*[Date:Mmmm d, yyyy]*

[Client Name], [Company Name]

[Client Street Address]

[Client City], [Client State] [Client Zipcode:9999]

***Re: Formation of Entity***

Dear [Client Name],

We recently assisted you in forming [Company Name] (the “Company”) and preparing for you an [IF Company Entity Type = "Limited Liability Company"]Operating Agreement (the “Operating Agreement”)[ELSE]the Bylaws (the “Bylaws”)[END IF], which we understand you will execute. You should now have in your files the basic Company formation documents, which are as follows:

a. The Articles of [IF Company Entity Type = "Limited Liability Company"]Organization[ELSE]Incorporation[END IF] filed to form the Company;

b. Your original [IF Company Entity Type = "Limited Liability Company"]Operating Agreement[ELSE]Bylaws[END IF] and

c. Your federal tax ID.

[IF Company Entity Type = "Corporation"]

d. Your initial shareholder consent appointing the Board of Directors; and

e. Your initial board consent appointing the Company officers.

[END IF]

We are very pleased to have the opportunity to help you as you grow your Company. As you operate the Company over time, you should keep the formation documents as well as additional documents in the Company’s books and records at the Company’s principal place of business. Documents are generally kept in chronological order. The additional documents include your tax filings, amendments to (and/or restatements of) the Articles of [IF Company Entity Type = "Limited Liability Company"]Organization[ELSE]Incorporation[END IF] and/or the [IF Company Entity Type = "Limited Liability Company"]Operating Agreement[ELSE]Bylaws[END IF], minutes from meetings as set forth in the [IF Company Entity Type = "Limited Liability Company"]Operating Agreement[ELSE]Bylaws[END IF], action resolutions and filings with governmental offices. [IF Has Books And Records Article]Refer to the “Books and Records” article of your [IF Company Entity Type = "Limited Liability Company"]Operating Agreement[ELSE]Bylaws[END IF] for more detail on record keeping[END IF] Furthermore, keep note of the entity number given the Company by the [IF Company Formation/Domestic State = "Kansas" OR Company Formation/Domestic State = "Missouri"][Company Formation/Domestic State][ELSE][Other State Name][END IF] Secretary of State (listed in the certificate issued by that office upon the formation of the Company), as you may be asked to provide that number in future filings and/or correspondence with the Secretary of State’s office.

Also attached is a confidential memorandum (the “Confidential Memorandum”) to provide you with some general guidance as you proceed with operation of your Company. All descriptions of legal and tax matters set forth in the attachment are based on current laws, which are subject to change.

We view the delivery to you of this Confidential Memorandum and the attached documents as the completion of such engagement for the formation of the entity. However, your need for legal advice and guidance, as you know, is not ending. As you operate your business you will likely encounter legal issues that you will need to resolve. We encourage you to continue to consult with us and also accountants of your choice to ensure that you operate your business in full compliance with the law and in a manner best calculated to assure your success. We would, of course, be happy to answer questions concerning the work we have done for you and continue to assist you as questions arise in the future. It has been a pleasure working with you on the formation of the Company.

Please do not hesitate to contact me at 913.815.8485 or [sseck@seckassociates.com](mailto:sseck@seckassociates.com) or Sammie Fechter at 314.384.9202 or [sfechter@seckassociates.com](mailto:sfechter@seckassociates.com) if we can answer any additional questions or if we can be of any additional service to you now or any time in the future. We wish you success in all of your endeavors and we are happy to assist you in the growth of your Company.

Regards,

**SECK & ASSOCIATES LLC**



Sheila L. Seck, JD, MBA

Managing Partner

**CONFIDENTIAL MEMORANDUM**

**MANAGEMENT AND ENTITY MAINTENANCE**

**A. Periodic Filings**

Under state and federal laws your business may be required to make certain filings with governmental agencies. The filings that may be required of the Company can vary, depending on the business it conducts, the jurisdictions in which it conducts business, changes in laws and various other factors. Accordingly, we will not attempt to list here all of the filings that may be or become necessary; but we will describe below some of the most common filings which you may need to cause the Company to take action.

1. **INCOME AND EARNINGS TAXES.** You may need to file some, or all, of the forms listed as a, through d, below, and make various tax payments. Please remember that we have not made any judgments concerning the tax characterization of Company income or expenses. We urge you to retain the services of a qualified accountant or other tax professional to advise you on an on-going basis to identify necessary tax filings and possibly prepare your tax returns. Among the filing requirements likely to affect the Company are:

[IF Company Tax Type = "Partnership"]

1. **Federal Partnership Return (Form 1065):** You have decided that you want the Company will to be treated as a “partnership” for federal income tax purposes. As a “partnership” for tax purposes, the Company will report its income and expenses on a partnership information return (Form 1065) and create a schedule K-1 for each owner, which reports what portions of those income and expenses are allocated to each of you. The information on the K-1 is transferred to corresponding line entries on your individual forms 1040.[ELSE IF Company Tax Type = "S Corp"]**Federal S-Corp Return (Form 1120S):** You have decided that you want the Company to be treated as a “S-Corp” for federal income tax purposes. As a “S-Corp” for tax purposes, the Company will report its income and expenses on a S-Corp information return (Form 1120S) and create a Schedule K-1 (Form 1120S) for each owner, which reports what portions of those income and expenses are allocated to each of you. The information on the K-1 (Form 1120S) is transferred to corresponding line entries on your individual forms 1040.**[ELSE IF Company Tax Type = "Corporation"]Federal Corporation Income Tax Return (Form 1120):** You have decided that you want the Company to be treated as a “c-corporation” for federal income tax purposes. As a “c-corporation” for tax purposes, the Company will report its income and expenses on a corporation information return (Form 1120). C-Corporations have double taxation meaning the corporation is taxed and the shareholders are taxed.**[ELSE IF Company Tax Type = "Single Member LLC"]Single-Member LLC Return (Form 1040 - Schedule C):** You have decided that you want the Company to be treated as a “disregarded entity” for federal income tax purposes. As a disregarded entity, the Company will report income and expenses on your personal tax return through Schedule C. The information will then be carried to corresponding line entries on forms 1040.**[END IF]**
2. **[IF Company Tax Type = "Partnership"]State Partnership Returns:** These are the state version of “a” above. In your current circumstances, the Company will need to consider its obligation to file a [IF Company Formation/Domestic State = "Kansas" OR Company Formation/Domestic State = "Missouri"][Company Formation/Domestic State][ELSE][Other State Name][END IF] partnership tax return. As your business progresses, you should consult with your tax professional on which other jurisdictions may require the Company (and also perhaps you as its [IF Company Entity Type = "Limited Liability Company"]members[ELSE]shareholders[END IF]) to file tax returns associated with the Company’s business.[ELSE IF Company Tax Type = "S Corp"]**State 1120S Returns:** These are the state version of “a” above. In your current circumstances, the Company will need to consider its obligation to file a [IF Company Formation/Domestic State = "Kansas" OR Company Formation/Domestic State = "Missouri"][Company Formation/Domestic State][ELSE][Other State Name][END IF] form 1120S. As your business progresses you should consult with your tax professional on which other jurisdictions may require the Company (and also you as its [IF Company Entity Type = "Limited Liability Company"]members[ELSE]shareholders[END IF]) to file tax returns associated with the Company’s business.**[ELSE IF Company Tax Type = "Corporation"]State[IF Company Formation/Domestic State = "Kansas"]K-120[ELSE IF Company Formation/Domestic State = "Missouri"]MO-1120[ELSE][FORM NAME][END IF] Returns**:These are the state version of “a” above. In your current circumstances, the Company will need to consider its obligation to file a [IF Company Formation/Domestic State = "Kansas" OR Company Formation/Domestic State = "Missouri"][Company Formation/Domestic State][ELSE][Other State Name][END IF] form [IF Company Formation/Domestic State = "Kansas"]K-120[ELSE IF Company Formation/Domestic State = "Missouri"]MO-1120[ELSE][FORM NAME][END IF]. As your business progresses you should consult with your tax professional on which other jurisdictions may require the Company (and also you as its sole shareholder) to file tax returns associated with the Company’s business.**[ELSE IF Company Tax Type = "Single Member LLC"]State [IF Company Formation/Domestic State = "Kansas"]K-40[ELSE IF Company Formation/Domestic State = "Missouri"]MO-1040[ELSE][FORM NAME][END IF] Returns**:These are the state version of “a” above. In your current circumstances, you will need to consider your obligation to file a [IF Company Formation/Domestic State = "Kansas" OR Company Formation/Domestic State = "Missouri"][Company Formation/Domestic State][ELSE][Other State Name][END IF] form [IF Company Formation/Domestic State = "Kansas"]K-40[ELSE IF Company Formation/Domestic State = "Missouri"]MO-1040[ELSE][FORM NAME][END IF]. As your business progresses you should consult with your tax professional on which other jurisdictions may require the Company (and also you as its sole [IF Company Entity Type = "Limited Liability Company"]members[ELSE]shareholders[END IF]) to file tax returns associated with the Company’s business.[END IF]
3. **Kansas City Earnings Tax:** The City of Kansas City, Missouri, assesses a one percent earnings tax on income earned either inside the city or by residents of the city. We have not researched and offer no opinion on the extent to which the Company’s proposed business activities might result in “earned income” taxable to you by the city of Kansas City. Please consult with your tax professional on this question.
4. **Estimated Tax:** You may be required to file and pay a quarterly estimated income tax for self-employment income from your business, with both federal, state, and possibly city taxing authorities. These are generally due in April, June, September, and January for the calendar tax year in which taxes are due the following April 15th. Again, we suggest that you consult with your tax professional regarding your potential obligations to make estimated tax payments.
5. **PAYROLL TAXES.** Using the services of an accountant or at least a paycheck service is especially worthy of serious consideration if and when you hire employees. Employers have many legal responsibilities, for both tax and non-tax purposes. Employers must withhold income and payroll taxes (for Social Security and Medicare, for instance) which must be remitted periodically to taxing authorities. Business people may be held personally liable for failure to timely remit these amounts, despite the existence of your limited liability entity. Several firms offer a cost-effective way to handle these responsibilities. Just a few of the other legal considerations of employers are wage and hour, workers’ compensation, employment discrimination, unemployment insurance, and child labor laws. We urge you to consult us about these responsibilities if and when the Company proposes to hire one or more employees.
6. **ANNUAL REPORTS. [IF Company Formation/Domestic State = "Missouri"]**Under current Missouri law, a Missouri limited liability company is not required to file an annual report to its state of formation. [ELSE IF Company Formation/Domestic State = "Kansas"]As a Kansas entity, the Company will be required to file an annual report with the Kansas Secretary of State. [END IF]This report is required of limited liability companies and certain other business entities in [IF Company Formation/Domestic State = "Kansas" OR Company Formation/Domestic State = "Missouri"][Company Formation/Domestic State][ELSE][Other State Name][END IF]. The annual report is generally due on April 15th of each year. We will send you a reminder of your [IF Company Formation/Domestic State = "Kansas" OR Company Formation/Domestic State = "Missouri"][Company Formation/Domestic State][ELSE][Other State Name][END IF] annual report, and this is a service we can efficiently complete for you, at your discretion.
7. **OTHER TAXES.** A variety of other taxes may come into play depending on the Company’s activities and assets. For example, there may be real property or business personal property taxes on property owned by the Company, and sales or use tax collection and reporting obligations on goods or services supplied by the Company to consumers. We suggest that you check with a qualified tax professional as to the possible tax and tax reporting obligations in each jurisdiction in which the Company holds assets and/or conducts business.

**B. REGISTRATIONS, LICENSES AND REGULATORY COMPLIANCE**

Depending on a number of factors, the Company and its activities could bring into play a wide variety of federal, state and/or local laws requiring registrations, licenses and/or other types of regulatory compliance in addition to those specifically described above. Again, we will not endeavor to try to advise you on all of the requirements that might come into play, but do offer the following information on some of the more common requirements that may become relevant:

1. **REGISTRATION TO “DO BUSINESS” IN OTHER STATES.** If the Company proposes to “do business” in states other than [Company Formation/Domestic State] it may (and likely will) need to register as a foreign limited liability company in such other state(s). Definitions of what constitutes “doing business” for these purposes can vary from state to state. Thus, if the Company begins considering doing business in any state(s) other than [Company Formation/Domestic State], we suggest you consult with us to advise you on the applicable definitions and on any registration and ongoing reporting and tax obligations associated with doing business in such state(s).
2. **OCCUPATIONAL LICENSE.** Generally, an Occupational License is required for businesses doing business within the municipal corporate limits of Kansas City, Missouri, which is issued by the city Finance Department (816-513-1135). There are some exceptions to this requirement (for instance, most professionals like attorneys, doctors, dentists, etc.) If and when you propose to commence business activities in the city of Kansas City, you will have to consider this possible requirement. We have not researched whether your business activity would be considered “doing business in” Kansas City for the purposes of this occupational license; we are alerting you to the fact that you will need to determine if your business is required to do so. If you would like assistance in obtaining a city of Kansas City occupational license, we can guide you through this process or handle the process for you. If the Company proposes to do business in other localities, we can investigate the potential need to obtain similar licenses in such localities.
3. **[IF Is In St Louis]FOR ST. LOUIS GRADUATED BUSINESS LICENSE.** Generally, a Graduated Business License is required for businesses doing business within the municipal corporate limits of St. Louis, Missouri, which is issued by the city Licensor’s Collectors office (314-622-4528). There are some exceptions to this requirement (for instance, most professionals like attorneys, doctors, dentists, etc.) If and when you propose to commence business activities in the city of St. Louis, you will have to consider this possible requirement. We have not researched whether your business activity would be considered “doing business in” St. Louis for the purposes of this occupational license; we are alerting you to the fact that you will need to determine if your business is required to do so. If you would like assistance in obtaining a city of St. Louis graduated business license, we can guide you through this process or handle the process for you. If the Company proposes to do business in other localities, we can investigate the potential need to obtain similar licenses in such localities.[END IF]
4. **SECURITIES LAW COMPLIANCE.** Given the nature of the Company as a [Company Entity Type:like this], your present circumstances and the nature of the involvement you plan to have in the operation of the Company, we do not believe that the interests in the Company issued to you constitute “securities” for federal or [Company Entity Type:like this] securities regulation purposes. However, if such circumstance were to change, and particularly if you propose to sell or issue any interest in the Company to another person or entity, you may have applicable obligations under federal or [Company Entity Type:like this] securities laws (and perhaps the securities laws of other states as well if there are sufficient contacts with those states). Accordingly, if there is any such change in circumstances or proposed sale or issuance of an interest in the Company, you should consult with us regarding potential obligations under securities laws.

**C. BUSINESS TRANSACTIONS AND Signing Documents**

Company transactions should be carried out in the name of the [Company Entity Type:like this]. Signing documents in a “personal” capacity rather than Company capacity might expose you to personal liability that might be otherwise avoided. Thus, we suggest using a signature block on documents for Company transactions as follows:

|  |
| --- |
| **[Company Name:LIKE THIS]**  a [IF Company Formation/Domestic State = "Kansas" OR Company Formation/Domestic State = "Missouri"][Company Formation/Domestic State][ELSE][Other State Name][END IF] [Company Entity Type:like this] |
| [Client Name], Member |

[IF Company Tax Type != "Single Member LLC"]Please note that if you have more than one [IF Company Entity Type = "Limited Liability Company"]member[ELSE]shareholder[END IF],they do not all have to sign contracts to bind the Company, so, if you prefer, you could leave off one of the “By” lines if only one of you is signing a particular document; however, you will also recall that your [IF Company Entity Type = "Limited Liability Company"]Operating Agreement sets[ELSE]Bylaws set[END IF] several actions requiring your joint approval first. You should make sure that you follow the decision-making and approval/consent provisions of the [IF Company Entity Type = "Limited Liability Company"]Operating Agreement[ELSE]Bylaws[END IF].[END IF]

To help preserve your limited liability to the fullest extent available under the law, and reduce the chances that you could be held personally responsible for business debts, you should take care to keep the Company adequately capitalized for its business, maintain adequate levels of insurance coverage, clearly transact Company business in the name of the Company, and respect other business formalities. Maintain your Company business bank account, for instance, separately from your personal ones. Most vendors of goods and services will probably be willing to deal with the Company as such. Occasionally, though, you may be asked to provide personal guarantees of Company obligations (for instance, commercial lenders may require the [IF Company Entity Type = "Limited Liability Company"]members[ELSE]shareholders[END IF] to provide personal guarantees of Company obligations). As [IF Company Entity Type = "Limited Liability Company"]members[ELSE]shareholders[END IF] of the Company in deciding whether to approve such guarantees you should, of course, explore the potential economic and tax consequences of such guarantees.

Please note also that material suppliers and workman who perform services or provide materials for real estate improvements (such as roofing materials or plumbing repairs) may have a right to claim a mechanic’s lien against the title of the property if they are not paid. Mechanics’ liens can prevent a landowner from passing free and clear title to purchasers. You should consult with us if this becomes an issue for you.

**D. Admitting Additional OR TRANSFERS TO OTHER** [IF Company Entity Type = "Limited Liability Company"]**MEMBERS**[ELSE]**SHAREHOLDERS**[END IF]

Your [IF Company Entity Type = "Limited Liability Company"]Operating Agreement was[ELSE]Bylaws were[END IF] specifically crafted for you, as the initial owner(s) of this Company. Thus, if at any time you think about accepting any new [IF Company Entity Type = "Limited Liability Company"]members[ELSE]shareholders[END IF] or changing “the deal” (the economic or management arrangement or other rights or obligations) you should consult with us about the implications of that action and the corresponding adjustments you will need to make in the [IF Company Entity Type = "Limited Liability Company"]Operating Agreement[ELSE]Bylaws[END IF]; you may even want to craft [IF Company Entity Type = "Limited Liability Company"]an[END IF] entirely new [IF Company Entity Type = "Limited Liability Company"]one[ELSE]ones[END IF].