Checklist for joint venture agreements

(a) General Background Information.

(1) The names, addresses, and occupations of the Venturers.
(2) The name of the proposed Venture.
(3) A description of the proposed Venture business.
(4) The states or counties in which the Venture business is to be conducted.
(5) The term of the Venture.

(b) Liability. Do the parties understand the liability dangers inherent in forming a Joint Venture and the alternatives thereto? Have they considered that under the law, it is very difficult to avoid the presumption that one Venturer can bind another? If the Venturers intend that they will not be able to bind each other, then they should consider:

(1) Drafting a document that not only makes it clear that they will not have the power to represent each other, but that any person, without express written authority, who either (i) attempts to, or (ii) in fact binds the other will be liable to the person so bound.
(2) Participating in an entity in which the owners have limited liability, such as a limited liability company.
(3) Participating in an entity, such as a corporation, where the mere fact that a person is an owner does not give that person any aura of authority (perhaps an S corporation to take advantage of the single tier taxation of an S corporation).
(4) Granting each other (or either one of them) limited powers of attorney to bolster the idea that they have limited authority to bind each other.

(c) Accounting and Bookkeeping. Who has responsibility for establishing and maintaining accurate books and records?

(d) Resolution of Disputes. Which disputes should be resolved by all Venturers? A majority of Venturers? Should certain Venturers have the right to make the final determination of particular disputes? Should there be an outside arbitration of all or certain types of disputes?

(e) Prohibitions on Venturers. May certain acts be undertaken without the consent of all Venturers? For instance:

(1) Significantly change the Venture's operations or operating methods.

(2) Acquire the business or assets of another entity or person as a going concern; or sell, lease, exchange, or otherwise dispose of all or a substantial portion of its assets; or consolidate, merge, or amalgamate with any other company, association, partnership, or legal entity; or create or acquire any subsidiary.
(3) Enter into any transaction with a Venturer other than as specifically agreed to elsewhere in this Agreement.
(4) Enter into any transaction outside the normal course of business.
(5) Make any material change in accounting practices and procedures.
(6) Create any lien, pledge, or other encumbrance outside the ordinary course of business; or give any guaranties or indemnities of the obligation or liabilities of any person or company otherwise than in the normal course of business.
(7) Enter into any intellectual property rights to agreements outside the normal course of business.
(8) Establish or make a material change (an annualized change in access of 10%) to the overall compensation and benefits structure of any employee or independent contractor.
(9) Establish or make a material change (an annualized change in excess of 10%) to any individual's incentives, shares option, or other bonus plans and make awards thereunder.
(10) Establish or make any benefit for any employee or independent contractor.
(11) Hire *[Job Title List]*.
(12) Enter into any employment agreement not terminable at will unless employment contracts in a particular locale cannot be terminable at will, in which case the employment contract shall give the employer as much flexibility as it can reasonably get.
(13) Enter into any severance agreement in excess of one month's pay.
(14) Enter into any transaction with any employee or independent consultant outside the terms of that employment or independent contractor relationship.
(15) Settle any litigation or threatened litigation, tax claim, or other claim not in the ordinary course of business, involving or against it and involving payment of *[Dollars]* or more.
(16) Borrow or guarantee any borrowing, establish bank accounts or bank credit lines, make any change in bank credit lines, or make any change in relationship between the Venture and any commercial or investment bank.
(17) Select or terminate an auditor.
(18) Enter into negotiations with any labor union or into any

binding agreement with any labor union.

(19) Make any political contribution.

(20) Change the nature or extent of warranties and guaranties covering products and services.

(21) Sell or issue any share in the capital of the entity; or consolidate, subdivide, or convert any of the share capital; or alter any of the rights attendant thereto.

(22) Lend money, including loans to employees or equity holders, or make any investment or capital contribution in or to any entity.

(23) Pay any dividend, or make any other distribution to, or redeem any interest of an equity holder.

(f) Death, Retirement, Withdrawal, and Expulsion.

(1) May a Venturer be expelled?
- (A) By whom, on what vote and on what grounds?
- (B) What rights does an expelled Venturer have?

(2) Withdrawal or retirement
- (A) What notice should be given by a retiring or withdrawing Venturer?
- (B) Should there be a prohibition against competing with the Venture for reasonable period of time?
- (C) What are the rights of a retiring or withdrawing Venturer against the Venture, including possible forfeitures of a portion of the interest of such Venturer?

(g) Winding Up.

(1) What events should cause the Venture to be wound up?
- (A) Death or withdrawal of specific Venturers.
- (B) Bankruptcy or assignment for creditors of Venture.
- (C) Insanity or incapacity.

(2) Who is to liquidate business? Salary of liquidator.

(3) Are assets to be sold or distributed to Venturers?
- (A) May some Venturers buy at sale?
- (B) Is sale to be public?
- (C) Should specific assets be distributed to specific Venturers?

(4) Order of distribution of assets.