

## JOINT VENTURE AGREEMENT STRUCTURE & ABSTRACT TEMPLATE

A summary of items with \*\* are often included in a 3-6 page letter of intent (LOI)

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**General Guidelines:** list section number where the information can be found for ease of reference.

**Definitions:** many legal documents are full of “defined terms”. This is especially true for joint venture and loan agreements. A defined term is typically a word that is capitalized and has a specific meaning that may or may not be like the normal definition of the word.

Example: “capital expenditure” and “Capital Expenditure”. The latter would be a defined term that would either be (a) listed before the first use of the term or (b) listed in a separate list of definitions. “capital expenditures” may mean different things to different people whereas “Capital Expenditures” will be specifically defined as “in accordance with generally accepted accounting principles” or similar. **Very important:** don’t assume the meaning of a defined term. Read the definition.

General	
Company	[name of venture, typically a limited liability company (LLC)]
Property	[description of the property]
Date of Agreement	[the date]

Members	
Operator Partner	[legal name of the operating partner aka general partner]
Limited Partner	[legal name of the limited / investment partner(s)]
Managing Member	[indication of who is the managing member; the managing member is usually the operating partner and operates the property on a day-to-day basis, subject to the major decision rights of the limited partner]

### **Reps & Warranties, Covenants**

Representations and warranties are statements by each party that certain things are true at time of the document execution. Examples:

- Each party is a legal entity that is not in default or bankruptcy.
- The information provided to the limited partner is accurate to the best of operating partner's knowledge.
- There has been no material adverse change in the financial conditions of the property.

Covenants put affirmative ("have to") and negative ("can't do") restrictions on either or both parties. Examples:

- Comply with laws.
- Maintain required insurance.
- Report to the operating partner as required.
- Comply with major decisions (see below)

### **Major Decisions\*\***

Major decisions are decisions that the limited partner(s) (LP) must sign off on. If there is a single LP, then there will be a long list of major decisions that are highly negotiated. If there are many small LPs, none of which is more than a [5%] investor, then there may be no major decisions. Examples of major decisions:

- Sale of the property.
- Purchase of a new property (if venture agreement contemplates new acquisitions).
- Entering into a loan agreement.
- Approval of the annual property budget. Approval of controllable expenditures not in line with approved annual budget (ex. \$50K variance) other than emergency items.
- Signing leases over a certain square footage (usually the biggest only).\*\*
- Proceeding with capital expenditures over a certain dollar threshold.\*\*
- Settling litigation over a certain dollar threshold.
- Changing tax preparer and/or auditor.

The operating partner will typically have signing authority on most contracts (leases, vendor, etc) subject to the major decision approval rights of the LP(s).

## Capital Contributions\*\*

This section discusses both the initial capital contribution amounts and what are the requirements for future capital contribution amounts if needed.

1% to 10% - typical initial investment amount of the operating partner  
90% to 99% - typical initial investment amount of the limited partner(s)

Future capital contribution amounts (aka capital calls) may either be (a) at the ratio of the initial capital call – ex 90/10 or (b) at the highest promote tier – ex 70/30. This can be a heavily negotiated item.

This section will also discuss what happens if one of the partners does not contribute the capital call, the ability of another partner to cover the shortfall, and the preferred return the contributing partner gets for this.

## Distributions (including Promote)\*\*

This is often one of the most highly negotiated item in terms of both (a) percentage amounts and (b) sequence. Example of distributions sequence in a 90/10 deal:

### Proceeds from Capital Events (sale and refinance)

- 1) Return on capital for covering another partner's capital call shortfall. Ex: 10% per year.
- 2) Return of capital for covering another partner's capital call shortfall.
- 3) Return of original capital.
- 4) Return on original capital (sometimes referred to as the "pref"). Ex. 8% per year.
- 5) First promote tier. Example:
  - a. 80% to all capital (GP & LP) and 20% to promote (GP only)
  - b. Until all LP earns a 12% IRR.
- 6) Second promote tier.
  - a. 70% to all capital (GP & LP) and 30% to promote (GP only).

### Proceeds from Cash Flow (the preferred return is earned BEFORE return of capital)

- 1) Return on capital for covering another partner's capital call shortfall. Ex: 10% per year.
- 2) Return of capital for covering another partner's capital call shortfall.
- 3) Return on original capital (sometimes referred to as the "pref"). Ex. 8% per year.
- 4) First promote tier. Example:
  - a. 80% to all capital (GP & LP) and 20% to promote (GP only)

Both of these are just examples. Amounts can vary significantly from deal to deal and will be negotiated in conjunction with (a) the investment percentage of the operating partner and (b) the fees paid to the operating partner.

Note there will be a separate section covering *allocation of profits and losses*. It will detail the sequence of distributions, but gives more details related to taxes.

## Fees\*\*

Fees are earned by the operating partner for services provided to benefit the venture. Examples:

- Acquisition Fee (one-time fee):
  - Amount: 0.50% to 1.00% of the purchase price; Ex. 1% x \$10M = \$100K.
  - Service: sourcing the deal; managing due diligence; closing the deal.
- Debt Placement Fee (one-time fee per loan):
  - Amount: 0.50% of loan amount.
  - Service: sourcing, negotiating, and closing the loan.
- Asset Management Fee (annual fee paid monthly or quarterly):
  - Amount: 0.50% to 1.00% of equity. Ex. 1% x \$5M equity = \$50K per year.
  - Service: executing the business plan for the property; most LPs that are structured as a fund will not pay an asset management fee to the operating partner because they are already charging the investors in the fund an asset management fee.
- Property Management Fee (annual fee paid monthly or quarterly):
  - Amount: 3.0% of gross revenue subject to a minimum per month; logic of the minimum is that there is still lots of work (sometime more) to do when the property is vacant. Ex. 3% x \$600K gross revenue = \$18K per year.
  - Service: managing the tenants/vendors; reporting.
- Leasing Commissions (one-time fee for each lease):
  - Amount: 1% of the total rent for new deals if listing broker is used. 3% of the total rent for renewal if no listing broker is used.
  - Service: Managing the brokers and negotiating the lease.
- Construction Management Fee (one-time fee for each construction job):
  - Amount: 4% to 10% of the hard and soft costs of construction, typically on a sliding scale. Some LPs will push for fee only on hard costs.
  - Service: Managing the general or sub-contractors.
- Reimbursement of Expenses (recurring fee paid monthly):
  - Amount: Actual costs.
  - Service: Certain in-house legals, tax experts, etc.

#### **Loan Guaranty\*\***

An entity or person will be needed to guaranty certain aspects of non-recourse loans such as (a) environmental liability and (b) “bad boy carveouts” (fraud, etc). LPs will want the operating partner to do this. If the venture is part of a larger fund or separately managed account (SMA), both parties may agree to have the fund or SMA act as the guarantor if the lender will accept this.

### Forced Sale

Larger LP investors want the ability to unwind the venture after a certain amount of time (ex. 3-5 years). Sometimes the operating partner and LP will not agree to sell the property. This forced sale section pre-negotiates the process in which either party can force a sale after a certain amount of time. Typical process:

- 1) One party (*initiating party*) informs the other (*responding party*) that it wants to sell.
- 2) If the *responding party* does not want to sell, then *the initiating party* makes a buyout offer at which it would either buy or sell the property.
- 3) The *responding party* either (a) agrees to be bought out at this price or (b) agrees to buy out the *initiating party* at this price.
- 4) The party buying out the other then has a certain amount of time to complete the buyout (example 90 days).

I have only seen this happen once in my 20+ year career.

### Transfer Rights

Operating partners and/or larger LP investors may want the right to transfer their interests to a related party. This section describes what qualifies as a related party.

### Default

This section describes what qualifies as a default, the notification process, the ability to cure a default, and what happens if a default is not cured. An example of a default could be the operating partner not getting LP approval on a major decision. Some defaults may cause the removal of the operating partner as the managing member. This could put the fees and/or promote at risk.

### Dissolution

This section describes the process to wind down and dissolve the venture.

### Insurance Requirements

This will list the insurance requirements in up to three components:

- Venture insurance requirements: covering the owned property.
- Manager insurance requirements: related to liability coverage for the property manager if an affiliate of managing member serves in this function.
- Vendor insurance requirements: list of requirements that managing member must obtain from any vendors it engages on behalf of the venture.

### Reporting Requirements

This can be very simple or detailed. Institutional LPs that have a fund and/or significant reporting requirement to their investors will have very specific reporting requirements.

There will likely be monthly, quarterly, and annual components. Reporting could include the following:

- Cash flow statement
- Income statement
- Balance sheet
- Equity waterfall (promote) schedule
- Tax return including K-1 tax statements for each member
- Annual audit by third party

### Signature Blocks

Leases and contracts signed on behalf of the venture will have a specific structure, empowering the managing member to sign on behalf of the venture. Within the managing member, only certain individuals will be empowered to sign. See below for example.

XXX LLC, [THIS IS THE VENTURE]  
a Delaware limited liability company

By: xxxx, LLC,  
a Delaware limited liability company,  
its Managing Member

By: \_\_\_\_\_  
Name  
Authorized Signatory

Exhibits	
Certificate of Formation	[evidence that the LLC has been created]
Annual Business Plan	[first year approved business plan; will include monthly cash flow statement; sometimes includes both stub year and next calendar year]
Reporting Requirements	[detailed summary of reporting requirements that managing member will be required to deliver to both members]
Form of Management Agreement	[complete form of the property management agreement the venture will execute with an affiliate of the operating partner if the operating partner will provide property management and accounting services]
Insurance Requirements	[detailed list of insurance requirements]