1. Introductory Clauses/Recitals

\_\_\_State names of all partners, including addresses.

\_\_\_Name general partner.

\_\_\_Name limited partner(s).

\_\_\_Are any partners not natural persons?

\_\_\_Include name of agent and address for service of process of entities.

1. Formation of Limited Partnership

\_\_\_Declare formation of limited partnership.

\_\_\_Under which state's limited partnership law is the LP organized?

\_\_\_What are the LP statutes in the state?

The usual statement is that "except as otherwise provided, the duties and obligations of the partners shall be governed by the [state] limited partnership act," but you should know whether you need to vary the terms of the particular act by agreement.

1. Name

\_\_\_What will be the name of the LP?

\_\_\_Does it contain any particular words required by statute, i.e., L.P., Limited, etc.?

\_\_\_Will a fictitious name filing be required?

\_\_\_Can the name be changed? By whom?

1. Principal Place of Business

\_\_\_What will be the principal place of business?

\_\_\_May it be changed? By whom?

1. Registered Office

\_\_\_Does the LP statute require statement of a registered office?

\_\_\_If not, you should at least state a name and address for an agent for service of process.

1. Business of Partnership

\_\_\_What is the specific business of the partnership?

\_\_\_Is a general purpose clause desired, i.e., any business other than the LP business?

\_\_\_Who determines if the LP may engage in any other business?

\_\_\_What powers does the partnership have in connection with partnership business?

You might consider listing powers of partnership here: enter into leases, lease equipment, borrow or raise money, and so forth.

1. Specific Powers

\_\_\_Specific license agreements, sales of assets in the partnership, need to engage personnel?

\_\_\_Engage attorneys, independent accountants, etc.?

\_\_\_Are there any specific settlements or agreements with regulatory agencies which limit the activities of the partnership?

\_\_\_If so, include a prohibition against such activity.

\_\_\_Is there a territorial limitation?

\_\_\_Can the partnership engage in business outside the continental United States? Territorial United States?

1. Term of Partnership

\_\_\_What date will the partnership commence?

\_\_\_How long will the partnership continue?

\_\_\_A specified period, or

\_\_\_until dissolved by agreement,

\_\_\_until specified undertaking is completed,

\_\_\_until dissolved by some specific act or event, or

\_\_\_until cancellation of the partnership's certificate of limited partnership.

Coordinate the term of LP with transfer, buy-sell, and continuation of business provisions.

1. Other Jurisdictions

\_\_\_Will the limited partnership own property or engage in activities in other jurisdictions?

\_\_\_If so, allow the general partner(s) to register in those jurisdictions; give general partner(s) authority to execute necessary documents.

1. Initial Capital

\_\_\_Will any partners be making capital contributions other than in cash?

\_\_\_How will such contributions be valued?

Percentage interest is important since many agreements provide that voting power varies with percentage interest. In addition:

\_\_\_Describe the property in detail.

\_\_\_Specify the value to be attributed to property on partnership books.

\_\_\_To what extent are tax issues included?

\_\_\_What is contributing partner's adjusted income tax basis for property?

This information will help to determine the contributing partner's initial tax basis for the partnership interest, the partnership's initial income tax basis for the contributed property, and whether the partnership agreement should provide for special allocations of gain, loss, depreciation, or income.

\_\_\_Would there be any reason to allocate losses differently from profits?

XI.Additional Capital

\_\_\_Must partners make additional capital contributions?

\_\_\_May contributions be payable in cash or other property? Or any combination?

\_\_\_Must there be any prior approval of contributions not paid in cash? If not in cash, must a formula be used to determine the amount of contribution of each partner?

\_\_\_Is there any arrangement for a partner to loan property or cash to the partnership?

\_\_\_Under what circumstances are additional capital contributions required?

\_\_\_Who determines the need? The partnership committee? An approved business plan or budget?

\_\_\_What notice provisions are there?

\_\_\_Must notice be written?

\_\_\_Are all limited partners equally liable for contributions?

\_\_\_Is the general partner liable for contributions?

\_\_\_What is the effect of failure to make a required capital contribution?

\_\_\_Is another partner permitted but not required to make up additional capital contributions upon failure of another partner to do so?

\_\_\_What if more than one other partner elects to contribute to the default amount?

\_\_\_How will such additional contributions to capital be handled?

\_\_\_In what event may the partnership institute proceedings against the defaulting partner for unpaid contributions?

\_\_\_How will costs of collection be paid?

\_\_\_Would the defaulting partner be liable for reimbursing the costs if not paid, or would the costs be deducted from the defaulting partner's capital account?

\_\_\_Does contribution of additional capital affect voting percentage and rights to profits?

\_\_\_What is the effect of additional capital contributions upon dissolution?

XII.Accounts

There are usually two sets of equity accounts: capital and income. Partnership assets minus liabilities equals the sum of the partners' equity accounts. A capital account consists of each partner's initial capital contribution increased by any additional contribution.

\_\_\_Provide a separate capital account for each partner.

\_\_\_Reference appropriate sections of the Internal Revenue Code and income tax regulations thereunder.

\_\_\_Are partners allowed to make withdrawals from capital accounts?

\_\_\_Will interest be paid on capital accounts?

\_\_\_What about payments to third parties? How is this reflected in capital accounts?

XIII.Income Accounts and Taxes

Provide for periodic allocation of profits and losses to each partner's income account, generally according to each partners' percentage interest. A partner may be taxed on his or her distributive share of profits even if no money is actually allocated. Allocated profits are not the same as cash flow.

\_\_\_Will there be an allocation of money for taxes on profits?

\_\_\_Will there be a minimum gain chargeback provision?

\_\_\_Will there be a qualified income offset?

\_\_\_Are there any special allocations?

\_\_\_Will interest be paid on income accounts?

\_\_\_Should a partner be allowed to withdraw the credit balance from the income account?

\_\_\_How often will partners require accountings of partnership affairs?

\_\_\_How will partners' distributive shares of net partnership profits and losses be allocated?

\_\_\_stated percentages to remain unchanged,

\_\_\_stated percentages to vary with partnership taxable year,

\_\_\_division based on units of participation in partnership business,

\_\_\_division based on proportion of business brought in and amount of work performed by each partner, or

\_\_\_partners' retention of percentage of income earned by them before net profits are computed and distributed.

\_\_\_In what manner will each partner's distributive share be paid?

\_\_\_What portion, if any, is to be paid as salary?

XIV.Draws

To determine the portion, if any, of distributive share to be available as a draw, consider the following:

\_\_\_each partner's anticipated income taxes,

\_\_\_anticipated income of partnership business, and

\_\_\_growth potential of partnership business.

A business with good growth potential may require a large portion of partnership cash flow to be plowed back into the partnership operations.

XV.Management of Partnership

\_\_\_How will management be structured?

\_\_\_Will the agreement provide for a partnership committee?

\_\_\_Who could replace the partnership committee? Any notice?

Remember the hallmark of a limited partnership is that the limited partners do not engage in management activities. If a limited partner does so, he or she is risking the shield of limited liability afforded limited partners.

\_\_\_Will a vote of the limited partners be required on any matter?

\_\_\_Will any partnership committee cause the partnership's obligations to be fulfilled?

\_\_\_How will a successor general partner be named?

\_\_\_If a managing committee is to be responsible for day-to-day operations, when will decision of other partners be necessary?

\_\_\_If there is a partnership committee, who appoints members? How often does it meet? Notice of unscheduled meeting?

\_\_\_Allow action by unanimous written consent?

\_\_\_What limitations will be placed on acts of partners other than general partner?

\_\_\_May the partners have other business activities?

\_\_\_When might partners compete with the partnership?

It is likely that the limited partners will engage in other business activities. However, it may be best not to allow direct competition with the LP. Clarify in the agreement what types of business activities would be permitted.

XVI.Noncompetition Agreement

\_\_\_What about a noncompetition agreement with the general partner? Limited partners?

\_\_\_Would the terms of the noncompetition agreement be enforceable?

The general rule is that only noncompetition agreements with reasonable provisions are enforceable, but the definition of what is reasonable varies greatly by state.

XVII.Partnership Committee Votes

\_\_\_Must interest of general partner be voted as a bloc?

\_\_\_What number of partners/percentage of interest is required for a quorum?

\_\_\_Does the partnership committee have the authority of a board of directors under the law of the state in which the LP is organized?

\_\_\_Is an acknowledgment clause desired from each partner by execution of the agreement for the delegation of powers to the members of the partnership committee?

\_\_\_What reports must the partnership committee receive?

\_\_\_Must the members of the partnership committee receive compensation? How much?

XVIII.Authority

\_\_\_May the partners take any action without consent of the partnership management committee?

\_\_\_If so, what action(s) may the partners take?

XIX.Banking

\_\_\_Should the general partner be able to sign checks to make withdrawals regardless of amount?

\_\_\_Be sure to authorize execution of any LP certificate as required by a financial institution.

XX.Books and Records

\_\_\_To what extent will requirements be different from those provided by statute?

\_\_\_Will fiduciary obligation be disclaimed?

Partners are fiduciaries and have rights to access to books and records, full information, and to a full accounting. They are accountable as fiduciaries for any benefit received without the consent of all the partners. This obligation is often disclaimed by agreement.

XXI.Title to Property

\_\_\_Will any real property be owned by a partner and leased to the partnership?

\_\_\_Consider a general clause to allow the title to any property owned by the partnership to be held in such manner as the partners may determine.

XXII.Limitations

\_\_\_To what extent may a limited partner mortgage, pledge, assign, or sell any part of its interest in the partnership?

\_\_\_Is written consent of a majority in interest required?

XXIII.Withdrawal

\_\_\_What is the effect of withdrawal of a limited partner? General partner?

\_\_\_Will the partnership continue?

\_\_\_Consider whether the vote to continue must be unanimous.

\_\_\_If the remaining partners desire to continue, but not together, you may provide for liquidation.

\_\_\_Specify when a partner may withdraw, i.e., at the end of a fiscal year.

\_\_\_How will the withdrawing partner be compensated for his or her interest?

Computation of the value of the interest is often described as the sum of the partner's capital account plus the partner's proportionate share of accrued net profits, which may be the balance set forth in the income account. If the partnership has incurred a net loss to the date of withdrawal, the withdrawing partner's share of such loss is deducted from the partner's accounts.

\_\_\_Will the partner receive any value for goodwill?

\_\_\_How will you assure that the partnership will have liquid funds available to pay an outgoing partner?

\_\_\_How will outgoing partner's interest be disposed of?

\_\_\_by sale to remaining partners, or

\_\_\_liquidation of interest.

\_\_\_If a cross-purchase occurs, what valuation method will be used to set the purchase price?

\_\_\_If cross-purchase is to be funded by insurance, ascertain whether arrangements for insurance have already been made, whether each partner will carry insurance on all other partners, or the partnership will carry insurance on all partners.

XXIV.Expulsion

\_\_\_What are the grounds for expulsion?

\_\_\_breach of the partnership agreement,

\_\_\_disability over a period of time,

\_\_\_bankruptcy,

\_\_\_conduct reflecting adversely on the partnership, or

\_\_\_disciplinary action by a professional organization (where appropriate).

\_\_\_What is the importance of partnership continuity to the partners and tax consequences attending partnership dissolution?

\_\_\_What notice period will be required before resignation, expulsion, or retirement will be effective?

XXV.Termination and Dissolution

\_\_\_When will partnership be dissolved?

\_\_\_At specified date for dissolution? Unanimous written consent? Bankruptcy?

\_\_\_Withdrawal of general partner?

\_\_\_Will the partnership be dissolved if one remaining general partner wishes to carry on the business?

\_\_\_May a majority in interest of the remaining partners (or such greater percentage as is required by the state's limited partnership act) agree in writing to continue the business?

\_\_\_Need to appoint new general partner.

\_\_\_Would any partner elect dissolution and distribution of the assets upon dissolution?

\_\_\_What procedure must be followed?

\_\_\_May new partners, limited or general, be admitted?

If a new partner may be admitted, it is customary to require the execution of any agreement to abide by the limited partnership agreement and make such other representations and warranties as required by the LP or the partnership committee.

XXVI.Transferability

\_\_\_May any partnership interest be transferred?

\_\_\_Would there be any restrictions on transfer?

\_\_\_Must the interest be transferred only to affiliates?

\_\_\_Is transfer subject to approval by the partnership committee?

Usually no permission is required to transfer a partnership interest to an affiliate. The agreement should specify that transfer to an affiliate (as defined) is permissible.

\_\_\_Would the partnership have a redemption option if a partner's aggregate percentage interest dips below a certain level?

XXVII.Liquidation

\_\_\_What procedure will be followed upon voluntary dissolution?

\_\_\_Should general partner be responsible for winding up?

\_\_\_Provide priority for asset distribution -- first to partnership debts, then to debts of partnership to partners, the amounts owed partners for undistributed net profits, and finally the capital contributions of partners as reflected in their capital accounts.

\_\_\_What proportion will be used for gain or loss on disposition of partnership properties in the process of liquidation? In proportion to partners' interest in profits or losses?

\_\_\_If property is distributed in kind, provide a valuation method.

\_\_\_What happens if any partner has a negative balance in its capital account?

Often, a provision explains that the negative balance will represent an obligation from such partner to the other partners to be paid in cash within a specified period of time, sometimes six months to a year.

\_\_\_Will written demand for payment by other partners be required?

XXVIII.Dispute Resolution

\_\_\_Will an attempt be made to resolve any disputes in an alternative way, i.e., mediation?

\_\_\_Will an arbitration clause be included?

Arbitration is a double-edged sword. On one hand, it may be cheaper and quicker than litigation, though that has been disputed. If it is possible to agree to select an arbitrator with specific technical expertise and sophistication, that may be preferable. A less adversarial setting would make it easier for the partners to work together in the future.

On the other hand, arbitration may be slow and expensive if there is more than one arbitrator. The successful party may have to go to court anyway to enforce the arbitration agreement. Use of arbitration means the loss of some procedural safeguards, so the arbitration award cannot be challenged in court on the grounds of mistakes of law or fact.

XXIX.Tax Matters

\_\_\_What is the partnership's fiscal year?

\_\_\_What accounting method will be employed?

\_\_\_Will there be a tax election?

XXX.Indemnification

\_\_\_Will the partnership indemnify the limited partners? General partner?

\_\_\_How far will the indemnification extend? To affiliates? Directors? Officers?

XXXI.Exculpation

\_\_\_Will the partnership or any partner, employee, etc., be liable to the partnership for mistakes of judgment?

XXXII.Outside Activities

\_\_\_To what extent may any partner engage in other business ventures?

\_\_\_What exceptions?

\_\_\_The specific business of the partnership?

\_\_\_Business involving any specific licenses, services?

XXXIII.Regulatory Matters

\_\_\_Are there any outstanding decrees or judgments that might affect the partnership?

\_\_\_Will the affected party request a waiver for the benefit of the partnership?

\_\_\_If there is no waiver, the partnership would be required to conform to any such prohibitions.

XXXIV.Miscellaneous Provisions

1.Amendment

\_\_\_Must the amendment be in writing? Must it be signed by all partners?

\_\_\_Is affirmative vote of a majority of partners sufficient? Is a supermajority required for certain changes?

\_\_\_Other standard provisions:

\_\_\_binding nature,

\_\_\_choice of law -- reference the state and its limited partnership act, except to the extent modified by the agreement, and

\_\_\_agreement not to challenge the choice-of-law provisions.

\_\_\_Are there any specific rights which are not appropriate, i.e., waiver or right to partition of partnership assets?

\_\_\_Clauses regarding section headings, notices, counterparts, survival, and agreement to execute further documents.

\_\_\_Failure to include any boilerplate may raise the issue of whether the parties actually did not intend for them to apply.

2.Signatures

\_\_\_Correct name and title of each general and limited partner.

\_\_\_Appropriate officer to execute on behalf of any business entity.

\_\_\_Must the signatures be verified or acknowledged?

3.Documents

\_\_\_What documents are necessary?

\_\_\_If property other than cash is contributed to the partnership, obtain

\_\_\_instrument (e.g., deed) conveying title to contributing partner,

\_\_\_documents of title to motor vehicles,

\_\_\_leases affecting contributed property,

\_\_\_licenses and permits (if any),

\_\_\_franchise agreements (if any), and

\_\_\_financial statements for any going businesses contributed.

Note that financial statements, while not determinative, will aid in computing both the adjusted tax basis and the fair market value of contributed businesses.

\_\_\_Insurance policies on all real and personal property contributed to the partnership.

\_\_\_Insurance policies, if already issued, to be used in funding cross-purchase agreements.

XXXV.Schedule 1

\_\_\_List general and limited partners and their percentage interests in the LP.