

**FIRST AMENDED AND RESTATED  
OPERATING AGREEMENT  
OF  
DD SALEM CENTER TWO, LLC**

This First Amended and Restated Operating Agreement of DD Salem Center Two, LLC (the “**Company**”) dated as of July 31, 2022 is entered into by and among the Members listed on Exhibit A attached hereto and any other persons that may hereafter become Members or successors in interests in the Company.

Recitals

A. The Company was formed as an Oregon limited liability company on May 2, 2019 and Deacon Development, LLC was the sole member of the Company under the Operating Agreement dated May 2, 2019 (the “**Prior Agreement**”).

B. The purposes of the Company is to, among other things, acquire and develop, that certain property located at 420 Center Street NE, Salem, Oregon (the “**Real Property**”).

C. The Members set forth on the attached Exhibit A are entering into this Operating Agreement in order to define their respective rights and obligations in connection with the ownership, operation and governance of the Company.

Agreements

NOW THEREFORE, in consideration of the covenants contained herein and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Members covenant and agree as follows:

**ARTICLE 1  
DEFINITIONS**

The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided herein):

“**Act**” shall mean the Oregon Limited Liability Company Act.

“**Additional Member**” shall mean a Member, other than a Member identified on the attached Exhibit A or a Substitute Member, who has acquired a Membership Interest from the Company.

**“Adjusted Capital Contribution Balance”** means at any time the Aggregate Capital Contribution Amount, reduced by the aggregate amount of distributions made to the Members pursuant to Section 8.2(c) and Section 8.3(c) at or before such time.

**“Adjusted Deficit”** shall mean, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments: The Capital Account shall be increased by any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the next to the last sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and the Capital Account shall be decreased by the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Regulations. The foregoing definition of Adjusted Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

**“Affiliate”** shall mean, with respect to any Person: (a) any Person directly or indirectly controlling, controlled by or under common control with such Person, (b) any Person owning or controlling ten percent or more of the outstanding voting interests of such Person, (c) any officer, director, or manager of such Person, or (d) any Person who is an officer, director, manager, trustee, or holder of ten percent or more of the voting interests of any Person described in clauses (a) through (c) of this sentence. For purposes of this definition, the term **“controls,” “is controlled by,”** or **“is under common control with”** shall mean 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.

**“Aggregate Capital Contribution Amount”** means at any time the aggregate amount of the Capital Contributions made by all Members at or before such time.

**“Agreement”** shall mean this Operating Agreement, as amended or restated from time to time.

**“Articles”** shall mean the Articles of Organization of the Company previously filed with the Oregon Secretary of State, as amended or restated from time to time.

**“Assignee”** shall mean a Person who becomes the owner of Economic Rights by Transfer and who has not been admitted as a Substitute Member.

**“Bankruptcy”** shall mean, with respect to any Person, a Voluntary Bankruptcy or an Involuntary Bankruptcy.

**“Business Day”** shall mean any day other than Saturday, Sunday or any legal holiday observed in Oregon.

**“Capital Account”** shall mean the account maintained with respect to a Member determined in accordance with Section 6.3.

**“Capital Contribution”** means the total amount of cash and the fair market value of any other property contributed to the Company by a Member (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code), in the case of the latter, as agreed upon by the Member and the Manager.

**“Cause”** shall mean commission of a felony or acts or omissions pertaining to the Company and constituting fraud or embezzlement, as adjudicated by a court of competent jurisdiction, or the commission of willful misconduct.

**“Cessation Event”** shall have the meaning set forth in Section 11.1.

**“Code”** shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequent superseding federal revenue laws.

**“Company”** shall have the meaning given in the Recitals to this Agreement.

**“Company Minimum Gain”** shall mean the same as “partnership minimum gain” as set forth in Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

**“Company Property”** shall mean any Property owned by the Company.

**“Confidential Information”** shall have the meaning set forth in Section 16.15.

**“Contribution”** shall mean, with respect to any Member, the amount of money and the initial Gross Asset Value of any Property (other than money) contributed or to be contributed to the Company with respect to the interest in the Company held by such Person.

**“Deacon Trust”** shall mean the Steven D. Deacon Revocable Trust dated June 17, 1993.

**“Depreciation”** shall mean, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager.

**“Dissolution Event”** shall mean the events identified in Section 12.2.

**“Economic Rights”** shall mean a Member’s share of the Profits, Losses and distributions of Company Property pursuant to the Act, the Articles and this Agreement but shall not include any Management Rights.

**“Entity”** shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.

**“Family”** shall mean (a) if a Member is an individual, a Member’s siblings and natural and adoptive lineal ancestors or descendants and spouses of any of the foregoing, and trusts, partnerships and limited liability companies for which the Members and such siblings, ancestors and descendants and spouses are the sole non-charitable beneficiaries, partners or members, as the case may be, and (b) if a Member is an Entity, those individuals who directly or indirectly own a membership interest or share of such Member or are beneficiaries of a trust that directly or indirectly owns a membership interest or share of such Member and each such individual’s siblings and natural and adoptive lineal ancestors or descendants and spouses of any of the foregoing, and trusts, partnerships and limited liability companies for which such individual and such siblings, ancestors and descendants and spouses are the sole non-charitable beneficiaries, partners or members, as the case may be.

**“Fiscal Year”** shall mean the Company’s fiscal year, which shall be determined pursuant to Code Section 706.

**“Gross Asset Value”** shall mean an asset’s adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Manager;

(b) The Gross Asset Values of all assets shall be adjusted to equal their respective gross fair market values, as determined by the Manager, as of the following times:

(1) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Contribution;

(2) the distribution by the Company to a Member of more than a de minimis amount of Property as consideration for an interest in the Company;

(3) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g);

(4) in connection with the grant of an interest in the Company (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a member capacity, or by a new Member acting in a partner capacity in anticipation of being a Member; and

(5) the Gross Asset Value of any asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the Manager;

provided, however, that adjustments pursuant to clauses (1), (2) and (4) above shall be made only if the Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relative Economic Rights of the Members.

(c) The Gross Asset Values of assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m) and subparagraph (f) of the definition of Profits and Losses and Section 7.2(g) hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (c) to the extent the Manager determines that an adjustment pursuant to subparagraph (b) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (c); and

(d) The foregoing adjustments shall be made in lieu of any adjustments or allocations provided for under ORS 63.185(4) of the Act.

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraph (a), subparagraph (b), or subparagraph (c) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

**“Initial Contributions”** shall mean the initial Contributions made pursuant to Section 6.1.

**“Involuntary Bankruptcy”** shall mean, with respect to any Person, without the consent or acquiescence of such Person, the entering of an order for relief or approving a petition for relief or reorganization or any other petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or other similar relief under any present or future bankruptcy, insolvency or similar statute, law or regulation, or the filing of any such petition against such Person which petition shall not be dismissed within 90 days, or, without the consent or acquiescence of such Person, the entering of an order appointing a trustee, custodian, receiver, or liquidator of such Person or of all or any substantial part of the property of such Person which order shall not be dismissed within 60 days.

**“Majority”** shall mean, with respect to the Members, greater than fifty percent (50%), in terms of Percentage Interests, of all Members then entitled to vote, consent to or otherwise decide any matter submitted to the Members.

**“Management Rights”** shall mean the right of a Member to participate in the management of the Company, including rights to information and to consent or approve actions of the Members.

**“Manager”** shall mean the Person designated or selected to manage the affairs of the Company under Article 4 hereof.

“**Member**” shall mean each of the parties identified on Exhibit A who executes a counterpart or adoption of this Agreement and each of the parties who may hereafter become Additional or Substitute Members; provided that any such party shall be a Member only for so long as such party is a Member under the terms of this Agreement. The term “Member” when used in any provision relating to Capital Accounts or any other tax or financial matter shall also include any Person having Economic Rights under this Agreement.

“**Member Nonrecourse Debt**” shall have the meaning set forth in Section 1.704-2(b)(4) of the Regulations for “partner nonrecourse debt”.

“**Member Nonrecourse Debt Minimum Gain**” shall mean an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

“**Member Nonrecourse Deductions**” shall have the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations for “partner nonrecourse deductions”.

“**Membership Interest**” shall mean a Member’s entire interest in the Company, including such Member’s Economic Rights and Management Rights.

“**Net Cash From Operations**” shall mean the gross cash proceeds from Company operations (including sales and dispositions of Company Property in the ordinary course of business) less the portion thereof used to pay or establish reserves for all Company expenses (including reserves for anticipated tenant improvements and broker commissions in connection with the leasing of the Project), debt payments, capital improvements, replacements, and contingencies, all as determined by the Manager. “Net Cash From Operations” shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established pursuant to the first sentence hereof and from Net Cash From Sales or Refinancings.

“**Net Cash From Sales or Refinancings**” shall mean the net cash proceeds from all sales and other dispositions (other than in the ordinary course of business) and all refinancings of Company Property, less any portion thereof used to establish reserves, all as determined by the Manager. “Net Cash From Sales or Refinancings” shall include all principal and interest payments received by the Company with respect to any note or other obligation acquired in connection with sales and other dispositions (other than in the ordinary course of business) of Company Property. Net cash proceeds shall mean the gross receipts (including condemnation and casualty insurance proceeds) from the refinancing, sale, exchange or other disposition (excluding leasing) of all or part of a Company Property other than in the ordinary course of business, less the costs and expenses of the refinancing, sale, exchange or other disposition (including brokerage commissions), less the amount of any outstanding indebtedness allocable to such Company Property and discharged on such sale, exchange or other disposition, and less the amount of any expenses (including capital expenditures and additions to reserves as herein provided) paid pursuant to the terms of this Agreement from the proceeds of the refinancing, sale, exchange or other disposition of such Company Property. In the event any cash proceeds

are not clearly identifiable as “Net Cash From Operations” or “Net Cash From Sales or Refinancings,” then the Manager shall determine how to categorize such cash proceeds.

“**Nonrecourse Deductions**” shall have the meaning set forth in Section 1.704-2(b)(1) of the Regulations.

“**Nonrecourse Liability**” shall have the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

“**Percentage Interest**” shall mean, for each Member, the proportion that a Member’s ownership of Units bears to the aggregate Units owned by all Members. The initial Percentage Interest for the Member are set forth on Exhibit A.

“**Person**” shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of each such Person where the context so permits.

“**Permitted Transfer**” shall mean a Transfer of a Person’s interest in the Company in accordance with the applicable provisions of Section 10.2.

“**Preferred Return**” means an amount equal to eight percent (8%) per annum, based upon a 365-day year, for the actual number of days for which the Preferred Return is being determined, compounded annually, based upon the amount of the Adjusted Capital Contribution Balance of each Member, as applicable, and any accrued, but unpaid, Preferred Return.

“**Profits**” and “**Losses**” shall mean, for each Fiscal Year, an amount equal to the Company’s taxable income or loss for such Fiscal Year, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses hereunder shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses hereunder shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (b) or subparagraph (c) of the definition of Gross Asset Value hereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by

reference to the Gross Asset Value of the Company Property disposed of, notwithstanding that the adjusted tax basis of such Property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year, computed in accordance with this Agreement;

(f) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in complete liquidation of a Member's Economic Rights, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses; and

(g) Notwithstanding any other provision in any subparagraph hereof, any items which are specially allocated pursuant to Section 7.2 or Section 7.3 hereof shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Sections 7.2 and 7.3 hereof shall be determined by applying rules analogous to those set forth in subparagraphs (a) through (f) above.

**"Property"** shall mean any property, real or personal, tangible or intangible, including money, credits, entitlements and any legal or equitable interest in or relating to such property, but excluding services and promises to perform services in the future.

**"Project"** shall mean the redevelopment of the Real Property into an approximately 147 unit, five story, apartment building and the marketing, leasing and other operation of the Real Property following completion of such redevelopment.

**"RDS Trust"** shall mean the RDS Trust dated February 7, 2013.

**"Real Property"** shall have the meaning given in the Recitals to this Agreement.

**"Regulations"** shall mean proposed, temporary and final regulations promulgated under the Code in effect as of the date the Articles were filed and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations.

**"Substitute Member"** shall mean a Person who is the owner of Economic Rights and who also possesses Management Rights and who therefore is entitled to all of the rights of membership pursuant to this Agreement.

**"Transfer"** shall mean, as a noun, any voluntary or involuntary transfer, sale or other disposition or any pledge, hypothecation or grant of a security interest, and, as a verb, voluntarily or involuntarily to transfer, sell or otherwise dispose of or to pledge, hypothecate or grant a security interest.



“**Unit**” shall mean the means by which ownership interests in the Company are expressed, whether on account of a Member’s Initial Contributions to the Company or otherwise as indicated on Exhibit A of this Agreement.

“**Voluntary Bankruptcy**” shall mean, with respect to any Person, the inability of such Person generally to pay its debts as such debts become due, or an admission in writing by such Person of its inability to pay its debts generally or a general assignment by such Person for the benefit of creditors; the filing of any petition or answer by such Person seeking to adjudicate it a bankrupt or insolvent, or seeking for itself any liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of such Person or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking, consenting to, or acquiescing in the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its property; or corporate action taken by such Person to authorize any of the actions set forth above.

## ARTICLE 2 ORGANIZATION OF COMPANY

2.1 **Organization.** By execution and filing of the Articles, the Company has been created in accordance with and pursuant to the Act.

2.2 **Nature of Business.** The Company is organized to acquire and develop, either directly or through a joint venture entity, the Real Property. With the approval of a Majority of the Members, the Company also may engage in any other lawful business permitted by the Act or the laws of any jurisdiction in which the Company may do business. The Company shall have the authority to do all things necessary or convenient to accomplish its purposes and operate its businesses.

2.3 **Defects as to Formalities.** A failure to observe any formalities or requirements of this Agreement, the Articles or the Act shall not be grounds for imposing personal liability on the Members or Manager for liabilities of the Company.

2.4 **Rights of Creditors and Third Parties.** This Agreement is entered into among the Members for the exclusive benefit of the Members and their respective heirs, successors and assigns. The Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under this Agreement or any agreement between the Company and any Member with respect to any Contribution or otherwise.

2.5 **Title to Property.** All Company Property shall be owned by the Company as an entity, and no Member shall have any ownership interest in such Property in the Member’s individual name, right or capacity, and each Member’s interest in the Company shall be personal property for all purposes. The Company shall hold all Company Property in the name of the Company and not in the name or names of any Member or Members.

### ARTICLE 3 MEMBERS

3.1 **Authority to Act.** No Member shall have any power or authority to bind the Company in the Member's capacity as a member unless the Member has been authorized in writing by the Manager to act as an agent of the Company in accordance with this Agreement. Without limitation of the foregoing, no Member shall communicate with any tenants, lenders, agents, vendors, contractors or other business associates of the Company about matters pertaining to the Company or Company Property, except with the prior written consent of the Manager.

3.2 **Limitation of Liability.** Each Member's liability shall be limited to the fullest extent provided or allowed by the Act or other applicable law. Except as otherwise provided by law, a Member will not be personally liable, merely by reason of being a Member, for any debts or losses of the Company.

3.3 **Indemnification.** To the fullest extent provided or allowed by the laws of Oregon, the Company shall indemnify the Members in their capacity as Members from and against all costs, losses, liabilities, damages, claims and expenses (including attorneys' fees as incurred at trial and on appeal) incurred by such Member in its capacity as a Member relating to action or inaction that (i) is taken in good faith on behalf of the Company and in a manner that the Member reasonably believes or believed to be within the scope of its authority granted by this Agreement or by the Manager and not opposed to the best interests of the Company, and (ii) does not constitute willful misconduct, fraud, or gross negligence.

3.4 **Voting Rights.** Members shall be entitled to vote on or consent to matters submitted to a vote of, or requiring consent from, the Members under this Agreement. Except to the extent expressly provided otherwise in this Agreement, the vote or consent of a Member shall equal that Member's Percentage Interest hereunder, and approval of any matter submitted to a vote of the Members shall be approved by the affirmative vote of a Majority of the Members.

3.5 **Actions of Members.**

(a) **Meetings.** Meetings of the Members, for any purpose or purposes, may be called by the Manager or by any Member or Members possessing a Percentage Interest of at least five percent (5%) upon at least five days prior notice to the other Members.

(b) **Place of Meetings.** The Manager may designate any place within Oregon or Washington as the location for any meeting of the Members.

(c) **Manner of Acting.** Unless otherwise expressly provided herein, Members who have an interest in the outcome of any particular matter upon which the Members vote or consent may vote or consent upon any such matter and their vote or consent, as the case may be, shall be counted in determining whether the requisite matter is approved by the Members.

(d) **Proxies.** At all meetings of the Members, a Member may vote in person or by a proxy executed in writing by the Member or by a duly authorized attorney in fact. Such proxy shall be filed with the Manager before or at the time of the meeting and may be of any duration except that a Member who shall appear in person at a meeting shall void any outstanding proxy for so long as such Member is in attendance.

(e) **Action by Members Without a Meeting.** Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by Members sufficient to have approved the actions or resolutions at issue had a meeting been held at which all Members then entitled to vote were present. Such written consents shall be delivered to the Manager for inclusion in the Company records. Action taken under this Section 3.5(e) shall be effective when the necessary Members have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

(f) **Waiver of Notice.** Whenever a notice is required to be given to any Member hereunder, a waiver thereof by such Member, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

(g) **Telephonic Meetings.** Members may participate in a meeting of the Members by means of a conference telephone or similar communications equipment provided all Members participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting.

3.6 **Books, Records, Reports and Information.** Each Member shall have the right to receive the reports and information required to be provided by the Act, the Articles or this Agreement. Upon reasonable request, each Member, and the Member's agent and attorney shall have the right, during ordinary business hours, to inspect and copy, at the requesting Member's expense, the books and records which the Manager is required to maintain and keep by the Act, the Articles or this Agreement.

## **ARTICLE 4 MANAGER**

### **4.1 General.**

(a) **Number; Designation.** The Company shall have one (1) Manager and the initial Manager is Steven D. Deacon.

(b) **Qualifications.** The Manager may be an individual or an Entity and need not be a Member or a resident of Oregon.

(c) **Term.** The Manager shall hold office until such Manager (i) dies or resigns or (ii) is removed either by the Members or for Cause in accordance with this Agreement.

(d) **Resignation.** The Manager may resign at any time by giving written notice to the Members. The resignation of the Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of the Manager in its capacity as a Member.

(e) **Removal.** The Manager may be removed as the Manager only for Cause, and only with the approval of a Majority of the Members.

**4.2 Authority of the Manager; Delegation of Authority and Management Power to Officers.** Subject to the limitations and restrictions set forth in the Act, the Articles and this Agreement (including, without limitation, the limitations and restrictions set forth in Section 4.3, the Manager shall have the sole and exclusive right to manage the business and affairs of the Company and shall have all of the rights and powers which may be possessed by a Manager under the Act, the Articles and this Agreement, including, without limitation, the authority and power to bind the Company and to execute documents and instruments on behalf of the Company consistent with its rights and authority under this Agreement. Without limiting the generality of the foregoing, the Manager shall have all authority and power necessary or convenient for entering into contracts for the development, redevelopment, construction, leasing, improvement, management, operation, financing, maintenance and repair of the Project. Notwithstanding the foregoing, control of the Company's day-to-day business and affairs may be delegated by the Manager to the officers serving from time to time, each of whom shall be an agent for the Company with the powers set forth in any enabling resolution of the Manager. The term of office of any officer shall be from the officer's appointment until the officer's death, resignation or removal or the appointment of the officer's successor. The Manager may remove any officer at any time, with or without cause and without any specification of any reason for removal.

**4.3 Matters Requiring Approval of a Majority of the Members.** The following (and any other matters this Agreement provides require Member approval) shall require the approval of a Majority of the Members, and the Manager shall not have the authority to cause the Company to do any of the following (or any other matter that requires Member approval), and shall not permit or cause the Company to do any of the following (or any other matter that requires Member approval), without the required approval of the Members:

(a) Knowingly contravene this Agreement, including, without limitation, taking or failing to take any action without the consent of the Members as and to the extent such Member consent is required in this Agreement or knowingly do any act that would make it impossible to carry on the ordinary business of the Company, except as otherwise provided in this Agreement;

(b) Possess Company Property or assign rights in specific Company Property for other than a Company purpose;

(c) Sell, convey, mortgage, pledge, create a security interest in, exchange, transfer, or otherwise dispose of all or any material part of the Company Property;

(d) Amend this Agreement or the Company's articles of organization (provided that any amendment shall require approval of the Members as provided in Article 15);

(e) File for, or cooperate in any filing for, Bankruptcy;

(f) Cease the Company's activities and dissolve (except following an authorized sale of all of the Property owned by the Company);

(g) Issue any new Membership Interest and, if applicable, admit any Additional Member or admit any Assignee as a Substitute Member;

(h) Merge, consolidate or reorganize the Company with or into any other Person or convert the Company;

(i) Commence litigation on matters relating to the Company; or

(j) Enter into any transaction with a Member or an Affiliate of a Member or the Manager not expressly provided for in this Agreement.

#### **4.4 Right to Rely on Manager.**

(a) Any Person dealing with the Company may rely (without duty of further inquiry) upon a certificate signed by the Manager as to: (i) the identity of the Manager or any Member; (ii) the existence or nonexistence of any fact or facts which constitute a condition precedent to acts by the Manager or which are in any other manner germane to the business or affairs of the Company; (iii) the Persons who are authorized to execute and deliver any instrument or document of the Company; or (iv) any act or failure to act by the Company or any other matter whatsoever involving the Company or any Member that involves the apparent carrying on in the usual way the business or affairs of the Company.

(b) Subject to compliance with the provisions of this Agreement, including obtaining any required approval of the Members, the signature of the Manager shall be necessary and sufficient to convey title to any Company Property or to execute any deeds, promissory notes, trust deeds, mortgages, leases or other instruments of conveyance or hypothecation, and all of the Members agree that a copy of this Agreement may be shown to the appropriate parties in order to confirm the same, and further agree that the signature of the Manager shall be sufficient to execute any "statement of company" or other documents necessary to effectuate this or any other provision of this Agreement. All of the Members do hereby appoint the Manager as their attorneys in fact for the execution of any or all of the documents described in this Section 4.4(b).

**4.5 Devotion of Time.** The Manager shall not be required to devote his full time to the business or affairs of the Company, but each shall devote such time as reasonably is necessary to perform his or its duties under this Agreement.

**4.6 Expenses.** The Company shall pay or reimburse the Manager for all reasonable, usual and customary out-of-pocket expenses incurred directly on behalf of the Company.

**4.7 Limitation of Liability; Indemnity.** The Manager shall not be personally liable for any debt, obligation or liability of the Company merely by reason of being the Manager. To the fullest extent provided or allowed by the Act or other applicable law, the Company shall indemnify the Manager in its capacity as Manager and the Manager's officers, directors, members and shareholders from and against all costs, losses, liabilities, damages, claims and expenses (including attorneys' fees as incurred at trial and on appeal) arising from the Manager actions or inactions taken or omitted in its capacity as Manager in good faith on behalf of the Company and in a manner that the Manager reasonably believes or believed to be within the scope of the Manager's authority granted by this Agreement or by the Members, and do not constitute willful misconduct, fraud, or gross negligence. Such indemnification obligation shall be limited to the assets of the Company and not place any personal liability on the Members.

## **ARTICLE 5 CONFLICTS OF INTEREST**

**5.1 Duty of Loyalty.** Each Member and the Manager shall be 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 Members and Manager may enter into transactions that are similar to the transactions into which the Company may enter into, and the Company, and each Member hereby waives any right or claim to participate therein. Each Member hereby waives any right or claim based on a breach of duty to the Company, or on any other basis arising from the interests of the Manager or its Affiliates in such competing properties. The Manager shall also have the right, with the prior written consent of a Majority of the Members, to contract on behalf of the Company, for goods or services with Affiliates of the Manager, provided that such goods or services are of equal or better quality when compared to the goods and services available from qualified professional non-Affiliates engaged in providing such goods and services and are provided at commercially reasonable prices not in excess of prevailing market prices.

**5.2 Other Transactions.** A Member or Manager shall not be deemed to violate a duty or obligation to the Company, merely because the conduct furthers the interest of the Member or Manager with respect to the Company. Subject to approval by a Majority of the Members after full disclosure of all material facts, a Member or Manager may lend money to and transact other business with the Company. The rights and obligations of a Member or Manager who lends money to or transacts business with the Company, shall be the same as those of a Person who is not a Member or Manager, subject to other applicable law. No transaction with the Company shall be voidable solely because a Member or Manager has a direct or indirect interest in the transaction if the transaction is approved or ratified as provided in this Agreement or in the Act.

## ARTICLE 6 CAPITAL CONTRIBUTIONS

### 6.1 Initial Contributions.

(a) The Members shall each contribute to the Company, as each Member's Initial Contribution, the cash and other Property stated for each such Member in Exhibit A hereto. The respective Percentage Interests of the Members shall be as set forth in Exhibit A hereto.

(b) No interest shall accrue on any Contribution and no Member shall have the right to withdraw or be repaid any Contribution except as provided in this Agreement.

**6.2 Additional Capital Contributions.** One or more of the Members may from time to time make additional capital contributions to the Company determined by the Manager, acting in good faith, to be required for permitted purposes of the Company. Each Member will be entitled, but not obligated, to contribute the Member's proportionate share of any additional capital contribution based on Percentage Interests and will not be in default under this Agreement if the Member does not contribute any or all of the Member's proportionate share of any additional capital contribution. For the avoidance of doubt, unless a Majority of the Members agrees otherwise, the Percentage Interests of the Members shall not be adjusted in connection with any additional capital contributions made to the Company, including without limitation any additional capital contributions made disproportionately. Instead, unless otherwise agreed by a Majority of the Members, any additional capital contribution made other than proportionately by all Members shall be entitled to a preferential return on capital equal to the prime rate quoted in *The Wall Street Journal* from time to time plus 6%. Unless and until any such preferential return has been fully distributed to the contributing Member or Members and any such additional capital contribution has been fully returned to the contributing Member or Members through distributions under Section 8.2 or Section 8.3, the Company shall not make any other distributions under Section 8.2 or Section 8.3 except that the Company shall in accordance with Section 8.2 endeavor to distribute to all Members out of available Net Cash Flow from Operations that the Company shall reserve for such purpose distributions sufficient to cover the amount the Manager reasonably estimates the Members require on a cumulative basis to cover federal, state and local taxes owing by the Members on the net income of the Company that passes through to the Members. In connection with any adjustment of Percentage Interests approved by a Majority of the Members, the Percentage Interests of the Members shall be adjusted to take into account any change in value and additional capital contributions made since any previous recalculation of Percentage Interests.

**6.3 Maintenance of Capital Accounts.** The Company shall establish and maintain Capital Accounts with respect to each Member in accordance with the following provisions:

(a) **Increases.** Each Person's Capital Account shall be increased by such Person's Contributions, such Person's distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 7.2 or Section 7.3 hereof, and

the amount of any Company liabilities assumed by such Person or which are secured by any Property distributed to such Person.

(b) **Decreases.** Each Person's Capital Account shall be decreased by the amount of cash and the Gross Asset Value of any Company Property (other than cash) distributed to such Person pursuant to any provision of this Agreement, such Person's distributive share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Section 7.2 or Section 7.3 hereof, and the amount of any liabilities of such Person assumed by the Company or which are secured by any property contributed by such Person to the Company.

(c) **Distribution of Assets.** If the Company at any time distributes any of its assets in kind to any Member, the Capital Accounts shall be adjusted to account for that Member's allocable share (as determined under Article 7 below) of the Profits or Losses that would have been realized by the Company had it sold the assets that were distributed at their respective fair market values immediately prior to their distribution.

(d) **Sale or Exchange of Interest.** In the event of a Transfer of all or a portion of a Person's Economic Rights in accordance with the terms of this Agreement, the Assignee shall succeed to the Capital Account of the Person to the extent it relates to the Transfer of such Person's Economic Rights.

(e) **Compliance with Section 704(b) of the Code.** The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Manager shall determine that it is prudent to modify the manner in which the Capital Accounts, or any adjustments thereto (including, without limitation, adjustments relating to liabilities which are secured by contributions or distributed property or which are assumed by the Company or Members), are computed in order to comply with such Regulations, the Manager may make such modification, provided that such modifications are not likely to have a material effect on the amounts distributed to any Person pursuant to Article 12 hereof upon the dissolution of the Company. The Manager also shall make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q). In determining the amount of any liability for purposes of this Section, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation or otherwise personally obligate any Member to make a contribution in excess of the Contributions referred to in Section 6.1 or, if applicable to the Member, under Section 12.8.



## ARTICLE 7 ALLOCATIONS

### 7.1 Profits and Losses.

(a) **Allocation of Profits.** After giving effect to the special allocations set forth in Sections 7.2 and Section 7.3, Profits for any Fiscal Year (and each item of income, gain, loss, and deduction entering into the calculation of such Profits) shall be allocated in the following order and priority; provided that, prior to any allocation provided for below, the Company shall first allocate Profits up to the amount of any accrued preferential return on capital under Section 6.2 with respect to which no prior allocation of Profits has been made under this Section 7.1(a), pro rata in accordance with the amount of the accrued preferential return to which each Member is entitled and in respect of which no such prior allocation of Profits has been made:

#### (1) Profits from Operations:

(i) First, among the Members to whom Losses were allocated in prior Fiscal Years pursuant to Section 7.1(b), in reverse order of priority, in proportion to the cumulative Losses allocated to each such person pursuant to Section 7.1(b) in all prior Fiscal Years, until the cumulative Profits allocated pursuant to this Section 7.1(a)(1)(i) and Section 7.1(a)(2)(i) below for the Fiscal Year and all prior Fiscal Years equal to the cumulative Losses allocated pursuant to Section 7.1(b) in all prior Fiscal Years;

(ii) Second, to the Deacon Trust and the RDS Trust in proportion to their relative Percentage Interests until the Deacon Trust and the RDS Trust have received aggregate cumulative allocations of Profits pursuant to this Section 7.1(a)(1)(ii) and Section 7.1(a)(2)(ii) below equal to the amount of cumulative distributions to the Deacon Trust and the RDS Trust, respectively, pursuant to Section 8.2(a) and Section 8.3(a);

(iii) Third, to the Members in proportion to their relative Percentage Interests until the Members have received aggregate cumulative allocations of Profits pursuant to this Section 7.1(a)(1)(iii) and Section 7.1(a)(2)(iii) below equal to the amount of cumulative distributions to the Members, respectively, pursuant to Section 8.2(b) and Section 8.3(b); and

(iv) Thereafter, to Deacon Development, LLC.

(2) **Profits from Sales of Company Property:**

(i) First, among the Members to whom Losses were allocated in prior Fiscal Years pursuant to Section 7.1(b), in reverse order of priority, in proportion to the cumulative Losses allocated to each such person pursuant to Section 7.1(b) in all prior Fiscal Years, until the cumulative Profits allocated pursuant to this Section 7.1(a)(2)(i) and Section 7.1(a)(1)(i) above for the Fiscal Year and all prior Fiscal Years equal to the cumulative Losses allocated pursuant to Section 7.1(b) in all prior Fiscal Years;

(ii) Second, to the Deacon Trust and the RDS Trust in proportion to their relative Percentage Interests until the Deacon Trust and the RDS Trust have received aggregate cumulative allocations of Profits pursuant to this Section 7.1(a)(2)(ii) and Section 7.1(a)(1)(ii) above equal to the amount of cumulative distributions to the Deacon Trust and the RDS Trust, respectively, pursuant to Section 8.2(a) and Section 8.3(a);

(iii) Third, to the Members in proportion to their relative Percentage Interests until the Members have received aggregate cumulative allocations of Profits pursuant to this Section 7.1(a)(2)(iii) and Section 7.1(a)(1)(iii) above equal to the amount of cumulative distributions to the Members, respectively, pursuant to Section 8.2(b) and Section 8.3(b); and

(iv) Thereafter, to Deacon Development, LLC.

(b) **Allocation of Losses.** After giving effect to the special allocations set forth in Sections 7.2 and 7.3, and subject to Sections 7.4, Losses shall be allocated in the following order and priority:

(1) First, Losses shall be allocated to Deacon Development, LLC, until the Capital Account balance of Deacon Development, LLC is reduced to zero;

(2) Second, Losses shall be allocated among the Members (other than Deacon Development, LLC), in proportion to their respective Capital Account balances, until such Capital Account balances are reduced to zero; and

(3) Thereafter, to the Members in proportion to their relative Percentage Interests.

**7.2 Special Allocations.** The following special allocations shall be made in the following order:

(a) **Minimum Gain Chargeback.** Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Article 7, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Person's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the preceding sentence shall be made in proportion to the respective

amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This Section 7.2(a) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(b) **Member Minimum Gain Chargeback.** Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Article 7, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Person who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Person's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 7.2(b) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

(c) **Qualified Income Offset.** In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), Section 1.704-1(b)(2)(ii)(d)(5) or Section 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 7.2(c) shall be made only if and to the extent that such Member would have an Adjusted Deficit after all other allocations provided for in this Article 7 have been tentatively made as if this Section 7.2(c) were not in this Agreement.

(d) **Gross Income Allocation.** In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of the amount such Member is obligated to restore pursuant to any provision of this Agreement, and the amount such Member is deemed to be obligated to restore pursuant to the next to the last sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 7.2(d) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article 7 have been made as if Section 7.2(c) hereof and this Section 7.2(d) were not in the Agreement.

(e) **Nonrecourse Deductions.** Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Members in accordance with their Percentage Interests.

(f) **Member Nonrecourse Deductions.** Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(g) **Section 754 Adjustments.** To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of the Member's interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(h) **Allocations Relating to Taxable Issuance of Company Interests.** Any income, gain, loss or deduction realized as a direct or indirect result of the issuance of an interest by the Company to a Member (the "**Issuance Items**") shall be allocated among the Members so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Agreement to each Member, shall be equal to the net amount that would have been allocated to each such Member if the Issuance Items had not been realized.

(i) **Allocations Relating to Substitute Members.** Allocation provisions of the Act, if any, shall not apply in the event of the admission of a Substitute Member.

**7.3 Curative Allocations.** The allocations set forth in Sections 7.2(a)-(g) and Section 7.4 hereof (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 7.3. Therefore, notwithstanding any other provision of this Article 7 (other than the Regulatory Allocations), the Manager shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner they determine appropriate so that, after such offsetting allocations are made, each Member's Capital Account is, to the extent possible, equal to the Capital Account such Member would have had if the Regulatory Allocations were not part of this Agreement and all Company items were allocated pursuant to Sections 7.1 and 7.2(h).

**7.4 Loss Limitation.** Losses allocated pursuant to Section 7.1(b) hereof shall not exceed the maximum amount of Losses that can be allocated without causing any Member to have an Adjusted Deficit at the end of any Allocation Year. In the event some but not all of the Members would have Adjusted Deficits as a consequence of an allocation of Losses pursuant to Section 7.1(b) hereof, the limitation set forth in this Section 7.4 shall be applied on a Member by Member basis and Losses not allocable to any Member as a result of such limitation shall be allocated to the other Members in accordance with the positive balances in such Member's

Capital Accounts so as to allocate the maximum permissible Losses to each Member under Regulations Section 1.704-1(b)(2)(ii)(d).

## 7.5 Other Allocation Rules.

(a) For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Manager using any permissible method under Code Section 706 and the Regulations thereunder.

(b) The Members are aware of the income tax consequences of the allocations made by this Article 7 and hereby agree to be bound by the provisions of this Article 7 in reporting their shares of Company income and loss for income tax purposes.

(c) Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Regulations Section 1.752-3(a)(3), the Members' interests in Company profits are in proportion to their Sharing Ratios.

(d) To the extent permitted by Section 1.704-2(h)(3) of the Regulations, the Manager shall endeavor to treat distributions of Net Cash From Operations or Net Cash From Sales or Refinancings as having been made from the proceeds of a Nonrecourse Liability or a Member Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Deficit for any Member.

(e) All allocations to Members shall include the Manager to the extent that the Manager is also a Member.

**7.6 Tax Allocations:** Code Section 704(c). In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any Property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with subparagraph (a) of the definition of Gross Asset Value) using the remedial method under Code Section 704(c).

In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (b) of the definition of Gross Asset Value hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

Any elections or other decisions relating to such allocations shall be made by the Manager in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 7.6 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Person's Capital

Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

## ARTICLE 8 DISTRIBUTIONS

8.1 **General.** Except as otherwise provided in the Act, the Articles and this Agreement, no Member shall have the right or power to demand or receive a distribution in a form other than cash and shall not be required or compelled to accept a distribution of any asset in kind, to the extent that the interest distributed would exceed the Member's pro rata share of operating or liquidating distributions, as the case may be. All distributions to Members shall include the Manager to the extent that the Manager is also a Member. Notwithstanding anything contained in this Agreement or the Articles to the contrary, no distribution shall be made to a Member in violation of the Act.

8.2 **Distributions of Net Cash From Operations.** Except as provided under Section 8.4 below, the Manager shall cause the Company to distribute Net Cash From Operations to the Members as follows:

(a) First, to the Deacon Trust and the RDS Trust in proportion to their relative Percentage Interests until each of the Deacon Trust and the RDS Trust has received aggregate cumulative distributions pursuant to this Section 8.2(a) and Section 8.3(a) below equal to \$100,000.00;

(b) Second, to the Members in proportion to their relative Percentage Interests until the Members have received aggregate cumulative distributions pursuant to this Section 8.2(b) and Section 8.3(b) below equal to the Preferred Return;

(c) Third, to the Members in proportion to their Percentage Interests until the Members have received aggregate cumulative distributions pursuant to this Section 8.2(c) and Section 8.3(c) below so that the Adjusted Capital Contribution Balance is reduced to zero; and

(d) Thereafter, to Deacon Development, LLC;

provided that, prior to making any such distribution under this Section 8.2, the Company shall first comply with Section 6.2, if applicable, with respect to distribution of a preferential return on, and the return of, any additional capital contributions made other than proportionately under Section 6.2. Distributions to the Members shall in no manner affect their respective Percentage Interests or their voting rights pursuant to Section 3.4.

8.3 **Distributions of Net Cash From Sales or Refinancings.** Except as provided under Section 8.4 below, the Manager shall cause the Company to distribute Net Cash From Sales or Refinancings to the Members as follows:

(a) First, to the Deacon Trust and the RDS Trust in proportion to their relative Percentage Interests until each of the Deacon Trust and the RDS Trust has received aggregate

cumulative distributions pursuant to this Section 8.3(a) and Section 8.2(a) above equal to \$100,000.00;

(b) Second, to the Members in proportion to their relative Percentage Interests until the Members have received aggregate cumulative distributions pursuant to this Section 8.3(b) and Section 8.2(b) above equal to the Preferred Return;

(c) Third, to the Members in proportion to their Percentage Interests until the Members have received aggregate cumulative distributions pursuant to this Section 8.3(c) and Section 8.2(c) above so that the Adjusted Capital Contribution Balance is reduced to zero; and

(d) Thereafter, to Deacon Development, LLC;

provided that, prior to making any such distribution under this Section 8.3, the Company shall first comply with Section 6.2, if applicable, with respect to distribution of a preferential return on, and the return of, any additional capital contributions made other than proportionately under Section 6.2.

**8.4 Liquidating Distributions.** Notwithstanding Section 8.2 and Section 8.3 above, in the event the Company is dissolved and the business and affairs are wound up, distributions shall be made pursuant to Section 12.4.

**8.5 Tax Payment Distributions.** Except to the extent otherwise prohibited by the Act, as advances on the distributions otherwise provided for by Section 8.2 and Section 8.3, the Manager shall endeavor to cause the Company to distribute to the Members with respect to each calendar quarter an amount equal to the product of (i) the highest combined state and federal marginal tax rate then applicable to any Member multiplied by (ii) the taxable income of the Company for the portion of the Fiscal Year through the calendar quarter to which such distribution relates, as estimated by the Company, less amounts previously distributed with respect to such Fiscal Year. The amount otherwise distributable under the foregoing to any Member may be reduced to take account of any over-distribution made to the Member on a cumulative basis with respect to the estimated tax liability of the Member and any capital needs of the Company reflected in reserves maintained by the Company at the direction of the Manager.

**8.6 Amounts Withheld.** All amounts withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment, distribution or allocation to the Members shall be treated as amounts distributed to the Members pursuant to this Article 8 for all purposes under this Agreement. The Manager is authorized to withhold from distributions, or with respect to allocations, and to pay over to any federal, state or local government any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state or local law and shall allocate any such amounts to the Members with respect to which such amount was withheld.

## ARTICLE 9 ADDITIONAL MEMBERS

9.1 **Admission.** Persons may with the approval of a Majority of the Members be added as Additional Members upon the terms and conditions contained in this Agreement. Notwithstanding the foregoing, a Person shall not become an Additional Member unless and until such Person executes such documents and instruments as the Manager reasonably may request to confirm such Person as a Member in the Company and such Person's agreement to be bound by the terms and conditions hereof.

9.2 **Accounting.** No Additional Member shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Manager may at the time an Additional Member is admitted close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, income and expense deductions to an Additional Member for that portion of the Company's tax year in which such Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Regulations promulgated thereunder.

## ARTICLE 10 TRANSFERS OF INTERESTS

10.1 **Restriction on Transfers.** Except as otherwise permitted by this Agreement, no Member or Assignee shall Transfer all or any portion of such Person's interest in the Company.

10.2 **Permitted Transfers.** Each Transfer described in and permitted under any of Section 10.2(a), Section 10.2(b) or Section 10.2(c) shall be a permitted Transfer (collectively, the "**Permitted Transfers**");

(a) Subject to the conditions and restrictions set forth in Sections 10.3 and 10.5 hereof, any Member or Assignee may at any time Transfer all or any portion of such Person's interests in the Company (i) in a Transfer (including a pledge, hypothecation or grant of a security interest) approved by Majority of the Members or (ii) to the transferor's Family (including, without limitation, for estate tax planning purposes), or to the transferor's executor, conservator, administrator, trustee, or personal representative to whom such interests are transferred at death, incompetency or involuntarily by operation of law, or to an Affiliate of such Member or Assignee. Notwithstanding that the foregoing Transfers may be Permitted Transfers if the conditions of Section 10.3 are satisfied, the transferee shall be an Assignee of Economic Rights only whose rights are restricted as provided in Section 10.5 below and the Act, unless and until such Assignee becomes a Substitute Member as provided in Section 10.6.

(b) A Member may at any time Transfer its Membership Interest to another Member of the Company. A Member that is a transferee shall automatically be admitted as a Substitute Member effective upon the Transfer.

(c) A Transfer, directly or indirectly, of ownership interests in any Member that is a limited liability company, corporation or limited partnership is permitted and shall not



have any effect on the Membership Interest of the Member so long as, after such Transfer, the Persons that are members, shareholders or partners, as applicable, of such Member immediately prior to the Transfer, or the individuals or Family of the individuals that directly or indirectly own any such members, shareholders or partners immediately prior to the Transfer or are beneficiaries of any trust that owns any such members, shareholders or partners, (i) own, or have a beneficial interest in, directly or indirectly, at least fifty-one percent (51%) of the legal, beneficial and economic ownership interests in such Member, and (ii) control all material decisions of such Member relating to or affecting such Member's Membership Interest in the Company. Any change-of-control that affects a Member and is not described above and therefore is not a Permitted Transfer shall cause the affected Member to be an Assignee for purposes of this Agreement.

**10.3 Conditions to Permitted Transfers Under Section 10.2(a).** A Transfer shall not be treated as a Permitted Transfer under Section 10.2(a) hereof unless and until the following conditions are satisfied:

(a) Except in the case of a Transfer of a Person's interests in the Company at death or involuntarily by operation of law, the transferor and Assignee shall execute and deliver to the Company such documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Company to effect such Transfer and to confirm the agreement of the Assignee to be bound by this Agreement, including the provisions of this Article 10. In the case of a Transfer of a Person's interests in the Company at death or involuntarily by operation of law, the Transfer shall be confirmed by presentation to the Company of legal evidence of such Transfer, in form and substance satisfactory to counsel to the Company. Unless waived by the Company, the Company shall be reimbursed by the transferor and/or Assignee for all costs and expenses that the Company reasonably incurs in connection with such Transfer.

(b) Except in the case of a Transfer at death or involuntarily by operation of law, the transferor shall furnish to the Company an opinion of counsel, which counsel and opinion shall be satisfactory to the Company, that the Transfer will not cause the Company to terminate for federal income tax purposes and that such Transfer will not cause the application of the rules of Code Sections 168(g)(1)(B) and 168(h) (generally referred to as the "tax exempt entity leasing rules") or similar rules to apply to the Company, Company Property, or the Manager and Members.

(c) The transferor and Assignee have obtained consent to the Transfer from any lender or mortgagee to whom the Company is obligated (if required) and have paid all fees and charges in connection therewith.

(d) The transferor and Assignee shall furnish the Company with the Assignee's taxpayer identification number, sufficient information to determine the Assignee's initial tax basis in the Person's interests in the Company transferred, and any other information reasonably necessary to permit the Company to file all required federal and state tax returns and other legally required information statements or returns. Without limiting the generality of the

foregoing, the Company shall not be required to make any distribution otherwise provided for in this Agreement with respect to any Transfer until it has received such information.

(e) Except in the case of a Transfer of a Person's interests in the Company at death or involuntarily by operation of law, either: (i) such Person's interests in the Company shall be registered under the Securities Act of 1933, as amended, and any applicable state securities laws, or (ii) the transferor shall provide an opinion of counsel, which opinion and counsel shall be satisfactory to the Company, to the effect that such Transfer is exempt from all applicable registration requirements and that such Transfer will not violate any applicable laws regulating the Transfer of securities.

(f) Except in the case of a Transfer of a Person's interests in the Company at death or involuntarily by operation of law, the transferor shall provide an opinion of counsel, which opinion and counsel shall be reasonably satisfactory to the other Members, to the effect that such Transfer will not cause the Company to be deemed to be an "investment company" under the Investment Company Act of 1940.

**10.4 Prohibited Transfers.** Any purported Transfer of a Person's interests in the Company that is not a Permitted Transfer shall be null and void and of no force or effect whatever; provided that, if the Company is required to recognize a Transfer that is not a Permitted Transfer (or if the Company, in its sole discretion, elects to recognize a Transfer that is not a Permitted Transfer), the interest Transferred shall be strictly limited to the transferor's Economic Rights with respect to the transferred interests, with distributions first applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations, or liabilities for damages that the transferor or Assignee may have to the Company.

In the case of a Transfer or attempted Transfer of a Person's interests in the Company that is not a Permitted Transfer, the parties engaging or attempting to engage in such Transfer shall indemnify and hold harmless the Company and the other Members from all cost, liability, and damage that any of such indemnified Persons may incur (including, without limitation, incremental tax liability and attorneys' fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

#### **10.5 Rights and Obligations of Assignees and Assignors.**

(a) An assignment of a Person's interest in the Company shall not itself dissolve the Company or entitle the Assignee to become a Member or exercise any Management Rights. An Assignee who acquires a Person's interests in the Company but who is not admitted as a Substitute Member pursuant to Section 10.6 hereof shall be entitled only to the Economic Rights with respect to such interests, and shall have no right to any information or accounting of the affairs of the Company, and shall not be entitled to inspect the books or records of the Company.

(b) A Member's assignment of an interest in the Company shall, to the extent of the interest transferred, eliminate the Member's power and right to vote on any matter submitted to the Members, and for voting purposes such interest shall not be counted as

outstanding. The Assignee will have no Management Rights unless and until the Assignee becomes a Substitute Member, at which time the voting rights associated with the transferred interest shall be restored, and such interest shall again be counted as outstanding. An Assignee shall have no liability as a Member solely as a result of the assignment. A Member who assigns an interest in the Company shall not be released from any liability to the Company solely as a result of the assignment of such Economic Rights.

(c) In the event a court of competent jurisdiction charges a Membership Interest with the payment of an unsatisfied amount of a judgment with interest, to the extent so charged the judgment creditor shall be treated as an Assignee.

#### **10.6 Acceptance of Assignee as Substitute Member.**

(a) Subject to the other provisions of this Article 10, an Assignee in a Permitted Transfer under Section 10.2(a) or any other Assignee not automatically admitted as a Substitute Member under Section 10.2(b) may be admitted to the Company as a Substitute Member, with all of the Management Rights of a Member, only upon satisfaction of all of the conditions set forth below in this Section 10.6.

(1) A Majority of the Members consents to such admission, which consent shall not be unreasonably withheld.

(2) If required under the terms of any loans to the Company, the consent of such lenders to the admission of the Assignee as a Substitute Member.

(3) The Assignee shall become a party to this Agreement as a Member by executing such documents and instruments as the Manager may reasonably request as may be necessary or appropriate to confirm such Assignee as a Member in the Company and such Assignee's agreement to be bound by the terms and conditions hereof.

(4) The Assignee shall pay or reimburse the Company for all reasonable legal, filing, and publication costs that the Company incurs in connection with the admission of the Assignee as a Member with respect to the Transferred Interests.

(5) If the Assignee is not an individual of legal majority, the Assignee shall provide the Company with evidence satisfactory to counsel for the Company of the authority of the Assignee to become a Member and to be bound by the terms and conditions of this Agreement.

(b) An Assignee who becomes a Substitute Member has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a Member under the Act, the Articles and this Agreement, and is also liable for any obligations of the assignor to make Contributions, but is not obligated for liabilities reasonably unknown to the Assignee at the time the Assignee becomes a Member.

(c) Even if an Assignee becomes a Substitute Member, the assignor is not released from any liability the assignor may have to the Company.

**10.7 Distributions and Allocations Regarding Transferred Interests.** If any Person's interest in the Company is Transferred during any Fiscal Year in compliance with the provisions of this Article 10, Profits, Losses, each item thereof, and all other items attributable to such interest for such Fiscal Year shall be divided and allocated between the transferor and the Assignee by taking into account their varying interests during such Fiscal Year in accordance with Code Section 706(d), using any conventions permitted by law and selected by the Manager. All distributions on or before the date of such Transfer shall be made to the transferor, and all distributions thereafter shall be made to the Assignee. Solely for purposes of making such allocations and distributions, the Company shall recognize such Transfer not later than the end of the calendar month during which it is given notice of such Transfer, provided that, if the Company is given notice of a Transfer at least ten Business Days prior to the Transfer, the Company shall recognize such Transfer as the date of such Transfer, and provided further that, if the Company does not receive a notice stating the date such interest was Transferred and such other information as the Manager may reasonably require within 30 days after the end of the Fiscal Year during which the Transfer occurs, then all such items shall be allocated, and all distributions shall be made, to the Person who, according to the books and records of the Company, was the owner of the interest on the last day of the Fiscal Year during which the Transfer occurs. Neither the Company nor any Manager shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 10.7, whether or not the Manager or the Company has knowledge of any Transfer of ownership of any interest.

**10.8 Deacon Trust/RDS Trust Call Option.** The Manager, may upon no less than fifteen (15) days prior written notice to the Deacon Trust and the RDS Trust ("**Deacon/RDS Call Notice**"), redeem all of the Membership Interests and Units of the Deacon Trust and the RDS Trust at any time by paying to the Deacon Trust and the RDS Trust an amount equal to (a) an amount, together with aggregate cumulative distributions pursuant to Sections 8.2(a)-(c) and Sections 8.3(a)-(c) necessary to provide each of the Deacon Trust and the RDS Trust with One Hundred Thousand Dollars (\$100,000.00), the Preferred Return and a return of the Adjusted Capital Contribution Balance of each Member calculated as the date of such redemption; plus (b) One Dollar (\$1.00) (collectively, the "**Deacon/RDS Redemption Amount**"). The Deacon/RDS Call Notice shall include a detailed calculation of the Deacon/RDS Redemption Amount, the date which the Deacon/RDS Redemption Amount shall be wired to the Deacon Trust and the RDS Trust, and drafts of any documents required to be executed to complete the redemption contemplated in this Section 10.8. If there is any dispute as to the Deacon/RDS Redemption Amount, the parties shall meet and confer to attempt to mutually determine the same for a period of fifteen (15) days prior to engaging in any dispute resolution provisions set forth below. The Company may assign its rights under this Section 10.8 to Deacon Development, LLC and/or its Affiliates to the extent disclosed in the Deacon/RDS Call Notice. The Deacon/RDS Redemption Amount shall be delivered to the Deacon Trust and the RDS Trust by wire transfer on the date set forth in the Deacon/RDS Call Notice. The Manager (on behalf of the Company) and the Deacon Trust and the RDS Trust shall execute, acknowledge and deliver such instruments as may be necessary or appropriate to carry out and enforce the provisions of this Section 10.8. Upon the receipt of the Deacon/RDS Call Notice, and the exchange of the required documents and instruments, the Deacon Trust and the RDS Trust shall be fully redeemed of all of its Membership Interest in the Company and shall have no further right in or obligation to the

Company; provided, however, the Company shall be required to deliver the records set forth in Article 14 (as such relate to the time period up to and including such redemption) to the Deacon Trust and the RDS Trust within thirty (30) days after the redemption of the Membership Interest of the Deacon Trust and the RDS Trust contemplated in this Section 10.8.

## **ARTICLE 11**

### **CESSATION OF A MEMBER**

**11.1 Cessation.** A Person shall cease to be a Member upon the happening of any of the following (each, a “**Cessation Event**”), and such Person or any transferee by reason of the Cessation Event shall thereupon be an Assignee except as otherwise expressly provided in the Transfer provisions in Article 10:

- (a) the purported withdrawal of a Member as provided in Section 11.2;
- (b) the expulsion of a Member pursuant to Section 11.3;
- (c) the Bankruptcy of a Member;
- (d) in the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member’s person estate;
- (e) in the case of a Member who is acting as a Member by virtue of being trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);
- (f) in the case of a Member that is a separate Entity other than a corporation, the dissolution and commencement of winding up of the separate Entity;
- (g) in the case of a Member that is a corporation, the filing of articles of dissolution or its equivalent, for the corporation or the revocation of its charter;
- (h) in the case of an estate, the distribution by the fiduciary of the estate’s entire Membership Interest in the Company; or
- (i) transfer of a Member’s entire Membership Interest.

**11.2 Withdrawal.** No Member has the power to withdraw voluntarily from the Company. A Member that purports to withdraw voluntarily from the Company prior to any dissolution and winding up of the Company shall be in breach of this Agreement, shall be liable to the Company for any damages arising directly or indirectly from such purported withdrawal, shall cease to be a Member but shall continue to hold Economic Rights as an Assignee, and shall not be entitled to any distribution from the Company by reason of such withdrawal.

**11.3 Expulsion.** A Member may be expelled from the Company upon a determination by a court upon application of any Member that the Member sought to be expelled has been guilty of wrongful conduct that adversely and materially affects the business or affairs of the Company, or has otherwise breached a duty owed to the Company or the other Members to the extent that it is not reasonably practicable to carry on the business or affairs of the Company with the Member. An expelled Member shall be treated as having withdrawn from the Company in breach of this Agreement on the date of such determination and shall not be entitled to any distribution from the Company by reason of such expulsion and deemed withdrawal.

## **ARTICLE 12 DISSOLUTION AND WINDING UP**

**12.1 Covenant Not to Cause Dissolution.** Except as otherwise permitted by this Agreement, each Member hereby covenants and agrees not to take any voluntary action that would cause the Company to dissolve, and notwithstanding any provision of the Act, the Company shall not dissolve prior to the occurrence of a Dissolution Event.

**12.2 Dissolution Events.** The Company shall dissolve and commence winding up and liquidating upon the first to occur of any of the following (each a “**Dissolution Event**”):

- (a) The sale (other than pursuant to a like-kind exchange approved by a Majority of the Members) of all or substantially all of the Company Property;
- (b) A Majority of the Members vote to dissolve, wind up, and liquidate the Company; or
- (c) A judicial dissolution of the Company.

Notwithstanding anything in the Act to the contrary, to the maximum extent permitted by law, the foregoing events are the exclusive events which may cause the Company to dissolve.

**12.3 Cessation Event Not a Dissolution Event.** The occurrence of a Cessation Event shall not be a Dissolution Event, and the Company shall not be required to be wound up by reason of a Cessation Event.

**12.4 Winding Up.** Upon the occurrence of a Dissolution Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, satisfying the claims of its creditors and Members, and liquidating or distributing its assets to the extent necessary therefor, and no Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the orderly winding up of the Company’s business and affairs. To the extent not inconsistent with the foregoing, all obligations in this Agreement shall continue in full force and effect until such time as the Company Property has been distributed pursuant to this Section 12.4. The Manager or, if there is no Manager then serving, the Members shall oversee the winding up and dissolution of the Company, shall provide a full accounting of the Company’s liabilities and Property, shall cause the Company Property to be liquidated as promptly as is consistent with obtaining the fair value thereof, and shall cause the proceeds

therefrom and any remaining Property, to the extent sufficient therefor, to be applied and distributed in the following order:

(a) First, to the payment and discharge of all of the Company's debts and liabilities to creditors other than Members;

(b) Second, to the payment and discharge of all of the Company's debts and liabilities to Members; and

(c) The balance shall be distributed to the Members in the amount of the positive balances in the respective Capital Accounts, after giving effect to all allocations and distributions for all periods, including allocations of Profits and Losses and adjustments of Gross Asset Values in accordance with the definition thereof contained in Article 1. Profits or Losses, as the case may be, shall be allocated among the Members so that, to the greatest extent possible, the liquidation of the Company in accordance with the Member's relative Capital Account balances would have the same result as a liquidation of the Company and the distribution of assets in accordance with Section 8.3. To the extent that the foregoing allocation provisions would not achieve this result, Profits and Losses (including items of gross income if required to fulfill the intent of this provision) will be reallocated among the Members for the fiscal year of the liquidation (and, if necessary, prior fiscal years) so as to cause the balances in the Capital Accounts to be in the correct amounts.

Any Manager or Member that performs more than de minimis services in completing the winding up and termination of the Company shall be entitled to receive reasonable compensation for its services performed in completing such winding up and termination of the Company pursuant to this Article 12.

**12.5 Compliance With Regulations; Deficit Capital Accounts.** In the event the Company is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), distributions shall be made pursuant to this Article 12 to the Members who have positive Capital Accounts in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2). Except for any contributions required under Sections 6.1 or under Section 12.8 below, if applicable, if any Member has a deficit Capital Account balance (after giving effect to all contributions, distributions and allocations for all Fiscal Years, including the Fiscal Year during which such liquidation occurs), such Member shall have no obligation to make any Contribution with respect to such deficit, and such deficit shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever. In the reasonable discretion of the Manager, a pro rata portion of the distributions that would otherwise be made to the Members pursuant to this Article 12 may be:

(a) Distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the Manager, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to Section 12.4 hereof; or

(b) Withheld to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, provided that such withheld amounts shall be distributed to the Members as soon as practicable.

**12.6 Rights of Members.** Except as otherwise expressly provided in this Agreement:

(a) Each Member shall look solely to the assets of the Company for the return of Contributions and shall have no right or power to demand or receive property other than cash from the Company, and

(b) No Member shall have priority over any other Member as to the return of Contributions or the receipt of distributions or allocations.

**12.7 Notice of Dissolution; Filing of Articles of Dissolution and Publication of Notice of Dissolution.** In the event a Dissolution Event occurs, the Manager shall, within 30 days thereafter, provide written notice thereof to each of the Members and give such other notices as the Manager may determine are necessary or desirable in connection with the dissolution and winding up of the Company. The Manager shall, in addition, cause Articles of Dissolution to be filed by the Company and a notice of dissolution to be published in accordance with the Act.

**12.8 Limited Default Restoration Obligation.**

(a) **General.** Upon liquidation of the Company or of any Member's entire interest in the Company, and after allocation of all items of income, gain, or loss pursuant to Article 7 incurred through the liquidation event, any Member with a deficit balance in his or her Capital Account will be required to make a capital contribution equal to the lesser of (i) the absolute value of such deficit balance or (ii) the Member's Elective Deficit Amount as described in subsection (b) of this section not later than through the end of the taxable year in which such liquidation occurs or, if later, within 90 days after the date of such liquidation.

(b) **Elective Deficit Amount.** Each Member has an initial elective Deficit Amount of zero. Any Member may, by written election delivered to the Manager, increase his or her Elective Deficit Amount to a dollar amount specified by the Member.

(c) **Notice of Proposed Allocation.** For each taxable year in which any Member has a distributive share of any item of Company loss or deduction for which an allocation to the Member would, otherwise, result in an Adjusted Deficit in such Member's Capital Account, the Manager will provide notice of such restrictions to the Member. The Member may within 10 days after receipt of such notice, give written notice to the Manager that the Member elects to increase the Member's Elective Deficit Amount to a specified amount. Any increase in the Member's Elective Deficit Amount will then be given effect in the allocation of the items of loss or deduction for the taxable year (and all subsequent taxable years).



(d) **Reduction of Elective Deficit Amount.** At any time that a Member does not have a deficit in his or her Capital Account, the Member may, by written notice to the Manager, decrease the Member's Elective Deficit Amount to zero or to any specified amount.

## **ARTICLE 13**

### **TAXES**

13.1 **Elections.** The Manager may cause the Company to file an election in accordance with the applicable Regulations promulgated under Section 754 of the Code to cause the basis of the Company's assets to be adjusted for federal income tax purposes as provided by the Code and may also make any other tax elections for the Company allowed under the Code or the tax laws of any state or other jurisdiction having taxing jurisdiction over the Company.

13.2 **Taxes of Taxing Jurisdictions.** To the extent that the laws of any taxing jurisdiction require, each Member requested to do so by the Manager will submit an agreement indicating that the Member will make timely income tax payments to the taxing jurisdiction and that the Member accepts personal jurisdiction of the taxing jurisdiction with regard to the collection of income taxes attributable to the Member's income, and interest and penalties assessed on such income. If the Member fails to provide such agreement, the Company may withhold and pay over to such taxing jurisdiction the amount of tax, penalty and interest determined under the laws of the taxing jurisdiction with respect to such income. Any such payments with respect to the income of a Member shall be treated as a distribution for purposes of Article 7. The Manager may, where permitted by the rules of any taxing jurisdiction, cause the Company to file a composite, combined or aggregate tax return reflecting the income of the Company and pay the tax, interest and penalties of some or all of the Members on such income to the taxing jurisdiction, in which case the Company shall inform the affected Members of the amount of such tax interest and penalties so paid.

### **13.3 Partnership Representative.**

(a) Steven D. Deacon or such other Member as may be appointed from time to time by a Majority of the Members, shall act as the partnership representative of the Company pursuant to Code Section 6223(a).

(b) The Partnership Representative is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by taxing authorities, including administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The Partnership Representative shall promptly notify the Members if any tax return of the Company is audited and upon the receipt of a notice of final partnership administrative adjustment or final partnership adjustment. Without the consent of a Majority of the Members, the Partnership Representative shall not extend the statute of limitations, file a request for administrative adjustment, file suit relating to any Company tax refund or deficiency or enter into any settlement agreement relating to items of income, gain, loss or deduction of the Company with any taxing authority.

(c) To the extent permitted by applicable law and regulations, the Company will annually elect out of the partnership audit procedure enacted under Section 1101 of the Bipartisan Budget Act of 2015 (the “**BBA Procedures**”) pursuant to Code Section 6221(b). For any year in which applicable law and regulations do not permit the Company to elect out of the BBA Procedures, then within forty-five (45) days of any notice of final partnership adjustment, the Company will elect the alternative procedure under Code Section 6226, and furnish to the Internal Revenue Service and each Member during the year or years to which the notice of final partnership adjustment relates a statement of the Member’s share of any adjustment set forth in the notice of final partnership adjustment.

(d) Each Member agrees that such Member shall not treat any Company item inconsistently on such Member’s federal, state, foreign or other income tax return with the treatment of the item on the Company’s return. Any deficiency for taxes imposed on any Member (including penalties, additions to tax or interest imposed with respect to such taxes and any taxes imposed pursuant to Code Section 6226) shall be paid by such Member.

(e) Except as otherwise provided herein, the Partnership Representative shall have sole discretion to make any determination regarding income tax elections it deems advisable on behalf of the Company; provided, that the Partnership Representative shall make an election under Code Section 754, if requested in writing by another Member.

## ARTICLE 14

### BOOKS, RECORDS AND ACCOUNTINGS

**14.1 Books and Records.** At the expense of the Company, the Manager shall maintain records and accounts of all operations and expenditures of the Company. At a minimum, the Company shall keep at its principal place of business all records required under the Act.

**14.2 Tax Information.** As soon as reasonably practicable after the end of each Fiscal Year of the Company, the Manager shall cause the Company shall furnish to each Member the Member’s Schedule K-1 and a copy of the Company’s federal income tax return for that fiscal year. The Manager shall cause the Company to also promptly furnish to a Member any additional information that the Member may reasonably request and require for the preparation of the Member’s individual federal and state income tax returns.

**14.3 Financial Reports.** The Manager shall cause the Company to furnish the following financial reports to each Member:

(a) As soon as reasonably practicable after the end of each Fiscal Year, and in any event within 45 days thereafter, a balance sheet of the Company as of the end of such Fiscal Year, and statements of income and cash flows of the Company for such year, prepared in accordance with sound accounting principles, consistently applied, and setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail, and, within 90 days after the end of each Fiscal Year, financial statements of the Company for the Fiscal Year.

(b) As soon as reasonably practicable after the end of the first, second and third quarterly accounting periods in each Fiscal Year, and in any event within 45 days thereafter, a balance sheet of the Company as of the end of each such quarterly period, and statements of income and cash flows of the Company for such period and for the current Fiscal Year to date, prepared in accordance with sound accounting principles, consistently applied, and setting forth in comparative form the figures for the corresponding periods of the previous Fiscal Year, subject to changes resulting from normal year end audit adjustments, all in reasonable detail.

**14.4 Indemnification; Other Reports.** If the Company indemnifies or advances expenses to a Member or a Manager, the Company shall report the indemnification or advance in writing to the Members. The Manager shall also provide such other reports to the Members as the Members reasonably request at such time and in such manner as the Members from time to time reasonably request.

## **ARTICLE 15 AMENDMENT**

Any amendment, restatement, or modification of this Agreement or the Articles shall require the written consent of Members with greater than eighty percent (80%), in terms of Percentage Interests, of all Members then entitled to vote; provided that the Manager, without the consent of any other Member or Person, may amend any provisions of this Agreement with respect to the allocation of Profits, Losses, items thereof, and tax items if so required by a taxing authority. No Member or Manager shall have any vested rights in this Agreement which may not be modified through an amendment to this Agreement.

## **ARTICLE 16 MISCELLANEOUS**

**16.1 Governing Law.** This Agreement, and the application of interpretation hereof, shall be governed exclusively by its terms and by the laws of Oregon, and specifically the Act.

**16.2 Construction.** Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

**16.3 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

**16.4 Execution of Additional Instruments.** Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

**16.5 Headings.** The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision hereof.

**16.6 Heirs, Successors and Assigns.** Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, and permitted successors and assigns.

**16.7 Notices.** Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the party or to an executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's and/or Company's address, as shown in the records of the Company. Except as otherwise provided herein, any such notice shall be deemed to be given two business days after the date on which the same was deposited in the United States mails, addressed as aforesaid.

**16.8 Rights and Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

**16.9 Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

**16.10 Waivers.** The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

**16.11 Arbitration.** Any controversy or claim arising out of this Agreement will be settled by arbitration before a single arbitrator in Portland, Oregon. If the parties agree on an arbitrator, the arbitration will be held before the arbitrator selected by the parties. If the parties do not agree on an arbitrator, each party will designate an arbitrator and the arbitration will be held before a third arbitrator selected by the designated arbitrators. The arbitration will be conducted in accordance with the then-current rules of the Arbitration Service of Portland, Inc. The resolution of any controversy or claim as determined by the arbitrator will be binding on the parties. Any party may seek from a court an order to compel arbitration, or any other interim relief or provisional remedies pending an arbitrator's resolution of any controversy or claim. Any such action or proceeding – or any action or proceeding to confirm, vacate, modify or correct the award of the arbitrator – will be litigated in courts located in Multnomah County, Oregon. Each party consents and submits to the jurisdiction of any court located in Multnomah County, Oregon. The prevailing party in the arbitration will be entitled to recover from the other party all expenses incurred in connection with the arbitration, including attorneys' fees.

**16.12 Injunctive Relief.** Notwithstanding anything to the contrary contained in this Agreement, any Member may seek a temporary restraining order or a preliminary injunction from

any court of competent jurisdiction in order to prevent immediate and irreparable injury, loss or damage; provided such Member has commenced in good faith a dispute resolution proceeding pursuant to Section 16.11. The arbitrator once appointed shall have the power to modify or vacate such temporary restraining order or preliminary injunction or to issue a restraining order or injunction.

**16.13 Entire Agreement.** This Agreement and any other document to be furnished pursuant to the provisions hereof embody the entire agreement and understanding of the parties hereto as to the subject matter contained herein and therein. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in this Agreement and such documents. This Agreement and such documents supersede all prior agreements and understandings among the parties with respect to the subject matter hereof and thereof.

**16.14 No Third Party Beneficiary.** It is expressly understood and agreed that this Agreement is made and entered into for the sole protection and benefit of the Members and Manager and their respective successors and assigns (but subject to Article 10), and, without the prior express written consent of all of the Members and any other parties hereto, no other Person shall have any right to action hereon.

**16.15 Confidentiality.** Any and all financial and budgetary information about the Company, the Property, the Project and the Members shall be “**Confidential Information**”. Except with respect to Confidential Information available to the public and except if required to do so by applicable law or by order of a governmental entity or in connection with any proposed disposition by a Member of the Member’s Membership Interest or designation of a nominee to purchase under Section 10.8 (provided that in any such case the disclosing Member obtains an agreement by the potential third party purchaser or nominee to be bound by confidentiality provisions substantially equivalent to those contained in this Section), no Member shall disclose any Confidential Information to any Person (other than their advisors and legal counsel) without the prior written consent of the Manager and each other Member, which consent may be withheld by the Manager and each Member in his or its sole discretion. Each Member acknowledges and agrees that any breach by it, directly or indirectly, of this Agreement, will cause irreparable injury for which there is no adequate remedy at law. Accordingly, each Member expressly agrees that, in the event of any such breach or any threatened breach, directly or indirectly, either the Company or a Member enforcing this confidentiality requirement shall be entitled, in addition to any and all other remedies available, to seek and obtain injunctive and/or other equitable relief to require specific performance of or prevent a breach under the provisions of this Agreement.

**16.16 Broker’s Indemnity.** Each Member represents that it has not dealt with any broker or agent in connection with this Agreement or any of the transactions contemplated hereby, and hereby agrees to indemnify each other Member and the Company and hold them each harmless from and against all liability, loss, cost, damage and expense (including attorneys’ fees and costs incurred in the investigation, defense and settlement of the matter) which any other Member or the Company shall ever suffer or incur by reason of any claim by any broker or agent, whether or not meritorious, for any compensation with respect to such indemnifying Member’s

dealings in connection with this Agreement or such indemnifying Member's contribution or other transactions provided for or referred to herein.

**16.17 Representation and Waiver of Potential Conflicts.** The Members acknowledge and agree that (i) Brix Law LLP represents only the Company in connection with this Agreement, and (ii) Brix Law LLP has advised each of the Members who have been or currently are clients of Brix Law LLP that (a) such representation constitutes a potential conflict of interest due to the existing legal relationships between such persons (or their affiliates) and Brix Law LLP, (b) that each such Member should seek independent legal counsel to determine whether or not to waive the potential conflicts of interest and consent to Brix Law LLP's representation of the Company as set forth above, and (c) in the event of a dispute between the Company and any of the other Members, Brix Law LLP may withdraw its representation and in such case each of the disputing parties will be obligated to seek independent legal counsel in connection with such conflict. Having been apprised of such potential conflicts of interest, each of the Members hereby waives all potential conflicts of interest and consents to Brix Law LLP's representation of the Company as set forth above, in connection with this matter.

**16.18 Prior Agreement Superseded.** This Agreement supersedes and replaces in its entirety any prior operating agreement of the Company, including without limitation the Prior Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Members have executed this Agreement effective as of the date first set forth above.

**Members:**

DEACON DEVELOPMENT, LLC,  
an Oregon limited liability company

By: \_\_\_\_\_  
Steven D. Deacon, Manager

Steven D. Deacon Revocable Trust dated  
June 17, 1993

By: \_\_\_\_\_  
Steven D. Deacon, Trustee

RDS Trust dated February 7, 2013

By: \_\_\_\_\_  
Richard Smith, Trustee

EXHIBIT A  
CONTRIBUTIONS; PERCENTAGE INTERESTS

<u>Member</u>	<u>Contribution</u>	<u>Percentage Interest</u>	<u>Units</u>
Deacon Development, LLC, an Oregon limited liability company	\$1,000,000.00	14.814%	1,000,000
Steven D. Deacon Revocable Trust dated June 17, 1993	\$2,875,000.00	42.593%	2,875,000
RDS Trust dated February 7, 2013	\$2,875,000.00	42.593%	2,875,000

Initials: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_



**FIRST AMENDED AND RESTATED  
OPERATING AGREEMENT  
OF  
DD SALEM CENTER TWO, LLC**

This First Amended and Restated Operating Agreement of DD Salem Center Two, LLC (the “**Company**”) dated as of July 31, 2022 is entered into by and among the Members listed on Exhibit A attached hereto and any other persons that may hereafter become Members or successors in interests in the Company.

Recitals

A. The Company was formed as an Oregon limited liability company on May 2, 2019 and Deacon Development, LLC was the sole member of the Company under the Operating Agreement dated May 2, 2019 (the “**Prior Agreement**”).

B. The purposes of the Company is to, among other things, acquire and develop, that certain property located at 420 Center Street NE, Salem, Oregon (the “**Real Property**”).

C. The Members set forth on the attached Exhibit A are entering into this Operating Agreement in order to define their respective rights and obligations in connection with the ownership, operation and governance of the Company.

Agreements

NOW THEREFORE, in consideration of the covenants contained herein and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Members covenant and agree as follows:

**ARTICLE 1  
DEFINITIONS**

The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided herein):

“**Act**” shall mean the Oregon Limited Liability Company Act.

“**Additional Member**” shall mean a Member, other than a Member identified on the attached Exhibit A or a Substitute Member, who has acquired a Membership Interest from the Company.

**“Adjusted Capital Contribution Balance”** means at any time the Aggregate Capital Contribution Amount, reduced by the aggregate amount of distributions made to the Members pursuant to Section 8.2(c) and Section 8.3(c) at or before such time.

**“Adjusted Deficit”** shall mean, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments: The Capital Account shall be increased by any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the next to the last sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and the Capital Account shall be decreased by the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Regulations. The foregoing definition of Adjusted Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

**“Affiliate”** shall mean, with respect to any Person: (a) any Person directly or indirectly controlling, controlled by or under common control with such Person, (b) any Person owning or controlling ten percent or more of the outstanding voting interests of such Person, (c) any officer, director, or manager of such Person, or (d) any Person who is an officer, director, manager, trustee, or holder of ten percent or more of the voting interests of any Person described in clauses (a) through (c) of this sentence. For purposes of this definition, the term **“controls,” “is controlled by,”** or **“is under common control with”** shall mean 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.

**“Aggregate Capital Contribution Amount”** means at any time the aggregate amount of the Capital Contributions made by all Members at or before such time.

**“Agreement”** shall mean this Operating Agreement, as amended or restated from time to time.

**“Articles”** shall mean the Articles of Organization of the Company previously filed with the Oregon Secretary of State, as amended or restated from time to time.

**“Assignee”** shall mean a Person who becomes the owner of Economic Rights by Transfer and who has not been admitted as a Substitute Member.

**“Bankruptcy”** shall mean, with respect to any Person, a Voluntary Bankruptcy or an Involuntary Bankruptcy.

**“Business Day”** shall mean any day other than Saturday, Sunday or any legal holiday observed in Oregon.

**“Capital Account”** shall mean the account maintained with respect to a Member determined in accordance with Section 6.3.

**“Capital Contribution”** means the total amount of cash and the fair market value of any other property contributed to the Company by a Member (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code), in the case of the latter, as agreed upon by the Member and the Manager.

**“Cause”** shall mean commission of a felony or acts or omissions pertaining to the Company and constituting fraud or embezzlement, as adjudicated by a court of competent jurisdiction, or the commission of willful misconduct.

**“Cessation Event”** shall have the meaning set forth in Section 11.1.

**“Code”** shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequent superseding federal revenue laws.

**“Company”** shall have the meaning given in the Recitals to this Agreement.

**“Company Minimum Gain”** shall mean the same as “partnership minimum gain” as set forth in Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

**“Company Property”** shall mean any Property owned by the Company.

**“Confidential Information”** shall have the meaning set forth in Section 16.15.

**“Contribution”** shall mean, with respect to any Member, the amount of money and the initial Gross Asset Value of any Property (other than money) contributed or to be contributed to the Company with respect to the interest in the Company held by such Person.

**“Deacon Trust”** shall mean the Steven D. Deacon Revocable Trust dated June 17, 1993.

**“Depreciation”** shall mean, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager.

**“Dissolution Event”** shall mean the events identified in Section 12.2.

**“Economic Rights”** shall mean a Member’s share of the Profits, Losses and distributions of Company Property pursuant to the Act, the Articles and this Agreement but shall not include any Management Rights.

**“Entity”** shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.

**“Family”** shall mean (a) if a Member is an individual, a Member’s siblings and natural and adoptive lineal ancestors or descendants and spouses of any of the foregoing, and trusts, partnerships and limited liability companies for which the Members and such siblings, ancestors and descendants and spouses are the sole non-charitable beneficiaries, partners or members, as the case may be, and (b) if a Member is an Entity, those individuals who directly or indirectly own a membership interest or share of such Member or are beneficiaries of a trust that directly or indirectly owns a membership interest or share of such Member and each such individual’s siblings and natural and adoptive lineal ancestors or descendants and spouses of any of the foregoing, and trusts, partnerships and limited liability companies for which such individual and such siblings, ancestors and descendants and spouses are the sole non-charitable beneficiaries, partners or members, as the case may be.

**“Fiscal Year”** shall mean the Company’s fiscal year, which shall be determined pursuant to Code Section 706.

**“Gross Asset Value”** shall mean an asset’s adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Manager;

(b) The Gross Asset Values of all assets shall be adjusted to equal their respective gross fair market values, as determined by the Manager, as of the following times:

(1) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Contribution;

(2) the distribution by the Company to a Member of more than a de minimis amount of Property as consideration for an interest in the Company;

(3) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g);

(4) in connection with the grant of an interest in the Company (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a member capacity, or by a new Member acting in a partner capacity in anticipation of being a Member; and

(5) the Gross Asset Value of any asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the Manager;

provided, however, that adjustments pursuant to clauses (1), (2) and (4) above shall be made only if the Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relative Economic Rights of the Members.

(c) The Gross Asset Values of assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m) and subparagraph (f) of the definition of Profits and Losses and Section 7.2(g) hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (c) to the extent the Manager determines that an adjustment pursuant to subparagraph (b) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (c); and

(d) The foregoing adjustments shall be made in lieu of any adjustments or allocations provided for under ORS 63.185(4) of the Act.

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraph (a), subparagraph (b), or subparagraph (c) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

**“Initial Contributions”** shall mean the initial Contributions made pursuant to Section 6.1.

**“Involuntary Bankruptcy”** shall mean, with respect to any Person, without the consent or acquiescence of such Person, the entering of an order for relief or approving a petition for relief or reorganization or any other petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or other similar relief under any present or future bankruptcy, insolvency or similar statute, law or regulation, or the filing of any such petition against such Person which petition shall not be dismissed within 90 days, or, without the consent or acquiescence of such Person, the entering of an order appointing a trustee, custodian, receiver, or liquidator of such Person or of all or any substantial part of the property of such Person which order shall not be dismissed within 60 days.

**“Majority”** shall mean, with respect to the Members, greater than fifty percent (50%), in terms of Percentage Interests, of all Members then entitled to vote, consent to or otherwise decide any matter submitted to the Members.

**“Management Rights”** shall mean the right of a Member to participate in the management of the Company, including rights to information and to consent or approve actions of the Members.

**“Manager”** shall mean the Person designated or selected to manage the affairs of the Company under Article 4 hereof.

“**Member**” shall mean each of the parties identified on Exhibit A who executes a counterpart or adoption of this Agreement and each of the parties who may hereafter become Additional or Substitute Members; provided that any such party shall be a Member only for so long as such party is a Member under the terms of this Agreement. The term “Member” when used in any provision relating to Capital Accounts or any other tax or financial matter shall also include any Person having Economic Rights under this Agreement.

“**Member Nonrecourse Debt**” shall have the meaning set forth in Section 1.704-2(b)(4) of the Regulations for “partner nonrecourse debt”.

“**Member Nonrecourse Debt Minimum Gain**” shall mean an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

“**Member Nonrecourse Deductions**” shall have the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations for “partner nonrecourse deductions”.

“**Membership Interest**” shall mean a Member’s entire interest in the Company, including such Member’s Economic Rights and Management Rights.

“**Net Cash From Operations**” shall mean the gross cash proceeds from Company operations (including sales and dispositions of Company Property in the ordinary course of business) less the portion thereof used to pay or establish reserves for all Company expenses (including reserves for anticipated tenant improvements and broker commissions in connection with the leasing of the Project), debt payments, capital improvements, replacements, and contingencies, all as determined by the Manager. “Net Cash From Operations” shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established pursuant to the first sentence hereof and from Net Cash From Sales or Refinancings.

“**Net Cash From Sales or Refinancings**” shall mean the net cash proceeds from all sales and other dispositions (other than in the ordinary course of business) and all refinancings of Company Property, less any portion thereof used to establish reserves, all as determined by the Manager. “Net Cash From Sales or Refinancings” shall include all principal and interest payments received by the Company with respect to any note or other obligation acquired in connection with sales and other dispositions (other than in the ordinary course of business) of Company Property. Net cash proceeds shall mean the gross receipts (including condemnation and casualty insurance proceeds) from the refinancing, sale, exchange or other disposition (excluding leasing) of all or part of a Company Property other than in the ordinary course of business, less the costs and expenses of the refinancing, sale, exchange or other disposition (including brokerage commissions), less the amount of any outstanding indebtedness allocable to such Company Property and discharged on such sale, exchange or other disposition, and less the amount of any expenses (including capital expenditures and additions to reserves as herein provided) paid pursuant to the terms of this Agreement from the proceeds of the refinancing, sale, exchange or other disposition of such Company Property. In the event any cash proceeds

are not clearly identifiable as “Net Cash From Operations” or “Net Cash From Sales or Refinancings,” then the Manager shall determine how to categorize such cash proceeds.

“**Nonrecourse Deductions**” shall have the meaning set forth in Section 1.704-2(b)(1) of the Regulations.

“**Nonrecourse Liability**” shall have the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

“**Percentage Interest**” shall mean, for each Member, the proportion that a Member’s ownership of Units bears to the aggregate Units owned by all Members. The initial Percentage Interest for the Member are set forth on Exhibit A.

“**Person**” shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of each such Person where the context so permits.

“**Permitted Transfer**” shall mean a Transfer of a Person’s interest in the Company in accordance with the applicable provisions of Section 10.2.

“**Preferred Return**” means an amount equal to eight percent (8%) per annum, based upon a 365-day year, for the actual number of days for which the Preferred Return is being determined, compounded annually, based upon the amount of the Adjusted Capital Contribution Balance of each Member, as applicable, and any accrued, but unpaid, Preferred Return.

“**Profits**” and “**Losses**” shall mean, for each Fiscal Year, an amount equal to the Company’s taxable income or loss for such Fiscal Year, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses hereunder shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses hereunder shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (b) or subparagraph (c) of the definition of Gross Asset Value hereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by

reference to the Gross Asset Value of the Company Property disposed of, notwithstanding that the adjusted tax basis of such Property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year, computed in accordance with this Agreement;

(f) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in complete liquidation of a Member's Economic Rights, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses; and

(g) Notwithstanding any other provision in any subparagraph hereof, any items which are specially allocated pursuant to Section 7.2 or Section 7.3 hereof shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Sections 7.2 and 7.3 hereof shall be determined by applying rules analogous to those set forth in subparagraphs (a) through (f) above.

**"Property"** shall mean any property, real or personal, tangible or intangible, including money, credits, entitlements and any legal or equitable interest in or relating to such property, but excluding services and promises to perform services in the future.

**"Project"** shall mean the redevelopment of the Real Property into an approximately 147 unit, five story, apartment building and the marketing, leasing and other operation of the Real Property following completion of such redevelopment.

**"RDS Trust"** shall mean the RDS Trust dated February 7, 2013.

**"Real Property"** shall have the meaning given in the Recitals to this Agreement.

**"Regulations"** shall mean proposed, temporary and final regulations promulgated under the Code in effect as of the date the Articles were filed and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations.

**"Substitute Member"** shall mean a Person who is the owner of Economic Rights and who also possesses Management Rights and who therefore is entitled to all of the rights of membership pursuant to this Agreement.

**"Transfer"** shall mean, as a noun, any voluntary or involuntary transfer, sale or other disposition or any pledge, hypothecation or grant of a security interest, and, as a verb, voluntarily or involuntarily to transfer, sell or otherwise dispose of or to pledge, hypothecate or grant a security interest.



“**Unit**” shall mean the means by which ownership interests in the Company are expressed, whether on account of a Member’s Initial Contributions to the Company or otherwise as indicated on Exhibit A of this Agreement.

“**Voluntary Bankruptcy**” shall mean, with respect to any Person, the inability of such Person generally to pay its debts as such debts become due, or an admission in writing by such Person of its inability to pay its debts generally or a general assignment by such Person for the benefit of creditors; the filing of any petition or answer by such Person seeking to adjudicate it a bankrupt or insolvent, or seeking for itself any liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of such Person or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking, consenting to, or acquiescing in the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its property; or corporate action taken by such Person to authorize any of the actions set forth above.

## ARTICLE 2 ORGANIZATION OF COMPANY

2.1 **Organization.** By execution and filing of the Articles, the Company has been created in accordance with and pursuant to the Act.

2.2 **Nature of Business.** The Company is organized to acquire and develop, either directly or through a joint venture entity, the Real Property. With the approval of a Majority of the Members, the Company also may engage in any other lawful business permitted by the Act or the laws of any jurisdiction in which the Company may do business. The Company shall have the authority to do all things necessary or convenient to accomplish its purposes and operate its businesses.

2.3 **Defects as to Formalities.** A failure to observe any formalities or requirements of this Agreement, the Articles or the Act shall not be grounds for imposing personal liability on the Members or Manager for liabilities of the Company.

2.4 **Rights of Creditors and Third Parties.** This Agreement is entered into among the Members for the exclusive benefit of the Members and their respective heirs, successors and assigns. The Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under this Agreement or any agreement between the Company and any Member with respect to any Contribution or otherwise.

2.5 **Title to Property.** All Company Property shall be owned by the Company as an entity, and no Member shall have any ownership interest in such Property in the Member’s individual name, right or capacity, and each Member’s interest in the Company shall be personal property for all purposes. The Company shall hold all Company Property in the name of the Company and not in the name or names of any Member or Members.

### **ARTICLE 3 MEMBERS**

3.1 **Authority to Act.** No Member shall have any power or authority to bind the Company in the Member's capacity as a member unless the Member has been authorized in writing by the Manager to act as an agent of the Company in accordance with this Agreement. Without limitation of the foregoing, no Member shall communicate with any tenants, lenders, agents, vendors, contractors or other business associates of the Company about matters pertaining to the Company or Company Property, except with the prior written consent of the Manager.

3.2 **Limitation of Liability.** Each Member's liability shall be limited to the fullest extent provided or allowed by the Act or other applicable law. Except as otherwise provided by law, a Member will not be personally liable, merely by reason of being a Member, for any debts or losses of the Company.

3.3 **Indemnification.** To the fullest extent provided or allowed by the laws of Oregon, the Company shall indemnify the Members in their capacity as Members from and against all costs, losses, liabilities, damages, claims and expenses (including attorneys' fees as incurred at trial and on appeal) incurred by such Member in its capacity as a Member relating to action or inaction that (i) is taken in good faith on behalf of the Company and in a manner that the Member reasonably believes or believed to be within the scope of its authority granted by this Agreement or by the Manager and not opposed to the best interests of the Company, and (ii) does not constitute willful misconduct, fraud, or gross negligence.

3.4 **Voting Rights.** Members shall be entitled to vote on or consent to matters submitted to a vote of, or requiring consent from, the Members under this Agreement. Except to the extent expressly provided otherwise in this Agreement, the vote or consent of a Member shall equal that Member's Percentage Interest hereunder, and approval of any matter submitted to a vote of the Members shall be approved by the affirmative vote of a Majority of the Members.

3.5 **Actions of Members.**

(a) **Meetings.** Meetings of the Members, for any purpose or purposes, may be called by the Manager or by any Member or Members possessing a Percentage Interest of at least five percent (5%) upon at least five days prior notice to the other Members.

(b) **Place of Meetings.** The Manager may designate any place within Oregon or Washington as the location for any meeting of the Members.

(c) **Manner of Acting.** Unless otherwise expressly provided herein, Members who have an interest in the outcome of any particular matter upon which the Members vote or consent may vote or consent upon any such matter and their vote or consent, as the case may be, shall be counted in determining whether the requisite matter is approved by the Members.

(d) **Proxies.** At all meetings of the Members, a Member may vote in person or by a proxy executed in writing by the Member or by a duly authorized attorney in fact. Such proxy shall be filed with the Manager before or at the time of the meeting and may be of any duration except that a Member who shall appear in person at a meeting shall void any outstanding proxy for so long as such Member is in attendance.

(e) **Action by Members Without a Meeting.** Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by Members sufficient to have approved the actions or resolutions at issue had a meeting been held at which all Members then entitled to vote were present. Such written consents shall be delivered to the Manager for inclusion in the Company records. Action taken under this Section 3.5(e) shall be effective when the necessary Members have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

(f) **Waiver of Notice.** Whenever a notice is required to be given to any Member hereunder, a waiver thereof by such Member, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

(g) **Telephonic Meetings.** Members may participate in a meeting of the Members by means of a conference telephone or similar communications equipment provided all Members participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting.

3.6 **Books, Records, Reports and Information.** Each Member shall have the right to receive the reports and information required to be provided by the Act, the Articles or this Agreement. Upon reasonable request, each Member, and the Member's agent and attorney shall have the right, during ordinary business hours, to inspect and copy, at the requesting Member's expense, the books and records which the Manager is required to maintain and keep by the Act, the Articles or this Agreement.

## **ARTICLE 4 MANAGER**

### **4.1 General.**

(a) **Number; Designation.** The Company shall have one (1) Manager and the initial Manager is Steven D. Deacon.

(b) **Qualifications.** The Manager may be an individual or an Entity and need not be a Member or a resident of Oregon.

(c) **Term.** The Manager shall hold office until such Manager (i) dies or resigns or (ii) is removed either by the Members or for Cause in accordance with this Agreement.

(d) **Resignation.** The Manager may resign at any time by giving written notice to the Members. The resignation of the Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of the Manager in its capacity as a Member.

(e) **Removal.** The Manager may be removed as the Manager only for Cause, and only with the approval of a Majority of the Members.

**4.2 Authority of the Manager; Delegation of Authority and Management Power to Officers.** Subject to the limitations and restrictions set forth in the Act, the Articles and this Agreement (including, without limitation, the limitations and restrictions set forth in Section 4.3, the Manager shall have the sole and exclusive right to manage the business and affairs of the Company and shall have all of the rights and powers which may be possessed by a Manager under the Act, the Articles and this Agreement, including, without limitation, the authority and power to bind the Company and to execute documents and instruments on behalf of the Company consistent with its rights and authority under this Agreement. Without limiting the generality of the foregoing, the Manager shall have all authority and power necessary or convenient for entering into contracts for the development, redevelopment, construction, leasing, improvement, management, operation, financing, maintenance and repair of the Project. Notwithstanding the foregoing, control of the Company's day-to-day business and affairs may be delegated by the Manager to the officers serving from time to time, each of whom shall be an agent for the Company with the powers set forth in any enabling resolution of the Manager. The term of office of any officer shall be from the officer's appointment until the officer's death, resignation or removal or the appointment of the officer's successor. The Manager may remove any officer at any time, with or without cause and without any specification of any reason for removal.

**4.3 Matters Requiring Approval of a Majority of the Members.** The following (and any other matters this Agreement provides require Member approval) shall require the approval of a Majority of the Members, and the Manager shall not have the authority to cause the Company to do any of the following (or any other matter that requires Member approval), and shall not permit or cause the Company to do any of the following (or any other matter that requires Member approval), without the required approval of the Members:

(a) Knowingly contravene this Agreement, including, without limitation, taking or failing to take any action without the consent of the Members as and to the extent such Member consent is required in this Agreement or knowingly do any act that would make it impossible to carry on the ordinary business of the Company, except as otherwise provided in this Agreement;

(b) Possess Company Property or assign rights in specific Company Property for other than a Company purpose;

(c) Sell, convey, mortgage, pledge, create a security interest in, exchange, transfer, or otherwise dispose of all or any material part of the Company Property;

(d) Amend this Agreement or the Company's articles of organization (provided that any amendment shall require approval of the Members as provided in Article 15);

(e) File for, or cooperate in any filing for, Bankruptcy;

(f) Cease the Company's activities and dissolve (except following an authorized sale of all of the Property owned by the Company);

(g) Issue any new Membership Interest and, if applicable, admit any Additional Member or admit any Assignee as a Substitute Member;

(h) Merge, consolidate or reorganize the Company with or into any other Person or convert the Company;

(i) Commence litigation on matters relating to the Company; or

(j) Enter into any transaction with a Member or an Affiliate of a Member or the Manager not expressly provided for in this Agreement.

#### **4.4 Right to Rely on Manager.**

(a) Any Person dealing with the Company may rely (without duty of further inquiry) upon a certificate signed by the Manager as to: (i) the identity of the Manager or any Member; (ii) the existence or nonexistence of any fact or facts which constitute a condition precedent to acts by the Manager or which are in any other manner germane to the business or affairs of the Company; (iii) the Persons who are authorized to execute and deliver any instrument or document of the Company; or (iv) any act or failure to act by the Company or any other matter whatsoever involving the Company or any Member that involves the apparent carrying on in the usual way the business or affairs of the Company.

(b) Subject to compliance with the provisions of this Agreement, including obtaining any required approval of the Members, the signature of the Manager shall be necessary and sufficient to convey title to any Company Property or to execute any deeds, promissory notes, trust deeds, mortgages, leases or other instruments of conveyance or hypothecation, and all of the Members agree that a copy of this Agreement may be shown to the appropriate parties in order to confirm the same, and further agree that the signature of the Manager shall be sufficient to execute any "statement of company" or other documents necessary to effectuate this or any other provision of this Agreement. All of the Members do hereby appoint the Manager as their attorneys in fact for the execution of any or all of the documents described in this Section 4.4(b).

**4.5 Devotion of Time.** The Manager shall not be required to devote his full time to the business or affairs of the Company, but each shall devote such time as reasonably is necessary to perform his or its duties under this Agreement.

**4.6 Expenses.** The Company shall pay or reimburse the Manager for all reasonable, usual and customary out-of-pocket expenses incurred directly on behalf of the Company.

**4.7 Limitation of Liability; Indemnity.** The Manager shall not be personally liable for any debt, obligation or liability of the Company merely by reason of being the Manager. To the fullest extent provided or allowed by the Act or other applicable law, the Company shall indemnify the Manager in its capacity as Manager and the Manager's officers, directors, members and shareholders from and against all costs, losses, liabilities, damages, claims and expenses (including attorneys' fees as incurred at trial and on appeal) arising from the Manager actions or inactions taken or omitted in its capacity as Manager in good faith on behalf of the Company and in a manner that the Manager reasonably believes or believed to be within the scope of the Manager's authority granted by this Agreement or by the Members, and do not constitute willful misconduct, fraud, or gross negligence. Such indemnification obligation shall be limited to the assets of the Company and not place any personal liability on the Members.

## **ARTICLE 5 CONFLICTS OF INTEREST**

**5.1 Duty of Loyalty.** Each Member and the Manager shall be 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 Members and Manager may enter into transactions that are similar to the transactions into which the Company may enter into, and the Company, and each Member hereby waives any right or claim to participate therein. Each Member hereby waives any right or claim based on a breach of duty to the Company, or on any other basis arising from the interests of the Manager or its Affiliates in such competing properties. The Manager shall also have the right, with the prior written consent of a Majority of the Members, to contract on behalf of the Company, for goods or services with Affiliates of the Manager, provided that such goods or services are of equal or better quality when compared to the goods and services available from qualified professional non-Affiliates engaged in providing such goods and services and are provided at commercially reasonable prices not in excess of prevailing market prices.

**5.2 Other Transactions.** A Member or Manager shall not be deemed to violate a duty or obligation to the Company, merely because the conduct furthers the interest of the Member or Manager with respect to the Company. Subject to approval by a Majority of the Members after full disclosure of all material facts, a Member or Manager may lend money to and transact other business with the Company. The rights and obligations of a Member or Manager who lends money to or transacts business with the Company, shall be the same as those of a Person who is not a Member or Manager, subject to other applicable law. No transaction with the Company shall be voidable solely because a Member or Manager has a direct or indirect interest in the transaction if the transaction is approved or ratified as provided in this Agreement or in the Act.

## ARTICLE 6 CAPITAL CONTRIBUTIONS

### 6.1 Initial Contributions.

(a) The Members shall each contribute to the Company, as each Member's Initial Contribution, the cash and other Property stated for each such Member in Exhibit A hereto. The respective Percentage Interests of the Members shall be as set forth in Exhibit A hereto.

(b) No interest shall accrue on any Contribution and no Member shall have the right to withdraw or be repaid any Contribution except as provided in this Agreement.

**6.2 Additional Capital Contributions.** One or more of the Members may from time to time make additional capital contributions to the Company determined by the Manager, acting in good faith, to be required for permitted purposes of the Company. Each Member will be entitled, but not obligated, to contribute the Member's proportionate share of any additional capital contribution based on Percentage Interests and will not be in default under this Agreement if the Member does not contribute any or all of the Member's proportionate share of any additional capital contribution. For the avoidance of doubt, unless a Majority of the Members agrees otherwise, the Percentage Interests of the Members shall not be adjusted in connection with any additional capital contributions made to the Company, including without limitation any additional capital contributions made disproportionately. Instead, unless otherwise agreed by a Majority of the Members, any additional capital contribution made other than proportionately by all Members shall be entitled to a preferential return on capital equal to the prime rate quoted in *The Wall Street Journal* from time to time plus 6%. Unless and until any such preferential return has been fully distributed to the contributing Member or Members and any such additional capital contribution has been fully returned to the contributing Member or Members through distributions under Section 8.2 or Section 8.3, the Company shall not make any other distributions under Section 8.2 or Section 8.3 except that the Company shall in accordance with Section 8.2 endeavor to distribute to all Members out of available Net Cash Flow from Operations that the Company shall reserve for such purpose distributions sufficient to cover the amount the Manager reasonably estimates the Members require on a cumulative basis to cover federal, state and local taxes owing by the Members on the net income of the Company that passes through to the Members. In connection with any adjustment of Percentage Interests approved by a Majority of the Members, the Percentage Interests of the Members shall be adjusted to take into account any change in value and additional capital contributions made since any previous recalculation of Percentage Interests.

**6.3 Maintenance of Capital Accounts.** The Company shall establish and maintain Capital Accounts with respect to each Member in accordance with the following provisions:

(a) **Increases.** Each Person's Capital Account shall be increased by such Person's Contributions, such Person's distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 7.2 or Section 7.3 hereof, and

the amount of any Company liabilities assumed by such Person or which are secured by any Property distributed to such Person.

(b) **Decreases.** Each Person's Capital Account shall be decreased by the amount of cash and the Gross Asset Value of any Company Property (other than cash) distributed to such Person pursuant to any provision of this Agreement, such Person's distributive share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Section 7.2 or Section 7.3 hereof, and the amount of any liabilities of such Person assumed by the Company or which are secured by any property contributed by such Person to the Company.

(c) **Distribution of Assets.** If the Company at any time distributes any of its assets in kind to any Member, the Capital Accounts shall be adjusted to account for that Member's allocable share (as determined under Article 7 below) of the Profits or Losses that would have been realized by the Company had it sold the assets that were distributed at their respective fair market values immediately prior to their distribution.

(d) **Sale or Exchange of Interest.** In the event of a Transfer of all or a portion of a Person's Economic Rights in accordance with the terms of this Agreement, the Assignee shall succeed to the Capital Account of the Person to the extent it relates to the Transfer of such Person's Economic Rights.

(e) **Compliance with Section 704(b) of the Code.** The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Manager shall determine that it is prudent to modify the manner in which the Capital Accounts, or any adjustments thereto (including, without limitation, adjustments relating to liabilities which are secured by contributions or distributed property or which are assumed by the Company or Members), are computed in order to comply with such Regulations, the Manager may make such modification, provided that such modifications are not likely to have a material effect on the amounts distributed to any Person pursuant to Article 12 hereof upon the dissolution of the Company. The Manager also shall make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q). In determining the amount of any liability for purposes of this Section, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation or otherwise personally obligate any Member to make a contribution in excess of the Contributions referred to in Section 6.1 or, if applicable to the Member, under Section 12.8.



## ARTICLE 7 ALLOCATIONS

### 7.1 Profits and Losses.

(a) **Allocation of Profits.** After giving effect to the special allocations set forth in Sections 7.2 and Section 7.3, Profits for any Fiscal Year (and each item of income, gain, loss, and deduction entering into the calculation of such Profits) shall be allocated in the following order and priority; provided that, prior to any allocation provided for below, the Company shall first allocate Profits up to the amount of any accrued preferential return on capital under Section 6.2 with respect to which no prior allocation of Profits has been made under this Section 7.1(a), pro rata in accordance with the amount of the accrued preferential return to which each Member is entitled and in respect of which no such prior allocation of Profits has been made:

#### (1) Profits from Operations:

(i) First, among the Members to whom Losses were allocated in prior Fiscal Years pursuant to Section 7.1(b), in reverse order of priority, in proportion to the cumulative Losses allocated to each such person pursuant to Section 7.1(b) in all prior Fiscal Years, until the cumulative Profits allocated pursuant to this Section 7.1(a)(1)(i) and Section 7.1(a)(2)(i) below for the Fiscal Year and all prior Fiscal Years equal to the cumulative Losses allocated pursuant to Section 7.1(b) in all prior Fiscal Years;

(ii) Second, to the Deacon Trust and the RDS Trust in proportion to their relative Percentage Interests until the Deacon Trust and the RDS Trust have received aggregate cumulative allocations of Profits pursuant to this Section 7.1(a)(1)(ii) and Section 7.1(a)(2)(ii) below equal to the amount of cumulative distributions to the Deacon Trust and the RDS Trust, respectively, pursuant to Section 8.2(a) and Section 8.3(a);

(iii) Third, to the Members in proportion to their relative Percentage Interests until the Members have received aggregate cumulative allocations of Profits pursuant to this Section 7.1(a)(1)(iii) and Section 7.1(a)(2)(iii) below equal to the amount of cumulative distributions to the Members, respectively, pursuant to Section 8.2(b) and Section 8.3(b); and

(iv) Thereafter, to Deacon Development, LLC.

(2) **Profits from Sales of Company Property:**

(i) First, among the Members to whom Losses were allocated in prior Fiscal Years pursuant to Section 7.1(b), in reverse order of priority, in proportion to the cumulative Losses allocated to each such person pursuant to Section 7.1(b) in all prior Fiscal Years, until the cumulative Profits allocated pursuant to this Section 7.1(a)(2)(i) and Section 7.1(a)(1)(i) above for the Fiscal Year and all prior Fiscal Years equal to the cumulative Losses allocated pursuant to Section 7.1(b) in all prior Fiscal Years;

(ii) Second, to the Deacon Trust and the RDS Trust in proportion to their relative Percentage Interests until the Deacon Trust and the RDS Trust have received aggregate cumulative allocations of Profits pursuant to this Section 7.1(a)(2)(ii) and Section 7.1(a)(1)(ii) above equal to the amount of cumulative distributions to the Deacon Trust and the RDS Trust, respectively, pursuant to Section 8.2(a) and Section 8.3(a);

(iii) Third, to the Members in proportion to their relative Percentage Interests until the Members have received aggregate cumulative allocations of Profits pursuant to this Section 7.1(a)(2)(iii) and Section 7.1(a)(1)(iii) above equal to the amount of cumulative distributions to the Members, respectively, pursuant to Section 8.2(b) and Section 8.3(b); and

(iv) Thereafter, to Deacon Development, LLC.

(b) **Allocation of Losses.** After giving effect to the special allocations set forth in Sections 7.2 and 7.3, and subject to Sections 7.4, Losses shall be allocated in the following order and priority:

(1) First, Losses shall be allocated to Deacon Development, LLC, until the Capital Account balance of Deacon Development, LLC is reduced to zero;

(2) Second, Losses shall be allocated among the Members (other than Deacon Development, LLC), in proportion to their respective Capital Account balances, until such Capital Account balances are reduced to zero; and

(3) Thereafter, to the Members in proportion to their relative Percentage Interests.

**7.2 Special Allocations.** The following special allocations shall be made in the following order:

(a) **Minimum Gain Chargeback.** Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Article 7, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Person's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the preceding sentence shall be made in proportion to the respective

amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This Section 7.2(a) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(b) **Member Minimum Gain Chargeback.** Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Article 7, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Person who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Person's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 7.2(b) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

(c) **Qualified Income Offset.** In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), Section 1.704-1(b)(2)(ii)(d)(5) or Section 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 7.2(c) shall be made only if and to the extent that such Member would have an Adjusted Deficit after all other allocations provided for in this Article 7 have been tentatively made as if this Section 7.2(c) were not in this Agreement.

(d) **Gross Income Allocation.** In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of the amount such Member is obligated to restore pursuant to any provision of this Agreement, and the amount such Member is deemed to be obligated to restore pursuant to the next to the last sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 7.2(d) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article 7 have been made as if Section 7.2(c) hereof and this Section 7.2(d) were not in the Agreement.

(e) **Nonrecourse Deductions.** Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Members in accordance with their Percentage Interests.

(f) **Member Nonrecourse Deductions.** Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(g) **Section 754 Adjustments.** To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of the Member's interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(h) **Allocations Relating to Taxable Issuance of Company Interests.** Any income, gain, loss or deduction realized as a direct or indirect result of the issuance of an interest by the Company to a Member (the "**Issuance Items**") shall be allocated among the Members so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Agreement to each Member, shall be equal to the net amount that would have been allocated to each such Member if the Issuance Items had not been realized.

(i) **Allocations Relating to Substitute Members.** Allocation provisions of the Act, if any, shall not apply in the event of the admission of a Substitute Member.

**7.3 Curative Allocations.** The allocations set forth in Sections 7.2(a)-(g) and Section 7.4 hereof (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 7.3. Therefore, notwithstanding any other provision of this Article 7 (other than the Regulatory Allocations), the Manager shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner they determine appropriate so that, after such offsetting allocations are made, each Member's Capital Account is, to the extent possible, equal to the Capital Account such Member would have had if the Regulatory Allocations were not part of this Agreement and all Company items were allocated pursuant to Sections 7.1 and 7.2(h).

**7.4 Loss Limitation.** Losses allocated pursuant to Section 7.1(b) hereof shall not exceed the maximum amount of Losses that can be allocated without causing any Member to have an Adjusted Deficit at the end of any Allocation Year. In the event some but not all of the Members would have Adjusted Deficits as a consequence of an allocation of Losses pursuant to Section 7.1(b) hereof, the limitation set forth in this Section 7.4 shall be applied on a Member by Member basis and Losses not allocable to any Member as a result of such limitation shall be allocated to the other Members in accordance with the positive balances in such Member's

Capital Accounts so as to allocate the maximum permissible Losses to each Member under Regulations Section 1.704-1(b)(2)(ii)(d).

## 7.5 Other Allocation Rules.

(a) For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Manager using any permissible method under Code Section 706 and the Regulations thereunder.

(b) The Members are aware of the income tax consequences of the allocations made by this Article 7 and hereby agree to be bound by the provisions of this Article 7 in reporting their shares of Company income and loss for income tax purposes.

(c) Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Regulations Section 1.752-3(a)(3), the Members' interests in Company profits are in proportion to their Sharing Ratios.

(d) To the extent permitted by Section 1.704-2(h)(3) of the Regulations, the Manager shall endeavor to treat distributions of Net Cash From Operations or Net Cash From Sales or Refinancings as having been made from the proceeds of a Nonrecourse Liability or a Member Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Deficit for any Member.

(e) All allocations to Members shall include the Manager to the extent that the Manager is also a Member.

**7.6 Tax Allocations:** Code Section 704(c). In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any Property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with subparagraph (a) of the definition of Gross Asset Value) using the remedial method under Code Section 704(c).

In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (b) of the definition of Gross Asset Value hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

Any elections or other decisions relating to such allocations shall be made by the Manager in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 7.6 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Person's Capital

Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

## ARTICLE 8 DISTRIBUTIONS

8.1 **General.** Except as otherwise provided in the Act, the Articles and this Agreement, no Member shall have the right or power to demand or receive a distribution in a form other than cash and shall not be required or compelled to accept a distribution of any asset in kind, to the extent that the interest distributed would exceed the Member's pro rata share of operating or liquidating distributions, as the case may be. All distributions to Members shall include the Manager to the extent that the Manager is also a Member. Notwithstanding anything contained in this Agreement or the Articles to the contrary, no distribution shall be made to a Member in violation of the Act.

8.2 **Distributions of Net Cash From Operations.** Except as provided under Section 8.4 below, the Manager shall cause the Company to distribute Net Cash From Operations to the Members as follows:

(a) First, to the Deacon Trust and the RDS Trust in proportion to their relative Percentage Interests until each of the Deacon Trust and the RDS Trust has received aggregate cumulative distributions pursuant to this Section 8.2(a) and Section 8.3(a) below equal to \$100,000.00;

(b) Second, to the Members in proportion to their relative Percentage Interests until the Members have received aggregate cumulative distributions pursuant to this Section 8.2(b) and Section 8.3(b) below equal to the Preferred Return;

(c) Third, to the Members in proportion to their Percentage Interests until the Members have received aggregate cumulative distributions pursuant to this Section 8.2(c) and Section 8.3(c) below so that the Adjusted Capital Contribution Balance is reduced to zero; and

(d) Thereafter, to Deacon Development, LLC;

provided that, prior to making any such distribution under this Section 8.2, the Company shall first comply with Section 6.2, if applicable, with respect to distribution of a preferential return on, and the return of, any additional capital contributions made other than proportionately under Section 6.2. Distributions to the Members shall in no manner affect their respective Percentage Interests or their voting rights pursuant to Section 3.4.

8.3 **Distributions of Net Cash From Sales or Refinancings.** Except as provided under Section 8.4 below, the Manager shall cause the Company to distribute Net Cash From Sales or Refinancings to the Members as follows:

(a) First, to the Deacon Trust and the RDS Trust in proportion to their relative Percentage Interests until each of the Deacon Trust and the RDS Trust has received aggregate

cumulative distributions pursuant to this Section 8.3(a) and Section 8.2(a) above equal to \$100,000.00;

(b) Second, to the Members in proportion to their relative Percentage Interests until the Members have received aggregate cumulative distributions pursuant to this Section 8.3(b) and Section 8.2(b) above equal to the Preferred Return;

(c) Third, to the Members in proportion to their Percentage Interests until the Members have received aggregate cumulative distributions pursuant to this Section 8.3(c) and Section 8.2(c) above so that the Adjusted Capital Contribution Balance is reduced to zero; and

(d) Thereafter, to Deacon Development, LLC;

provided that, prior to making any such distribution under this Section 8.3, the Company shall first comply with Section 6.2, if applicable, with respect to distribution of a preferential return on, and the return of, any additional capital contributions made other than proportionately under Section 6.2.

**8.4 Liquidating Distributions.** Notwithstanding Section 8.2 and Section 8.3 above, in the event the Company is dissolved and the business and affairs are wound up, distributions shall be made pursuant to Section 12.4.

**8.5 Tax Payment Distributions.** Except to the extent otherwise prohibited by the Act, as advances on the distributions otherwise provided for by Section 8.2 and Section 8.3, the Manager shall endeavor to cause the Company to distribute to the Members with respect to each calendar quarter an amount equal to the product of (i) the highest combined state and federal marginal tax rate then applicable to any Member multiplied by (ii) the taxable income of the Company for the portion of the Fiscal Year through the calendar quarter to which such distribution relates, as estimated by the Company, less amounts previously distributed with respect to such Fiscal Year. The amount otherwise distributable under the foregoing to any Member may be reduced to take account of any over-distribution made to the Member on a cumulative basis with respect to the estimated tax liability of the Member and any capital needs of the Company reflected in reserves maintained by the Company at the direction of the Manager.

**8.6 Amounts Withheld.** All amounts withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment, distribution or allocation to the Members shall be treated as amounts distributed to the Members pursuant to this Article 8 for all purposes under this Agreement. The Manager is authorized to withhold from distributions, or with respect to allocations, and to pay over to any federal, state or local government any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state or local law and shall allocate any such amounts to the Members with respect to which such amount was withheld.

## ARTICLE 9 ADDITIONAL MEMBERS

9.1 **Admission.** Persons may with the approval of a Majority of the Members be added as Additional Members upon the terms and conditions contained in this Agreement. Notwithstanding the foregoing, a Person shall not become an Additional Member unless and until such Person executes such documents and instruments as the Manager reasonably may request to confirm such Person as a Member in the Company and such Person's agreement to be bound by the terms and conditions hereof.

9.2 **Accounting.** No Additional Member shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Manager may at the time an Additional Member is admitted close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, income and expense deductions to an Additional Member for that portion of the Company's tax year in which such Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Regulations promulgated thereunder.

## ARTICLE 10 TRANSFERS OF INTERESTS

10.1 **Restriction on Transfers.** Except as otherwise permitted by this Agreement, no Member or Assignee shall Transfer all or any portion of such Person's interest in the Company.

10.2 **Permitted Transfers.** Each Transfer described in and permitted under any of Section 10.2(a), Section 10.2(b) or Section 10.2(c) shall be a permitted Transfer (collectively, the "**Permitted Transfers**");

(a) Subject to the conditions and restrictions set forth in Sections 10.3 and 10.5 hereof, any Member or Assignee may at any time Transfer all or any portion of such Person's interests in the Company (i) in a Transfer (including a pledge, hypothecation or grant of a security interest) approved by Majority of the Members or (ii) to the transferor's Family (including, without limitation, for estate tax planning purposes), or to the transferor's executor, conservator, administrator, trustee, or personal representative to whom such interests are transferred at death, incompetency or involuntarily by operation of law, or to an Affiliate of such Member or Assignee. Notwithstanding that the foregoing Transfers may be Permitted Transfers if the conditions of Section 10.3 are satisfied, the transferee shall be an Assignee of Economic Rights only whose rights are restricted as provided in Section 10.5 below and the Act, unless and until such Assignee becomes a Substitute Member as provided in Section 10.6.

(b) A Member may at any time Transfer its Membership Interest to another Member of the Company. A Member that is a transferee shall automatically be admitted as a Substitute Member effective upon the Transfer.

(c) A Transfer, directly or indirectly, of ownership interests in any Member that is a limited liability company, corporation or limited partnership is permitted and shall not



have any effect on the Membership Interest of the Member so long as, after such Transfer, the Persons that are members, shareholders or partners, as applicable, of such Member immediately prior to the Transfer, or the individuals or Family of the individuals that directly or indirectly own any such members, shareholders or partners immediately prior to the Transfer or are beneficiaries of any trust that owns any such members, shareholders or partners, (i) own, or have a beneficial interest in, directly or indirectly, at least fifty-one percent (51%) of the legal, beneficial and economic ownership interests in such Member, and (ii) control all material decisions of such Member relating to or affecting such Member's Membership Interest in the Company. Any change-of-control that affects a Member and is not described above and therefore is not a Permitted Transfer shall cause the affected Member to be an Assignee for purposes of this Agreement.

**10.3 Conditions to Permitted Transfers Under Section 10.2(a).** A Transfer shall not be treated as a Permitted Transfer under Section 10.2(a) hereof unless and until the following conditions are satisfied:

(a) Except in the case of a Transfer of a Person's interests in the Company at death or involuntarily by operation of law, the transferor and Assignee shall execute and deliver to the Company such documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Company to effect such Transfer and to confirm the agreement of the Assignee to be bound by this Agreement, including the provisions of this Article 10. In the case of a Transfer of a Person's interests in the Company at death or involuntarily by operation of law, the Transfer shall be confirmed by presentation to the Company of legal evidence of such Transfer, in form and substance satisfactory to counsel to the Company. Unless waived by the Company, the Company shall be reimbursed by the transferor and/or Assignee for all costs and expenses that the Company reasonably incurs in connection with such Transfer.

(b) Except in the case of a Transfer at death or involuntarily by operation of law, the transferor shall furnish to the Company an opinion of counsel, which counsel and opinion shall be satisfactory to the Company, that the Transfer will not cause the Company to terminate for federal income tax purposes and that such Transfer will not cause the application of the rules of Code Sections 168(g)(1)(B) and 168(h) (generally referred to as the "tax exempt entity leasing rules") or similar rules to apply to the Company, Company Property, or the Manager and Members.

(c) The transferor and Assignee have obtained consent to the Transfer from any lender or mortgagee to whom the Company is obligated (if required) and have paid all fees and charges in connection therewith.

(d) The transferor and Assignee shall furnish the Company with the Assignee's taxpayer identification number, sufficient information to determine the Assignee's initial tax basis in the Person's interests in the Company transferred, and any other information reasonably necessary to permit the Company to file all required federal and state tax returns and other legally required information statements or returns. Without limiting the generality of the

foregoing, the Company shall not be required to make any distribution otherwise provided for in this Agreement with respect to any Transfer until it has received such information.

(e) Except in the case of a Transfer of a Person's interests in the Company at death or involuntarily by operation of law, either: (i) such Person's interests in the Company shall be registered under the Securities Act of 1933, as amended, and any applicable state securities laws, or (ii) the transferor shall provide an opinion of counsel, which opinion and counsel shall be satisfactory to the Company, to the effect that such Transfer is exempt from all applicable registration requirements and that such Transfer will not violate any applicable laws regulating the Transfer of securities.

(f) Except in the case of a Transfer of a Person's interests in the Company at death or involuntarily by operation of law, the transferor shall provide an opinion of counsel, which opinion and counsel shall be reasonably satisfactory to the other Members, to the effect that such Transfer will not cause the Company to be deemed to be an "investment company" under the Investment Company Act of 1940.

**10.4 Prohibited Transfers.** Any purported Transfer of a Person's interests in the Company that is not a Permitted Transfer shall be null and void and of no force or effect whatever; provided that, if the Company is required to recognize a Transfer that is not a Permitted Transfer (or if the Company, in its sole discretion, elects to recognize a Transfer that is not a Permitted Transfer), the interest Transferred shall be strictly limited to the transferor's Economic Rights with respect to the transferred interests, with distributions first applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations, or liabilities for damages that the transferor or Assignee may have to the Company.

In the case of a Transfer or attempted Transfer of a Person's interests in the Company that is not a Permitted Transfer, the parties engaging or attempting to engage in such Transfer shall indemnify and hold harmless the Company and the other Members from all cost, liability, and damage that any of such indemnified Persons may incur (including, without limitation, incremental tax liability and attorneys' fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

#### **10.5 Rights and Obligations of Assignees and Assignors.**

(a) An assignment of a Person's interest in the Company shall not itself dissolve the Company or entitle the Assignee to become a Member or exercise any Management Rights. An Assignee who acquires a Person's interests in the Company but who is not admitted as a Substitute Member pursuant to Section 10.6 hereof shall be entitled only to the Economic Rights with respect to such interests, and shall have no right to any information or accounting of the affairs of the Company, and shall not be entitled to inspect the books or records of the Company.

(b) A Member's assignment of an interest in the Company shall, to the extent of the interest transferred, eliminate the Member's power and right to vote on any matter submitted to the Members, and for voting purposes such interest shall not be counted as

outstanding. The Assignee will have no Management Rights unless and until the Assignee becomes a Substitute Member, at which time the voting rights associated with the transferred interest shall be restored, and such interest shall again be counted as outstanding. An Assignee shall have no liability as a Member solely as a result of the assignment. A Member who assigns an interest in the Company shall not be released from any liability to the Company solely as a result of the assignment of such Economic Rights.

(c) In the event a court of competent jurisdiction charges a Membership Interest with the payment of an unsatisfied amount of a judgment with interest, to the extent so charged the judgment creditor shall be treated as an Assignee.

#### **10.6 Acceptance of Assignee as Substitute Member.**

(a) Subject to the other provisions of this Article 10, an Assignee in a Permitted Transfer under Section 10.2(a) or any other Assignee not automatically admitted as a Substitute Member under Section 10.2(b) may be admitted to the Company as a Substitute Member, with all of the Management Rights of a Member, only upon satisfaction of all of the conditions set forth below in this Section 10.6.

(1) A Majority of the Members consents to such admission, which consent shall not be unreasonably withheld.

(2) If required under the terms of any loans to the Company, the consent of such lenders to the admission of the Assignee as a Substitute Member.

(3) The Assignee shall become a party to this Agreement as a Member by executing such documents and instruments as the Manager may reasonably request as may be necessary or appropriate to confirm such Assignee as a Member in the Company and such Assignee's agreement to be bound by the terms and conditions hereof.

(4) The Assignee shall pay or reimburse the Company for all reasonable legal, filing, and publication costs that the Company incurs in connection with the admission of the Assignee as a Member with respect to the Transferred Interests.

(5) If the Assignee is not an individual of legal majority, the Assignee shall provide the Company with evidence satisfactory to counsel for the Company of the authority of the Assignee to become a Member and to be bound by the terms and conditions of this Agreement.

(b) An Assignee who becomes a Substitute Member has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a Member under the Act, the Articles and this Agreement, and is also liable for any obligations of the assignor to make Contributions, but is not obligated for liabilities reasonably unknown to the Assignee at the time the Assignee becomes a Member.

(c) Even if an Assignee becomes a Substitute Member, the assignor is not released from any liability the assignor may have to the Company.

**10.7 Distributions and Allocations Regarding Transferred Interests.** If any Person's interest in the Company is Transferred during any Fiscal Year in compliance with the provisions of this Article 10, Profits, Losses, each item thereof, and all other items attributable to such interest for such Fiscal Year shall be divided and allocated between the transferor and the Assignee by taking into account their varying interests during such Fiscal Year in accordance with Code Section 706(d), using any conventions permitted by law and selected by the Manager. All distributions on or before the date of such Transfer shall be made to the transferor, and all distributions thereafter shall be made to the Assignee. Solely for purposes of making such allocations and distributions, the Company shall recognize such Transfer not later than the end of the calendar month during which it is given notice of such Transfer, provided that, if the Company is given notice of a Transfer at least ten Business Days prior to the Transfer, the Company shall recognize such Transfer as the date of such Transfer, and provided further that, if the Company does not receive a notice stating the date such interest was Transferred and such other information as the Manager may reasonably require within 30 days after the end of the Fiscal Year during which the Transfer occurs, then all such items shall be allocated, and all distributions shall be made, to the Person who, according to the books and records of the Company, was the owner of the interest on the last day of the Fiscal Year during which the Transfer occurs. Neither the Company nor any Manager shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 10.7, whether or not the Manager or the Company has knowledge of any Transfer of ownership of any interest.

**10.8 Deacon Trust/RDS Trust Call Option.** The Manager, may upon no less than fifteen (15) days prior written notice to the Deacon Trust and the RDS Trust ("**Deacon/RDS Call Notice**"), redeem all of the Membership Interests and Units of the Deacon Trust and the RDS Trust at any time by paying to the Deacon Trust and the RDS Trust an amount equal to (a) an amount, together with aggregate cumulative distributions pursuant to Sections 8.2(a)-(c) and Sections 8.3(a)-(c) necessary to provide each of the Deacon Trust and the RDS Trust with One Hundred Thousand Dollars (\$100,000.00), the Preferred Return and a return of the Adjusted Capital Contribution Balance of each Member calculated as the date of such redemption; plus (b) One Dollar (\$1.00) (collectively, the "**Deacon/RDS Redemption Amount**"). The Deacon/RDS Call Notice shall include a detailed calculation of the Deacon/RDS Redemption Amount, the date which the Deacon/RDS Redemption Amount shall be wired to the Deacon Trust and the RDS Trust, and drafts of any documents required to be executed to complete the redemption contemplated in this Section 10.8. If there is any dispute as to the Deacon/RDS Redemption Amount, the parties shall meet and confer to attempt to mutually determine the same for a period of fifteen (15) days prior to engaging in any dispute resolution provisions set forth below. The Company may assign its rights under this Section 10.8 to Deacon Development, LLC and/or its Affiliates to the extent disclosed in the Deacon/RDS Call Notice. The Deacon/RDS Redemption Amount shall be delivered to the Deacon Trust and the RDS Trust by wire transfer on the date set forth in the Deacon/RDS Call Notice. The Manager (on behalf of the Company) and the Deacon Trust and the RDS Trust shall execute, acknowledge and deliver such instruments as may be necessary or appropriate to carry out and enforce the provisions of this Section 10.8. Upon the receipt of the Deacon/RDS Call Notice, and the exchange of the required documents and instruments, the Deacon Trust and the RDS Trust shall be fully redeemed of all of its Membership Interest in the Company and shall have no further right in or obligation to the

Company; provided, however, the Company shall be required to deliver the records set forth in Article 14 (as such relate to the time period up to and including such redemption) to the Deacon Trust and the RDS Trust within thirty (30) days after the redemption of the Membership Interest of the Deacon Trust and the RDS Trust contemplated in this Section 10.8.

## **ARTICLE 11**

### **CESSATION OF A MEMBER**

**11.1 Cessation.** A Person shall cease to be a Member upon the happening of any of the following (each, a “**Cessation Event**”), and such Person or any transferee by reason of the Cessation Event shall thereupon be an Assignee except as otherwise expressly provided in the Transfer provisions in Article 10:

- (a) the purported withdrawal of a Member as provided in Section 11.2;
- (b) the expulsion of a Member pursuant to Section 11.3;
- (c) the Bankruptcy of a Member;
- (d) in the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member’s person estate;
- (e) in the case of a Member who is acting as a Member by virtue of being trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);
- (f) in the case of a Member that is a separate Entity other than a corporation, the dissolution and commencement of winding up of the separate Entity;
- (g) in the case of a Member that is a corporation, the filing of articles of dissolution or its equivalent, for the corporation or the revocation of its charter;
- (h) in the case of an estate, the distribution by the fiduciary of the estate’s entire Membership Interest in the Company; or
- (i) transfer of a Member’s entire Membership Interest.

**11.2 Withdrawal.** No Member has the power to withdraw voluntarily from the Company. A Member that purports to withdraw voluntarily from the Company prior to any dissolution and winding up of the Company shall be in breach of this Agreement, shall be liable to the Company for any damages arising directly or indirectly from such purported withdrawal, shall cease to be a Member but shall continue to hold Economic Rights as an Assignee, and shall not be entitled to any distribution from the Company by reason of such withdrawal.

**11.3 Expulsion.** A Member may be expelled from the Company upon a determination by a court upon application of any Member that the Member sought to be expelled has been guilty of wrongful conduct that adversely and materially affects the business or affairs of the Company, or has otherwise breached a duty owed to the Company or the other Members to the extent that it is not reasonably practicable to carry on the business or affairs of the Company with the Member. An expelled Member shall be treated as having withdrawn from the Company in breach of this Agreement on the date of such determination and shall not be entitled to any distribution from the Company by reason of such expulsion and deemed withdrawal.

## **ARTICLE 12 DISSOLUTION AND WINDING UP**

**12.1 Covenant Not to Cause Dissolution.** Except as otherwise permitted by this Agreement, each Member hereby covenants and agrees not to take any voluntary action that would cause the Company to dissolve, and notwithstanding any provision of the Act, the Company shall not dissolve prior to the occurrence of a Dissolution Event.

**12.2 Dissolution Events.** The Company shall dissolve and commence winding up and liquidating upon the first to occur of any of the following (each a “**Dissolution Event**”):

- (a) The sale (other than pursuant to a like-kind exchange approved by a Majority of the Members) of all or substantially all of the Company Property;
- (b) A Majority of the Members vote to dissolve, wind up, and liquidate the Company; or
- (c) A judicial dissolution of the Company.

Notwithstanding anything in the Act to the contrary, to the maximum extent permitted by law, the foregoing events are the exclusive events which may cause the Company to dissolve.

**12.3 Cessation Event Not a Dissolution Event.** The occurrence of a Cessation Event shall not be a Dissolution Event, and the Company shall not be required to be wound up by reason of a Cessation Event.

**12.4 Winding Up.** Upon the occurrence of a Dissolution Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, satisfying the claims of its creditors and Members, and liquidating or distributing its assets to the extent necessary therefor, and no Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the orderly winding up of the Company’s business and affairs. To the extent not inconsistent with the foregoing, all obligations in this Agreement shall continue in full force and effect until such time as the Company Property has been distributed pursuant to this Section 12.4. The Manager or, if there is no Manager then serving, the Members shall oversee the winding up and dissolution of the Company, shall provide a full accounting of the Company’s liabilities and Property, shall cause the Company Property to be liquidated as promptly as is consistent with obtaining the fair value thereof, and shall cause the proceeds

therefrom and any remaining Property, to the extent sufficient therefor, to be applied and distributed in the following order:

(a) First, to the payment and discharge of all of the Company's debts and liabilities to creditors other than Members;

(b) Second, to the payment and discharge of all of the Company's debts and liabilities to Members; and

(c) The balance shall be distributed to the Members in the amount of the positive balances in the respective Capital Accounts, after giving effect to all allocations and distributions for all periods, including allocations of Profits and Losses and adjustments of Gross Asset Values in accordance with the definition thereof contained in Article 1. Profits or Losses, as the case may be, shall be allocated among the Members so that, to the greatest extent possible, the liquidation of the Company in accordance with the Member's relative Capital Account balances would have the same result as a liquidation of the Company and the distribution of assets in accordance with Section 8.3. To the extent that the foregoing allocation provisions would not achieve this result, Profits and Losses (including items of gross income if required to fulfill the intent of this provision) will be reallocated among the Members for the fiscal year of the liquidation (and, if necessary, prior fiscal years) so as to cause the balances in the Capital Accounts to be in the correct amounts.

Any Manager or Member that performs more than de minimis services in completing the winding up and termination of the Company shall be entitled to receive reasonable compensation for its services performed in completing such winding up and termination of the Company pursuant to this Article 12.

**12.5 Compliance With Regulations; Deficit Capital Accounts.** In the event the Company is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), distributions shall be made pursuant to this Article 12 to the Members who have positive Capital Accounts in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2). Except for any contributions required under Sections 6.1 or under Section 12.8 below, if applicable, if any Member has a deficit Capital Account balance (after giving effect to all contributions, distributions and allocations for all Fiscal Years, including the Fiscal Year during which such liquidation occurs), such Member shall have no obligation to make any Contribution with respect to such deficit, and such deficit shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever. In the reasonable discretion of the Manager, a pro rata portion of the distributions that would otherwise be made to the Members pursuant to this Article 12 may be:

(a) Distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the Manager, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to Section 12.4 hereof; or

(b) Withheld to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, provided that such withheld amounts shall be distributed to the Members as soon as practicable.

**12.6 Rights of Members.** Except as otherwise expressly provided in this Agreement:

(a) Each Member shall look solely to the assets of the Company for the return of Contributions and shall have no right or power to demand or receive property other than cash from the Company, and

(b) No Member shall have priority over any other Member as to the return of Contributions or the receipt of distributions or allocations.

**12.7 Notice of Dissolution; Filing of Articles of Dissolution and Publication of Notice of Dissolution.** In the event a Dissolution Event occurs, the Manager shall, within 30 days thereafter, provide written notice thereof to each of the Members and give such other notices as the Manager may determine are necessary or desirable in connection with the dissolution and winding up of the Company. The Manager shall, in addition, cause Articles of Dissolution to be filed by the Company and a notice of dissolution to be published in accordance with the Act.

**12.8 Limited Default Restoration Obligation.**

(a) **General.** Upon liquidation of the Company or of any Member's entire interest in the Company, and after allocation of all items of income, gain, or loss pursuant to Article 7 incurred through the liquidation event, any Member with a deficit balance in his or her Capital Account will be required to make a capital contribution equal to the lesser of (i) the absolute value of such deficit balance or (ii) the Member's Elective Deficit Amount as described in subsection (b) of this section not later than through the end of the taxable year in which such liquidation occurs or, if later, within 90 days after the date of such liquidation.

(b) **Elective Deficit Amount.** Each Member has an initial elective Deficit Amount of zero. Any Member may, by written election delivered to the Manager, increase his or her Elective Deficit Amount to a dollar amount specified by the Member.

(c) **Notice of Proposed Allocation.** For each taxable year in which any Member has a distributive share of any item of Company loss or deduction for which an allocation to the Member would, otherwise, result in an Adjusted Deficit in such Member's Capital Account, the Manager will provide notice of such restrictions to the Member. The Member may within 10 days after receipt of such notice, give written notice to the Manager that the Member elects to increase the Member's Elective Deficit Amount to a specified amount. Any increase in the Member's Elective Deficit Amount will then be given effect in the allocation of the items of loss or deduction for the taxable year (and all subsequent taxable years).



(d) **Reduction of Elective Deficit Amount.** At any time that a Member does not have a deficit in his or her Capital Account, the Member may, by written notice to the Manager, decrease the Member's Elective Deficit Amount to zero or to any specified amount.

## **ARTICLE 13**

### **TAXES**

13.1 **Elections.** The Manager may cause the Company to file an election in accordance with the applicable Regulations promulgated under Section 754 of the Code to cause the basis of the Company's assets to be adjusted for federal income tax purposes as provided by the Code and may also make any other tax elections for the Company allowed under the Code or the tax laws of any state or other jurisdiction having taxing jurisdiction over the Company.

13.2 **Taxes of Taxing Jurisdictions.** To the extent that the laws of any taxing jurisdiction require, each Member requested to do so by the Manager will submit an agreement indicating that the Member will make timely income tax payments to the taxing jurisdiction and that the Member accepts personal jurisdiction of the taxing jurisdiction with regard to the collection of income taxes attributable to the Member's income, and interest and penalties assessed on such income. If the Member fails to provide such agreement, the Company may withhold and pay over to such taxing jurisdiction the amount of tax, penalty and interest determined under the laws of the taxing jurisdiction with respect to such income. Any such payments with respect to the income of a Member shall be treated as a distribution for purposes of Article 7. The Manager may, where permitted by the rules of any taxing jurisdiction, cause the Company to file a composite, combined or aggregate tax return reflecting the income of the Company and pay the tax, interest and penalties of some or all of the Members on such income to the taxing jurisdiction, in which case the Company shall inform the affected Members of the amount of such tax interest and penalties so paid.

### **13.3 Partnership Representative.**

(a) Steven D. Deacon or such other Member as may be appointed from time to time by a Majority of the Members, shall act as the partnership representative of the Company pursuant to Code Section 6223(a).

(b) The Partnership Representative is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by taxing authorities, including administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The Partnership Representative shall promptly notify the Members if any tax return of the Company is audited and upon the receipt of a notice of final partnership administrative adjustment or final partnership adjustment. Without the consent of a Majority of the Members, the Partnership Representative shall not extend the statute of limitations, file a request for administrative adjustment, file suit relating to any Company tax refund or deficiency or enter into any settlement agreement relating to items of income, gain, loss or deduction of the Company with any taxing authority.

(c) To the extent permitted by applicable law and regulations, the Company will annually elect out of the partnership audit procedure enacted under Section 1101 of the Bipartisan Budget Act of 2015 (the “**BBA Procedures**”) pursuant to Code Section 6221(b). For any year in which applicable law and regulations do not permit the Company to elect out of the BBA Procedures, then within forty-five (45) days of any notice of final partnership adjustment, the Company will elect the alternative procedure under Code Section 6226, and furnish to the Internal Revenue Service and each Member during the year or years to which the notice of final partnership adjustment relates a statement of the Member’s share of any adjustment set forth in the notice of final partnership adjustment.

(d) Each Member agrees that such Member shall not treat any Company item inconsistently on such Member’s federal, state, foreign or other income tax return with the treatment of the item on the Company’s return. Any deficiency for taxes imposed on any Member (including penalties, additions to tax or interest imposed with respect to such taxes and any taxes imposed pursuant to Code Section 6226) shall be paid by such Member.

(e) Except as otherwise provided herein, the Partnership Representative shall have sole discretion to make any determination regarding income tax elections it deems advisable on behalf of the Company; provided, that the Partnership Representative shall make an election under Code Section 754, if requested in writing by another Member.

## ARTICLE 14

### BOOKS, RECORDS AND ACCOUNTINGS

**14.1 Books and Records.** At the expense of the Company, the Manager shall maintain records and accounts of all operations and expenditures of the Company. At a minimum, the Company shall keep at its principal place of business all records required under the Act.

**14.2 Tax Information.** As soon as reasonably practicable after the end of each Fiscal Year of the Company, the Manager shall cause the Company shall furnish to each Member the Member’s Schedule K-1 and a copy of the Company’s federal income tax return for that fiscal year. The Manager shall cause the Company to also promptly furnish to a Member any additional information that the Member may reasonably request and require for the preparation of the Member’s individual federal and state income tax returns.

**14.3 Financial Reports.** The Manager shall cause the Company to furnish the following financial reports to each Member:

(a) As soon as reasonably practicable after the end of each Fiscal Year, and in any event within 45 days thereafter, a balance sheet of the Company as of the end of such Fiscal Year, and statements of income and cash flows of the Company for such year, prepared in accordance with sound accounting principles, consistently applied, and setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail, and, within 90 days after the end of each Fiscal Year, financial statements of the Company for the Fiscal Year.

(b) As soon as reasonably practicable after the end of the first, second and third quarterly accounting periods in each Fiscal Year, and in any event within 45 days thereafter, a balance sheet of the Company as of the end of each such quarterly period, and statements of income and cash flows of the Company for such period and for the current Fiscal Year to date, prepared in accordance with sound accounting principles, consistently applied, and setting forth in comparative form the figures for the corresponding periods of the previous Fiscal Year, subject to changes resulting from normal year end audit adjustments, all in reasonable detail.

**14.4 Indemnification; Other Reports.** If the Company indemnifies or advances expenses to a Member or a Manager, the Company shall report the indemnification or advance in writing to the Members. The Manager shall also provide such other reports to the Members as the Members reasonably request at such time and in such manner as the Members from time to time reasonably request.

## **ARTICLE 15 AMENDMENT**

Any amendment, restatement, or modification of this Agreement or the Articles shall require the written consent of Members with greater than eighty percent (80%), in terms of Percentage Interests, of all Members then entitled to vote; provided that the Manager, without the consent of any other Member or Person, may amend any provisions of this Agreement with respect to the allocation of Profits, Losses, items thereof, and tax items if so required by a taxing authority. No Member or Manager shall have any vested rights in this Agreement which may not be modified through an amendment to this Agreement.

## **ARTICLE 16 MISCELLANEOUS**

**16.1 Governing Law.** This Agreement, and the application of interpretation hereof, shall be governed exclusively by its terms and by the laws of Oregon, and specifically the Act.

**16.2 Construction.** Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

**16.3 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

**16.4 Execution of Additional Instruments.** Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

**16.5 Headings.** The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision hereof.

**16.6 Heirs, Successors and Assigns.** Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, and permitted successors and assigns.

**16.7 Notices.** Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the party or to an executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's and/or Company's address, as shown in the records of the Company. Except as otherwise provided herein, any such notice shall be deemed to be given two business days after the date on which the same was deposited in the United States mails, addressed as aforesaid.

**16.8 Rights and Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

**16.9 Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

**16.10 Waivers.** The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

**16.11 Arbitration.** Any controversy or claim arising out of this Agreement will be settled by arbitration before a single arbitrator in Portland, Oregon. If the parties agree on an arbitrator, the arbitration will be held before the arbitrator selected by the parties. If the parties do not agree on an arbitrator, each party will designate an arbitrator and the arbitration will be held before a third arbitrator selected by the designated arbitrators. The arbitration will be conducted in accordance with the then-current rules of the Arbitration Service of Portland, Inc. The resolution of any controversy or claim as determined by the arbitrator will be binding on the parties. Any party may seek from a court an order to compel arbitration, or any other interim relief or provisional remedies pending an arbitrator's resolution of any controversy or claim. Any such action or proceeding – or any action or proceeding to confirm, vacate, modify or correct the award of the arbitrator – will be litigated in courts located in Multnomah County, Oregon. Each party consents and submits to the jurisdiction of any court located in Multnomah County, Oregon. The prevailing party in the arbitration will be entitled to recover from the other party all expenses incurred in connection with the arbitration, including attorneys' fees.

**16.12 Injunctive Relief.** Notwithstanding anything to the contrary contained in this Agreement, any Member may seek a temporary restraining order or a preliminary injunction from

any court of competent jurisdiction in order to prevent immediate and irreparable injury, loss or damage; provided such Member has commenced in good faith a dispute resolution proceeding pursuant to Section 16.11. The arbitrator once appointed shall have the power to modify or vacate such temporary restraining order or preliminary injunction or to issue a restraining order or injunction.

**16.13 Entire Agreement.** This Agreement and any other document to be furnished pursuant to the provisions hereof embody the entire agreement and understanding of the parties hereto as to the subject matter contained herein and therein. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in this Agreement and such documents. This Agreement and such documents supersede all prior agreements and understandings among the parties with respect to the subject matter hereof and thereof.

**16.14 No Third Party Beneficiary.** It is expressly understood and agreed that this Agreement is made and entered into for the sole protection and benefit of the Members and Manager and their respective successors and assigns (but subject to Article 10), and, without the prior express written consent of all of the Members and any other parties hereto, no other Person shall have any right to action hereon.

**16.15 Confidentiality.** Any and all financial and budgetary information about the Company, the Property, the Project and the Members shall be “**Confidential Information**”. Except with respect to Confidential Information available to the public and except if required to do so by applicable law or by order of a governmental entity or in connection with any proposed disposition by a Member of the Member’s Membership Interest or designation of a nominee to purchase under Section 10.8 (provided that in any such case the disclosing Member obtains an agreement by the potential third party purchaser or nominee to be bound by confidentiality provisions substantially equivalent to those contained in this Section), no Member shall disclose any Confidential Information to any Person (other than their advisors and legal counsel) without the prior written consent of the Manager and each other Member, which consent may be withheld by the Manager and each Member in his or its sole discretion. Each Member acknowledges and agrees that any breach by it, directly or indirectly, of this Agreement, will cause irreparable injury for which there is no adequate remedy at law. Accordingly, each Member expressly agrees that, in the event of any such breach or any threatened breach, directly or indirectly, either the Company or a Member enforcing this confidentiality requirement shall be entitled, in addition to any and all other remedies available, to seek and obtain injunctive and/or other equitable relief to require specific performance of or prevent a breach under the provisions of this Agreement.

**16.16 Broker’s Indemnity.** Each Member represents that it has not dealt with any broker or agent in connection with this Agreement or any of the transactions contemplated hereby, and hereby agrees to indemnify each other Member and the Company and hold them each harmless from and against all liability, loss, cost, damage and expense (including attorneys’ fees and costs incurred in the investigation, defense and settlement of the matter) which any other Member or the Company shall ever suffer or incur by reason of any claim by any broker or agent, whether or not meritorious, for any compensation with respect to such indemnifying Member’s

dealings in connection with this Agreement or such indemnifying Member's contribution or other transactions provided for or referred to herein.

**16.17 Representation and Waiver of Potential Conflicts.** The Members acknowledge and agree that (i) Brix Law LLP represents only the Company in connection with this Agreement, and (ii) Brix Law LLP has advised each of the Members who have been or currently are clients of Brix Law LLP that (a) such representation constitutes a potential conflict of interest due to the existing legal relationships between such persons (or their affiliates) and Brix Law LLP, (b) that each such Member should seek independent legal counsel to determine whether or not to waive the potential conflicts of interest and consent to Brix Law LLP's representation of the Company as set forth above, and (c) in the event of a dispute between the Company and any of the other Members, Brix Law LLP may withdraw its representation and in such case each of the disputing parties will be obligated to seek independent legal counsel in connection with such conflict. Having been apprised of such potential conflicts of interest, each of the Members hereby waives all potential conflicts of interest and consents to Brix Law LLP's representation of the Company as set forth above, in connection with this matter.

**16.18 Prior Agreement Superseded.** This Agreement supersedes and replaces in its entirety any prior operating agreement of the Company, including without limitation the Prior Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Members have executed this Agreement effective as of the date first set forth above.

**Members:**

DEACON DEVELOPMENT, LLC,  
an Oregon limited liability company

DocuSigned by:  
By: Steve Deacon  
0CCB741117E042B...  
Steven D. Deacon, Manager

Steven D. Deacon Revocable Trust dated  
June 17, 1993



DocuSigned by:  
By: Steve Deacon  
0CCB741117E042B...  
Steven D. Deacon, Trustee

RDS Trust dated February 7, 2013

DocuSigned by:  
By: Richard Smith  
DFB0CDE944394AA...  
Richard Smith, Trustee

**EXHIBIT A**  
**CONTRIBUTIONS; PERCENTAGE INTERESTS**

<u>Member</u>	<u>Contribution</u>	<u>Percentage Interest</u>	<u>Units</u>
Deacon Development, LLC, an Oregon limited liability company	\$1,000,000.00	14.814%	1,000,000
Steven D. Deacon Revocable Trust dated June 17, 1993	\$2,875,000.00	42.593%	2,875,000
RDS Trust dated February 7, 2013	\$2,875,000.00	42.593%	2,875,000

Initials: , , 