

# OPERATING AGREEMENT

OF

## OGSC2, LLC

**DATE:** December 19, 2023

**PARTIES:** Patrick J. Carney ("**Carney**");  
Kelly M. McDonald ("**McDonald**"); and  
Mark D. Shipman ("**Shipman**"), (collectively, the "**Members**").

### RECITAL:

The parties to this Operating Agreement (the "**Agreement**") are entering into this Agreement for the purpose of forming a limited liability company (the "**Company**") under the Limited Liability Company Act of the state of Oregon (the "**Act**"). The Company is to be managed by its Members.

### AGREEMENT:

#### 1. Formation

##### 1.1 Name

The name of the Company is **OGSC2, LLC**.

##### 1.2 Articles of Organization

Articles of Organization for the Company were filed with the Secretary of State for the state of Oregon on December 19, 2023.

##### 1.3 Duration

The Company will exist until dissolved as provided in this Agreement.

##### 1.4 Principal Office

The Company's principal office will initially be at 625 Hawthorne Ave SE, Suite 110, Salem, OR 97301, but it may be relocated by the Members at any time.

##### 1.5 Registered Office and Registered Agent

The Company's initial registered office will be at 625 Hawthorne Ave SE, Suite 110, Salem, OR 97301, and the name of its initial registered agent at that address will be Thomas J. Wettlaufer. The Company's registered agent and registered office can only be changed by filing a notice of the change with the secretary of state for the state in which the Articles of Organization of the Company were filed.

## **1.6 Purposes and Powers**

The Company is formed for the purpose of engaging in the business of buying, developing, and selling of real estate. The Company has the power to do all things necessary, incident, or in furtherance of that business.

## **1.7 Title to Assets**

Title to all assets of the Company will be held in the name of the Company. No Member has any right to the assets of the Company or any ownership interest in those assets except indirectly as a result of the Member's ownership of an interest in the Company. No Member has any right to partition any assets of the Company or any right to receive any specific assets on the winding up of the business of the Company or on any other distribution from the Company. Assets of the Company may not be commingled with those of a Member or any other person.

## **2. Members, Contributions and Interests**

### **2.1 Initial Members**

The names and addresses of the initial Members of the Company, the amounts of their initial capital contributions and their initial ownership interests are as set forth on **Schedule 2.1**, attached hereto and by this reference made a part hereof. Each Member's ownership interest at any time will be determined by the ratio of the Member's aggregate capital contributions to the aggregate capital contributions of all Members.

### **2.2 Initial Capital Contributions**

The capital contributions of Carney, McDonald and Shipman must be paid to the Company, in collected funds, immediately after all the Members have signed this Agreement.

### **2.3 Additional Members**

Except as otherwise provided in the section of this Agreement relating to substitution, additional Members of the Company may be admitted only with the Members' unanimous approval.

### **2.4 Additional Contributions**

No Member is required to contribute additional capital to the Company without the Member's consent, unless the act provides otherwise. Additional capital contributions may be made only with the Members' unanimous approval. If the Members approve additional capital contributions, they must set a maximum, and the Members will then have the right, but not the obligation, to contribute pro rata shares of the maximum based on their ownership interests. If a Member fails to make the Member's full contribution, the difference may be contributed by the other Members on a pro rata basis or any other basis they agree on.

### **2.5 No Interest on Capital Contributions**

No interest will be paid on capital contributions.

## **2.6 Capital Accounts**

Because the Company will be taxed as an S corporation and not as a partnership, no capital accounts will be maintained for the Members.

## **3. Allocation of Profits and Losses**

### **3.1 Net Profit or Loss**

The net profit or loss of the Company for each fiscal year will be determined according to the accounting principles employed in the preparation of the Company's federal income tax information return. The profit or loss, as well as any items thereof that must be separately stated under IRC § 703(a), will be allocated to the Members in proportion to their ownership interests.

### **3.2 Allocations of Income and Loss**

For such time that the Company is taxed as an S Corporation, items of income, gain, loss, deduction and credit shall be allocated to the Members in proportion to their respective ownership interests.

### **3.3 Prorates**

If a Member has been a member of the Company during only part of a fiscal year, or if a Member's ownership interest changes during a fiscal year, the net profit or net loss for the year will be allocated to the Member based on the period of time during which the Member was a member or held a particular ownership interest. Net profit or loss for the fiscal year may be allocated ratably between the persons who were Members on a daily basis using the Company's usual accounting methods. Except as otherwise provided in IRC § 706(d)(3), the Company's fiscal year may, in the alternative, be divided into two or more segments, and the net profits or losses for each segment allocated among the persons who were Members, or who held particular ownership interests, during the segment. Decisions about the method of prorating profit or loss will be made by the Members.

## **4. Distributions**

### **4.1 Annual Distributions**

To enable the Members to pay taxes on income of the Company, the Company must distribute cash during each fiscal year in an amount equal to the product of: (a) the amount of the taxable income of the Company for the year and (b) the highest aggregate rate of federal, state, and local income and self-employment tax imposed on any Member's share of the income. Distributions must be paid quarterly at times that coincide to the extent possible with the Members' payment of estimated taxes, and the amount of each distribution is to be based on the anticipated taxable income of the Company for the fiscal year of the distribution and the anticipated tax rates of Members, as determined at the time the distribution is made.

#### **4.2 Additional Distributions**

Additional distributions of cash or property may be made by the Company to the Members, at such times and in such amounts as the Members determine.

#### **4.3 Property Distributions**

Property of the Company may be distributed to the Members in kind, but only with their unanimous approval. As provided in Treas. Reg. § 1.704-1(b)(2)(iv)(e)(1), any property distributed in kind must be valued and treated for the Company's accounting purposes as though the property had been sold at fair market value on the date of distribution. The difference between the fair market value of the property and its adjusted tax basis will be treated as a gain or loss on the sale of the property and will be credited or charged to the Member. This gain or loss will not be treated as gain or loss recognized by the Company for income tax purposes.

#### **4.4 Allocation and Limitation**

All annual distributions and additional distributions must be made to Members in proportion to their ownership interests. No distribution, including an annual distribution, may be made to the extent it would violate the act's restrictions on distributions.

### **5. Administration of Company Business**

#### **5.1 Management**

The Company is a member-managed LLC, and the Members are vested with the exclusive authority to manage the Company's business. All Members have the right to participate in the control and conduct of the Company's business. Subject to the limitations imposed by this Agreement or by action of the Members, each Member is an agent of the Company and has authority to bind the Company in the ordinary course of its business. For example, a Member may:

- 5.1.1 Expend the Company's funds in the conduct of its business;
- 5.1.2 Sign and deliver all agreements and documents that are necessary or desirable to carry out the Company's business, including documents conveying, leasing, or granting a security interest in any of the Company's assets, without additional signatures being required;
- 5.1.3 Borrow money for use in the Company's business and sign and deliver promissory notes or other negotiable or nonnegotiable evidences of the Company's indebtedness along with mortgages, trust deeds, security agreements, pledge agreements, or other documents securing the indebtedness with assets of the Company; and
- 5.1.4 Engage such persons as may be advisable to operate the Company's business.

## **5.2 Actions by Members**

Except as otherwise provided in this Agreement, all decisions requiring action of the Members or relating to the business or affairs of the Company will be decided by the affirmative vote or consent of Members holding a majority of the ownership interests. Members may act with or without a meeting, and any Member may participate in any meeting by written proxy or by any means of communication reasonable under the circumstances.

## **5.3 Approval of Other Members**

No Member has authority to do any of the following without the prior unanimous written consent of the Members:

- 5.3.1 To sell, lease, exchange, mortgage, pledge, or otherwise transfer or dispose of all or substantially all of the property or assets of the Company;
- 5.3.2 To merge the Company with any other entity;
- 5.3.3 To amend the articles of organization of the Company or this Agreement;
- 5.3.4 To incur indebtedness by the Company other than in the ordinary course of business;
- 5.3.5 To authorize a transaction involving an actual or potential conflict of interest between a Member and the Company;
- 5.3.6 To change the nature of the business of the Company; or
- 5.3.7 To commence a voluntary bankruptcy case for the Company.

## **5.4 Compensation and Reimbursement**

Members are entitled to reimbursement from the Company for reasonable expenses incurred on behalf of the Company, including expenses incurred in the formation, dissolution, and liquidation of the Company. But no Member who renders services to the Company is entitled to compensation without the Members' unanimous approval. Compensation paid to a Member will be treated as an expense of the Company and a guaranteed payment within the meaning of IRC § 707(c) and will not be charged against the share of profits of the Company that would otherwise be allocated to the compensated Member.

## **5.5 Outside Activities**

Each Member must devote so much time and attention to the business of the Company as the Members agree is appropriate. Members are not expected to devote their full time to the business of the Company and, except as limited by the section of this Agreement relating to fiduciary duties, may engage in business and investment activities outside the Company. Neither the Company nor the other Members have any rights to the profits or benefits of such activities.

## **5.6 Fiduciary Duties**

Each Member owes the fiduciary duties of care and loyalty to the Company and the other Members and must discharge these duties and exercise the Member's rights in the Company consistently with the obligation of good faith and fair dealing. Members must discharge their fiduciary duties of care and loyalty to the Company and the other Members in accordance with the standards set forth in the section of this Agreement relating to outside activities as well as the following standards:

- 5.6.1 In conducting or winding up the Company's business, a Member must refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, and knowing violations of the law;
- 5.6.2 A Member must account to the Company, and hold as trustee for the Company, any profit or benefit derived by the Member in the conduct or winding up of the Company's business or derived from use by the Member of the Company's property, including the appropriation of a Company opportunity;
- 5.6.3 Except as otherwise provided in the section of this Agreement relating to self-interest, a Member must refrain from dealing with the Company in the conduct or winding up of its business either personally or on behalf of a party having an adverse interest to the Company; and
- 5.6.4 A Member may not compete with the Company in the conduct of its business before it is dissolved.

## **5.7 Self-Interest**

A Member does not violate any duty or obligation to the Company merely as a result of engaging in conduct that furthers the interest of the Member. A Member may lend money or transact other business with the Company, and, in this case, the rights and obligations of the Member will be the same as those of a person who is not a member, so long as the loan or other transaction has been approved or ratified by all Members. Unless otherwise provided by applicable law, a Member with a financial interest in the outcome of a particular action is nevertheless entitled to vote on such action.

## **5.8 Indemnification**

The Company must indemnify each of the Members against all liabilities, losses, and costs (including attorneys' fees) incurred or suffered by the Member in connection with the Company or in connection with the Member's participation in any other entity, association, or enterprise at the request of the Company. The Company may, by action of the Members, provide indemnification to employees and agents who are not Members. Notwithstanding any other provision of this Agreement, the Company in no event has an obligation to indemnify a Member for any liability arising out of: (a) a breach of the Member's fiduciary duties to the Company or the Members; (b) an act or omission not in good faith that involves intentional misconduct or a knowing violation of law; or (c) an unlawful distribution under the act. If the Company has been dissolved and is unable to fully indemnify a Member as required in this section, each of the other Members must indemnify the Member for a proportionate share of

the shortfall based on their ownership interests. But no Member's indemnification obligation will exceed the amount of money and the value of assets received by the Member when the Company was dissolved. The indemnification required in this section is not exclusive of that required by any statute, agreement, resolution of Members, contract, or otherwise.

### **5.9 Limited Liability**

Except as otherwise provided in the act or this Agreement, no Member has any personal liability for any obligation, expense, or liability of the Company, including the obligation to indemnify Members.

## **6. Accounting and Records**

### **6.1 Books and Records**

The Members must keep such books and records relating to the operation of the Company as are appropriate and adequate for the Company's business and carrying out this Agreement. At a minimum, the following must be maintained at the principal office of the Company: (a) financial statements for the three most recent fiscal years; (b) federal, state, and local income tax returns for the three most recent fiscal years; (c) a register showing the names and current addresses of the Members; (d) a copy of the Company's Articles of Organization and any amendments; (e) this Agreement and any amendments; (f) minutes of all meetings of Members; and (g) all consents to action by Members. Each Member will have access to all the Company's books and records at all times.

### **6.2 Banking**

All funds of the Company must be deposited in accounts in the Company's name at such banks or other financial institutions selected by the Members. Funds may be withdrawn from the accounts on the signature of a person or persons designated by the Members.

### **6.3 Fiscal Year**

The fiscal year of the Company will be the calendar year.

### **6.4 Accounting Reports**

Within ninety (90) days after the close of each fiscal year, the Company must deliver to each Member an unaudited report of the activities of the Company for the year, including a copy of a balance sheet of the Company as of the end of the year and a profit and loss statement for the year.

### **6.5 Tax Returns**

The Company must prepare and file on a timely basis all required federal, state, and local income tax and other tax returns. Within ninety (90) days after the end of each fiscal year, the Company must deliver a Schedule K-1 to each Member showing the amounts of any income, gain, loss, deductions, or credits allocated to the Member for the fiscal year.

## **7. Dissociation of Members**

### **7.1 Withdrawal**

A Member may withdraw from the Company but must give notice of withdrawal to the other Members at least ninety (90) days prior to the effective date of the withdrawal.

### **7.2 Expulsion**

A Member may be expelled from the Company by an affirmative vote of the Members holding a majority of the ownership interests held by Members other than the expelled Member. But a Member may be expelled only if the Member: (a) has been guilty of wrongful conduct that adversely and materially affects the business or affairs of the Company; (b) has willfully or persistently committed a material breach of the articles of organization of the Company or this Agreement; or (c) has otherwise breached a duty owed to the Company or to 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. The right to expel a Member under the provisions of this section does not limit or adversely affect any right or power of the Company or the other Members to recover damages from the expelled Member or to pursue other remedies available under applicable law or in equity. In addition to any other remedies, the Company or the other Members may offset any damages suffered against any amounts otherwise distributable or payable to the expelled Member.

### **7.3 Events of Dissociation**

A Member dissociates from the Company if the Member withdraws. A Member also dissociates from the Company if the Member is an individual and dies or becomes incapacitated, the Member is an entity and is dissolved or terminated, or the Member becomes bankrupt.

7.3.1 A Member will be considered to be incapacitated if a guardian of the Member or a conservator of the Member's estate is appointed. A Member will also be considered to be incapacitated if the Member has been unable to perform the essential functions of a Member of the Company, with or without reasonable accommodation, for a consecutive period of one hundred eighty (180) days, or it has been determined with reasonable medical certainty that the Member will be unable to perform those functions for a consecutive period of one hundred eighty (180) days.

7.3.2 A Member will be considered bankrupt if: (a) the Member makes an assignment for the benefit of creditors; (b) the Member files a voluntary petition in bankruptcy; (c) the Member is adjudicated as being bankrupt or insolvent; (d) the Member files a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, or dissolution for the Member, or similar relief under any statute, law, or regulation; (e) the Member files an answer or other pleading admitting or failing to contest the material allegations in any proceeding of the foregoing nature filed against the Member, or the proceeding is not dismissed within one hundred twenty (120) days after it is commenced; or (f) the Member seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member, or of all or any



substantial part of the Member's property, or the appointment of such a trustee, receiver, or liquidator without the Member's consent is not vacated or stayed within one hundred twenty (120) days after the appointment or after the expiration of a stay.

#### **7.4 Effect of Dissociation**

The "**Dissociation Date**" with respect to a Dissociating Member is the effective date of the Member's withdrawal or the date of the Member's expulsion. If another event causes the dissociation, the Dissociation Date is the later of the date of the event, or the first day the Company has knowledge of the event. Within sixty (60) days after the Dissociation Date, the Company may elect to purchase all or part of the Dissociating Member's ownership interest by giving notice of the election to the Dissociating Member and all other Members. If the Company does not elect to purchase all of the Dissociating Member's interest, one or more of the other Members may elect to purchase the remaining interest by giving written notice to the Dissociating Member, the Company, and/or the other Members. This notice must be given within fifteen (15) days after the 60-day period for the Company to purchase the interest expires. If more than one Member elects to make the purchase, the electing Members have the right to purchase the interest pro rata in accordance with their ownership interests or on such other basis as they agree. No election to purchase a Dissociating Member's interest will be effective unless the election is made by the Company or the other Members to purchase the Dissociating Member's entire interest. If neither the Company nor the other Members elect to purchase a Dissociating Member's interest within the allowable time limits, the Company will be dissolved, and its business must be wound up.

#### **7.5 Status of Member**

A Member ceases to be a member of the Company on the Dissociation Date. After that, the Dissociating Member has no rights as a Member in the Company, except the right to have the member's ownership interest purchased in accordance with this Agreement. If the Company and other Members fail to purchase a Dissociating Member's interest and the Company is dissolved as a result, the Member will be considered to have continued to be a Member retroactive to the Dissociation Date and will have all rights of a Member in connection with the winding up of the business of the Company.

#### **7.6 Definitions**

For purposes of this Agreement, the term "**Dissociating Member**" includes a Dissociating Member's successor in interest. If there is more than one purchaser of a Dissociating Member's interest, the term "**purchaser**" includes all of them.

### **8. Purchase Price**

The purchase price for a Dissociating Member's ownership interest may be determined by agreement between the Dissociating Member and the purchaser, whether the purchaser is the Company or other Members. If an agreement is not reached within thirty (30) days following the election to purchase the interest, it must be valued by a third-party appraiser selected by the purchaser who is reasonably acceptable to the Dissociating Member, and the purchase price will be the value determined by that appraisal. In appraising the interest, the appraiser must determine the fair market

value of the Dissociating Member's ownership interest on the Dissociation Date, considering the greater of the liquidation value of the Company or its value as a going concern. The appraiser must also consider appropriate minority interest, lack of marketability, and other discounts. If the appraisal is not completed within one hundred eighty (180) days following the election to purchase a Dissociating Member's interest, the Dissociating Member may apply to a court of competent jurisdiction for the appointment of another appraiser, in which case the court-appointed appraiser must appraise the interest in accordance with the standards set forth in this section, and the purchase price will be the value determined by that appraisal. One-half of the costs of all appraisals must be paid by the Dissociating Member, and the purchaser must pay the other half.

## **9. Payment**

### **9.1 Terms**

Whether a Dissociating Member's ownership interest is purchased by the Company or other Members, the purchase price for the interest will be paid as provided in this section.

9.1.1 The price will be paid in accordance with a promissory note of the purchaser providing for the payment of the principal amount in sixty (60) equal monthly installments, including interest on the unpaid balance at the prime rate of interest as quoted in *The Wall Street Journal* for the last business day before the closing. If there is more than one purchaser, the purchasers will be jointly and severally liable for payment of the note. The first installment on the note will be due one month after the date of closing, and an additional installment will be due on the same day of each succeeding month until the note is paid in full. The note will provide that if any installment is not paid when due, the holder may declare the entire remaining balance, together with all accrued interest, immediately due and payable. Partial or complete prepayment of the remaining balance due under the note will be permitted at any time without penalty, but no partial prepayment will affect the amount or regularity of payments coming due thereafter.

9.1.2 The promissory note will be secured by one or more security agreements in a form reasonably acceptable to the lawyer for the Dissociating Member. The collateral will be an ownership interest comparable to that sold by the Dissociating Member. If one or more other Members purchase the Dissociating Member's interest, the collateral furnished by each Member will be the Dissociating Member's ownership interest purchased by the Member. If the Company purchases the interest, each of the other Members must sign a separate security agreement securing the Company's payment of the purchase price. In this case, the collateral for each security agreement will be a percentage of the signing Member's ownership interest, as it exists after the purchase, equal to the percentage ownership interest of the Dissociating Member that is being purchased by the Company. For example, if there are three (3) Members, two (2) have ownership interests of twenty-five percent (25%) and one (1) has an ownership interest of fifty percent (50%), and the Company purchases the interest of the fifty percent (50%) Member as a result of the Member's dissociation, each of the twenty-five percent (25%) Members

(who will have a fifty percent (50%) ownership interest after the Company's purchase) must provide collateral in the form of a twenty-five percent (25%) ownership interest. All security agreements must provide that if there is a default and the security interest is foreclosed or the ownership interest serving as collateral is retained by the secured party in satisfaction of the secured indebtedness, the ownership interest will be transferable without the consent of the Members or tender of the interest for sale to the Company or other Members. In addition, the security agreement must permit a person to whom the ownership interest is transferred to be admitted as a member of the Company without consent of the Members so long as the person agrees in writing to be subject to this Agreement, as amended prior to the transfer.

## **9.2 Closing**

The purchase must be closed within thirty (30) days following the determination of the purchase price. At the closing, the Dissociating Member must sign and deliver to the purchaser a written assignment transferring the Dissociating Member's ownership interest free and clear of all encumbrances. The assignment must contain warranties of title and good right to transfer. The purchaser must sign and deliver to the Dissociating Member the promissory note, one or more security agreements, and signed financing statements sufficient to perfect the security interests created by the security agreements. All security agreements must be signed by all of the other Members evidencing their consent to the creation of the security interest, transfer of the ownership interest constituting the collateral in the event of a default, and admission of the Dissociating Member as a member of the Company following a default.

## **9.3 Indebtedness, Guaranties and Security Interests**

If the entire ownership interest of a Member is purchased as a result of a dissociation or the tender of the interest to the Company for sale, all obligations of the Company and other Members owed to the Dissociating Member must be paid in full at the time of the closing, and all obligations of the Dissociating Member owed to the Company or other Members must also be paid in full. In addition, the Company and other Members must make reasonable efforts to obtain the release of the Dissociating Member from any guaranty of indebtedness or obligations of the Company and to obtain the release of any trust deed, mortgage, pledge, security interest, or other security device in any form on any property or interest in property of the Dissociating Member that secures the indebtedness or obligations. If these releases cannot be obtained, the Company and the other Members must, at the time of the closing, agree to indemnify and hold the seller harmless from any loss, liability, or expense, including reasonable attorneys' fees, arising out of or related to the indebtedness or obligations.

## **10. Life Insurance**

### **10.1 Funding Source**

The Company may insure the life of any Member for purposes of funding the purchase of the interests of deceased Members under this Agreement, and the Members consent to the Company's purchase of such insurance.

## **10.2 Policy Ownership**

The Company will be the sole owner of any life insurance policies that it purchases and may use any dividends declared and paid on a policy for the payment of premiums on the policy. The Company may name itself as beneficiary of any life insurance policies purchased, but death benefits received by the Company must be held in trust for the purposes of this Agreement.

## **10.3 Amount**

The amount of insurance purchased by the Company on the life of a Member may be the amount the Company deems appropriate.

## **10.4 Death of Insured**

If the Company owns insurance on the life of a Member at the time of his or her death and the price for the purchase of the Member's ownership interest is determined by appraisal, the insurance must be valued for purposes of the appraisal at its cash surrender value on the day preceding the Member's death. Whether the purchase price is determined by agreement or appraisal and whether the purchase is made by the Company or the other Members, the purchase price for a deceased Member's ownership interest may not be less than the amount of the death benefits received by the Company, and a down payment must be made when the purchase of the decedent's interest is closed equal to the amount of such death benefits. The amount of this down payment will reduce the amount of the promissory note in payment of the decedent's interest.

## **10.5 Dissociation of Insured**

The Company may retain ownership of insurance on the life of any Member who ceases to be a Member of the Company. But if a Member dissociates from the Company for a reason other than death, the Member has the right to purchase any insurance on his or her life. This option may be exercised at any time after the Member's dissociation by giving notice of exercise to the Company. The price for any insurance policy purchased will be its cash surrender value on the date of its purchase, less the balance of any loans outstanding against the policy on that date. The sale of the policy must be closed promptly after notice of exercise of the option is given, and the purchase price must be paid in cash or collected funds. The Company is not obligated to retain ownership of any policy on the life of a Member for more than sixty (60) days after his or her dissociation.

# **11. Transfer of Members' Interests**

## **11.1 Effectiveness of Transfers**

No Member may transfer any portion of the Member's ownership interest except as permitted in this section. Any purported transfer of an ownership interest in violation of this Agreement will be void and of no effect. A "transfer" includes a sale, exchange, pledge, or other disposition, whether voluntary, involuntary, or by operation of law, and specifically includes the transfer of a Member's interest incident to a dissolution of the Member's marriage or a legal separation from his or her spouse.

### **11.2 Permitted Transfers**

A Member may transfer all or part of the Member's ownership interest with the prior written consent of all other Members. If the other Members do not consent, the Member may make the transfer if: (a) the interest has been tendered for sale to the Company; (b) the tender has not been accepted by the Company or the other Members within the time limits set forth in this Agreement; (c) the transfer is made to the transferee named in the notice of tender within 180 days after the notice is given; and (d) the transfer is at a price and on terms no more favorable to the transferee than those set forth in the notice.

### **11.3 Tender of Interest**

If a Member wants to transfer all or part of the Member's ownership interest and the other Members do not consent, the interest may be tendered for sale by giving notice to the Company. The notice must contain the name and address of the proposed transferee, the price to be paid for the interest, if any, and the terms of the proposed transfer. If a Member's interest is transferred involuntarily or by operation of law, the successor in interest to the transferring Member may give notice of a tender to the Company at any time following the transfer. Another Member may also give notice of a tender on behalf of the successor in interest. In this case, the notice must be given to the successor in interest as well as the Company, and the successor in interest will be deemed to have given the notice of a tender at the time it is given by the Member. For purposes of this Agreement, the term "**Tendering Member**" includes a successor in interest to a Member whose ownership interest has been transferred.

### **11.4 Acceptance of Tender**

Within sixty (60) days after a notice of tender is given, the Company may accept the tender by giving notice to the Tendering Member. The Company will then have the right to purchase the tendered ownership interest for the lesser of the price set forth in the notice of tender (if the proposed transfer is to be by sale) or the price determined under this Agreement as if the Tendering Member dissociated from the Company on the date of the tender. The purchase will be closed and the price paid on the terms that would apply under this Agreement if the Tendering Member had dissociated on the date of the tender, unless the proposed transfer involves a sale, in which case the Company may choose to pay the purchase price on the terms set forth in the notice of tender or in this Agreement.

### **11.5 Purchase by Members**

If the Company fails to exercise its right to accept a tender, any Member may accept the tender and purchase the tendered interest at the same price and on the same terms that would apply to a purchase by the Company. Notice of acceptance of tender by a Member must be given to all other Members as well as to the Tendering Member. The tender must be accepted by a Member within fifteen (15) days following the expiration of the 60-day period for the Company to accept the tender. If more than one Member accepts the tender, the accepting Members have the right to purchase the tendered interest pro rata in accordance with their ownership interests.

### **11.6 Purchase of Entire Interest Required**

No acceptance of a tender will be effective unless the tender is accepted by the Company and/or by other Members as to the entire ownership interest tendered. A Tendering Member is not required to sell only a part of a tendered interest.

### **11.7 Effect of Tender**

The Member tendering an ownership interest will cease to be a Member with respect to the interest when it is tendered to the Company. After that, the Member will have no rights as a Member in the Company, including the right to vote or otherwise participate in the management of the Company, to act on behalf of the Company, or to inspect records of the Company.

### **11.8 Substitution**

If part or all a Member's ownership interest is transferred, the transferee may be admitted as a Member of the Company if the transferee commits in writing to be subject to this Agreement, as amended prior to the transfer. But a transferee will be admitted only if all Members consent to the admission, and they may withhold their consent reasonably or unreasonably. If a transferee is not admitted as a Member, the transferee will be allocated the portion of the Company's profits or losses allocated to the ownership interest that has been transferred and will have the right to receive distributions from the Company with respect to the interest. But the transferee will not have the other rights of a Member, including the right to vote or otherwise participate in the management of the Company, to act on behalf of the Company, or to inspect records of the Company. If the transferee is the only Member of the Company following the transfer, the transferee will be admitted as a Member without the need for an agreement to be bound by this Operating Agreement or the consent of Members.

## **12. Dissolution and Winding Up**

### **12.1 Causes of Dissolution**

The Company will dissolve on the earliest of the following events: (a) the expiration of the period of time for the Company and other Members to elect to purchase the interest of a Dissociating Member if neither the Company nor the other Members has exercised the election; (b) approval of a dissolution of the Company by unanimous consent of the Members; or (c) such time as the Company has no Members.

### **12.2 Liquidation after Dissolution**

Following dissolution of the Company, the Members must wind up its affairs. A full account must be taken of the assets and liabilities of the Company, and the property of the Company must be liquidated unless it is to be distributed to creditors or Members in kind. The net assets of the Company must then be applied and distributed in the following order of priority:

12.2.1 To the creditors of the Company in satisfaction of liabilities and obligations of the Company, including, to the extent permitted by law, liabilities and

obligations owed to Members as creditors (except liabilities for unpaid distributions);

12.2.2 To any reserves set up for contingent or unliquidated liabilities or obligations of the Company deemed reasonably necessary by the Members, which reserves may be delivered to an escrow agent to be held for disbursement in satisfaction of the liabilities and obligations of the Company, with any excess being distributed to the Members as provided in the following subsection; and

12.2.3 To the Members in proportion to the positive balances of the ownership interest held by each.

### **12.3 Distribution of Property in Kind**

Property of the Company may be distributed to Members in kind in the process of winding up with the unanimous approval of the Members. The fair market value of any property distributed in kind must be determined, and that value will be charged against the amount distributable to the Member receiving the property.

## **13. Cross Offer**

### **13.1 Cross Offer Notice**

If the Members are unable to make decisions about the management of the Company as a result of deadlock, a failure of one or more Members to participate in decision making, or other reason for a period of one hundred eighty (180) days, any Member (the "**Initiating Member**") may give notice (the "**Cross Offer Notice**") to all other Members of the Initiating Member's intent to either purchase the ownership interests of all other Members or sell the Initiating Member's ownership interest to the other Members. The Cross Offer Notice must set forth the proposed price and terms of payment, which will apply whether the Initiating Member makes a purchase or a sale. A Cross Offer Notice can only be given while the Members are unable to make decisions, and no such notice may be given while another Member's offer to purchase or sell under a Cross Offer Notice is outstanding.

### **13.2 Response**

The other Members have a period of thirty (30) days after receiving a Cross Offer Notice to elect whether to sell their ownership interests or purchase the Initiating Member's ownership interest. The election requires the consent of other Members who hold a majority of the ownership interests other than that of the Initiating Member. The other Members' election must be made by giving notice to the Initiating Member within thirty (30) days after the Cross Offer Notice is given. If the other Members fail to make an election or fail to provide notice of their election to the Initiating Member within this period of time, they will be deemed to have elected to sell their interests.

### **13.3 Dissenting Members**

If Members who hold a majority of the ownership interests other than that of the Initiating Member elect to purchase the Initiating Member's interest, any Member who objects

to the purchase may give notice of dissent to the remaining other Members. If a notice of dissent is given within thirty (30) days after an election to purchase the Initiating Member's interest is made, the dissenting Member's ownership interest must be purchased at the same time, at the same price, and on the same terms as the purchase of the Initiating Member's interest.

#### **13.4 Closing of Purchase or Sale**

A purchase or sale resulting from a Cross Offer Notice must be closed within sixty (60) days after the other Members give notice to the Initiating Member of their response to the Cross Offer Notice, or if no response is given, sixty (60) days from the expiration of the period for the other Members to respond to the Cross Offer Notice.

### **14. Preservation of S Corporation Election**

#### **14.1 Consent to Revocation**

No Member may sign a consent to the revocation of the Company's election to be taxed as an S corporation for federal income tax purposes unless Members holding at least seventy-five percent (75%) of the ownership interests consent to the revocation.

#### **14.2 Limitations on Company Action**

The Company may not, without approval of the Members holding at least seventy-five percent (75%) of the ownership interests, take any action that would result in its failure to qualify as an S corporation, including without limitation, the issuance of a second class of ownership interests, issuance of shares to more than one hundred (100) Members, or issuance of shares to a person who is not eligible to own stock of an S corporation.

#### **14.3 Inadvertent Termination**

If the Company's S corporation election is terminated and the termination is inadvertent within the meaning of I.R.C. § 1362(f), each Member must make any adjustments required by the Internal Revenue Service in order for the Company to be treated as if its S corporation election remained in effect. But no Member is required to make any adjustment that will adversely affect the Member, considering the position the Member would have been in had the Company's S corporation election not terminated, unless the Company or the other Members indemnify and hold the Member harmless against the adverse consequences. The obligations of this subsection are binding on all Members who are parties to this agreement or become Members of the Company in the future, whether or not any such Member holds ownership interest at the time the required adjustments are to be made.

### **15. Partnership Representative**

The Members shall appoint a Member, or the sole owner of a Member, to serve as the "**Partnership Representative**" of the Company.



### **15.1 Removal and Replacement of the Partnership Representative**

- 15.1.1 The Partnership Representative may be removed at any time by a Majority vote of the Members.
- 15.1.2 The Partnership Representative may be replaced by the Members holding a Majority of ownership interest if he, she, or it resigns, dies or is removed pursuant to Section 15.1.1, above.

### **15.2 Duties of the Partnership Representative**

The Partnership Representative:

- 15.2.1 Shall give notice to the Members concerning any partnership audit and all significant developments in that audit, including notice of the commencement of an audit, when any assessment has been made, and options available to appeal the assessment.
- 15.2.2 Shall make no major audit decisions except with the consent of the Members holding a Majority of ownership interest, including decisions relating to settling an audit, extending the statute of limitations, and proceeding to litigation.
- 15.2.3 Subject to approval of the Majority of the ownership interest under Section 15.2.2, shall have complete authority to act on behalf of the Company in matters involving the Internal Revenue Service (IRS) and shall have the ability to bind the Company and all Members with respect to audits and other proceedings, including settlement authority and decisions on procedural issues, including extending the statute of limitations and determining whether to proceed to litigation.

### **15.3 Partnership Representative Safeguards**

- 15.3.1 The Partnership Representative will have discretion to retain experts, including experts on partnership tax issues, to assist the Partnership Representative in performing his, her, or its duties.
- 15.3.2 Except in the case of gross negligence, or a material breach of Section 15.2, the Members waive their right to make claims against the Partnership Representative for conduct arising from the performance of the Partnership Representative's duties as described in Section 15.2 of this Agreement.
- 15.3.3 Except in the case of gross negligence, or a material breach of Section 15.2, the Company shall indemnify the Partnership Representative for any expenses, losses, suits, claims, or similar actions he, she, or it may incur or become subject to in connection with the performance of the Partnership Representative's duties as described in Section 15.2 of this Agreement.
- 15.3.4 The Company shall advance fees, costs, or other expenses to the Partnership Representative which he, she, or it may incur in connection with the

performance of the Partnership Representative's duties as described in Section 15.2 of this Agreement. Such advances shall not apply to fees, costs, or other expenses the Partnership Representative may incur in defending himself or herself against any claims involving allegations of gross negligence by the Partnership Representative.

#### **15.4 Company Audits**

15.4.1 The Members agree that it is their intention to minimize any obligation of the Company to pay federal taxes and interest in connection with any IRS audit of the Company. To this end, with the consent of the Members holding a Majority of ownership interest, the Company shall make push-out elections under Internal Revenue Code Section 6226 or the Members shall file amended returns under Section 6225(c)(2).

15.4.2 The Members agree to cooperate in good faith, including timely providing information reasonably requested by the Partnership Representative, making and filing amended returns reasonably requested by the Partnership Representative, and making timely payments of their share of Company imputed underpayments and penalties for non-payment in the event of a push-out election.

15.4.3 The Company agrees to provide the Members with all information reasonably requested by the Members that the Members need in order to file such amended returns and otherwise to respond to any IRS audit of the partnership.

The Company may opt out of the Centralized Audit Regime rules in any year upon approval of a Majority of the ownership interest.

### **16. Corporate Transparency Act**

#### **16.1 Compliance with the Corporate Transparency Act**

The Members intend for the Company to fully comply with its obligations under the Corporate Transparency Act of 2020 as amended from time to time and any and all related regulations promulgated by the Financial Crimes Enforcement Network (collectively, the "**CTA**").

#### **16.2 CTA Officer**

The Members shall appoint a "**CTA Officer**" who shall ensure the Company's compliance with the CTA. The Members may at any time remove the CTA Officer and shall appoint a new CTA Officer if the position is vacant.

#### **16.3 CTA Officer Duties**

The CTA Officer shall take all steps reasonably necessary to ensure that the initial CTA report is filed with Financial Crimes Enforcement Network ("**FinCEN**") as well as any changes to the filing which may be required from time to time. Such report shall include the name of the Company, all trade names of the Company, the Company's principal place of business in the

United States, the jurisdiction of the Company's formation and, if different, the first United States state or tribal jurisdiction registered to, the Company's tax identification number, the information required by the CTA for each beneficial owner of the Company, and any other information that the CTA may require to be filed. The CTA Officer shall file said reports personally or, with the approval of the Members, hire a third-party filing company to do so. Utilizing a third-party company to compile and file required CTA reports in no way alleviates the CTA Officer's obligations to oversee and enforce compliance with the CTA through all reasonably necessary means. The CTA Officer shall endeavor to keep informed of any changes in the reporting requirements of the CTA.

#### **16.4 Reporting Party**

A "**Reporting Party**" is any party holding any direct ownership interest in or exerting substantial control, as defined by the CTA, over the Company. Parties exerting substantial control include, but are not limited to, those directly or indirectly having any substantial influence on important matters affecting the Company.

#### **16.5 Reporting Party Obligations of Natural Persons**

Each Reporting Party that is a natural person shall provide to the CTA Officer that Reporting Party's total combined direct and indirect ownership interest in the Company and either (I) that person's (1) full legal name, (2) date of birth, (3) residential street address, (4) business street address, and (5) a unique identifying number from one of the following documents: (a) a non-expired passport issued by the United States Government, (b) a non-expired identification document issued to the individual by a State, local government, or Indian tribe for the purpose of identifying the individual, (c) a non-expired driver's license issued to the individual by a State, or (d) a non-expired passport issued by a foreign government to the individual, if the individual does not possess any of the documents described in paragraph (a), (b) or (c), and (6) an image of the document from which the unique identifying number in subsection (c)(5) was obtained which includes both the unique identifying number and photograph of the individual in sufficient quality to be legible and recognizable or (II) that person's FinCEN identifier (collectively, the "**CTA Information**").

#### **16.6 Reporting Party Obligations of Non-Natural Persons**

A Reporting Party that is not a natural person shall provide the CTA Officer with the CTA Information of each natural person that directly or indirectly holds ownership interest in or exercises substantial control over that Reporting Party.

#### **16.7 Ongoing Obligation to Report**

Each Reporting Party shall provide the CTA Officer with updated CTA Information if there is any change in the CTA Information previously provided to the CTA Officer or the identities of those whose CTA Information must be provided under this Section within seven (7) calendar days of the change. Changes in the CTA Information include, but are not limited to, a change in any provided address and the renewal of any provided government issued identification.

### **16.8 Company Applicant**

The CTA Officer will collect CTA Information from each individual defined as a “Company Applicant” by the CTA.

### **16.9 Confidentiality of CTA Information**

The CTA Officer will safeguard and keep confidential all CTA Information to the fullest extent reasonably possible. Such information shall not be disclosed to any third party without the express written consent of the party to whom the CTA Information identifies or as required by law.

### **16.10 Indemnification**

Each Reporting Party shall indemnify, defend and hold harmless the Company and CTA Officer against any third-party claim, loss or expense incurred as a result of: (1) any inaccuracy in any CTA Information provided by such Reporting Party; or (2) any failure of such Reporting Party to provide initial or updated CTA Information to the CTA Officer within the time period required.

### **16.11 CTA Compliance Reports**

The CTA Officer shall provide the Manager and Members with no less than one (1) written report per year that details the CTA Officer’s CTA compliance activities since the last such report. Reports need only state the efforts that the CTA Officer has taken to ensure compliance with the CTA and shall not provide any CTA Information provided by Reporting Parties.

## **17. Miscellaneous Provisions**

### **17.1 Amendment**

The Members may amend or repeal all or part of this Agreement by unanimous written agreement. This Agreement may not be amended or repealed by oral agreement of the Members.

### **17.2 Binding Effect**

The provisions of this Agreement are binding on and will inure to the benefit of the heirs, personal representatives, successors, and assigns of the Members. This Section is, however, not a modification of any restriction on transfer set forth in this Agreement.

### **17.3 Notice**

Any notice or other communication required or permitted to be given under this Agreement must be in writing and personally delivered or mailed by certified mail, return receipt requested, with postage prepaid. Notices mailed to a Member must be addressed to the Member’s address listed in the section of this Agreement relating to initial Members, or if there is none, the current address of the Member shown on the records of the Company. Notices mailed to the Company must be addressed to its principal office. The address of a party to which

notices must be mailed may be changed by the party's giving written notice to the other parties. All mailed notices will be deemed to be given at the expiration of three (3) days after the date of mailing unless the recipient acknowledges receipt prior to that time.

#### **17.4 Litigation Expense**

If any legal proceeding is commenced for the purpose of interpreting or enforcing any provision of this Agreement, including any proceeding in the United States Bankruptcy Court, the prevailing party is entitled to recover reasonable attorneys' fees in the proceeding, or any appeal, to be set by the court without the necessity of hearing testimony or receiving evidence, in addition to the costs and disbursements allowed by law.

#### **17.5 Additional Documents**

Each Member must execute all additional documents and take all actions as are reasonably requested by the other Members in order to complete or confirm the transactions contemplated by this Agreement.

#### **17.6 Counterparts, Electronic Transmission and Electronic Signatures**

This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Facsimile, email transmission or other means of electronic transmission of any signed original document, and retransmission shall be the same as delivery of an original. The parties agree that this transaction may be conducted and closed by electronic means in accordance with the provisions of the *Uniform Electronic Transactions Act* ("*UETA*") as codified in ORS Chapter 84. At the request of either party, the parties shall confirm electronically transmitted original signatures or electronic signatures by signing an original document and providing the signed original to the requesting party.

#### **17.7 Governing Law**

This Agreement is governed by the law of the state in which the articles of organization of the Company were filed and must be construed in accordance with the law of that state.

#### **17.8 Third Party Beneficiaries**

The provisions of this Agreement are intended solely for the benefit of the Members and create no rights or obligations enforceable by any third party, including any creditor of the Company, except as otherwise provided by applicable law.

#### **17.9 Authority**


Each individual executing this Agreement on behalf of a corporation or other entity warrants that he or she is authorized to do so and that this Agreement constitutes a legally binding obligation of the corporation or other entity that the individual represents.

[Signature Page to Follow]

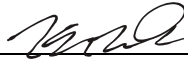
The undersigned, being all the Members of the Company, hereby agree, acknowledge and certify that the foregoing Operating Agreement constitutes the sole and entire Operating Agreement of the Company, unanimously adopted by the Members of the Company as of the date first written above.

**MEMBERS:**


**Patrick J. Carney**

By:   
Patrick J. Carney, Individually

**Kelly M. McDonald**

By:   
Kelly M. McDonald, Individually

**Mark D. Shipman**

By:   
Mark D. Shipman, Individually

## SCHEDULE 2.1

### NAMES, ADDRESSES AND OWNERSHIP INTEREST OF INITIAL MEMBERS OF THE COMPANY

MEMBER'S NAME & ADDRESS	CONTRIBUTION	OWNERSHIP INTEREST
Patrick J. Carney 625 Hawthorne Ave SE Salem, OR 97301	100% of interest in Salem Center Property	33 1/3%
Kelly M. McDonald 22150 SE Tallman Ln Amity, OR 97101	100% of interest in Salem Center Property	33 1/3%
Mark D. Shipman 3245 Sunridge Dr S Salem, OR 97302	100% of interest in Salem Center Property	33 1/3%

Title	OGSC2, LLC Operating Agreement for E-Signing
File name	Operating Agreeme...3234-2170 v.5.pdf
Document ID	18aca5dcc3e5571e5b616bb5315f824d6b3a2812
Audit trail date format	MM / DD / YYYY
Status	● Signed

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## Document History

 SENT	<b>01 / 12 / 2024</b> 16:29:31 UTC	Sent for signature to Patrick J. Carney (patrickcarney7007@gmail.com), Kelly M. McDonald (kelly@nathanlevinco.com) and Mark D. Shipman (mshipman@sglaw.com) from hstevenson@sglaw.com IP: 63.239.63.66
 VIEWED	<b>01 / 12 / 2024</b> 16:41:15 UTC	Viewed by Patrick J. Carney (patrickcarney7007@gmail.com) IP: 71.34.100.17
 SIGNED	<b>01 / 12 / 2024</b> 16:41:38 UTC	Signed by Patrick J. Carney (patrickcarney7007@gmail.com) IP: 71.34.100.17
 VIEWED	<b>01 / 12 / 2024</b> 17:24:17 UTC	Viewed by Mark D. Shipman (mshipman@sglaw.com) IP: 63.239.63.66
 SIGNED	<b>01 / 12 / 2024</b> 17:24:31 UTC	Signed by Mark D. Shipman (mshipman@sglaw.com) IP: 63.239.63.66



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Title	OGSC2, LLC Operating Agreement for E-Signing
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Document ID	18aca5dcc3e5571e5b616bb5315f824d6b3a2812
Audit trail date format	MM / DD / YYYY
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### Document History



**01 / 16 / 2024**  
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**01 / 16 / 2024**  
15:43:57 UTC

Signed by Kelly M. McDonald (kelly@nathanlevinco.com)  
IP: 98.97.38.162



**01 / 16 / 2024**  
15:43:57 UTC

The document has been completed.