

NOTE: REFERENCES IN THIS DOCUMENT (I.E. MEMBERS, MANAGER) RELATE TO THE FORMATION OF A LIMITED LIABILITY COMPANY (LLC). TO USE THIS DOCUMENT FOR A PARTNERSHIP, CHANGE THE REFERENCE FROM MEMBER(S) TO PARTNER(S), FROM MANAGER TO MANAGING PARTNER AND FROM OPERATING AGREEMENT TO PARTNERSHIP AGREEMENT.

(Company Name)

Operating Agreement Term Sheet Checklist

1. Names of Members, capital contributions and initial ownership percentages

Member's Name	Cash Contributions	Ownership %

Describe any non-cash capital contributions to be made, if any:

2. Describe Member's commitment to make future capital contributions (indicate if no future contributions required):

3. Initial termination date of the LLC (generally 50 years): _____

4. Initial address of business: _____

5. Management of LLC:

a. Indicate which Member(s) will hold the position of “Manager” .

b. Indicate the percentage of Membership interests necessary to elect a new Manager. _____%

c. Indicate which individual will be named the “Tax Matters Member” (will be responsible to make any tax elections and will be the contact person for the IRS).

d. Indicate which of the following decisions that may be taken by any Member designated as a Manager, and those decisions which would require a “majority” of all Members to agree. For this purpose, a “majority” shall be defined as Members representing _____% of total Membership interests (i.e. more than 50%, or unanimous agreement).

Decision	Manager(s)	“Majority” of Members
Enter into a merger or consolidation of the Company.		
Enter into an agreement to sell all or substantially all of the assets of the Company		
Enter into any contract or similarly binding agreement with an aggregate value that exceeds \$ _____ .		
Negotiate for and enter into any agreement with an affiliated party		
Adopt any employee benefit or incentive compensation plan		
Increase any employee’s base salary or pay, bonus and/or incentive compensation		
Approve the annual operating expense and capital expenditure budgets of the Company		
Engage legal counsel, accountants and other third party professionals and to compensate them from Company funds		

5.

e. Describe any other management decisions which would require special approvals:

f. Actions which, if not cured within _____ days, will result in the removal of a Member from the position of Manager:

Action	"X"
Manager takes action enumerated in 5(d) above that required approval of "majority" of Members	
Manager acts dishonestly, including fraud, self-dealing, embezzlement or theft	
Manager commits act of gross negligence that has a material adverse effect upon the Company	
Manager breaches any other material provision of the Operating Agreement	
Manager commits any act of moral turpitude which may, directly or indirectly damage the Company	

g. Does the removal of a Manager in any way change his/her ownership interest in the Company (e.g. required to sell interest back to Company or to other Members, or the Company and/or the other Members have the option to purchase the interest)

6. Division of profits and losses

a. Will any Member be entitled to receive a salary? Yes/No _____

If yes, how will salary be determined?

b. Will remaining net profits or losses, after consideration of Members' salaries, be allocated to individual Member's based upon each Member's proportionate share of total Members' Interests? Yes/No _____

If no, how will remaining net profits/losses be allocated:

7. Distributions

a. Will the Company be **required** to make distributions of net profits to its Members? Yes / No _____

If Yes, how will the distribution amounts be determined? (typical provision would require distributions equal to 50% of reported taxable net profits so that income tax liability on profits can be funded)

b. Will the amount of distributions made to each Member be made in accordance with such Member's proportionate share of total Member's interest? Yes/No _____

If No, how will distribution amounts be determined?

8. Transfers of Members' Interests

Which of the following provisions will exist regarding a Member's right to sell or transfer a Member Interest in the Company:

	Yes/No
Does a Member have the right to transfer an Interest in the Company without the prior approval of other Members?	
Does a Member have the ability to transfer a Membership Interest for estate tax planning purposes?	
Do other Members have a right-of-first-refusal to purchase the interest of a Member proposing to sell his/her interest to a third party?	
Do Members have the right to "tag-along" in a proposed sale of a Member's Interest in the Company? (i.e. also sell their interest according to the same terms offered to the selling Member)	
Do Members have the right to "drag-along" a minority Interest holder in a proposed sale of at least _____% of the total Members Interest in the Company? (i.e. can Members holding 75% of the Company force to remaining 25% holders to sell to a prospective acquirer of the Company)	

9. Transfer of Member's Interest upon death

a. Upon the death of a Member, what happens to his/her interest in the Company.

Options	"X"
Transferred in accordance with Member's will	
Interest purchased by the Company	
Interest purchased by remaining Members	
Company has option to purchase the Interest, and remaining members must purchase if Company does not exercise option	

9.

b. If interest is to be purchased how will it be valued?

Options	"X"
Independent valuation	
Agreed upon formula value	

If formula value, specify agreed methodology if available (i.e. multiple of revenues/multiple of earnings:

c. If interest is to be purchased, how will purchase be funded?

Option	Yes/No
Life insurance	
Installment purchase over ____ years with interest at ____ % per annum	

10. Transfer of Member's Interest upon disability

a. How will disability be defined?

Options	Yes/No
Inability to perform job responsibilities or absence from fulltime work for ____ out of ____ work days	
Agreement of Members representing ____ % of the Membership Interests in the Company	
Opinion of medical doctor	

b. Upon the disability of a Member, what happens to his/her interest in the Company.

Options	"X"
No change (i.e. Member continues to hold Interest)	
Interest purchased by the Company	
Interest purchased by remaining Members	
Company has option to purchase the Interest, and remaining members must purchase if Company does not exercise option	

