

**Joint Venture Agreements  
Structuring, Drafting and Negotiating  
Parts 1, 2 and 3**

**October 16, 2013  
January 29, 2014  
February 19, 2014**

**Gregory G. Gosfield, Esquire**  
1835 Market Street  
Philadelphia, PA 19103  
Tel.: 215-569-4164  
Email: [ggosfield@klehr.com](mailto:ggosfield@klehr.com)

**Jon M. Katona, Esquire**  
1835 Market Street  
Philadelphia, PA 19103  
Tel.: 215-569-4222  
Email: [jkatona@klehr.com](mailto:jkatona@klehr.com)

**Jennifer A. O'Leary, Esquire**  
1835 Market Street  
Philadelphia, PA 19103  
Tel.: 215-569-4928  
Email: [joleary@klehr.com](mailto:joleary@klehr.com)

## TABLE OF CONTENTS

	<u>Page</u>
1. INTRODUCTION .....	1
2. CHOICE OF ENTITY AND JURISDICTION .....	4
2.1. Surface Issues.....	4
2.2. Subsurface Issues .....	4
3. FORMATION.....	5
3.1. Documentation.....	5
3.2. Formation Documents.....	5
3.3. Contributions from Manager and Non-Managers.....	6
4. MANAGEMENT.....	6
4.1. Day to Day Operations.....	6
4.2. Affiliates .....	7
4.3. Non-Manager Control.....	7
4.4. Approval Process .....	7
4.5. Removal or Conversion of Rights of Manager for Cause.....	8
4.6. Dilution of Manager Compensation.....	8
4.7. Dilution of Manager's Power.....	8
5. PROGRAM STRUCTURE .....	9
5.1. Program Structure .....	9
5.2. First Rights.....	9
5.3. Noncompete .....	10
6. CONTRIBUTIONS .....	10
6.1. Capital Calls.....	10
6.2. Required Loans in Place of Capital Contributions .....	11
6.3. Guaranties as Additional Capital .....	11
7. DISTRIBUTIONS .....	12
7.1. Distributions of Cash Flow .....	12
7.2. Fees .....	13
7.3. Clawback and Claw-Forward .....	14
7.4. Distributions of Capital Event Proceeds .....	14
8. ADMISSION; WITHDRAWAL .....	15
8.1. Admission .....	15
8.2. Withdrawal.....	15
9. TRANSFERABILITY .....	16
9.1. Fears of Transfer .....	16
9.2. Pre-Stabilization.....	16
9.3. Anti-Assignment Programs.....	16
9.4. Right of First Refusal.....	17
9.5. Forbidden Transfer.....	17

## TABLE OF CONTENTS

	<u>Page</u>
10. EXIT STRATEGY AND LOCKUP .....	18
10.1. Exit Strategy.....	18
10.2. Liquidation.....	18
10.3. Put or Call .....	18
10.4. Buy/Sell.....	19
11. DISPUTE RESOLUTION .....	20
11.1. Triggers .....	20
11.2. Procedures and Mechanisms.....	21
12. DEFAULT AND REMEDIES.....	22
12.1. Defaults .....	22
12.2. Remedies.....	24
13. DISSOLUTION, WINDING UP, LIQUIDATION, TERMINATION, CANCELLATION.....	31
13.1. Contract Dissolution .....	31
13.2. Statutory Dissolution .....	31
13.3. Winding-Up and Liquidation.....	31
13.4. Liquidation Distributions .....	31
13.5. Termination and Cancellation.....	32
14. ATTORNEY CONFLICT OF INTEREST REPRESENTING THE JV.....	32
14.1. Concurrent Clients .....	32
14.2. Consent and Recognizing When the Conflict May be Waived .....	32
14.3. Informed Consent.....	33
14.4. Common/Dual Representation in Transaction Matters.....	33
15. GENERAL DRAFTING ISSUES .....	35
15.1. Recitals.....	35
15.2. Definitions.....	35
15.3. Representations and Warranties.....	35
15.4. Covenants.....	36
15.5. Conditions .....	36
15.6. Indemnification .....	36
15.7. Material Default Remedies .....	36
15.8. Non Compete; Non-Solicitation .....	36
16. MISC. ISSUES TO BRING IN OTHER EXPERTS- ALLOCATIONS; REIT ISSUES; ERISA ISSUES; DEALING WITH PENSION OR GOVERNMENTAL FUNDS, ETC.....	36
16.1. Tax Issues.....	36
16.2. REIT Issues.....	36
16.3. ERISA Issues .....	36
16.4. Pension or Governmental Funds as a Venturer.....	37
16.5. Banker's Rule.....	37

## TABLE OF CONTENTS

	<u>Page</u>
Exhibits	
Exhibit A	Major Decision List
Exhibit B	Glossary
Exhibit C	Miscellaneous Default/Workout Clauses

For complete content, contact Gregory Gosfield  
215-569-4164 | [ggosfield@klehr.com](mailto:ggosfield@klehr.com)