

## **OPERATING AGREEMENT OF QOZ THIRTY, LLC**

An Oregon Limited Liability Company

This OPERATING AGREEMENT (this “Agreement”) is made and entered into effective **January 31, 2020** (the “Effective Date”), by and among QOZ THIRTY, LLC (the “Company”) and Member 1 and Member 2 (collectively the “Members”).

### **SECTION 1. THE LIMITED LIABILITY COMPANY**

1.1 Formation. As of the Effective Date, the Members formed an Oregon limited liability company under the name QOZ THIRTY, LLC, on the terms and conditions set forth in this Agreement and pursuant to the Oregon Limited Liability Company Act (the “LLC Act”). On the Effective Date, the Members filed Articles of Organization for the Company with the Corporation Division of the Oregon Secretary of State’s office, Registry Number **164011893**. The rights and obligations of the parties are as provided in the LLC Act except as otherwise expressly provided in this Agreement.

1.2 Name. The business of the Company will be conducted under the name QOZ THIRTY, LLC.

1.3 Purpose. The purpose of the Company is to create a Qualified Opportunity Fund and to use the created Fund to purchase and develop or improve real property, that real property being located in a Qualified Opportunity Zone, and to engage in all activities incidental to that Business.

1.4 Office. The Company maintains its principal business office in Oregon at 295 Patterson St NW, Salem, OR 97304.

1.5 Registered Agent. Brandon Fahlman will be the Company’s initial registered agent in Oregon and the registered office will be at 295 Patterson St NW, Salem, OR 97304. At a later date, the Members may appoint a successor registered agent by agreement, and notice to the initial registered agent.

1.6 Term. The term of the Company commenced on the Effective Date, and will continue until terminated as provided in this Agreement.

1.7 Names and Addresses of Members. The Members’ names and addresses are:

Member 1: Brandon Fahlman

295 Patterson St NW, Salem, OR 97304

Member 2: Whitney Fahlman

295 Patterson St NW, Salem, OR 97304

1.8 Admission of Additional Members. Except as otherwise expressly provided in this Agreement, no additional members may be admitted to the Company without the prior written consent of all Members.

### **SECTION 2. CAPITAL CONTRIBUTIONS**

2.1 Initial Capital Contributions. The Members have contributed to the Company the assets described in *Appendix A* to this Agreement.

2.2 Additional Capital Contributions. Additional capital contributions may be made only on the prior consent of all Members and in such amounts and proportions as the Members mutually agree.

2.3 Membership Percentages. Each Member's percentage interest in the Company (the "Membership Percentage") is as follows:

Member 1: 50%

Member 2: 50%

2.4 No Interest on Capital Contributions. The Members will not be entitled to interest or other compensation for their capital contributions except as expressly provided in this Agreement.

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

3.1 Allocations of Income and Loss. All items of income, gain, loss, deduction, and credit will be allocated among the Members pro rata in proportion to their respective Membership Percentages.

3.1(a) Furthermore, all costs and expenses of the Members original purchase, and development of, any real property, shall be reimbursed to those Members who incurred such costs. Such reimbursement shall include, but not be limited to, the purchase price of the property, recording fees, title insurance, escrow costs, legal fees, and development fees. Such reimbursement shall also include, but not be limited to, construction costs, including construction costs of residential construction and common areas, costs of material, costs of engineering, application fees, and payments made to subcontractors. Such reimbursable costs and expenses of the Members shall not accrue any interest rate.

Only after payment of the Company's debts and expenses, and payment of reimbursement costs to the Members as described above, the income, gain, and loss shall be shared among the Members pro rata in proportion to their Membership interests.

Notwithstanding any other provision to the contrary in this Agreement, no Member shall receive any additional compensation for any work or services performed on the property in furtherance of its development, or construction on the property. Members shall only receive the portion of income or gain pro rata in proportion to their Membership interests.

3.2 Distributions. No distribution may be made to any Member if, after giving effect to the distribution, in the judgment of the Members either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business or (b) the fair value of the total assets of the Company would not at least equal its total liabilities. Subject to the foregoing limitation, the Company will make distributions, including draws, to Members at such times and in such amounts as the Members mutually agree. All distributions will be allocated among the Members pro rata in proportion to their respective Membership Percentages.

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

4.1 Management of Company Business. The Company is a member-managed limited liability company. The management and control of the Company and its business and affairs are vested exclusively in the Members. The Company does not have “managers,” as that term is used in the LLC Act. The Members, or either of them individually, have all the rights and powers that may be possessed by a member in a member-managed limited liability company pursuant to the LLC Act and those rights and powers that are otherwise conferred by law or are necessary, advisable, or convenient to the discharge of the Members’ duties under this Agreement and to the management of the Business and affairs of the Company. Without limiting the generality of the foregoing, and subject to the limitations set forth in Section 4.2 of this Agreement, the Members, or either of them individually, have the following rights and powers (which they may exercise at the cost, expense, and risk of the Company):

- (a) To expend the funds of the Company in furtherance of the Company’s business;
- (b) To perform all acts necessary to manage and operate the Business, including engaging such persons as the Members deem advisable to manage the Business;
- (c) To execute, deliver, and perform on behalf of and in the name of the Company any and all agreements and documents deemed necessary or desirable by the Members to carry out the Business, including any bill of sale, contract of sale, or service agreement. No other signature or signatures are required; and
- (d) To borrow or raise money on behalf of the Company in the Company’s name or in the name of the Members for the benefit of the Company and, from time to time, to draw, make, accept, endorse, execute, and issue promissory notes, drafts, checks, and other negotiable or nonnegotiable instruments and evidences of indebtedness. The rights and powers herein are subject to the limitations in Section 4.2 below.

4.2 Limitation on Authority of Individual Member. Notwithstanding any other provision of this Agreement or the LLC Act, no Member is authorized to take any of the following actions without the prior express approval or consent of all the Members:

- (a) Amend the Company’s Articles of Organization or this Agreement;
- (b) Sell or otherwise dispose of any assets owned by the Company other than in the ordinary course of business. This limitation includes the sale, encumbrance, execution of a trust deed, or entering into a contract to sell, all or any portion or partition of real property owned by the LLC.
- (c) Dissolve the Company;
- (d) Merge the Company with another entity or convert the Company into a different type of entity;
- (e) Admit a new Member; or
- (f) Borrow money or otherwise incur indebtedness in the name of the Company in excess of \$10,000.00 in a single transaction or in a series of related transactions.

4.3 Duties of the Members. The Members will manage and control the Company’s business and affairs to the best of their ability and will use their best efforts to carry out the Business. The Members will devote

such time to the business and affairs of the Company as is reasonable, necessary, or appropriate. Whenever reasonably requested by any Member, the Members will render a full and complete accounting of all dealings and transactions relating to the Business. Each Member will have a fiduciary responsibility for the safekeeping and use of all funds and assets of the Company, whether or not in his or her immediate possession or control, and the Members may not employ or permit another person to use those funds or assets in any manner except for the exclusive benefit of the Company.

4.4 Limitation on Liability of Members. Subject to the restrictions in Section 4.6, no Member will have any liability to the Company or to the other Member for any loss suffered by the Company or the other Member that arises out of any action or inaction of the Member as long as the Member's conduct was in good faith and the Member reasonably believed that the conduct was in the best interests of the Company.

4.5 Indemnification of Members. Each Member will be indemnified by the Company against any losses, judgments, liabilities, expenses, and amounts paid in settlement of any claims sustained against the Company or against the Member in connection with the Company, as long as the Member's conduct was in good faith and the Member reasonably believed that the conduct was in the best interests of the Company. The satisfaction of any indemnification and any saving harmless will be out of, and limited to, Company assets, and no Member will have any personal liability on account of such indemnification.

4.6 Restrictions. No Member will be relieved of liability pursuant to Section 4.4 or be entitled to indemnification pursuant to Section 4.5 for:

- (a) Any breach of the Member's duty of loyalty to the Company;
- (b) Any act or omission not in good faith that involves intentional misconduct or a knowing violation of law;
- (c) Any unlawful distribution to the Members in violation of ORS 63.235; or
- (d) Any transaction from which the Member derives an improper personal benefit.

4.7 Other Business. During the term of this Agreement, the Members may carry on other business that may be indirectly in competition with this Company.

4.8 Loans. Any Member may, but will not be obligated to, make loans to the Company to cover the Company's cash requirements. Any such loans made by a Member shall not bear interest.

4.9 Dealing with the Company. Either Member may deal with the Company by providing or receiving property and services to or from the Company, and may receive from others or the Company normal profits, compensation, commissions, or other income incident to those dealings, but the Member must first obtain written consent from the other Member for those dealings.

4.10 Liability of the Members for Company Obligation. Except to the limited extent provided in the LLC Act, the Members will not have any personal liability for any Company obligation, expense, or liability. The Members will not, without their consent, be required to make any capital contribution beyond their mutually agreed on capital contributions as expressly described in Section 2.1.

## **SECTION 5. COMPENSATION AND REIMBURSEMENT OF EXPENSES**

5.1 Organization Expenses. The Company will pay all expenses incurred in connection with organization of the Company.

5.2 Other Company Expenses. The Members may charge the Company for their actual out-of-pocket expenses incurred in connection with the Company's Business. Any amounts paid by a Member to satisfy obligations of the Company will be treated as loans to the Company under Section 4.8, but shall not bear interest.

5.3 Compensation. The Company may not pay the Members compensation for services rendered on behalf of the Company, unless the Members first unanimously agree to such compensation in writing.

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

6.1 Books of Account. The Company's books and records, a register showing the names of the Members and the respective interests held by each of them, and this Agreement will be maintained at the principal office of the Company. The Members will have access to those books and records at all reasonable times. The Members will keep and maintain books and records of the operations of the Company that are appropriate and adequate for the Company's Business and for carrying out this Agreement.

6.2 Accounting Reports. The Members will be furnished with copies of internally prepared financial statements of the Company.

6.3 Tax Returns. The Members will cause all federal and state income tax returns for the Company to be prepared and timely filed with the appropriate authorities as necessary. As soon as practicable after the end of each taxable year, each Member will be furnished with a statement that may be used by the Member in preparing the Member's income tax returns, showing the amounts of any distributions, gains, profits, losses, or credits allocated to or against the Member during the fiscal year.

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

6.5 Banking. All funds of the Company must be deposited in a separate bank account or in an account or accounts of a savings and loan association in the Company's name as the Members determine. Those funds may be withdrawn from the account or accounts on the signature of the person or persons who are designated by the Members.

## **SECTION 7. TRANSFER OF MEMBERSHIP INTEREST; VOLUNTARY WITHDRAWAL**

7.1 Transfer Prohibited. The Members may not assign, pledge, mortgage, sell, or otherwise transfer ("Transfer") any part of his or her interest in the Company, and the Members do not have the right to substitute an assignee or any other person in the Member's place, and no assignee or any other person may be admitted to the rights of any Member without the prior written consent of all Members. This consent may be given or withheld in the absolute discretion of the Members. The Members are entering into this Agreement to carry on the Business in mutual reliance on the close relationship between the Members and mutually agree that the foregoing restriction on the Members' ability to transfer their interest in the Company is reasonable under the circumstances.

7.2 Voluntary Withdrawal. A Member may withdraw from the Company at any time for any reason, or for no reason, but only on six months' prior written notice to the other Member. For purposes of this Agreement, the death of a Member, or dissolution of a Member, will be treated as a withdrawal by the deceased or dissolved Member and the six-month notice requirement will not apply. On withdrawal by a Member, the other Member will have the right, in his or her sole discretion, to elect to:

(a) Dissolve the Company as provided in Section 9;

(b) Continue the Company and treat the withdrawing Member or his or her representative as an assignee of the economic rights and benefits of the membership interest of the withdrawing Member, in which case the withdrawing Member will cease to have any voting or other management rights under this Agreement with respect to such membership interest and neither the other Members nor the Company will have any obligation to purchase or redeem the membership interest of or otherwise make any liquidating distribution to the withdrawing Member before the dissolution of the Company; or

(c) Continue the Company (with or without the admission of another member to retain the status of the Company as a partnership for income tax purposes) and cause the Company to purchase the membership interest of the withdrawing Member or his or her representative for the price and subject to the payment terms described in Section 8.

## **SECTION 8. PURCHASE PRICE AND PAYMENT TERMS**

8.1 Purchase Price. On election by the other Member to purchase the membership interest of a withdrawing Member pursuant to Section 7.2(c), the purchase price will be the amount the withdrawing Member would have received in a liquidation of the Company if all the Company's assets were sold, as of the effective date of the withdrawal, for their respective fair market values as determined by the Members (or the other Member and the representative of a deceased Member) and all Company liabilities were satisfied out of those proceeds. For this purpose, no discounts for lack of marketability or for a minority interest will be used. If the Members cannot agree on the fair market value of the Company's assets, the value will be determined by an appraiser selected by the withdrawing Member from a list of five qualified independent appraisers proposed by the other Members.

8.2 Payment. The purchase price determined as provided in Section 8.1 will be payable, together with interest at 3.5% per annum, in 12 substantially equal monthly installments of principal and interest commencing no later than 60 days after the effective date of the withdrawal. The Company may prepay the purchase price at any time without payment. The deferred purchase price will be an unsecured obligation of the Company. No prepayment penalty shall apply for early payment of the purchase price.

## **SECTION 9. DISSOLUTION AND WINDING UP OF THE COMPANY**

9.1 Dissolution. The Company will be dissolved on the occurrence of any of the following events:

(a) The agreement of all Members;

(b) The election of the nonwithdrawing Member as described in Section 7.2(a); or

(c) Otherwise by operation of law.

9.2 Winding Up. On dissolution of the Company, the Members will take full account of the Company's assets and liabilities, and the assets will be liquidated as promptly as is consistent with obtaining their fair value, and the proceeds, to the extent sufficient to pay the Company's obligations with respect to the liquidation, will be applied and distributed in the following order:

- (a) To payment and discharge of the expenses of liquidation and of all the Company's debts, including debts and liabilities owed to the Members;
- (b) To the Members to the extent of, and allocated among them pro rata in proportion to, their respective previously unreturned capital contributions; and
- (c) To the Members and allocated among them pro rata in proportion to their respective Membership Percentages.

## **SECTION 10. MISCELLANEOUS PROVISIONS**

10.1 Dispute Resolution. The Members will first attempt to resolve any dispute, controversy, or claim arising out of or relating to this Agreement through good faith mediation. The Members will select a professional mediator, or a retired judge, to act as a neutral mediator to resolve any dispute, controversy, or claim. Any dispute, controversy, or claim that cannot be resolved through mediation will be settled by arbitration. The Members will agree on an arbitrator, and if they cannot agree on an arbitrator, the Members will apply to Marion County Circuit Court for selection and appointment of an arbitrator. Judgment on the award rendered by the arbitrator may be entered in Marion County Circuit Court, and the resolution of the disputed matter as determined by the arbitrator will be binding on the parties. There will be one arbitrator who will be a retired state judge, or business attorney with a minimum of 10 years of experience or will have such alternate qualifications that are mutually agreeable to the parties. Any arbitration will be conducted in Marion County, Oregon, in accordance with the following provisions:

- (a) The arbitration will be conducted in accordance with the rules of court-annexed arbitration.
- (b) Arbitration proceedings under this Agreement may be consolidated with arbitration proceedings pending between other parties if both arbitration proceedings arise out of the same transaction or relate to the same subject matter. Consolidation will be by order of the arbitrator in any of the pending cases or, if the arbitrator fails to make such an order, the parties may apply to any court of competent jurisdiction for such an order.
- (c) A party may, without inconsistency with this Agreement, seek from a court any interim or provisional relief that may be necessary to protect the rights or property of that party pending the establishment of the arbitration (or pending the arbitrator's determination of the merits of the dispute, controversy, or claim).
- (d) The arbitrator will have authority to issue preliminary and other equitable relief.
- (e) Discovery proceedings of the type provided by the Oregon Rules of Civil Procedure will be permitted both in advance of and during recesses of the arbitration hearings. Any dispute relating to such discovery will be resolved by the arbitrator.

(f) The arbitrator will have the discretion to order a prehearing exchange of information by the parties and an exchange of summaries of testimony of proposed witnesses.

(g) The arbitrator will have the authority to award any remedy or relief that an Oregon court could order or grant, including specific performance of any obligation created under this Agreement, the issuance of an injunction, or the imposition of sanctions for abuse or frustration of the arbitration process, except that the arbitrator will not have authority to award punitive damages or any other amount for the purpose of imposing a penalty as opposed to compensating for actual damage suffered or actual loss incurred.

(h) The arbitration award must be in writing, must be signed by the arbitrator, and must include a statement regarding the disposition of any claim. The award must be kept confidential to the fullest extent permitted by law.

The parties enter into this Agreement as of the date first written above.

QOZ THIRTY, LLC By:

DocuSigned by:  
/s/ Brandon Fahlman  
CC32704B4194470...

Brandon Fahlman, Member

DocuSigned by:  
/s/ Whitney Fahlman  
2A57F923072F453...

Whitney Fahlman, Member

DocuSigned by:  
/s/ Brandon Fahlman  
CC32704B4194470...  
Name: **Brandon Fahlman**

As Co-President

DocuSigned by:  
By: /s/ Whitney Fahlman  
2A57F923072F453...  
Name: **whitney Fahlman**

As Co-President



**APPENDIX A**

**ASSETS**

Member 1:

Brandon Fahlman

\$1,250.00

Member 2:

Whitney Fahlman

\$1,250.00