establish contractual appraisal rights for members that will be triggered by certain fundamental transactions.
490A.712	Unless otherwise provided in an operating agreement, certain events in

	the lives of the members of a limited liability company, like bankruptcy or death, will cause the member to cease to be a member (and apparently to become merely an assignee of the member's membership interest).
490A.801(2)	Unless otherwise provided in the articles or an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability, or any other reason. A promise by a member to contribute to a limited liability company is not enforceable unless set out in writing signed by the member.
490A.801(3)	Unless otherwise provided in the articles or an operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of the ILLCA may be compromised only by consent of all the members.
490A.801(4)	An operating agreement may specify that the interest of a member of a limited liability company who fails to make a contribution that the member is obligated to make shall be subject to specified penalties.
490A.802	Unless provided in writing in the articles or an operating agreement, profits and losses shall be allocated among members on the basis of their respective capital contributions, as adjusted from time to time to reflect any additional contributions or withdrawals.
490A.803	Unless provided in writing in the articles or an operating agreement, distributions to members shall be made on the basis of their respective capital contributions as adjusted from time to time to reflect any additional contributions or withdrawals.
490A.805	If not otherwise provided in the articles or an operating agreement, a withdrawing member is entitled to receive (within a reasonable time after withdrawal) the fair value of the member's membership interest as of the date of withdrawal, based on the member's right to share in distributions from the limited liability company.
490A.806	Unless otherwise provided in the articles or an operating agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash; and a member shall not be compelled to accept distribution of any asset in kind from a limited liability company to the extent that the percentage of the assets distributed to the member exceeds the percentage of the member's membership interest in the limited liability company.
490A.807(1)(b)	A distribution shall not be made if the limited liability company's total assets would be less than the sum of its total liabilities plus, unless the articles or operating agreement permits otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of distribution, to satisfy preferential rights.
490A.807(4)	Except to the extent subordinated by agreement, a limited liability company's indebtedness to a member incurred by reason of distribution

	made in accordance with I.C.A. § 490A.807 is at parity with the limited liability company's indebtedness to its general unsecured creditors.
490A.809	Unless an operating agreement provides otherwise, a member of a limited liability company is entitled to normal creditor remedies with respect to approved distributions. An operating agreement may also provide for a record date for allocations and distributions.
490A.902	Unless otherwise provided in the articles or an operating agreement, a membership interest in a limited liability company is assignable in whole or in part. Such an assignment does not entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights of a member. Rather, except as provided in the articles or an operating agreement, the assignment entitles the assignee only to receive, to the extent assigned, any distribution the assignor would have received. Except as otherwise provided in the articles or an operating agreement, a member ceases to be a member upon the assignment of the member's entire membership interest.
490A.902	Unless otherwise provided in the articles or an operating agreement, the pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of the membership interest of a member shall not cause the member to cease to be a member and shall not deprive the member of the power to exercise any rights or powers of a member.
490A.902	Unless otherwise provided in the articles or an operating agreement and except to the extent assumed by agreement, until an assignee of a membership interest becomes a member, the assignee shall have no liability as a member as a result of the assignment except for liability for a wrongful distribution to the assignee described in I.C.A. § 490A.808.
490A.903(1)	Unless otherwise provided in the articles or an operating agreement, an assignee of an interest in a limited liability company may become a member only if the other members unanimously consent. The consent of a member may be evidenced in a manner specified in the articles or an operating agreement. In the absence of such specification, consent shall be evidenced by a written instrument, dated and signed by the requisite number of members, or evidenced by a vote taken at a meeting of members called for that purpose.
490A.903(2)	An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles, any operating agreement and ILLCA.
490A.1303	Unless otherwise provided in the articles or an operating agreement, members who have not wrongfully dissolved a limited liability company may wind up the limited liability company's affairs; but the district court of the county in which the registered office of the limited liability company is located, on cause shown, may wind up the limited liability company's affairs on application of any member, member's legal representative, or member's assignee.

490A.1304	Unless otherwise provided in the articles or an operating agreement, upon the winding up of a limited liability company, the assets of the limited liability company shall be distributed in the order as follows: to creditors; to members in satisfaction of liabilities for distributions; and to members first for the return of their capital contributions and second with respect to their interests in the limited liability company, in the proportions in which the members share in distributions.

Iowa Entity Formation Trends[3]

	LLPs	Ltd. Ptnerships.	LLLPs	LLCs	Corporations	Total
1990	N/A	90(2.3%)	N/A	4(.1%)	3,775(97.6%)	3,869 (100%)
1991	1(.03%)	98(2.3%)	N/A	3(.07%)	4,074(97.6%)	4,176 (100%)
1992	N/A	102(2.3%)	N/A	154(3.4%)	4,223(94.3%)	4,479 (100%)
1993	N/A	104(2.02%)	2(.04%)	619(12.03%)	4,423 (85.91%)	5,148 (100%)
1994	30(.6%)	123(2.2%)	N/A	852(15.5%)	4,500(81.7%)	5,505 (100%)
1995	77 (1.2%)	140(2.2)%	N/A	1,197 (18.4%)	5,072(78.2%)	6,486 (100%)
1996	85 (1.3%)	187(2.7%)	N/A	1,492 (22.2%)	4,959(73.8%)	6,723 (100%)
1997	60(.8%)	214(3.0%)	N/A	1,952 (27.1%)	4,966(69.1%)	7,192 (100%)
1998	93 (1.4%)	191(2.9%)	N/A	2,172 (32.5%)	4,236(63.2%)	6,692 (100%)
1999	103 (1.4%)	158(2.1%)	N/A	2,777 (37.3%)	4,408(59.2%)	7,446 (100%)
2000	105 (1.4%)	175(2.3%)	11(.1%)	3,062 (39.9%)	4,321(56.3%)	7,674 (100%)
2001	113 (1.4%)	116(1.5%)	20(.3%)	3,389 (43.1%)	4,221(53.7%)	7,859 (100%)
2002	106 (1.2%)	102(1.1%)	32(.4%)	4,341 (48.7%)	4,335(48.6%)	8,916 (100%)
2003	101 (1.0%)	102(1.0%)	31(.3%)	5,316 (53.5%)	4,387(44.2%)	9,937 (100%)
2004[4]	110 (1.2%)	68(.7%)	27(.3%)	5,391 (57.8%)	3,730(40.0%)	9,326 (100%)

[3] Source: Iowa Secretary of State Filings
[4] Totals for 2004 cover January 1, 2004 through October 31, 2004

Exhibit C

International Association of Commercial Administrators
Business Organization Section

Annual Report of Iowa

Please complete this annual statistical data report for the year ending as indicated below. Please refer to the instruction sheet for assistance in completing this annual report.

A.	Business and Professional Corporations	12/31/04	12/31/05
1.	Domestic business and professional corporations filed during the year	4,514	4,474
2.	Foreign business and professional corporations qualified during the year	1,503	1,311
3.	Total number of domestic and foreign business and professional corporations on file (good standing or active) on this date	73,972	77,049
4.	Total revenue collected for the initial filing for domestic and foreign business and professional corporations during the year		

Comments:

B.	Nonprofit Corporations	12/31/04	12/31/05
1.	Domestic nonprofit corporation filed during the year	1,091	1,195
2.	Foreign nonprofit corporations filed during the year	67	94
3.	Total number of domestic and foreign nonprofit corporations on file (good standing or active) on this date	25,240	24,579
4.	Total revenue collected for the initial filing for domestic and foreign nonprofit corporations during the year		

Comments:

C.	Limited Liability Companies	12/31/04	12/31/05
1.	Domestic limited liability companies filed during the year	6,462	7,658
2.	Foreign limited liability companies filed during the year	608	775
3.	Total number of domestic and foreign limited liability companies on file (good standing or active) on this date	37,317	43,100
4.	Total revenue collected for the initial filing for domestic and foreign limited liability companies during the year		

Comments:

D.	Limited Partnerships	12/31/04	12/31/05
1.	Domestic limited partnerships filed during the year	93	84
2.	Foreign limited partnerships filed during the year	65	59
3.	Total number of domestic and foreign limited partnerships on file (good standing or active) on this date	4,737	4,775
4.	Total revenue collected for the initial filing for domestic and foreign limited partnerships during the year		

Comments:

E.	Limited Liability Partnerships	12/31/04	12/31/05
1.	Domestic limited liability partnerships filed during the year	138	119
2.	Foreign limited liability partnerships filed during the year	8	10
3.	Total number of domestic and foreign limited liability partnerships on file (good standing or active) on this date	835	920
4.	Total revenue collected for the initial filing for domestic and foreign limited liability partnerships during the year		

Comments:

F.	Limited Liability Limited Partnerships	12/31/04	12/31/05
1.	Domestic limited liability limited partnerships filed during the year	42	44
2.	Foreign limited liability limited partnerships filed during the year	2	2
3.	Total number of domestic and foreign limited liability limited partnerships on file (good standing or active) on this date	160	208
4.	Total revenue collected for the initial filing for domestic and foreign limited liability limited partnerships during the year		

Comments:

G.	General Partnerships	12/31/04	12/31/05
1.	Domestic general partnerships filed during the year	NA	NA
2.	Foreign general partnerships filed dining the year	NA	NA
3.	Total number of domestic and foreign general partnerships on file (good standing or active) on this date	NA	NA
4.	Total revenue collected for the initial filing for domestic and foreign general partnerships during the year		

Comments:

H.	Business Trusts	12/31/04	12/31/05
1.	Domestic business trusts filed during the year	NA	NA
2.	Foreign trusts filed during the year	NA	NA
3.	Total number of domestic and foreign business trusts on file (good standing or active) on this date	NA	NA
4.	Total revenue collected for the initial filing for domestic and foreign business trusts during the year		

Comments:

I.	Incoming Telephone Calls	12/31/04	12/31/05
1.	Number of incoming telephone calls handled for the year	60,000	55,722
2.	Number of employees handling incoming telephone calls	5	4

Comments: Includes corp/UCC/Notary/Misc filings

J.	Employees	12/31/04	12/31/05
1.	Number of FTE employees	12	12

Comments: Includes Corp/UCC/Notary/Misc filings and the 4 positions in item `I" above