

**OPERATING AGREEMENT
OF
DD SALEM CENTER TWO, LLC**

This Operating Agreement (“**Agreement**”) is dated effective May 2, 2019 between DD Salem Center Two, LLC, an Oregon limited liability company (the “**Company**”), and Deacon Development, LLC (“**Member**”).

SECTION 1 DEFINITIONS

“**Act**” means the Oregon Limited Liability Company Act, as amended from time to time.

“**Articles of Organization**” means the Articles of Organization of the Company filed with the Secretary of State on May 2, 2019, as amended or restated from time to time, and including articles of conversion and articles of merger filed after the date of this Agreement.

“**Majority of Managers**” means: (a) the Manager, if the Company has one Manager; and (b) a majority of the Managers, if the Company has more than one Manager.

“**Manager**” means a person, who need not be a member, designated by Member to manage the Company’s business and affairs.

“**Units**” means units that evidence an ownership interest in the Company.

SECTION 2 COMPANY

2.1 Company Information. Schedule 2.1 sets forth the following Company information:

- (a) the number of Units owned by Member;
- (b) Member’s contribution to the Company, together with the date and value of the contribution;
- (c) the name of each Manager; and
- (d) the address of the Company, Member, and each Manager.

2.2 Amendment. The Company will promptly amend and restate Schedule 2.1 to account for any changes in the information set forth on Schedule 2.1 resulting from matters that occur in accordance with the Act, the Articles of Organization, and this Agreement. Upon an amendment, the Company will promptly deliver to Member a copy of the amended and restated Schedule 2.1.

2.3 Approval of Acts of Organizer. The Company and Member approve, ratify, and confirm all acts previously taken by the organizer of the Company in connection with filing the Articles of Organization, provided the acts were not inconsistent with the Act or any other applicable law.

SECTION 3 PURPOSES AND POWERS

- 3.1 Purposes.** The Company may buy, own, manage, operate, and hold for lease, and eventually sell a seventy-five percent (75%) tenancy in common interest in the real property located at 420 Center Street NE, Salem, Oregon and do all things incidental to that purpose. The Company will not conduct or promote any other business.
- 3.2 General Powers.** Subject to the Act, the Company may have and exercise all powers and do every other act not inconsistent with law which is necessary or convenient to promote and effect any and all of the purposes for which the Company is organized.

SECTION 4 MANAGEMENT AND MANAGEMENT RIGHTS OF MEMBER

- 4.1 Management.** The Company is a manager-managed limited liability company.
- 4.2 Rights of Managers.** Except as otherwise provided in this Agreement, any matter relating to the business of the Company will be exclusively decided by a Majority of Managers.
- 4.3 Designation and Removal.** A Manager:
- (a) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of Member; and
 - (b) holds office until a successor has been elected and qualified, unless the Manager sooner resigns or is removed.
- 4.4 Matters Requiring Consent of Member.** The following matters of the Company require the consent of Member:
- (a) the amendment of the Articles of Organization;
 - (b) the amendment of this Agreement;
 - (c) the compromise of an obligation to make a contribution under Section 5.2(b) or to return money or other property paid or distributed in violation of any provision of the Act;
 - (d) the consent to dissolve the Company under Section 8.1(b);
 - (e) the admission of a new member;
 - (f) the issuance of Units;
 - (g) the redemption of Units;
 - (h) the merger of the Company with any other entity;
 - (i) the conversion of the Company into any other type of entity;
 - (j) subject to Section 4.8(g), a transaction involving an actual or a potential conflict of interest between Member or a Manager and the Company;

- (k) a change in the nature of the Company's business; and
- (l) any other matter specified in the Articles of Organization or this Agreement as requiring Member approval.

4.5 Action by Member Without a Meeting. Action required or permitted to be taken by Member may be taken without a meeting.

4.6 Action by Managers Without a Meeting.

- (a) Action required or permitted to be taken by the Managers may be taken without a meeting if the action is taken by a Majority of Managers. The action must be evidenced by one or more written consents describing the action taken, signed by those Managers taking action, and included in the minutes or filed with the Company records reflecting the action taken.
- (b) Action taken under this Section 4.6 is effective when the consent bearing sufficient signatures is delivered to the Company, unless the consent specifies an earlier or later effective date.
- (c) A consent signed under this Section 4.6 has the effect of a meeting vote and may be described as such in any document.
- (d) If action is taken as provided in Section 4.6(a), the Company must give written notice of the action promptly after the action is taken to Managers who did not consent in writing under Section 4.6(a).

4.7 Agency Power. Each Manager is an agent of the Company for the purpose of its business. Subject to Section 4.4, any Manager may sign and deliver any instrument in the Company's name, including but not limited to any instrument transferring or affecting the Company's interest in real property.

4.8 Duties and Standard of Conduct.

- (a) The only fiduciary duties a Manager owes to the Company and Member are the duty of loyalty and the duty of care set forth in Section 4.8(b) and Section 4.8(d).
- (b) A Manager's duty of loyalty to the Company and Member includes the following:
 - (1) to account to the Company and hold for it any property, profit or benefit derived by the Manager in the conduct and winding up of the Company's business or derived from a use by the Manager of Company property; and
 - (2) except as provided in Section 4.8(f) and Section 4.8(g), to refrain from dealing with the Company in a manner adverse to the Company and to refrain from representing a person with an interest adverse to the Company, in the conduct or winding up of the Company's business.
- (c) A Manager will not violate the Manager's duty of loyalty to the Company and Member by:

- (1) competing with the Company in the conduct of the business of the Company before the dissolution of the Company; or
- (2) entering into or engaging in, for the Manager's own account, an investment, business, transaction or activity that is similar to the investments, businesses, transactions or activities of the Company without:
 - (A) first offering the Company or Member an opportunity to participate in the investment, business, transaction or activity; or
 - (B) having any obligation to account to the Company or Member for the investment, business, transaction or activity or the profits from the investment, business, transaction or activity.
- (d) A Manager's duty of care to the Company and Member in the conduct and winding up of the business of the Company is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.
- (e) A Manager will discharge the duties to the Company and Member under the Act or under this Agreement and exercise any rights consistent with the obligation of good faith and fair dealing.
- (f) A Manager does not violate a duty or obligation under the Act or under this Agreement merely because the Manager's conduct furthers the Manager's own interest.
- (g) A Manager may lend money to or transact other business with the Company, provided that any loan or transaction between the Manager and the Company must be authorized or ratified by Member after full disclosure of all material facts.
- (h) Loans and other transactions between the Company and a Manager are binding on the parties in the same manner as transactions between the Company and persons who are not Managers, subject to other applicable law.
- (i) Member owes no duties to the Company solely by reason of being a member.

4.9 Limitation of Liability and Indemnification.

- (a) Except as otherwise provided in Section 4.9(b), the Company will:
 - (1) indemnify any person for acts or omissions as a member or Manager; and
 - (2) eliminate the liability of Member or a Manager to the Company or Member for damages from such acts or omissions.
- (b) The Company may not indemnify a person for acts or omissions as a member or Manager or eliminate the liability of Member or a Manager for:
 - (1) any breach of the Manager's duty of loyalty to the Company or Member;
 - (2) acts or omissions not in good faith which involve intentional misconduct or a knowing violation of law;

- (3) any unlawful distribution under ORS 63.235; or
- (4) any transaction from which Member or the Manager derives an improper personal benefit.

4.10 Liability of Member and Managers. The debts, obligations, and liabilities of the Company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the Company. Neither Member nor a Manager is personally liable for a debt, obligation, or liability of the Company solely by reason of being or acting as a member or Manager.

SECTION 5 CONTRIBUTIONS

5.1 Contributions. The contributions of Member to the Company may consist of cash, property, services rendered, or a promissory note or other obligation to contribute cash or to perform services.

5.2 Liability for Contributions.

- (a) A promise by Member to contribute to the Company is not enforceable unless it is set out in writing and signed by Member.
- (b) The obligation of Member to make a contribution may be compromised only by consent of Member.

5.3 Initial Contribution. Member will, on or before the date of Member's contribution set forth on Schedule 2.1:

- (a) contribute to the Company the contribution of Member set forth on Schedule 2.1; and
- (b) deliver to the Company such deeds, bills of sale, certificates of title, assignments, and other documents that the Company may reasonably request for the contribution, in form and substance reasonably satisfactory to the Company.

5.4 Additional Contributions. Member is not required to make any additional contributions to the Company.

5.5 No Interest on Contributions. Member will not be paid any interest on any contribution.

5.6 Return of Contributions. Except as otherwise provided in this Agreement, Member will not have the right to receive any return of any contribution.

SECTION 6 ALLOCATION OF PROFITS AND LOSSES

The profits and losses of the Company will be allocated to Member.

SECTION 7 DISTRIBUTIONS

7.1 Allocation of Interim Distributions. Distributions of cash or other assets of the Company before the dissolution and winding up of the Company will be allocated to Member.

- 7.2 Right to Interim Distributions.** Except as provided in ORS 63.205 to ORS 63.235, Member is entitled to receive distributions from the Company before the dissolution and winding up of the Company to the extent and at the times as the Managers may determine.
- 7.3 Distribution In Kind.** Member, regardless of the nature of Member's contribution, has no right to demand and receive any distribution from the Company in any form other than cash.
- 7.4 Limitations on Distribution.**
- (a) A distribution may be made by the Company to Member only if, after giving effect to the distribution, in the judgment of the Managers:
 - (1) the Company would be able to pay its debts as they become due in the ordinary course of business; and
 - (2) the fair value of the total assets of the Company would at least equal the sum of its total liabilities.
 - (b) The Managers may base a determination that a distribution is not prohibited under Section 7.4(a) either on:
 - (1) financial statements that the Managers reasonably believe have been prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or
 - (2) a fair valuation or other method that the Managers reasonably believe is reasonable in the circumstances.
 - (c) For purposes of this Section 7.4, the amount, if any, by which a liability as to which the recourse of creditors is limited to specific property of the Company exceeds the fair value of the specific property will be disregarded as a liability of the Company.
 - (d) The effect of a distribution under Section 7.4(a) is measured for purposes of this Section 7.4:
 - (1) in the case of a distribution by purchase, retirement, or other acquisition of all or a portion of Member's Units, as of the earlier of the date the money or other property is transferred or debt incurred by the Company or the date Member ceases to be a member with respect to the Units purchased, retired, or otherwise acquired;
 - (2) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and
 - (3) in all other cases, as of the date a distribution is authorized if the payment occurs within 120 days after the date of authorization or the date the payment is made if it occurs more than 120 days after the date of authorization.

SECTION 8 DISSOLUTION

- 8.1 Dissolution.** The Company will be dissolved and its affairs will be wound up upon the first to occur of the following:
- (a) upon reaching the time for dissolution, if any, specified in the Articles of Organization;
 - (b) by the consent of Member;
 - (c) at such time as the Company has no members;
 - (d) upon administrative dissolution by the Secretary of State under ORS 63.651, but only after the five-year period for reinstatement in ORS 63.654(1) expires; and
 - (e) upon entry of a decree of judicial dissolution under ORS 63.671.
- 8.2 Distribution of Assets Upon Dissolution.** Upon the winding up of the Company, the assets of the Company will be distributed and applied in the following priority:
- (a) to the extent permitted by law, to creditors, including Member if Member is a creditor, in satisfaction of liabilities of the Company; and
 - (b) to Member.
- 8.3 Effect of Dissolution; Winding Up.**
- (a) Upon dissolution, the Company continues its existence, but may not carry on any business except that which is appropriate to wind up and liquidate its business and affairs, including:
 - (1) collecting the Company's assets;
 - (2) disposing of the Company's properties that will not be distributed in kind to Member;
 - (3) discharging or making provision for discharging the Company's liabilities;
 - (4) distributing the Company's remaining property to Member in accordance with Section 8.2;
 - (5) adopting a plan of merger; and
 - (6) doing other acts necessary to wind up and liquidate the Company's business and affairs.
 - (b) The Managers may wind up the Company's affairs.

SECTION 9 ACCOUNTING, BANKING, AND RECORDS

- 9.1 Books of Account.** The Company will keep complete and accurate books of account and records in a manner sufficient to effect and carry out this Agreement. The books of account and records will be kept in accordance with sound accounting practices consistently applied.

- 9.2 Bank Accounts.** All Company funds will be deposited in one or more bank accounts in the Company's name. The Managers will determine the banks, the types of accounts, and the individuals who have authority with respect to the accounts. Company funds will not be commingled with the funds of Member or any Manager.
- 9.3 Records.** The Company will keep at its principal office or registered office the following:
- (a) a current list of the full name and last-known business, residence, or mailing address of Member and each Manager, both past and present;
 - (b) a copy of the Articles of Organization and all amendments to the Articles of Organization, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;
 - (c) copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent years; and
 - (d) a copy of this Agreement and all amendments to this Agreement, copies of any writings permitted or required under the Act, and copies of any financial statements of the Company for the three most recent years.

SECTION 10 GENERAL

- 10.1 Binding Effect.** This Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit.
- 10.2 Waiver.** No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.
- 10.3 Severability.** If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.
- 10.4 Further Assurances.** The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement.
- 10.5 No Third-Party Beneficiaries.** The parties do not intend to confer any right or remedy on any third party.
- 10.6 Attachments.** Any exhibits, schedules, and other attachments referenced in this Agreement are part of this Agreement.
- 10.7 Remedies.** The parties will have all remedies available to them at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.
- 10.8 Governing Law.** This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement.

- 10.9 Venue.** Any action, suit, or proceeding arising out of the subject matter of this Agreement will be litigated in courts located in Multnomah County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Multnomah County, Oregon.
- 10.10 Attorney's Fees.** If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Agreement, or otherwise in connection with the subject matter of this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.
- 10.11 Entire Agreement.** Except for the Articles of Organization, this Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.
- 10.12 Single-Member Agreement.** The parties understand that certain provisions of this Agreement contemplate the Company having only one member. If for any reason the Company has two or more members after the date of this Agreement, the Company and the members will negotiate to amend this Agreement.

[signature page to follow]

Dated effective as of the date set forth in the preamble.

Company:

DD SALEM CENTER TWO, LLC,
an Oregon limited liability company

By: 
Steven D. Deacon, Manager

Member:

DEACON DEVELOPMENT, LLC,
an Oregon limited liability company

By: 
Steven D. Deacon, Manager

SCHEDULE 2.1

Company Information as of May 2, 2019

Member:

Name	Units	Contribution	Date of Contribution	Value of Contribution
Deacon Development, LLC	100	Cash	May 2, 2019	\$1,000

Manager:

Steven D. Deacon

Addresses:

Company:

DD Salem Center Two, LLC
901 NE Glisan St., Ste. 100
Portland, OR 97232

Member:

Deacon Development, LLC
901 NE Glisan St., Ste. 100
Portland, OR 97232

Managers:

Steven D. Deacon
901 NE Glisan St., Ste. 100
Portland, OR 97232