

**AMENDED AND RESTATED OPERATING AGREEMENT**  
**STAFFORD HOMES AND LAND, LLC**

**An Oregon Limited Liability Company**  
**(Manager-Managed)**

THIS AMENDED AND RESTATED OPERATING AGREEMENT is made and effective the 1<sup>st</sup> day of January, 2018.

**SECTION 1. THE LIMITED LIABILITY COMPANY**

**1.1 Formation.** Effective May 9, 2012, the Company was formed as an Oregon Limited Liability Company, Casey Meadows, LLC, (the "Company"), on the terms and conditions in the original Operating Agreement dated May 9, 2012, (the "Agreement") and pursuant to the Oregon Limited Liability Company Act (the "Act"). On March 14, 2018 the Members elected to begin reporting as an Sub chapter S Corporation for tax purposes and caused such an election to be filed with the Internal Revenue Service of the United States of America and hereby Amends its' previous Operating Agreement to reflect such changing the reporting of the entity for tax purposes. The Oregon Secretary of State office has advised the ownership and management of the Company that there is no revision necessary to the Company's Articles of Organization, the Company remains in good standing with the State, and hereby revises and restates the Operating Agreement as follows:

**1.2 Name.** The business of the Company will be conducted under the name **STAFFORD HOMES & LAND, LLC**.

**1.3 Purpose.** The Company may conduct or promote any lawful business or purpose that a partnership or corporation may conduct or promote. The primary purpose of the Company is to purchase, entitle, develop and sell real estate. All parties are to engage in all activities reasonably necessary and incidental thereto.

**1.4 Office.** The Company will maintain its principal business office within Oregon at: 485 South State Street, Lake Oswego, Oregon; 97034.

**1.5 Registered Agent.** Gordon Root will continue to serve as the Company's registered agent in Oregon and the registered office is at the same location as the Company office.

**1.6 Term.** The term of the Company commenced on **May 9, 2012**, and shall be perpetual unless sooner terminated as provided in this Agreement.

**1.7 Admission of Additional Members.** Except as otherwise expressly

provided in this Agreement, no additional members may be admitted to the Company through issuance by the company of a new interest in the Company without the prior unanimous written consent of the Managers and its' Members, City Redevelopment, LLC and Root Holdings, LLC.

## **SECTION 2. CAPITAL CONTRIBUTIONS**

**2.1 Initial Capital Contributions.** Root Holdings, LLC and City Redevelopment, LLC each made equal capital contributions to form the Company.

**2.2 Ownership Interest.** The Ownership and Member's of the Company are: **City Redevelopment, LLC 50% and Root Holdings, LLC 50%**, and the Company maintains its' principal office at 485 South State Street; Lake Oswego, OR 97034.

**2.3 Additional Capital Contributions.** The Members intend that to the maximum extent possible, Company obligations are to be paid from operating cash flows and from Company borrowings, whether short term or longer term. To the extent cash flow from operations and borrowings are not sufficient to meet the obligations of the Company as they become due, then, upon on the prior consent of the Managers of the Company, and the Members may elect to contribute to the Company the funds necessary to meet such obligations.

**2.4 No Interest on Capital Contributions.** Member(s) are not entitled to interest or other compensation for or on account of their capital contributions to the Company except to the extent, if any, expressly provided in this Agreement.

**2.5 Creditor Enforcement.** Notwithstanding any provision to the contrary, no obligation to make an additional Contribution may be enforced by a creditor of the Company unless the Member expressly consents to the enforcement.

**2.6 Limitation of Liability.** Each Member(s) liability shall be limited as set forth in this Agreement, the Act, and other applicable law. Except as otherwise provided by law and this Agreement, a Member will not be liable, merely as a Member, for any debts or losses of the company beyond the Member's respective Contributions and any obligation of the Member under this Section 2 to make Contributions.

## **SECTION 3. ALLOCATION OF PROFITS AND LOSSES; DISTRIBUTIONS**

**3.1 Determination of Income and Loss.** The Company's profits or losses for each fiscal year will be determined as of the end of that fiscal year by the Company's accountants in accordance with federal income tax accounting principles, consistently applied, utilizing that method of accounting employed in the federal income tax informational return filed by the Company for that fiscal year.

**3.2 Allocation of Profits and Losses.** Subject to the special allocations and limitations set forth in Section 3.4 and Appendix 3.5, the profits and losses of the Company for each fiscal year will be allocated to the Member(s) pro rata in proportion to their respective Ownership Interests.

**3.3 Distributions.** Distributions will be made to the Member(s) in accordance with the terms set forth herein, provided however, that no distribution may be made to the Member if, after giving effect to the distribution, in the judgment of the Operating Manager, either (1) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (2) the fair value of the total assets of the Company would not at least equal its total liabilities.

**3.4 Special Allocations and Limitations.** The Members intend that all allocations will be as described herein. However, in order to comply with federal income tax regulations regarding the substantial economic effect of Company allocations, in the special circumstances described in such provisions, all allocations of Company income, gain, loss, and deductions are subject to the special allocations and limitations described in Appendix 3.5.

**3.5 No Right to Demand Return of Capital.** No Member will have any right to any distribution except as expressly provided in this Agreement. No Member will have any drawing account in the Company.

**3.6 Optional Revaluation of Company Property.** Upon the occurrence of: (i) a subsequent contribution of money or property to the Company by a Member as consideration for additional Units, (ii) the admission of a new Member, or (iii) a distribution of money or property by the Company to a retiring or continuing Member as consideration for the purchase or redemption of one or more Units, or otherwise as provided in this Agreement, the Manager may elect to increase or decrease the respective Capital Accounts of all Members to reflect a revaluation of all Company property on the books of the Company, but:

(a) Such adjustments must be based on the fair market value of the property on the date of adjustment;

(b) The adjustments must reflect the manner in which the unrealized income, gain, loss, or deduction inherent in such property (that has not been reflected in the Capital Accounts of the Members previously), would be allocated among the Member(s) under this Section 3 if there were a taxable disposition of the property for the fair market value on the adjustment date;

(c) Thereafter, the Capital Accounts of the Member(s) must be adjusted in accordance with Treasury Regulation ' 1.704-1(b)(2)(iv)(g) for allocations to them of depreciation, depletion, amortization, and gain or loss, as computed for book

purposes, with respect to the property; and

(d) Thereafter, the Member(s) distributive shares of depreciation, depletion, amortization, and gain or loss, as computed for tax purposes, with respect to the property will be determined so as to take account of the variation between the adjusted tax basis and the book value of the property in the same manner as under Internal Revenue Code ' 704(c) and Treasury Regulation ' 1.704-1(b)(4)(i).

Adjustment pursuant to this Section 3.7 are intended to be in lieu of the adjustments described in ORS 63.185(4).

**3.7 Transfer of Units by Member During Fiscal Year.** If, after compliance with the requirements of Section 7, any Member transfers any Units during any fiscal year of the Company by sale, exchange, transfer, assignment, gift, death, operation of law, or in any other manner, the income, gain, loss, or expense of the Company allocable to the transferred Units will be prorated between the transferor and the transferee in accordance with the number of days during the fiscal year each party owned the Units; but the gain or loss realized by the Company from an insurance recovery or a condemnation award will be allocated to the owner of the Units on the date of the transaction.

## **SECTION 4. POWERS AND DUTIES OF MANAGERS**

### **4.1 Management of Company.**

**4.1.1** Subject to the limitations and except as otherwise provided herein, the management, decisions and control of the Company shall be exercised together by the Co-Managers, or by **either Co-Manager** who shall have the power and authority to act for or bind the Company regarding all matters, including matters regarding the Property, the performance of any and all acts or activities customary or incident to the management of the Company's business or the Property, and execution of any and all documents or instruments necessary or reasonable in the opinion of one of the Managers to facilitate the purposes and business of the Company as provided in Section 1.3.

**4.1.2** **Gordon Root, and Rick Waible**, shall be the Co-Managers and shall be known as the Operating Managers. Consistent with and subject to the foregoing, **either Operating Manager has all the rights and powers that may be possessed by a manager in a limited liability company with managers pursuant to the Act, and such rights and powers as are otherwise conferred by law or are necessary, advisable, or convenient to the discharge of the Operating Manager's duties under this Agreement and to the management of the business and affairs of the Company.** Without limiting the generality of the foregoing, subject to the restrictions set forth in Section 4.2, either Operating Manager has the following rights and powers (which he or she may exercise at the cost, expense, and risk of the

Company):

(1) To expend the funds of the Company in furtherance of the Company's business;

(2) To perform all acts necessary to fulfill the purposes of the Company, including engaging persons the Operating Manager(s) deems advisable to fulfill those purposes;

(3) To execute, deliver, and perform on behalf of and in the name of the Company, without any other signature, agreements and documents deemed necessary or desirable by the Operating Manager(s) to carry out the business of the Company, including any lease, deed, easement, bill of sale, mortgage, trust deed, security agreement, contract of sale, or other document conveying, leasing, or granting a security interest in the interest of the Company in any of its assets, or any part thereof, whether held in the Company's name, the name of either Operating Manager, or otherwise; and

(4) To borrow or raise money on behalf of the Company in the Company's name or in the name of the Operating Manager(s) for the benefit of the Company and, from time to time, to draw, make, accept, endorse, execute, and issue promissory notes, drafts, checks, and other negotiable or nonnegotiable instruments and evidences of indebtedness, and to secure their payment by mortgage, security agreement, pledge, conveyance, or assignment in trust of the whole or any part of the assets of the Company, including contract rights.

(5) Finance or refinance any assets of the Company, or demolish, renovate, or lease the Company's real property (the "Property");

(6) Acquire any land or other real property or interest in land or other real property other than any easement, right-of-way, or other similar interest reasonably required, in the opinion of the Operating Manager, for the ownership or operation of the Company's Property;

(7) Sell, transfer, or exchange any the Property or any other property owned by the Company; or

(8) Execute any lease or other arrangement involving the rental, use, or occupancy of the Property or any part of it.

**4.2 Tax Matters.** Rick Waible is hereby designated and approved as Tax Matters Manager of the Company; in such capacity he is authorized to participate in any audit of the Company's federal income tax return, and in connection therewith, to negotiate, settle, and make agreements and adjustments with respect to the

Company's federal income tax return that will be binding on all the Member(s); provided, however, that Rick Waible must first consult with and obtain the approval of the Co-Manager, Gordon Root concerning any audit adjustments proposed to be made to the Company's federal income tax return and must notify the Member(s) of any final Company audit adjustments.

**4.3 Limitation on Liability of Operating Manager.** The Operating Managers have no ability to unilaterally Amend the Company's Articles of Organization or this Agreement. Additionally, the Operating Managers have no liability to the Company or to any other Member for any loss suffered by the Company or any Member that arises out of any action or inaction of the Operating Manager if the Operating Manager, in good faith, determined that such course of conduct was in the best interest of the Company and such course of conduct did not constitute gross negligence, fraud or intentionally wrongful misconduct.

**4.4 Indemnification of Operating Managers.** Either Operating Manager is not personally liable for any debt, obligation, or liability of the Company merely by reason of being the Operating Manager or a Member. To the fullest extent provided or allowed by the laws of Oregon, the Company will indemnify the Operating Manager, in his or her capacity as Operating Manager, from and against all costs, losses, liabilities, damages, claims, and expenses (including attorney fees as incurred at trial and on appeal) (collectively, "Claims") arising from actions or inactions taken or omitted in his or her capacity as Operating Manager, including, without limitation, action taken or omitted by the Operating Manager consistent with this Agreement and in furtherance of the business or affairs of the Company, except in the event of gross negligence, fraud or intentionally wrongful misconduct. The satisfaction of any indemnification of the Operating Manager under this Agreement will be from, and limited to, Company assets, and the Member(s) will not have any liability on account thereof.

**4.5 Other Business.** Each Member and Manager is entitled to enter into transactions that may be considered to be competitive with, or a business opportunity that may be beneficial to, the Company, it being expressly understood that the Member or Managers may enter into transactions that are similar to the transactions into which the Company may enter, and the Company and Member(s) hereby waive any right or claim to participate in them.

**4.6 Decisions by Managers.** Whenever in this Agreement reference is made to the decision, consent, approval, judgment, or action of the Manager(s), unless otherwise expressly provided in this Agreement, such decision, consent, approval, judgment, or action shall be binding on the Company.

**4.7 Withdrawal by a Member.** A Member has no power to withdraw from the Company.

## **SECTION 5. SALARIES, REIMBURSEMENT, AND PAYMENT OF EXPENSES**

**5.1 Organization Expenses.** All expenses incurred in connection with organization of the Company will be paid by the Company.

**5.2 Reimbursements.** Either Operating Manager is entitled to reimbursement from the Company for actual out-of-pocket expenses of the Company reasonably incurred in connection with the Company's business.

**5.3 Salary.** Any salary to a Manager for the performance of his or her Duties under this Agreement must be agreed to by both Operating Managers and its' Members.

**5.4 Insurance.** At all times, the LLC must obtain and keep in full force and effect a comprehensive public liability policy and a property damage policy in amounts, with companies, and on terms acceptable to Member(s). Each policy of insurance covering any Company property or any portion of any Company property must provide that the policy may not be canceled without at least 10 days' written notice to the Member(s).

**5.5 Legal and Accounting Services.** Either Operating Manager is authorized to obtain legal and accounting services to the extent reasonably necessary for the conduct of the Company's business.

## **SECTION 6. BOOKS OF ACCOUNT, ACCOUNTING REPORTS, TAX RETURNS, FISCAL YEAR, BANKING**

**6.1 Capital Accounts.** The Company will maintain a Capital Account for each Member on a cumulative basis in accordance with federal income tax accounting principles as set forth in Treasury Regulation ' 1.704-1(b)(2)(iv). Each Member's Capital Account will be equal to:

(a) The amount of cash and the fair market value of the property contributed to the capital of the Company by the Member (net of any liabilities secured by such contributed property assumed by the Company or to which such contributed property is subject), but excluding any loans to the Company; plus

(b) The Member's allocable share under Section 3 of any income and gain, or items thereof, of the Company (including any income and gain exempt from federal income tax and including any items of gain, as computed for book purposes, under Treasury Regulation ' 1.704-1(b)(2)(iv)(g), with respect to property properly reflected on the books of the Company at a value that differs from the adjusted tax basis of such property, but excluding items of income or gain, as computed for tax purposes, as described in Treasury Regulation ' 1.704-1(b)(4)(i)); less

(c) The Member's allocable share under Section 3 of any loss or deduction, or any items thereof of the Company (including any items of depreciation, depletion, amortization, and loss, as computed for book purposes under Treasury Regulation ' 1.704-1(b)(2)(iv)(g), with respect to property properly reflected on the books of the Company at a value that differs from the adjusted tax basis of the property, but excluding items of depreciation, depletion, amortization, and loss, as computed for tax purposes as described in Treasury Regulation ' 1.704-1(b)(4)(i)); less

(d) The amount of cash and the fair market value of property distributed to the Member (net of any liabilities secured by the distributed property assumed by the Member or to which such distributed property is subject); less

(e) The Member's allocable share under Section 3 of any Company expenditures described in Internal Revenue Code ' 705(a)(2)(B), including items treated as ' 705(a)(2)(B) expenditures by Treasury Regulation ' 1.704-1(b)(2)(i); and (f) Otherwise adjusted as required pursuant to Treasury Regulation ' 1.704-1(b)(2)(iv).

**6.2 Banking.** All funds of the Company will be deposited in a separate bank account as will be determined by the Managers. Such funds will be invested or deposited with an institution, the accounts or deposits of which are insured or guaranteed by an agency of the United States Government. Such funds may be withdrawn from such account or accounts upon the signature of such person or persons as are designated by the Managers.

**6.3 Books of Account.** At the expense of the Company, the LLC must maintain records and accounts of all operations and expenditures of the Company at the principal office of the Company. At a minimum, the Company records must include (1) a current list of the full name and last-known business, residence, or mailing address of each Member, both past and present; (2) a copy of the Articles of Organization and all amendments; (3) a copy of the Company's currently effective written Operating Agreement and all amendments; and (4) copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years. Any Member has access to these at all reasonable times. The Operating Manager(s) must keep and maintain books and records of the operations of the Company that are appropriate and adequate for the Company's business and for carrying out this Agreement. The Tax Matters Manager must prepare the books and records on the basis of generally accepted accounting principles.

**6.4 Accounting Reports.** Within 60 days after the end of each quarter of the Company, the Tax Matters Manager must furnish each Member with copies of internally prepared financial statements of the Company.

**6.5 Audit.** At any time, on the written request of a Member, an audit of



the accounting books of the Company will occur at the expense of the Company. All Managers must cooperate fully with the accountant conducting the audit.

**6.6 Tax Returns.** The Operating Manager(s) must cause to be prepared and, on the review and approval of them by a Majority of the Members, must timely file with the appropriate authorities as necessary all federal and state income tax returns for the Company. Within 90 days after the end of each taxable year, or within a lesser time prescribed by the Internal Revenue Service, each Member will be furnished with a statement that may be used by the Member in the preparation of the Member's income tax returns, showing the amounts of any distributions, gains, profits, losses, deductions, or credits allocated to him or her during the fiscal year.

**6.7 Method of Accounting.** The Company will use the method of accounting previously determined by the Members for financial reporting and tax purposes.

**6.8 Fiscal Year; Taxable Year.** The fiscal year and the taxable year of the Company is the calendar year.

**6.9 Management of Funds.** The Operating Manager(s) must hold and disburse all funds of the Company in accordance with the terms of this Agreement and must account for all funds as a fiduciary. All funds of the Company held by a Member must be held in trust for the benefit of the Company, and, to the maximum extent permitted by law, not be vulnerable to inclusion in the bankruptcy estate of a Member.

## **SECTION 7. TRANSFER OF MEMBERSHIP INTEREST**

**7.1 Sale or Encumbrance Prohibited.** Except as otherwise permitted in this Agreement, no Member may voluntarily or involuntarily, directly or indirectly, transfer, sell, convey, encumber, pledge, assign, or otherwise dispose of (collectively, "Transfer") an interest in the Company without the prior written consent of a majority of the Ownership Interests held by the other nontransferring Members.

**7.2 Right of First Offer.** Notwithstanding Section 7.1, a Member may transfer all or any part of the Member's interest in the Company (the "Interest") as follows:

**7.2.1** The Member desiring to transfer his Interest first must provide written notice (the "Notice") to the other Member, specifying the price and terms on which the Member is prepared to sell the Interest (the "Offer").

**7.2.2** For a period of 30 days after receipt of the Notice, the Member has the right, but not the obligation, to acquire all, but not less than all, of the Interest at the price and under the terms specified in the Offer.

**7.2.3** Closing of the sale of the Interest will occur as stated in the Offer; provided, however, that the closing will not be less than 45 days after expiration of the 30-day notice period.

**7.2.4** If the other Member fails or refuses to notify the transferring Member of his desire to acquire all of the Interest proposed to be transferred within the 30-day period following receipt of the Notice, then the Member will be deemed to have waived his right to acquire the Interest on the terms described in the Offer, and the transferring Member may sell and convey the Interest consistent with the Offer to any other person or entity; provided, however, that notwithstanding anything in Section 7.2 to the contrary, should the sale to a third person be at a price or on terms that are more favorable to the purchaser than stated in the Offer, then the transferring Member must reoffer the sale of the Interest to the remaining Members at that other price or other terms; provided, further, that if the sale to a third person is not closed within six months after the expiration of the 30-day period described above, then the provisions of Section 7.2 will again apply to the Interest proposed to be sold or conveyed.

**7.3 Substituted Parties.** Any transfer in which the transferee becomes a fully substituted Member is not permitted unless and until:

(1) The transferor and assignee execute and deliver to the Company the documents and instruments of conveyance necessary or appropriate in the opinion of counsel to the Company to effect the transfer and to confirm the agreement of the permitted assignee to be bound by the provisions of this Agreement; and

(2) The transferor furnishes to the Company an opinion of counsel, satisfactory to the Company, that the transfer will not cause the Company to terminate for federal income tax purposes or that any termination is not adverse to the Company or the other Members.

**7.4 Death or Incompetency of Member.**

**7.4.1** On the death or adjudicated incompetence of a Member, unless the Company exercises its rights under Section 7.5 and subject to the exercise of rights by Members under Section 7.6, the successor in interest to the Member (whether an estate, or otherwise) will receive only the economic right to receive distributions whenever made by the Company and the Member's allocable share of taxable income, gain, loss, deduction, and credit (the "Economic Rights") unless and until the other Member admits the transferee as a fully substituted Member in accordance with the provisions of Section 7.3.

**7.4.2** Any transfer of Economic Rights pursuant to Section 7.4 will not include any right to participate in management of the Company, including any right

to vote, consent to, or approve any actions of the Operating Manager, however the estate will be entitled to receive information about the Company, its operations and financial condition. Following any transfer of only the Economic Rights of a Member's Interest in the Company, the transferring Member's power and right to vote or consent to any matter submitted to the Member will be eliminated, and the Ownership Interests of the remaining Members, for purposes only of such votes, consents, and participation in management, will be proportionately increased until such time, if any, as the transferee of the Economic Rights becomes a fully substituted Member.

**7.5 Death Buyout.** Notwithstanding Section 7.4, the Members covenant and agree that on the death of the principal of a Member, the Company, at its option, by providing written notice to the estate of the deceased Member within 60 days of the death of the Member, may purchase, acquire, and redeem the Interest of the deceased Member in the Company pursuant to Section 7.5.

**7.5.1** The value of the deceased Member's Interest in the Company will be determined by the accountant for the Company based on the book value of the Company on the date of the Member's death.

**7.5.2** Closing of the sale of the deceased Member's Interest in the Company will be held at the office of the Company on a date designated by the Company, and will not be later than 90 days after the date of the determination of the deceased Member's Interest in the Company. If no personal representative has been appointed within 60 days after the deceased Member's death, the surviving Members have the right to apply for and have a personal representative appointed.

**7.5.3** At closing, the Company will pay the purchase price for the deceased Member's Interest in the Company. If the purchase price is less than \$10,000, the purchase price will be paid in cash; if the purchase price is \$10,000 or more, the purchase price will be paid as follows:

(1) \$50,000 in cash, bank cashier's check, or certified funds;

(2) The balance of the purchase price by the Company executing and delivering its Promissory Note for the balance, with interest at the prime interest rate stated by Bank of America at the time of the deceased Member's death. Interest will be payable monthly, with the principal sum being due and payable in equal monthly installments over a period not to exceed 10 years. The Promissory Note will be secured by the ownership shares being transferred and will contain provisions that the principal sum may be paid in whole or in part at any time, without penalty.

**7.5.4** Upon receipt of the last installment payment, the deceased Member's estate or personal representative must assign to the Company all of the deceased

Member's Interest in the Company free and clear of all liens, claims, and encumbrances, and, at the request of the Company, the estate or personal representative must execute all other instruments as may reasonably be necessary to vest in the Company all of the deceased Member's right, title, and interest in the Company and its assets. If either the Company or the deceased Member's estate or personal representative fails or refuses to execute any instrument required by this Agreement, the other party is hereby granted the irrevocable power of attorney which, it is agreed, is coupled with an interest, to execute and deliver on behalf of the failing or refusing party all instruments required to be executed and delivered by the failing or refusing party.

**7.5.5** On completion of the purchase of the deceased Member's Interest in the Company, the Ownership Interest of the remaining Member will be 100%.

**7.6** Deadlock Buyout. The provisions of this Section 7.6 shall apply if (1) this Agreement requires the unanimity of the Members, (2) the Members cannot agree among themselves as to a decision or course of action (a "Deadlock"), (3) a Member delivers to the other Member a written notice of the Member's election to invoke the provisions of this Section 7.6 (a "Deadlock Notice"), and (4) unanimity cannot be reached within 45 days after delivery of the Deadlock Notice to the other Member.

**7.6.1.** A Member who believes that there is a Deadlock may deliver to the other Member a Deadlock Notice stating with particularity the issue or decision on which the Member believes there is a Deadlock. If the Members cannot resolve the Deadlock within 45 days after delivery of the Deadlock Notice (the "Resolution Period"), then during the 30-day period after expiration of the Resolution Period, any Member (the "Initiating Member") may deliver to the other Member (the "Responding Member") a written notice (the "Buyout Notice") invoking the provisions of this Section 7.6. The Buyout Notice shall set forth a dollar figure selected by the Initiating Member for the total value of the Company's assets, such value to be determined taking into account any and all debts, mortgages, or other liabilities of the Company (which figure is hereinafter referred to as the "Total Net Asset Value").

**7.6.2** Within 60 days after the delivery of such notice by the Initiating Member, the Responding Member shall furnish written notice to the Initiating Member electing either to purchase the Initiating Member's entire rights and interests in the Company or to sell the Responding Member's entire rights and interest in the Company to the Initiating Member, at the cash purchase price provided for in Section 7.6.5. If the Responding Member does not effectively give either notice, then the Responding Member shall be deemed to have elected to sell his rights and interests in the Company to the Initiating Member at such purchase price.

**7.6.3** Closing shall take place on the 30th day after the expiration of the 60-day period provided in Section 7.6.2 for the giving of notice of election by the Responding Member or, if that 30th day shall fall on a weekend or a holiday, then on the next ensuing business day thereafter. The closing shall occur at a time and place in Portland, Oregon, to be designated by the purchasing Member. At the time and place of closing, the selling Member shall convey, transfer, and assign to the purchasing Member by assignment, bill of sale, and such other instruments of transfer as shall reasonably be required, all of the selling Members' rights and interests in and to the Company and all its assets, and shall, to the extent requested by the purchasing Member, cooperate to effect the smooth and efficient continuation of Company affairs.

**7.6.4** The purchase price to be paid by the purchasing Member to the selling Member shall be equal to the amount that the selling Member would have received if all of the Company's assets had been sold on the date of closing for a cash price equal to the Total Net Asset Value, and the proceeds thereof were applied and distributed in the manner provided in Section 8 of this Agreement, except that any reserves for contingencies shall be taken into account for this purpose. The purchase price shall be payable in its entirety over a period not to exceed 120 months.

## **7.7 Bankruptcy of Member.**

**7.7.1** In the event of bankruptcy of a Member, unless the Company exercises its rights under Section 7.5 and subject to the exercise of rights by the Managers under Section 7.6, the successor in interest to the Member (whether a bankruptcy trustee, or otherwise) will receive only the economic right to receive distributions whenever made by the Company and the Member's allocable share of taxable income, gain, loss, deduction, and credit (the "Economic Rights") unless and until the Managers admits the transferee as a fully substituted Member in accordance with the provisions of Section 7.3.

**7.7.2** Any transfer of Economic Rights pursuant to Section 7.3.1 will not include any right to participate in management of the Company, including any right to vote, consent to, or approve any actions of the Operating Manager(s), and will not include any right to information on the Company or its operations or financial condition. Following any transfer of only the Economic Rights of a Member's Interest in the Company, the transferring Member's power and right to vote or consent to any matter submitted to the Member will be eliminated, and the Operating Managers will assume full authority to vote the bankrupt Members interest until such time, if any, as the transferee of the Economic Rights becomes a fully substituted Member.

## **7.8 Buy-out of Bankrupt Members' Interest.**

**7.8.1** In the event of bankruptcy of a Member, the Operating Managers will have the right to purchase the bankrupt Members interest under the following terms: At closing, the Company will pay the purchase price for the bankrupt Member's Interest in the Company. If the purchase price is less than \$10,000, the purchase price will be paid in cash; if the purchase price is \$10,000 or more, the purchase price will be paid as follows:

(1) \$10,000 in cash, bank cashier's check, or certified funds;

(2) The balance of the purchase price by the Company executing and delivering its promissory note for the balance, with interest at the prime interest rate stated by Bank of America at the time of the Members' bankruptcy, whether voluntary or involuntary. Interest will be payable quarterly, with the principal sum being due and payable in sixty (60) equal quarterly installments. The promissory note will be unsecured and will contain provisions that the principal sum may be paid in whole or in part at any time, without penalty.

**7.8.2** At the closing, the bankrupt Members' trustee must assign to the Company all of the Member's Interest in the Company free and clear of all liens, claims, and encumbrances, and, at the request of the Company, and must execute all other instruments as may reasonably be necessary to vest in the Company all of the bankrupt Member's right, title, and interest in the Company and its assets. If either the Company or the bankrupt Members' trustee fails or refuses to execute any instrument required by this Agreement, the other party is hereby granted the irrevocable power of attorney which, it is agreed, is coupled with an interest, to execute and deliver on behalf of the failing or refusing party all instruments required to be executed and delivered by the failing or refusing party.

**7.8.3** The closing shall occur at a time and place in Portland, Oregon, to be designated by the purchasing Operating Manager(s), but in no case greater than 60 days from approval of the sale by a bankruptcy court with proper jurisdiction. At the time and place of closing, the selling Member and/or its' trustee shall convey, transfer, and assign to the purchasing Member/Manager by assignment, bill of sale, and such other instruments of transfer as shall reasonably be required, all of the selling Members' rights and interests in and to the Company and all its assets, and shall, to the extent requested by the purchasing Member, cooperate to effect the smooth and efficient continuation of Company affairs.

**7.8.4** The purchase price to be paid by the purchasing Member to the selling Member shall be equal to the amount that the selling Member would have received if all of the Company's assets had been sold on the date of closing for a cash price, and the proceeds thereof were applied and distributed in the manner provided in Section 8 of this Agreement, except that any reserves for contingencies shall not be taken into account for this purpose.

## **SECTION 8. DISSOLUTION AND WINDING UP OF THE COMPANY**

**8.1 Dissolution.** The Company will be dissolved on the happening of any of the following events:

- (1) The consent of holders of 66% majority of the Members to dissolve the Company; or
- (2) By operation of law.
- (3) The duration shall be perpetual, if not either earlier terminated or extended by the Managers.

**8.2 Winding Up.** Upon the dissolution of the Company, the Manager(s) (or, if there is no Manager, a liquidator elected by the Members) will take full account of the Company's assets and liabilities, and the assets will be liquidated as promptly as is consistent with obtaining their fair value, and the proceeds, to the extent sufficient to pay the Company's obligations with respect to such liquidation, will be applied and distributed in the following order, after any gain or loss realized in connection with the liquidation has been allocated in accordance with Section 3, and the Members' Capital Accounts have been adjusted to reflect such allocation and all other transactions through the date of such distribution:

- (a) To payment and discharge of the expenses of liquidation and of all of the Company's debts and liabilities, including debts and liabilities owed to Members; and
- (b) To Members in the amount of their respective adjusted positive Capital Account balances on the date of distribution.

## **SECTION 9. GENERAL PROVISIONS**

**9.1 Amendments.** Amendments to this Agreement may be proposed by any Member or Manager. A proposed amendment will be adopted and become effective as an amendment only on the written approval of all the Members.

**9.2 Governing Law.** This Agreement and the rights and obligations of the parties under it are governed by and interpreted in accordance with the laws of the state of Oregon (without regard to principles of conflicts of law).

**9.3 Waiver of Action for Partition.** Each of the Members irrevocably waives, during the existence of the Company and during the period of its winding up and liquidation following any event of dissolution, any right that the Member may have to maintain any action for partition with respect to any of the assets of the Company.

**9.4 Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same counterpart. All counterparts will be construed together and will constitute one and the same Agreement. A single counterpart may be introduced as evidence of this Agreement.

**9.5 Parties in Interest.** Subject to the limitations on transfers of membership interests set forth in this Agreement, each and every covenant, term, provision, and agreement is binding on and inures to the benefit of the parties and their heirs, successors, assigns, and legal representatives.

**9.6 Entire Agreement; Modification.** This Agreement constitutes the entire understanding and agreement between the Members with respect to the subject matter of this Agreement. There are no agreements, understandings, restrictions, representations, or warranties between the Members other than those in this Agreement or referred to or provided for in this Agreement. No modification or amendment of any provision of this Agreement will be binding on any Member unless it is in writing and signed by all the Members.

**9.7 Attorney Fees.** In the event of any suit or action to enforce or interpret any provision of this Agreement (or that is based on this Agreement), the prevailing party is entitled to recover, in addition to other costs, reasonable attorney fees in connection with the suit, action, or arbitration, and in any appeals. The determination of who is the prevailing party and the amount of reasonable attorney fees to be paid to the prevailing party will be decided by the court or courts, including any appellate courts, in which the matter is tried, heard, or decided.

**9.8 Further Effect.** The parties agree to execute other documents reasonably necessary to further effect and evidence the terms of this Agreement, as long as the terms and provisions of the other documents are fully consistent with the terms of this Agreement.

**9.9 Severability.** If any term or provision of this Agreement is held to be void or unenforceable, that term or provision will be severed from this Agreement, the balance of the Agreement will survive, and the balance of this Agreement will be reasonably construed to carry out the intent of the parties as evidenced by the terms of this Agreement.

**9.10 Captions.** The captions used in this Agreement are for the convenience of the parties only and will not be interpreted to enlarge, contract, or alter the terms and provisions of this Agreement.

**9.11 Notices.** All notices required to be given by this Agreement will be in



writing and will be effective when actually delivered or, if mailed, when deposited as certified mail, postage prepaid, directed to the addresses first shown above for each Member or to any other address that a Member may specify by notice given in conformance with these provisions to the other Members.

IN WITNESS WHEREOF, the parties to this Agreement execute this Operating Agreement as of the date and year first above written.

**MANAGERS:**



By: Gordon C. Root, Manager



Richard L. Waible, Manager

**MEMBERS:**



By: Gordon C. Root, Manager  
Root Holdings, LLC



Richard L. Waible, Manager  
City Redevelopment, LLC

## **APPENDIX 3**

### **Definition of Terms for Section 3**

**Adjusted Capital Account Deficit.** A deficit balance in any Member=s Capital Account at the end of any fiscal year, after adjustment to reflect any Adjustment Items, to the extent that the deficit exceeds the amount of a Member=s shares of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain (if any) that the Member is deemed to be obligated to restore pursuant to Treasury Regulation ' ' 1.704-2(g)(1) and 1.704-2(i)(5).

**Adjustment Items.** Adjustments, allocations, and distributions described in Treasury Regulation ' 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

**Capital Account.** The account maintained for each Member pursuant to Section 7.6.

**Net Cash Flow.** For any given fiscal period of the Company, the amount by which: (1) the gross cash receipts received by the Company during that fiscal period exceed (2) the sum, without duplication, of: (a) all cash operating expenses of the Company during that fiscal period, (b) debt service payments made during that fiscal period on all indebtedness of the Company, (c) payments made during that fiscal period on account of the maintenance, leasing, repair, replacement, or improvement of property of the Company, and (d) all amounts allocated during that fiscal period, in the reasonable judgment of the Manager, to reserves established to meet the reasonable needs of the business, including working capital and capital improvement requirements and for reserves for unknown or unfixed liabilities or contingencies of the Company.

## **APPENDIX 3.5**

### **Special Allocations and Limitations**

**(1) Limitations on Allocations of Loss.** In no event will any Company loss or deduction, or item thereof, be allocated to any Member to the extent that the Member has, or would have as a result of the allocation, an Adjusted Capital Account Deficit in the Member's Capital Account as of the end of the Company taxable year to which the allocation relates. Any loss or deduction, the allocation of which to a Member is disallowed by the foregoing restriction, will be reallocated to those Members who do not have an Adjusted Capital Account Deficit as of the end of such taxable year.

**(2) Qualified Income Offset.** Notwithstanding any other provision of the Agreement or this Appendix 3.5, in the event any Member for any reason receives an Adjustment Item for any fiscal year that results in an Adjusted Capital Account Deficit for that Member, the Member will be specially allocated items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for the year) in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit, if any, created by such Adjustment Item as quickly as possible. Paragraph (2) of this Appendix 3.5 is intended to comply with the qualified income offset requirements of Treasury Regulation ' 1.704-1(b)(2)(ii)(d) and will be interpreted and applied consistently therewith.

**(3) Offsetting Allocations.** Any special allocation of items of income, gain, loss, or deduction pursuant to Paragraphs (1) or (2) of this Appendix 3.5 will be taken into account in computing subsequent allocations of Company income, gain, loss, or deduction pursuant to Section 3 of the Agreement so that the net amount of any items so allocated and all other income, gain, loss, deductions, and items thereof allocated to each Member pursuant to Section 3 will, to the extent possible, be equal to the net amount that would have been allocated to each Member pursuant to Section 3 if the special allocation had not occurred.

**(4) Allocations with Respect to Contributed or Revalued Property.** Notwithstanding any other provision of Section 3 of this Agreement, in the event Internal Revenue Code (AIRC@) ' 704(c) or IRC ' 704(c) principles applicable under Treasury Regulation ' 1.704-1(b)(2)(iv) require allocations of Company income, gain, loss, or deductions for income tax purposes in a manner different than otherwise provided in Section 3 of this Agreement, the provisions of IRC ' 704(c) and the regulations thereunder will control such allocations among the Members for income tax purposes. Any item of income, gain, loss, and deduction with respect to any property (other than cash) that has been contributed to the Company by a Member or that has been revalued for Capital Account purposes under Section 3.7 of this Agreement pursuant to Treasury Regulation ' 1.704-1(b)(2)(iv) and that is required or permitted to be allocated to such Member for income tax purposes

under IRC ' 704(c) so as to take into account the variation between the tax basis of such contributed or revalued property and its fair market value at the time of its contribution or revaluation will be allocated solely for income tax purposes in the manner so required or permitted under IRC ' 704(c) using the method described in Treasury Regulation ' 1.704-3 (or any successor regulation) selected by the Manager.