

Presented:
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Laying Out the Deal: Top Questions and Considerations in Developing and Drafting LLC Agreements

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COMPANY AGREEMENT
FOR
XYZ LIMITED LIABILITY COMPANY
[MULTI-MEMBER AND MULTI MANAGER]

THE MEMBERSHIP INTERESTS THAT ARE THE SUBJECT OF THIS COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. THE MEMBERSHIP INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, TRANSFERRED, OR OTHERWISE DISPOSED OF UNTIL THE HOLDER THEREOF PROVIDES EVIDENCE SATISFACTORY TO THE MANAGERS (WHICH, IN THE DISCRETION OF THE MANAGERS, MAY INCLUDE AN OPINION OF COUNSEL SATISFACTORY TO THE MANAGERS) THAT SUCH OFFER, SALE, PLEDGE, TRANSFER, OR OTHER DISPOSITION WILL NOT VIOLATE APPLICABLE FEDERAL OR STATE SECURITIES LAWS.

THE MEMBERSHIP INTERESTS THAT ARE THE SUBJECT OF THIS COMPANY AGREEMENT ARE SUBJECT TO RESTRICTIONS ON THE TRANSFER, SALE, PLEDGE, OR OTHER DISPOSITION AS SET FORTH IN THIS COMPANY AGREEMENT.

Practice Comment: If the Limited Liability Company is formed with an investment and management structure which causes some of the Membership Interests to be categorized as securities under the Texas Securities Act or Federal laws relating to securities regulation, this legend might be used to help a Limited Liability Company comply with these regulatory requirements. If the membership interests are to be certificated as authorized by §3.201(e) of the Texas Business Organizations Code ("*TBOC*"), legends similar to those appearing on this page should appear on the certificates.

Practice Comment: If the Membership Interests are to be certificated as authorized by §3.201(e) of the Texas Business Organizations Code ("*TBOC*"), legends similar to those appearing on this page should appear on the certificates as well.

Practice Comment: Confirm that this legend is consistent with any restrictions on transfer contained in the Company Agreement.

**COMPANY AGREEMENT
OF
XYZ LIMITED LIABILITY company**

This Company Agreement of XYZ Limited Liability Company is executed as of the Effective Date, by each of the Persons who sign this Agreement under the caption "Members" on the signature page of this Agreement.

**ARTICLE 1.
DEFINITIONS**

1.1 ***Certain Definitions.*** As used in this Agreement, each of the following terms has the meaning given to it below:

"*Affiliate*" means person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified or who is an Associate of the Person. For the purpose of this definition control, ***controlling***, controlled by and under common control with means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise and ***associate***, means (1) a corporation, partnership, limited liability company, or other business entity of which such person is an officer, owner, partner, member, manager or is, directly or indirectly, the beneficial owner of 10 percent or more of any beneficial interest, (2) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity, and (3) any relative or spouse of such person who is a officer, owner, partner, member, manager or is, directly or indirectly, the beneficial owner of 50 percent or more of any beneficial interest in such person.

Practice Comment: Consider use of Securities Act definition instead, in particular if a corporate model is adopted.
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Practice Comment: Consider the threshold levels for control – this language sets the trigger point at 50% or more - for a more expansive application of this concept – consider lowering the trigger point to include a greater number of persons in the definition.

"*Agreed Value*" means, in the case of any contributions or distributions of property, the fair market value of that property, as that fair market value is determined by the Managers using such reasonable method of valuation as they may adopt.

"*Agreement*" means this Company Agreement, as amended from time to time.

"Assignee" means a Person who receives a Transfer of all or a portion of the Membership Interest of a Member, but who has not been admitted to the Company as a Member in connection with such Transfer.

"*Base Rate*" means a rate per annum that from day to day is equal to the lesser of (a) the prime rate of interest as cited by *The Wall Street Journal* and (b) the maximum rate permitted by applicable laws, with each change in the rate to be made on the same date as any change in (a) or (b), as appropriate.

"*Business Day*" means any day other than a Saturday, a Sunday, or a holiday on which national banks in the State of Texas are permitted to be closed.

"*Capital Account*" shall have the meaning set out in Section 4.6 below.

"*Capital Contribution*" means, with respect to each Member, the contribution of Contributed Property and the amount of such contribution shall be amount of cash and the Agreed Value of any other such Contributed Property, net of any indebtedness or other liability, whether assumed by the Company or to which the Contributed Property is subject.

"*Certificate*" means the certificate of formation of the Company filed with the Secretary of State of the State of Texas pursuant to the TBOC, as amended or restated at such time.

"*Claims*" means all losses, costs, liabilities, damages, and expenses (including court costs and fees and disbursements of counsel) incurred in connection with a Proceeding.

"*Code*" means the Internal Revenue Code of 1986, as amended from time to time.

"*Company*" means the limited liability company formed pursuant to the Certificate.

"*Contributed Property*" means any cash or property contributed by a Member to the capital of the Company.

Practice Comment: For non cash property consider Special provisions which relates to contributed property such as an accurate description of the Contributed Property, Title issues, condition of property, representations and warranties as to the nature and character of the Contributed Property, timing and pro ration and impact on related liabilities (ad valorem taxes, mortgages and due on sale or transfer clauses....),

"*Distributable Cash*" means all cash funds of the Company on hand at any time after payment of all expenses of the Company due as of such time, as reduced by the amount of the Reserves, if any, at such time.

Practice Comment: See Comments below in connection with distributions

"*Effective Date*" means the later of (i) the date all of the parties required to sign this Agreement have signed and delivered the Agreement, or (ii) the date the Company is formed, as set out herein.

Practice Comment: LLC's are formed upon the filing of the Certificate unless otherwise set out in the Certificate. To avoid a problem with an oral Agreement you may want to have this Agreement signed before you file the Certificate.

"*Fair Value*" means, the fair value of the item being valued, as determined by an appraiser selected in accordance with the terms of this Agreement.

"*Fiscal Year*" means the fiscal year of the Company's operations as selected by the Managers of the Company for accounting purposes.

Practice Comment: Often for Federal income tax reasons the Company may be required to select a calendar year as the fiscal year of the Company. If you are interested in a fiscal year other than a calendar year, consult your tax advisor as to when this will be required.

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