

MEMORANDUM

TO: The Members or Managers

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You have chosen to do business through the use of a Michigan limited liability company. Your company provides you with benefits, such as limited liability for the company's members.

To preserve these benefits, however, you must follow certain procedures. This memorandum outlines the extent of your "limited liability" protection, the rights and duties of the company's members and managers, the procedures you should follow in conducting the company's business and other important considerations regarding your company.

LIMITED LIABILITY: KNOW THE LIMITS

A limited liability company provides its members with so-called "limited liability". This means that the company's members have no personal liability for any of the company's debts, liabilities or other obligations.

The limited liability shield does not protect you from personal responsibility for all of your actions conducted on behalf of the company, however. You will continue to have personal liability in at least the following significant areas:

1. You remain liable for your own personal negligence (such as malpractice in rendering services to the company's clients or your carelessness in otherwise rendering services on behalf of the company).
2. You will be personally liable under any contracts you make personally. Examples include your personal guarantee of a bank loan to your company and your guarantee of the company's lease of office space. You may even have personal liability under some corporate contracts if you do not make it clear that you were acting for the company when you entered into the contract (described in more detail below).
3. If the company is taxed as a partnership, the profits and losses pass to the members and the members are responsible for income taxes on their share. The company may also be completely disregarded for income tax purposes.
4. "Responsible persons" can be personally liable for income tax liabilities for certain state and federal withholding taxes if not paid in full by the company.
5. You can be held personally liable for all of the company's obligations if you lose the company's limited liability shield. This can happen, for example, if you co-mingle the company's funds with your personal fund or otherwise fail to observe sufficient corporate entity formalities (the "piercing" of this shield is discussed in more detail below).

6. You may have additional liabilities to the company and others if you serve as a director or officer.

RIGHTS AND DUTIES OF MEMBERS & MANAGERS

1. Summary of Member and Manager Duties. Members and managers have significantly different management rights, authority, and fiduciary obligations. The following chart shows the key differences (almost any of which can be altered through specific corporate procedures):

Members and Managers: Summary of Key Differences

<i>Position</i>	<i>Management Rights</i>	<i>Authority to Bind the Company</i>	<i>Fiduciary Obligations to Others in the Company</i>
Members	Unless management is delegated to one (or more) manager(s) in the Articles of Organization, the Members manage the company.	Unless management is vested in manager(s), then the members have authority to bind the company.	Members who are not managers do not have a fiduciary obligation to each other or the company (see paragraph 7 with regard to “shareholder oppression,” however).
Managers	Manager(s) may have all management rights of the corporation, depending on the Articles of Organization and/or Operating Agreement	Managers have authority to bind the company.	Managers have fiduciary obligations to the members and to the company.

2. Your Company’s Articles and Operating Agreement Control its Operation. You should always consult your company’s articles and operating agreement before drawing any conclusions about the relative rights and duties of members and managers. If none of these documents address the subject, the corporation statute likely provides an answer.

- a. **Articles.** Your company was formed by filing Articles of Organization with the State of Michigan. The Articles are a public document. The Articles typically contain little more than the company's name, resident agent, and registered office. Nevertheless, the Articles may contain other provisions significantly affecting the company and the rights of its members and managers.
- b. **Operating Agreement.** Your company must have an operating agreement, but it is not filed with the State and is not a public document. The operating agreement typically contains procedural rules for members and managers regarding meetings, notices of meetings, voting, and taking actions without meetings. The operating agreement can be amended by the members.
- c. **Member Agreement (or "Buy/Sell" Agreement).** If your company has more than one member, your company should have a member agreement. This agreement among the members typically addresses restrictions on transfer of ownership, purchases of membership interests in the event of death, and other matters among members.

3. Manager(s)' Authority to Run the Company's Business. The manager(s) has/have the right and duty to manage the company's business, subject to whatever limits are contained in your articles, operating agreement or member agreement. The operating agreement usually describes the members' rights to elect, compensate, remove and replace the manager(s).

4. Distributions to Members. In the absence of any limitation in the articles, operating agreement or member agreement, distributions and dividends are determined by the managers (or the members if there are no managers). It is illegal to approve a distribution when it would make the company insolvent. Distributions may also be limited by contractual restrictions with lenders or others. Violations of these provisions can result in personal liability to the members.

5. Membership Interests. The manager has the authority to issue membership interests to any person, whether or not that person is already a member. In many cases, the existing members will want to restrict the manager's authority. Members have the right to sell their interests to anyone they want. Typically, however, this right is restricted in the articles, operating agreement or member agreement. When interests are transferred, the recipient becomes a member and enjoys all member rights previously held by the seller, such as the right to vote, the right to receive distributions, the right to inspect the company's records, and other member rights, subject to any restrictions in the articles, operating agreement and member agreement.

6. Member Voting Rights. Each member owning a membership interest has the right to vote on matters requiring member approval, unless the articles, operating agreement or member agreement limits or removes that right. Members typically are entitled to one vote each, unless altered by the articles, operating agreement or member agreement. Your articles, operating agreement or member agreement will describe what percentage vote is required to approve the action (simple majority or some other percentage) and whether that percentage is applied to all members or only those that are represented and voted at a meeting.

7. Fiduciary Obligations of Members and Managers. Generally, members owe no duties of loyalty to each other or to the company. In some cases, however, a member may be liable for unfair or oppressive actions taken against other members or the company. This is

sometimes referred to as member oppression. “Oppression” is difficult to define, and you should consult us for guidance in this area.

Unlike members, managers must act in the best interest of the company and its members. They may not favor the interests of one group of members over another group if those actions are “willfully oppressive”. Similarly, managers may not take personal advantage of a business opportunity that could be valuable to the company without first offering that opportunity to the company.

For example, a manager cannot cause the company to enter into a contract with one of them personally on terms that are less favorable to the company than the terms that the company may have reasonably obtained from a third party. Similarly, a manager who learns that the company is considering purchasing a piece of real estate may not acquire that property for resale to the company at a higher price.

CORPORATE FORMALITIES: PROCEDURE TO FOLLOW IN CONDUCTING THE COMPANY’S BUSINESS

1. Why Do You Care About These Formalities? You should care about these formalities for one key reason: if these formalities are disregarded, you and the other members run a greater risk of being held personally responsible for all of the company’s obligations. Following these formalities significantly reduces the chance that the limited liability shield can be “pierced” by creditors or others dealing with the company.

2. Look at your Company’s Articles, Operating Agreement and Member Agreement. Your company’s articles, operating agreement and member agreement may require certain regular meetings, reports, and other ongoing activities. You should make sure that these are followed as closely as possible.

3. What Actions Need Member Approval? Very few company business actions require member approval. Generally, members must vote on each of the following:

- Amendment of the articles or organization or the member agreement
- Dissolution of the company
- Merger of the company
- Sale of substantially all of the company’s assets

4. What Actions Need Managers' Approval? All significant company transactions should be considered and approved by the managers. At a minimum, the managers should approve each of the following:

- Employment agreements for any member or manager;
- Borrowing by the company or loans from the company to others;
- Leases involving the company;
- Distributions to the members;
- Approval of any major purchase or sale or other significant transaction, such as real estate purchases;
- Approval of employee benefit plans;
- Approval of transactions involving conflicts of interest;
- Issuance of membership interests.

5. How Should You Obtain Member and Manager Approvals? Member and manager approval can be accomplished either through meetings or written actions by consent unless restricted by the articles, operating agreement or any member agreement. These documents contain specific procedures you must follow to obtain valid approval through the use of a meeting or action by consent.

6. Recordkeeping. We recommend that you work closely with an accountant in setting up the company's financial books and accounting systems. An accountant can also assist in preparing filings to comply with the federal, state and local tax laws and completing the Michigan state tax registration. The company must keep certain business records available to members, such as a list of current members, company tax returns, etc. Your articles, operating agreement and member agreement may require other recordkeeping.

7. Do Not Confuse Corporate Business with Personal Matters or Records. All corporate business should be conducted in the company's name, not through the name of any officer, employee, or other agent. All stationery, invoices, advertising, business cards, and telephone listings should carry the company's name. When an employee or other corporate agent acts on behalf of the company, make certain that everyone understands that the employee or other corporate agent is acting on behalf of the company rather than on the person's own behalf. To accomplish this, clearly identify the person's capacity on all documents signed on behalf of the company by placing "manager", "agent", or the person's actual corporate title next to the signature as follows:

The Widget Company, LLC
By: John A. Jones
Its: Member (or Manger)

You may wish to have company checks and other corporate documents prepared with the individual's capacity (officer, agent, or other official title) printed under the signature line of each document.

All bank accounts must be established in the company's name, not the name of any manager, agent, or other employee. Signature cards should be executed by the persons authorized by the manager and the title of each authorized person (member, manager) should be shown on the cards. Insurance policies for the company should be obtained in the company's name.

8. Business Transactions Between You and Your Company. All transfers of assets to and from the company must be properly documented. For example, if you contribute, to the company, office furniture or equipment that you purchased in your individual name, you should sign a bill of sale transferring ownership of that property from you to the company. If real property is transferred to the company, deeds and related real estate documents should be executed and recorded. If the company will use real or personal property without taking ownership, the company should sign a written lease.

Once your property is transferred to the company, the property must be treated as an asset of the company and not as your own. The company's bank account must not be used for personal purposes. The only three ways money or property can legally be taken out of the company are:

- a. A distribution to members under the rules described in the Operating Agreement and/or Member Agreement;
- b. As wages or salary to an employee, which is taxable to the employee and for which the company is permitted an offsetting income tax deduction; and
- c. As a loan, which may have tax consequences to the company and the borrower.

Any loan between the company and any of its members must be evidenced by a promissory note and should bear a market rate of interest. If the loan bears no interest, or interest at a rate that is less than a published federal rate, the Internal Revenue Service (IRS) may re-characterize the loan as a distribution and adversely affect your taxes.

If a member lends cash or property to the company without documenting the loan, that cash or property may be subject to the claims of the company's creditors and any attempt to remove that cash or property from the company could trigger income tax.

If the company is taking over certain obligations that existed before the company was created, those obligations should be assigned in writing to the company. In many cases, you will need the consent of other parties to the assignment before the company can take over any of those obligations. If the agreement was originally signed by you in your personal capacity, and you want to avoid any further personal liability, then the company and the other parties must agree in writing to release to you.

OTHER CORPORATE BUSINESS MATTERS

A. Federal Tax Matters

1. Federal Employer Identification Number (“EIN”). The company must obtain a federal employer identification number when it begins to do business, even if the company expects to have no employees. We can obtain this number for you at your request.

2. Federal Income and Withholding Taxes. You should consult your accountant with respect to the necessary income tax filings on behalf of the company. The company is responsible for reporting and withholding taxes for federal income taxes and Social Security (FICA) taxes on non-member employee salaries and wages.

B. State and Local Tax and Regulatory Matters

We suggest that you discuss the following with the company’s accountant:

1. Michigan Tax Registration. The company must register with the Michigan Department of Treasury by filing Form 518, “Michigan Department of Treasury Registration for Michigan Taxes.” This application covers registration for the Michigan Single Business Tax, employee withholding taxes, and the Michigan Sales and Use Tax.

2. Michigan Single Business Tax. The Michigan Single Business Tax (“SBT”) is a value-added tax. Quarterly estimated tax payments may be required in some cases. A company with business activities taxable both within and outside the State of Michigan may apportion its tax base.

3. Sales and Use Tax. The Michigan sales tax generally applies to retail sales that take place within the state. A company purchasing or renting property from an out-of-state source must pay Michigan use tax. If a company does not have a retail location in Michigan but intends to sell or lease tangible personal property to Michigan customers from an out-of-state location, it must obtain a use tax registration.

4. Unemployment Compensation. The company must register with the Employment Security Agency of the Michigan Department of Labor whether or not it has employees and whether or not it will be liable for unemployment taxes. This registration occurs automatically when the company files Form 518, “Michigan Department of Treasury Registration for Michigan Taxes.”

5. Worker’s Disability Compensation Insurance. Certain companies with employees must have workers’ disability compensation insurance. This insurance may be obtained through a commercial insurance company or, with prior approval, an employer may be self-insured.

6. Property Taxes. All real and tangible personal tangible property located in Michigan is subject to property taxation. The company must file a personal property statement in February of each year in each city, township or village where the company has assessable personal property. Appeal deadlines are extremely short (often less than two weeks) and you should carefully review any assessment notices as soon as you receive them.

7. City Income Taxes. Some cities in Michigan impose a local income tax. If your company does business in one of these cities, your company must file an income tax return whether or not it has a place of business in that city.

8. Michigan Annual Report and Registration as a Foreign Company in Other States. Every company formed or authorized to do business in Michigan must file an annual report with the Michigan Company Division. The State sends the report form to the registered agent for your company each year. In order to maintain the company's status, you must complete and return the Michigan Annual Report or send it to us to complete on your behalf. Failure to file it will result in automatic dissolution of the company. If the company does enough business in other states, the company may have to register in those states to do business as a foreign company.

9. Licensing. Many businesses may be required to obtain one or more licenses to conduct business. In some cases these licenses contain conditions that restrict certain company or company member activities.

HOW WE CAN HELP

We want to take every step to insure that you and your company are protected. Accordingly, we have ordered a corporate minute book for your company which we will maintain. We will assist you in conducting annual corporate meetings and will help to make sure that your corporate minute book is up to date.

Naturally, if you have any questions about how to handle certain corporate matters, or how to document specific corporate transactions, we encourage you to call us between the dates for the annual company meetings. However, at a minimum, we will review the company's status at least annually.