

# **MWSH BOONE ROAD PROPERTY LLC**

## **Salem, Oregon**

A Land Use Application for:

**Sec. 225.005. - Design review  
Type III Process**

Applicant:

**MWSH Boone Road Property LLC**

Project:

**McKenzie Heights II Apartments / Town Homes**

Submitted:

**November 19, 2021**

Prepared by:

**MWSH Boone Road Property LLC**

GRANTOR:  
David Ernest Berglund Living Trust, Alice L.  
Berglund- Rohde Revocable Living Trust, Steven  
E. Berglund Trust, Marcus E. Berglund, and Lorri  
Jo Pratt

GRANTEE:  
MWSH Boone Road Property LLC  
3425 Boone Road SE  
Salem, OR 97317

SEND TAX STATEMENTS TO:  
MWSH Boone Road Property LLC  
3425 Boone Road SE  
Salem, OR 97317

AFTER RECORDING RETURN TO:  
MWSH Boone Road Property LLC  
3425 Boone Road SE  
Salem, OR 97317

Escrow No: 471814034060-TTMIDWIL20  
3290 Boone Road SE  
Salem, OR 97317

SPACE ABOVE THIS LINE FOR RECORDER'S USE

### STATUTORY WARRANTY DEED

David Ernest Berglund, Trustee of the David Earnest Berglund Living Trust UTA dated November 26, 2006, Alice L. Berglund-Rohde, Trustee of the Alice L. Berglund- Rohde Revocable Living Trust UTA September 22, 2011, Steven E. Berglund, Trustee of the Steven E. Berglund Trust UTA dated March 23, 1995, Marcus E. Berglund, and Lorri Jo Pratt, formerly known as Lorri Jo Berglund Pratt, Grantor, conveys and warrants to MWSH Boone Road Property LLC, an Oregon limited liability company, Grantee, the following described real property, free and clear of encumbrances except as specifically set forth below, situated in the County of Marion, State of Oregon:

#### PARCEL 1:

Beginning at the Northwest corner of the Daniel Clark and wife Donation Land Claim in Township 8 South, Range 3 West of the Willamette Meridian, Marion County, Oregon; running thence North 88° West 4.18 chains to the quarter Section corner between Sections 13 and 12; thence South 21.47 chains; thence South 89° East 44.53 chains to the division line between the East and West halves of the Daniel Clark and wife Donation Land Claim; thence North 21.47 chains along the division line to the North line of the Daniel Clark and wife Donation Land Claim; thence North 89° West 4.17 chains to the corner common to Sections 7 and 18, Township 8 South, Range 2 West of the Willamette Meridian, and to Sections 12 and 13, Township 8 South, Range 3 West of the Willamette Meridian; thence North 89° 46' West 36.17 chains to the place of beginning.

Except a road 20.00 feet wide along the East end of said tract.

Also Save and Except: Beginning on the North line of Section 13, Township 8 South, Range 3 West of the Willamette Meridian in Marion County, Oregon, at a point which is 16.56 chains North 89° 46' West from the Northeast corner of said Section; thence South 2° 14' East 21.520 chains to a point on the South line of tract of land described in Volume 240, Page 343, Deed Records for said County and State, which point is 19.786 chains North 89° 00' West from the Southeast corner of said tract; thence North 89° 00' West along the South line of said tract, 4.660 chains; thence North 22° 23' West 11.190 chains; thence North 74° 05' East 4.720 chains; thence North 18° 08' East 10.305 chains to a point on the North line of said Section, which point is 0.350 chains North 89° 46' West from the place of beginning; thence South 89° 46' East 0.350 chains to the place of beginning.

Also Save and except all that portion conveyed to the State of Oregon by document recorded April 17, 1990 in Reel 763, Page 131, Microfilm Records, Marion County, Oregon.

Together with that portion of vacated street that would inure to said property by Ordinance No. 2011-R, recorded April 7, 1998 in Reel 1476, Page 680, Microfilm Records, Marion County, Oregon.

Ticor Title # 471814034060

**Parcel 2:**

Beginning on the North line of Section 13, Township 8 South, Range 3 West of the Willamette Meridian in Marion County, Oregon, at a point which is 16.56 chains North 89° 46' West from the Northeast corner of said Section; thence South 2° 14' East 21.520 chains to a point on the South line of a tract of land described in Volume 240, Page 343, Deed Records for said County and State, which point is 19.786 chains North 89° 00' West from the Southeast corner of said tract; thence North 89° 00' West along the South line of said tract 4.660 chains; thence North 22° 23' West 11.190 chains; thence North 74° 05' East 4.720 chains; thence North 18° 08' East 10.305 chains to a point on the North line of said Section, which point is 0.350 chains North 89° 46' West from the place of beginning; thence South 89° 46' East 0.350 chains to the place of beginning.

Also: Together with a road 20 feet wide along the East end of the following tract:  
Beginning at the Northwest corner of the Daniel Clark and wife Donation Land Claim in Township 8 South, Range 3 West of the Willamette Meridian, Marion County, Oregon; running thence North 88° West 4.18 chains to the quarter Section corner between Sections 13 and 12; thence South 21.47 chains; thence South 89° East 44.53 chains to the division line between the East and West halves of the Daniel Clark and wife Donation Land Claim; thence North 21.47 chains along the division line to the North line of the Daniel Clark and wife Donation Land Claim; thence North 89° West 4.17 chains to the corner common to Sections 7 and 18, Township 8 South, Range 2 West of the Willamette Meridian, and to Sections 12 and 13, Township 8 South, Range 3 West of the Willamette Meridian; thence North 89° 46' West 36.17 chains to the place of beginning.

THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE IS \$2,600,000.00.  
(See ORS 93.030)

**Subject to and excepting:**

1. Regulations, levies, liens, assessments, rights of way and easements of Santiam Water Control District.
2. Rights of the public to any portion of the Land lying within the area commonly known as roads, streets or highways.
3. Limited access to and from the Land as set forth in Deed shown below, which provides that there shall be no right of easement or right of access to, from or across the State Highway other than as expressly provided for in said Deed:  
Grantee: State of Oregon, by and through its State Highway Commission  
Recording Date: June 20, 1952  
Recording No.: Book 440, Page 787  
Affects: Parcel 1
4. Matters contained in that certain document  
Entitled: Restrictions  
Dated: June 17, 1952  
Recording Date: June 20, 1952  
Recording No: Book 440, Page 787  
Affects: Parcel 1  
Reference is hereby made to said document for full particulars
5. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:  
Granted to: Portland General Electric Company  
Purpose: Right of way  
Recording Date: February 9, 1953  
Recording No: Book 447, Page 648
6. Matters contained in that certain document  
Entitled: Access Restrictions  
Dated: January 9, 1990  
Recording Date: April 17, 1990  
Recording No: Reel 763, Page 131  
Affects: Parcel 1
7. Any easements or rights of way for existing utilities or other rights of way over those portions of said Land lying within the public right of way vacated by resolution or ordinance  
Recording Date: April 7, 1998  
Recording No: Reel 1476, Page 680  
Affects: Parcel 1
8. Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document:  
471814034060-TTMDWIL20  
Deed (Warranty-Statutory)

Purpose: Utility  
Recording Date: April 7, 1998  
Recording No: Reel 1476, Page 680  
Affects: Parcel 1

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED: February 20, 2015

David Ernest Berglund Living Trust

BY: David Ernest Berglund  
David Ernest Berglund  
Trustee

Alice L. Berglund-Rohde Revocable Living Trust

BY: Alice L. Berglund-Rohde, Trustee  
Alice L. Berglund-Rohde  
Trustee

Steven E. Berglund Trust

BY: Steven E. Berglund, Trustee  
Steven E. Berglund  
Trustee

Marcus E. Berglund  
Marcus E. Berglund  
Lorri Jo Pratt  
Lorri Jo Pratt

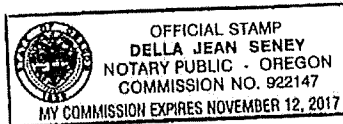
State of OREGON

COUNTY of Marion

This instrument was acknowledged before me on February 20, 2015, by David Ernest Berglund, Trustee of the David Ernest Berglund Living Trust UTA dated November 26, 2006, on behalf of the trust.

Della Jean Senev  
Notary Public - State of Oregon

My commission expires: 11-12-17



State of OREGON

COUNTY of Marion

This instrument was acknowledged before me on February 20, 2015, by Alice Berglund-Rohde, Trustee of the Alice Berglund-Rohde Revocable Living Trust UTA dated September 22, 2011, on behalf of the trust.

Della Jean Senev  
Notary Public - State of Oregon

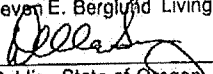
My commission expires: 11-12-17

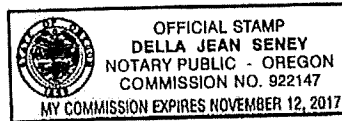


State of OREGON

COUNTY of Marion

This instrument was acknowledged before me on February 20, 2015, by Steven E. Berglund, Trustee of the Steven E. Berglund Living Trust UTA dated March 23, 1995, on behalf of the trust.

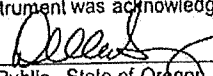
  
Notary Public - State of Oregon  
My commission expires: 11-12-17

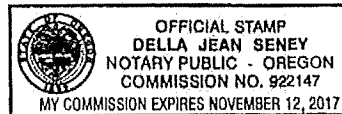


State of OREGON

COUNTY of Marion

This instrument was acknowledged before me on February 20, 2015, by Marcus E. Berglund.

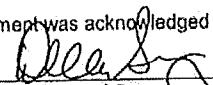
  
Notary Public - State of Oregon  
My commission expires: 11-12-17

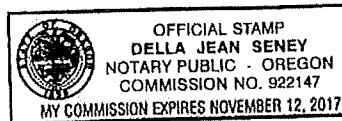


State of OREGON

COUNTY of Marion

This instrument was acknowledged before me on February 20, 2015, by Lorri Jo Pratt.

  
Notary Public - State of Oregon  
My commission expires: 11-12-17



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**REEL: 3674**

**PAGE: 319**

**February 20, 2015, 04:02 pm.**

CONTROL #: 378592

State of Oregon  
County of Marion

I hereby certify that the attached  
instrument was received and duly  
recorded by me in Marion County  
records:

FEE: \$ 61.00

BILL BURGESS  
COUNTY CLERK

THIS IS NOT AN INVOICE.

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**OPERATING AGREEMENT**

**of**

**MWSH BOONE ROAD PROPERTY LLC**

# **OPERATING AGREEMENT**

## **OF**

### **MWSH BOONE ROAD PROPERTY LLC**

an Oregon Limited Liability Company

THE OWNERSHIP INTERESTS REFLECTED IN THIS OPERATING AGREEMENT MAY REPRESENT SECURITIES THAT HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933. SUCH OWNERSHIP INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED, PLEDGED, OR OTHERWISE DISPOSED OF BY A MEMBER IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 AND APPLICABLE STATE SECURITIES LAWS OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION UNDER THE SECURITIES ACT OF 1933 IS NOT REQUIRED.

The undersigned Member(s), desiring to form a limited liability company under the Oregon Limited Liability Company Act, hereby agree as follows:

#### **ARTICLE 1 FORMATION**

1.1 Name. The name of the limited liability company (the "LLC") is " MWSH Boone Road Property LLC ".

1.2 Articles of Organization. Articles of Organization were filed with the Oregon Secretary of State on October 3, 2014.

1.3 Effective Date. The effective date of adoption of the Operating Agreement ("Agreement") of LLC is October 3, 2014.

1.4 Federal Employer Identification Number. The federal employer identification number (EIN) assigned to the LLC is EIN # 47-3146707.

1.5 Duration. The LLC shall continue until terminated as provided in this Agreement or under Oregon law.

1.6 Principal Place of Business. The principal office of the LLC shall initially be located at 3425 Boone Road SE, Salem, Oregon 97317. The Members may relocate the principal office or establish additional offices from time to time.

1.7 Registered Office and Registered Agent. The LLC's initial registered office shall be at 285 Liberty Street NE, Salem, Oregon 97301, and the name of its initial registered agent at such address shall be Corporation Service Company.

1.8 Management of LLC. The LLC shall be managed by a Manager or Managers.



1.9 Purposes and Powers. The primary purpose and general character of the business of the LLC is to acquire the property described in Exhibit "A" and develop it. This general undertaking of the LLC will be referred to in this Agreement as "the Project". This LLC shall be a single-purpose entity; provided, however, that the LLC may have more than one asset and may engage in any lawful business permitted under Oregon law or the laws of any jurisdiction in which the LLC may do business if to do so does not constitute a breach of any contractual, trust deed, note, mortgage or other obligation of the LLC.

1.10 Title to Property. All LLC property shall be owned by the LLC as an entity, and no Member shall have any ownership interest in such property in the Member's individual name or right, and any Member's interest in the LLC shall be personal property for all purposes. Except as otherwise provided in this Agreement, the LLC shall hold all LLC property in the name of the LLC and not in the name or names of any Member or Members. However, if the Managers decide it is appropriate, a Member or the trustee of a trust which is a Member of the LLC may hold an LLC asset in his or her individual name in trust for the LLC.

## **ARTICLE 2**

### **MEMBERS, CONTRIBUTIONS, AND INTERESTS**

2.1 Initial Members. Each of the Member(s) agree to make the following contributions, receive the following Membership Units, and have the following initial capital accounts:

<b>Member Name</b>	<b>Description of Contribution</b>	<b>Membership Units</b>	<b>%</b>
Kelley D. Hamilton, Trustee of the Kelley D. Hamilton Trust dated April 1, 2008	A bundle of contract rights, development concepts and reputation described in Exhibit B, attached hereto and made a part hereof by this reference.	1,000	100%

2.2 Certificates of Membership Units. The LLC may, but is not required to, issue each Member a Certificate of Membership indicating the Membership Units owned by each Member.

2.3 Other Business of Members. Any Member may engage independently or with others in other business and investment ventures of every nature and description and shall have no obligation to account to the LLC for such business or investments or for business or investment opportunities.

2.4 Additional Contributions. In addition to the capital contributions listed above, additional capital contributions shall be accepted from existing Members only if all the Members unanimously approve and set the maximum total amount of the additional capital contributions. If the Members unanimously agree to make additional capital contributions, the Members shall make additional capital contributions on a pro-rata basis in proportion to their Membership Units or as otherwise may be unanimously agreed among the Members.

2.5 No Interest on Capital Contributions. No interest shall be paid on capital contributions.

2.6 Capital Accounts. The LLC shall establish and maintain capital accounts with respect to each Member in accordance with the rules found in Treas. Reg. Section 1.704-1(b).

### **ARTICLE 3 MEMBER MEETINGS**

3.1 Annual Meeting. An annual meeting of the Members may be held at a time, date and place specified by the Managers and communicated by notice to the Members. At such annual meeting, the Members shall transact all business, which is properly brought before the meeting.

3.2 Special Meetings. A special meeting of Members shall be held if the Managers requests such meeting by providing notice of the time, date, place and purpose of the meeting to the Members. A special meeting of Members shall be held if any Member requests such meeting by signing, dating and delivering to the LLC's registered office a written demand for the meeting, which describes the purpose or purposes for which such meeting is to be held. All special meetings shall be held at a time, date and place designated by the Managers specified in the notice of this special meeting prepared by the Managers. In the event a Member requests a special meeting, the Managers shall set the date of such meeting not more than 30 days after receiving notice of the Member's request.

3.3 Notice of Meeting. Notice of the time, date and place of each Member meeting shall be mailed to each Member not earlier than 60 days nor less than 10 days before the meeting date. The notice must include a description of the time, date, place and purpose for which the meeting is called.

3.4 Record Date. The persons entitled to notice of and to vote at a Member meeting and their respective ownership interests shall be determined on the date on which the notice of the meeting was first mailed or otherwise delivered to Members (the record date).

3.5 Quorum. The presence, in person or by proxy, of Members holding at least 50% of the Membership Units shall constitute a quorum.

3.6 Proxies. A Member may be represented at a meeting by a person or entity holding such Member's written proxy.

3.7 Voting. On each matter requiring action by the Members, each Member shall be entitled to one vote for each Membership Unit. Whenever the phrase "Majority of the Members" or "Majority of the Membership Units" is used in relation to voting, it means the decision voted on requires the affirmative vote of more than 50% of the Membership Units. Unless otherwise provided in this Agreement, all matters requiring action by the Members shall be approved by vote of a Majority of the Membership Units.

3.8 Meeting of all Members. Notwithstanding any other provision of this Agreement, if all of the Members hold a meeting at any time and place, such meeting shall be valid without call or notice; and any lawful action taken at such meeting shall be the action of the Members.

3.9 Action Without Meeting. Any action required or permitted to be taken by the Members at a meeting may be taken without a meeting if a consent in writing, describing the

action taken, is signed by all of the Members and is included in the minutes or filed with the LLC's record of meetings.

3.10 Meetings by Telephone. Meetings of the Members may be held by telephone conference or by any other means of communication by which all participants can communicate with each other simultaneously during the meeting, and such participation shall constitute presence in person at the meeting.

3.11 Actions Requiring Unanimous Vote of Members. The following actions require the unanimous approval of the Members:

3.11.1 Admitting an additional Member;

3.11.2 Issuing additional Membership Units;

3.11.3 Amending or restating the Articles of Organization or this Agreement;

3.11.4 Electing a Manager who is not:

3.11.4.1 the trustor of a trust that is a Member of the LLC; nor

3.11.4.2 a Member of the LLC.

3.11.5 Merging the LLC with another entity;

3.11.6 Except as specifically provided in this Agreement, borrowing funds from any person or entity which requires the personal guarantee of all of the Members;

3.11.7 Requiring additional capital contributions; or

3.11.8 Allowing the LLC to loan LLC funds to a Member or entity owned by any Member.

## **ARTICLE 4 MANAGEMENT**

4.1 Management by Managers. The LLC shall be managed by one (1) or more Managers who shall be elected by the affirmative vote of a Majority of the Membership Units. The Managers shall not be compensated for serving as Managers unless otherwise agreed by the holders of a Majority of the Membership Units. However, the Managers may be reasonably compensated for services provided to the LLC which are not merely services incident to serving as Manager.

4.2 Initial Manager and Replacement of Managers. The initial Manager of the LLC shall be Mountain West Senior Housing LLC, an Oregon limited liability company, dba Bonaventure Senior Housing. The initial Manager shall continue as Manager until replaced by the affirmative vote of a Majority of the Membership Units.

4.3 Removal of Manager by Members. By affirmative vote of Members owning a Majority of the Membership Units, the Members, in such Members' sole discretion, may remove

one or more Managers. In the event of the removal of one or more Managers, the remaining Manager or Managers, if any, shall serve as Manager of the LLC. In the event of the removal of a sole Manager or all of the Managers, a replacement Manager shall be elected by an affirmative vote of a Majority of Membership Units. However, in the event the Members fail to elect a new Manager by the affirmative vote of a Majority of the Membership Units, the selection of a Manager shall be determined according to the dispute resolution provisions in this Agreement. In such event, until a new Manager is selected, the Members of the LLC shall act as Managers.

4.4 Election of Managers. Once properly elected, a Manager shall serve until such time as the Manager's death, resignation, removal, or at such time as a new Manager is properly elected by the Members. Upon replacement or removal of the initial Managers, the name of the newly-elected Managers and the date upon which such Managers is elected shall be set out in the space provided below and initialed by Members owning a Majority of the Membership Units electing such Managers. Unless this original Agreement so reflects a managerial change, it is conclusively presumed that the initial Managers continue as Manager of this LLC.

<u>Manager</u>	<u>Date of Election</u>	<u>Member's Initials</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

4.5 Manager Powers. All Managers shall have the right to participate in the management of the LLC, and each Manager shall have authority to make all decisions relating in any way to the LLC except decisions requiring unanimous approval of the Members of the LLC as provided in this Agreement.

4.5.1 All decisions which have a potential impact on the LLC which is more than \$50,000 shall require the signature of a majority of the Managers. If the Managers cannot approve or disapprove of a particular action because of a deadlock, the issue shall be resolved according to the dispute resolution provisions of this Agreement.

4.6 Borrowing. The Managers are authorized to borrow funds and pledge assets to secure funds. The Managers may borrow funds from all or any Member and in such case shall pay interest at the rate of four percent (4%) per annum above *Wall Street Journal* published prime rate. No distribution shall be made from the LLC until all loans from Members have been paid in full.

4.7 Other Activities. The Managers may have other business interests and may engage in other activities in addition to those relating to the LLC. This Section does not change each Manager's duty to act in a manner that the Manager reasonably believes to be in the best interests of the LLC.

4.8 Meetings. If more than one Manager is elected, the Managers may hold meetings at such place and time as is agreed upon by the Managers. No written notice of such meeting is necessary.

4.9 Vacancy. If a vacancy occurs in the office of the Managers, the vacancy shall be filled by the affirmative vote of Members owning a Majority of the Membership Units.

## ARTICLE 5 ACCOUNTING AND RECORDS

5.1 Books of Account. The LLC's books and records, a register showing the names, addresses, and Membership Units of the Members, and a copy of this Agreement shall be maintained at the principal office of the LLC; and each Member shall have access thereto at all reasonable times. The Managers shall keep books and records of the operation of the LLC which are appropriate and adequate for the LLC's business and for the carrying out of this Agreement. Accounting records shall be kept in accordance with a comprehensive income tax basis of accounting.

5.2 Fiscal Year. The fiscal year of the LLC shall be the calendar year.

5.3 Tax Returns. The Managers shall cause all required federal and state income tax returns for the LLC to be prepared and timely filed with the appropriate authorities. Within 90 days after the end of each fiscal year or such later date as the Members may agree by majority vote, each Member shall be furnished a statement suitable for use in the preparation of the Member's income tax return, showing the amounts of any distributions, contributions, gains, losses, profits, or credits allocated to the Member during such fiscal year. No Member may obtain damages of any kind or other relief against the LLC for failure to complete the accounting and tax returns within 90 days but may demand records, hire an accountant, and be reimbursed for actual expenses.

## ARTICLE 6 ALLOCATIONS AND DISTRIBUTIONS

6.1 Allocations of Income and Loss for Tax Purposes. Subject to the Special Allocations and Limitations set forth herein and in Appendices hereto, the profits and losses of the LLC for each fiscal year will be allocated among the Members pro rata in proportion to their Membership Units. All items of income, gain, loss, deduction, and credit shall be allocated among all Members in proportion to their Membership Units.

6.2 Distributions. Other than distributions in liquidation of the LLC as provided in this Agreement, the Managers, in the Managers' sole discretion, shall authorize cash distributions to the Members as may be reasonable in view of the cash reserves of the LLC. Such distribution shall be made to all Members *pro rata*, based upon each Member's percent of Membership Units.

6.3 Tax Consequences. It is understood that Members may have varying tax consequences relating to distributions from the LLC, and the LLC makes no representations, warranties, or promises relating to the tax obligations or consequences of any Member.

6.4 Distributions in Liquidation. Distributions in liquidation of the LLC or a Member's interest in the LLC, shall be made to the Members in the manner provided in this Agreement.

6.5 Allocation of Income and Loss. Members will be allocated income to the extent of the distributions paid to them. Except as otherwise provided herein, all other income, expenses and/or losses shall be allocated among the Members *pro rata*, based upon each Member's percent of Membership Units.

6.6 Special Allocations and Limitations. In order to comply with federal income tax regulations regarding the substantial economic effect of company allocations in the special circumstances described in Appendix 6.6, all allocations of company income, gain, loss, and deductions are subject to the special allocations, definitions, and limitations found in Appendix 6.6.

## ARTICLE 7 TRANSFERS OF INTEREST

7.1 Permitted Transfers. Notwithstanding any other provision of this Agreement, the Members agree that the following transfers shall be permitted transfers and shall not be deemed a transfer restricted under this Agreement:

7.1.1 Any transfer from one existing Member of the LLC to another existing Member of the LLC.

7.1.2 Any transfer from an individual Member to a trust of which the individual Member is the trustor or from a trust which is a Member to the individual who is the trustor of such trust; provided, however, that such Member shall provide the LLC with a Certification of Trust complies with the laws of the state in which the LLC is organized.

7.1.3 Any transfer from a Member to the spouse of the Member or a trust for the benefit of the spouse or children of the Member or its trustor or to a family LLC, the Members of which are such spouse or children. Provided, however, that this LLC shall be entitled to a copy of the certification of such trust and/or Agreement of such LLC; and provided further that such spouse, trust, and/or LLC shall become a signatory to this Agreement.

7.2 Security Interest in Member's Units as Collateral. A Member shall not be allowed to grant a security interest in Member's Membership Units as collateral for a loan unless such Member has previously obtained the written consent to do so from Members owning a Majority of the Membership Units. Such security interest shall: (a) include only the Member's right to receive distributions; (b) not act in any way to encumber any LLC property; and (c) only encumber the Member's Membership Units in the LLC. Such consent shall not be unreasonably withheld. In the event that a Member requests such consent, such Member shall pay all of the LLC's and remaining Members' expenses incurred in determining whether consent should be granted, including but not limited to the costs for attorney fees, accounting fees, title reports, UCC reports, credit reports, review and verification of credit applications, document preparation, recording fees, if any.

7.3 Restriction on Sale. Except as otherwise specifically provided herein, this Agreement is personal to the named members and none of them, individually, jointly, as trustor, trustee, or beneficiary of a trust shall in any manner or by operation of law sell, exchange, assign, pledge, give, or otherwise transfer or encumber all or any part of any interest in this LLC without obtaining the prior written consent of Members owning a Majority of the Membership Units of

the LLC. Under this Agreement, the word "transfer" means the voluntary or involuntary, direct or indirect, sale, transfer, license, sublease, *inter vivos* transfer, testamentary disposition, or other disposition of a Member's Membership Units, including but not limited to any change in ownership as a result of divorce, insolvency, bankruptcy, operation of law or otherwise, and any change in ownership upon the death of a Member by will, declaration, transfer in trust, or under the laws of intestate succession of any state. It is expressly agreed by each Member that no Member shall make or enter into any agreement or contract with a third party or make any will, trust agreement, deed, or gift which would tend to amend, alter, abrogate the provisions, or act in contravention of the terms of this Agreement. The provisions of this Agreement shall be binding upon all persons claiming the rights of any Member, including but not limited to the spouse, heirs, personal representatives, administrators, trustees, trustors, creditors, and beneficiaries of any trust of any Member.

7.4 Events Requiring Sale of Membership Units of a Member. The following shall govern voluntary and mandatory sales of LLC Membership Units by Members:

7.4.1 *Deadlock.* If any disagreement shall arise among the Members creating a deadlock in decision making relating to the operations of the LLC thus hindering the ability to carry on the business of the LLC, the disagreement shall be resolved in accordance with the Dispute Resolution Provisions of this Agreement. If any Member of this LLC is unwilling to abide by the decision obtained through the dispute resolution process relating to a deadlock or otherwise, then such dissenting Member shall offer Member's Membership Units in the LLC to the LLC and the remaining Members for the fair market value of such dissenting Member's Membership Units without deduction for minority status or lack of marketability.

7.4.2 *Desire to Sell/Death of a Member.* If any Member desires to no longer be a Member of the LLC or to sell such Member's Membership Units, then such Member shall offer such Member's Membership Units in the LLC to the LLC and the remaining Members for the fair market value of such Membership Units, without deduction for minority status or lack of marketability. Upon the death of any Member or the grantor of any trust that is a Member, the Membership Units owned by such Member shall be offered to the LLC and the remaining Members for the fair market value of such Membership Units, without deduction for minority status or lack of marketability.

7.4.3 *Other Events Requiring Sale.* Upon the occurrence of any of the following events relating to any Member, such Member shall offer to sell Member's Membership Units in the LLC to the LLC and the remaining Members for the fair market value of such Member's Membership Units, with deduction for minority ownership and lack of marketability: (i) the Member makes an assignment for the benefit of creditors; (ii) the Member files a voluntary petition for bankruptcy; (iii) the Member is adjudicated a bankrupt or insolvent; (iv) the Member files a petition or answer seeking for the Member any reorganization, arrangement for the benefit of creditors, composition of debts and assets, readjustment of debts and assets, liquidation of assets, or dissolution of marriage or similar relief under any statute, law, or regulation, or any other event not otherwise mentioned in this Section 7.4.

7.5 Valuation of Membership Units of a Member. In every instance involving the voluntary or mandatory purchase or sale of Membership Units in this LLC, if the parties cannot agree on the fair market value with or without discount for minority ownership and/or marketability of the LLC Membership Units of any Member whose Membership Units must be

voluntarily or mandatorily sold as described above, then the fair market value issue, with or without discount for minority ownership or marketability, shall be resolved in accordance with the dispute resolution provisions in this Agreement. The decision obtained through the dispute resolution procedure shall be binding on the parties. Such fair market value with or without discount, as the case may be, is referred to herein as the "Purchase Price".

7.6 Options to Purchase Membership Units of a Member. In every instance involving the voluntary or mandatory purchase or sale of Membership Units in this LLC and after the fair market value with or without discounts for minority ownership and/or marketability has been determined by agreement or through the dispute resolution procedure established in this Agreement, then:

7.6.1 *First Option to LLC.* For a period not exceeding 60 days from the date a Purchase Price for the Membership Units has been determined, the LLC shall have the option to purchase such Membership Units, which option may be exercised by giving written notice of the LLC's intent to purchase such Units at the Purchase Price which shall be paid pursuant to the terms provided in this Agreement to the transferring Member or the transferring Member's estate and shall be secured by the Membership Units so transferred.

7.6.2 *Second Option to Non-transferring Members.* If the LLC does not exercise its right to purchase Membership Units as provided above, the remaining Members, jointly or severally, shall have the option to purchase all such Membership Units at the Purchase Price determined pursuant to the terms of this Agreement. The non-transferring Members shall provide written notice of intent to exercise their option at any time within 60 days following the last date by which the LLC may give notice of its intent to exercise such rights. If more than one non-transferring Member desires to purchase all or any portion of such Membership Units, such Membership Units shall be purchased by such non-transferring Members in proportions upon which they agree or, in the absence of some other agreement among the non-transferring Members, in proportion to the existing Membership Units of each non-transferring Member.

7.7 Payment for Member's Membership Units. The LLC or the remaining Members, as the case may be, in their sole discretion, shall choose one of the following methods for payment of the Purchase Price for a Member's Membership Units purchased pursuant to this Agreement:

7.7.1 In cash within 30 days of the exercise of the option to purchase; or

7.7.2 In monthly installments amortized over a period of 25 years, including interest on the unpaid balance at the rate of 8% per annum, with no penalty for prepayment. If such deferred payment is opted by either the LLC or the remaining Members, such Purchase Price shall be memorialized by an installment note of the LLC or the non-transferring, purchasing Members, payable to the transferring Member or the transferring Member's estate. The installment note shall be secured by the Membership Units purchased by the LLC or the remaining Members, as the case may be; and the entire balance due on such installment note shall be due and payable in full upon the sale of all or substantially all of the LLC assets unless the sale is part of a tax deferred exchange.

7.8 Substituted Parties. Except in the case of permitted transfers defined in Section 7.1, upon any transfer of Membership Units, the transferee shall not become a fully



substituted Member with full membership rights unless and until: (a) the transferee is approved as a substitute Member by remaining Members holding all of the remaining Membership Units; (b) the transferee delivers to the LLC any and all personal financial statements or other information requested by the LLC; (c) the transferee pays for any credit reports requested by the LLC; (d) the transferee pays for all legal documentation necessary to effectuate the transfer, including legal costs of the LLC; and (e) the transferee executes and delivers to the LLC all documents necessary or appropriate in the opinion of counsel for the LLC to effect the transfer and to confirm the agreement of the permitted assignee to be bound by the provisions of this Agreement.

7.8.1 Upon any transfer of Membership Units in which the transferee is not admitted as a substitute Member, the Membership Units held by such transferee shall not include any right to participate in management of the LLC, including any right to vote, consent to, or approve any actions of the Manager and shall not include any right to information about the LLC, its operations or its financial condition. In addition, if the transferee is not admitted as a substitute Member, the transferee shall be allocated distributions for tax purposes, but the distribution of funds to such Member shall not be made. Such funds shall be held in a suspense account by the LLC until such time as such transferee is admitted as a substitute Member or upon dissolution of the LLC. Following any transfer to a transferee who is not admitted as a substitute Member, the transferring Member's power and right to vote or consent to any matters submitted to the Members to receive any distributions shall be terminated; and any Membership Units of the remaining Members for purposes only of such votes, consents, and participation in management shall be proportionately increased until such time, if any, as such transferee becomes admitted as a substitute Member.

7.9 Failure to Exercise Option. If neither the LLC nor the non-transferring Members agree to purchase the Membership Units of a Member who offers to or is required to offer to sell such Member's Membership Units to the LLC and/or the remaining Members as provided above, the restrictions of this Agreement on transfer of such Membership Units shall be removed; except that: (i) such Membership Units shall not be sold or transferred in any way to any third party for a purchase price less than the Purchase Price determined under the paragraph entitled **Valuation of Membership Units of a Member**, (ii) such Membership Units shall not be sold on terms more favorable to the purchaser than those provided in the paragraph entitled **Payment for Member's Membership Units**, and (iii) the rights of the transferee of such Membership Units shall be restricted as provided in the paragraph entitled **Substituted Parties** in this Agreement, and (iv) if such Membership Units are not sold by such Member within one (1) year of the determination of the Purchase Price pursuant to the provisions of this Agreement, then the provisions and restrictions of this Agreement relating to the transfer of Membership Units shall apply, and the options of the LLC and the remaining Members shall be reinstated.

## ARTICLE 8 DISSOLUTION AND WINDING UP OF THE LLC

8.1 Dissolution. Except as otherwise provided in this Agreement, the LLC shall be dissolved: (a) at the time, if any, for dissolution specified in the Articles of Organization; (b) within four (4) years of the sale, transfer, or other disposition of all of the assets of the LLC unless otherwise agreed by the Members; (c) upon the agreement of Members owning more than 50% of the Membership Units of this LLC. Provided, however, that, if such dissolution would

constitute an event of default of any contractual obligation of the LLC, then the LLC shall not be dissolved.

8.2 Winding Up. Upon the dissolution of the LLC, the assets shall be liquidated as promptly as is consistent with obtaining their fair market value, and the proceeds shall be applied and distributed and allocated as promptly as is commercially reasonable in the following order:

8.2.1 To the payment and discharge of the expenses of liquidation.

8.2.2 To the payment and discharge of all of the debts and liabilities of the LLC to persons or organizations other than the Members.

8.2.3 To the payment and discharge of any debts and liabilities to Members.

8.2.4 To the Members in the amount of the positive balances in their respective capital accounts on the date of distribution. If the amount available for such distribution to the Members is insufficient to bring all their positive capital account balances to zero, then payment shall be made on a pro-rata basis to all the Members in the same proportion that the positive balance in the capital account of each Member bears to the aggregate amount of the positive balances in the capital accounts of all Members.

8.2.5 Any proceeds remaining shall be distributed to the Members on a pro rata basis in proportion to their Membership Units.

8.3 Tax Consequences. It is understood that the Members may have varying consequences relating to distributions upon liquidation of the LLC, and the LLC makes no representations, warranties or promises relating to the tax obligations or consequences of any Member. To the extent of any negative capital account after distribution of all liquidation proceeds relating to any Member, the LLC shall release the Member from the obligation of repaying the negative capital account; and the Member shall be responsible for paying any tax liability that may result therefrom.

## ARTICLE 9 INDEMNIFICATION

9.1 Indemnification. To the fullest extent permitted under the law of the state of organization of the LLC, as such law exists or may hereafter be amended, the LLC shall defend, indemnify, and hold harmless each Member and/or Manager of the LLC against any and all claims and liabilities to which such Member and/or Manager has or shall become subject by reason of serving or having served as such Member and/or Manager or by reason of any action alleged to have been taken, omitted, or neglected by such Member and/or Manager. The LLC may provide indemnification to employees and agents of the LLC. The indemnification provided in this Section shall not be exclusive of any other rights to which any person may be entitled under statute, agreement, resolution, contract, or otherwise.

9.2 Limitation of Liability. Members managing the LLC shall not be liable to the LLC or its Members for monetary damages or otherwise for conduct as Member and/or Manager except to the extent that the Limited Liability Company Act of the state in which this LLC was organized, as it now exists or may hereafter be amended, prohibits elimination or limitation of

Manager or Member liability. No repeal or amendment of this Section of this Agreement or of the Limited Liability Company Act of the state in which this LLC was organized shall adversely affect any right or protection of a Manager or Member for actions or omissions prior to the repeal or amendment.

## **ARTICLE 10 AMENDMENTS**

10.1 By Members. The Members may amend or repeal the provisions of this Agreement by unanimous agreement of the Members set forth in writing or by unanimous action taken at a meeting of Members called for that purpose. This Agreement may not be amended or repealed by oral agreement of the Members.

## **ARTICLE 11 MISCELLANEOUS**

11.1 Additional Documents. Each Member shall execute such additional documents and take such actions as are reasonably requested in order to complete or confirm the transactions contemplated by this Agreement.

11.2 Dispute Resolution. In the event there is any dispute between or among the parties to this Agreement relating in any way to this Agreement, the parties must mediate such dispute before commencing any legal action. No party to this Agreement can bring legal action or demand mandatory arbitration against another party to this Agreement without first participating in mediation, unless one party refuses to submit to mediation and legal action is brought to specifically enforce this mandatory mediation provision of this Agreement. If the parties cannot agree upon the person to act as the mediator, then the U.S. Arbitration and Mediation Service of Portland, Oregon, shall select a person to act as the mediator. The mediator's charges and expenses shall be split by the parties on a 50/50 basis. Mediation fees and costs do not include each party's attorney fees and costs. Each party shall be responsible for his or her own attorney fees and costs at mediation. Should the dispute not be resolved by mediation, the parties agree to submit any dispute between the parties relating in any way to this Agreement to binding arbitration with the U.S. Arbitration and Mediation Service of Portland, Oregon, and shall utilize such service's rules of procedure. If the parties cannot agree upon an individual to act as the arbitrator, then the U.S. Arbitration and Mediation Service of Portland, Oregon, shall select a person to act as the arbitrator. If the dispute goes to arbitration, the prevailing party shall be entitled to such party's attorney's fees and costs incurred in the arbitration process. The decision of an arbitrator shall be final and not subject to any appeal and shall be enforceable in a court of competent jurisdiction. The arbitration provisions in this Agreement shall not be enforced in the event every indispensable and necessary party to the arbitration cannot be brought within the jurisdiction of the arbitrator. In that event, or in the event that this dispute resolution paragraph is deemed to be unenforceable as to any party, actual or alleged, then the parties, actual or alleged, to this Agreement may enter into any litigation filed by such parties relating hereto.

11.2.1 *Dispute Resolution in the Event of a Deadlock.* In any instance in which there is a deadlock between or among multiple parties, such decision shall be referred to the dispute resolution procedure described above. In such event, the LLC shall pay all costs of mediation and arbitration. The decision of the arbitrator shall be final and not be subject to any appeal and shall be enforceable in a court of competent jurisdiction.

11.2.2 *Loss of Rights for Failure to Submit to Dispute Resolution.* Except as provided above in this section 11.2, anyone who refuses to submit to the dispute resolution provisions of this Agreement shall lose all rights under this Agreement including the right to receive any income or property under this Agreement.

11.3 Governing Law. This Agreement shall be governed by the law of the state of Oregon where the LLC was organized.

11.4 Headings. Headings in this Agreement are for convenience only and shall not affect its meaning.

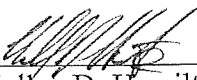
11.5 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions.

11.6 Third-party Beneficiaries. The provisions of this Agreement are intended solely for the benefit of the Members and shall create no rights or obligations enforceable by any third party, including creditors of the LLC, except as otherwise provided by applicable law.

This Operating Agreement is entered into effective October 3, 2014 by the undersigned.

**SOLE MEMBER:**

**Kelley D. Hamilton Trust dated April 1, 2008**

By  \_\_\_\_\_  
Kelley D. Hamilton, Trustee

## EXHIBIT A

### PARCEL 1:

Beginning at the Northwest corner of the Daniel Clark and wife Donation Land Claim in Township 8 South, Range 3 West of the Willamette Meridian, Marion County, Oregon; running thence North 88° West 4.18 chains to the quarter Section corner between Sections 13 and 12; thence South 21.47 chains; thence South 89° East 44.53 chains to the division line between the East and West halves of the Daniel Clark and wife Donation Land Claim; thence North 21.47 chains along the division line to the North line of the Daniel Clark and wife Donation Land Claim; thence North 89° West 4.17 chains to the corner common to Sections 7 and 18, Township 8 South, Range 2 West of the Willamette Meridian, and to Sections 12 and 13, Township 8 South, Range 3 West of the Willamette Meridian; thence North 89° 46' West 36.17 chains to the place of beginning.

Except a road 20.00 feet wide along the East end of said tract.

Also Save and Except: Beginning on the North line of Section 13, Township 8 South, Range 3 West of the Willamette Meridian in Marion County, Oregon, at a point which is 16.56 chains North 89° 46' West from the Northeast corner of said Section; thence South 2° 14' East 21.520 chains to a point on the South line of tract of land described in Volume 240, Page 343, Deed Records for said County and State, which point is 19.786 chains North 89° 00' West from the Southeast corner of said tract; thence North 89° 00' West along the South line of said tract, 4.660 chains; thence North 22° 23' West 11.190 chains; thence North 74° 05' East 4.720 chains; thence North 18° 08' East 10.305 chains to a point on the North line of said Section, which point is 0.350 chains North 89° 46' West from the place of beginning; thence South 89° 46' East 0.350 chains to the place of beginning.

Also Save and except all that portion conveyed to the State of Oregon by document recorded April 17, 1990 in Reel 763, Page 131, Microfilm Records, Marion County, Oregon.

Together with that portion of vacated street that would inure to said property by Ordinance No. 2011-R, recorded April 7, 1998 in Reel 1476, Page 680, Microfilm Records, Marion County, Oregon.

### Parcel 2:

Beginning on the North line of Section 13, Township 8 South, Range 3 West of the Willamette Meridian in Marion County, Oregon, at a point which is 16.56 chains North 89° 46' West from the Northeast corner of said Section; thence South 2° 14' East 21.520 chains to a point on the South line of a tract of land described in Volume 240, Page 343, Deed Records for said County and State, which point is 19.786 chains North 89° 00' West from the Southeast corner of said tract; thence North 89° 00' West along the South line of said tract 4.660 chains; thence North 22° 23' West 11.190 chains; thence North 74° 05' East 4.720 chains; thence North 18° 08' East 10.305 chains to a point on the North line of said Section, which point is 0.350 chains North 89° 46' West from the place of beginning; thence South 89° 46' East 0.350 chains to the place of beginning.

Also: Together with a road 20 feet wide along the East end of the following tract:

Beginning at the Northwest corner of the Daniel Clark and wife Donation Land Claim in Township 8 South, Range 3 West of the Willamette Meridian, Marion County, Oregon; running thence North 88° West 4.18 chains to the quarter Section corner between Sections 13 and 12; thence South 21.47 chains; thence South 89° East 44.53 chains to the division line between the East and West halves of the Daniel Clark and wife Donation Land Claim; thence North 21.47 chains along the division line to the North line of the Daniel Clark and wife Donation

Land Claim; thence North 89° West 4.17 chains to the corner common to Sections 7 and 18, Township 8 South, Range 2 West of the Willamette Meridian, and to Sections 12 and 13, Township 8 South, Range 3 West of the Willamette Meridian; thence North 89° 46' West 36.17 chains to the place of beginning.

## **EXHIBIT B**

### **Description of Capital Contribution of Hamilton**

1. All guarantees and warranties owned by Hamilton that in any way affect the real property on which LLC will construct improvements.
2. All permits, licenses, approvals, and consents issued to Hamilton or their assigns and required for the development or construction of the Project.
3. All designs, plans, specifications, engineering, or layout documents for the Project.
4. All approvals, consents, guarantees, and agreements issued to or obtained by Hamilton to facilitate construction of the Project and/or financing therefor.
5. Any and all agreements and commitments for construction financing and/or any other financing required for construction of the Project.
6. All other development rights and other intangible property, prepaid assets, and other unamortized assets owned by Hamilton relating to the Project, including Hamilton's development reputation and credibility.

## APPENDIX 6.6

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

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

6.6.3 *Capital Account* means the account maintained for each Member pursuant to Section 2.5.

6.6.4 *Company Minimum Gain* means, as of any date, the amount of gain, if any, that would be recognized by the Company for federal income tax purposes, as if it disposed of property in a taxable transaction on that date in full satisfaction of any non-recourse liability secured by the property, computed in accordance with Treasury Regulation §1.704-2(d)(1).

6.6.5 *Member Non-recourse Debt* has the same meaning as "partner non-recourse debt" set forth in Treasury Regulation §1.704-2(b)(4).

6.6.6 *Member Non-recourse Debt Minimum Gain* means an amount, with respect to each Member non-recourse Debt, equal to the Company Minimum Gain that would result if such Member Non-recourse Debt were treated as a non-recourse Liability, determined pursuant to Treasury Regulation §1.704-2(i)(2) and (3).

6.6.7 *Member Non-recourse Deductions* has the same meaning as "partner non-recourse deductions" set forth in Treasury Regulation §1.704-2(i)(2). The amount of Member non-recourse Deductions with respect to a Member non-recourse Debt for a Company fiscal year equals the excess, if any, of" (A) the net increase, if any, in the amount of the Company minimum Gain attributable to such Member Non-recourse Debt during the fiscal year over (B) the aggregate amount of any distribution during the fiscal year to the Member that bears the economic risk of loss for such Member Non-recourse Debt to the extent the distributions are from proceeds of the Member Non-recourse Debt and are allocable to an increase in Member Non-recourse Debt Minimum Gain attributable to the Member Non-recourse Debt, determined pursuant to Treasury Regulation §1.704-2(i).

6.6.8 *Non-recourse Deductions* has the meaning set forth in Treasury Regulation §1.704-2(c). The amount of Non-recourse Deduction for a Company fiscal year equals excess, if any, of the net increase, if any, in the amount of Company Minimum Gain during that fiscal year over the aggregate amount of any distributions during that fiscal year of proceeds of a non-recourse Liability that are allocable to an increase in Company Minimum Gain, determined pursuant to Treasury Regulation §1.704-2(c).

6.6.9 *Non-recourse Liability* has the meaning set forth in Treasury Regulation §1.704-2(b)(3).

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

6.6.11 *Company Minimum Gain Chargeback.* If there is a net decrease in Company Minimum Gain during any Company taxable year, each Member will be specially allocated, before any other allocation of Company income, gain, loss, or deduction for the taxable year, items of Company income and gain for the taxable year (and, if necessary, subsequent years) in proportion to and to the extent of an amount equal to each Member's share of the net decrease in Company Minimum Gain determine in accordance with Treasury Regulation §1.704-2(g)(2). This Paragraph is intended to comply with and will be interpreted consistently with the "minimum gain chargeback" provisions of Treasury Regulation §1.704-2(f).

6.6.12 *Member Non-recourse Debt Minimum Gain Chargeback.* Notwithstanding any other provision of Article 6 of the Agreement or this Appendix 6.6, except paragraph 6.6.11. of this Appendix, if there is a net decrease in Member Non-recourse Debt minimum Gain attributable to a Member Non-recourse Debt during any taxable year of the Company, each Member who has a share of the Member non-recourse Debt Minimum Gain attributable to such Member Non-recourse Debt, determined in accordance with Treasury Regulation §1.704-2(i)(5), will be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Non-recourse Debt, determined in accordance with Treasury Regulation §1.704-2(i)(4). Allocations pursuant to this Paragraph 6.6.12 will be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated will be determined in accordance with Treasury Regulation §1.704-2(i)(4). This Paragraph 6.6.12 is intended to comply with, and will be interpreted consistently with, the partner non-recourse debt minimum gain chargeback provisions of Treasury Regulations §1.704-2(i)(4).

6.6.13 *Qualified Income Offset.* Notwithstanding any other provision of the Agreement or this Appendix except Paragraphs 6.6.11 and 6.6.12 of this Appendix 6.6, in the event any Member for any reason receives an Adjustment Item for any fiscal year that results in an Adjusted Capital Account Deficit for that Member, the Member will be specially allocated items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for the year) in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit, if any, created by such Adjustment Item as quickly as possible. This Paragraph 6.6.13 is intended to comply with the "qualified income offset" requirements of Treasury Regulation §1.704-1(b)(2)(i)(d) and will be interpreted and applied consistently therewith.

6.6.14 *Offsetting Allocations.* Any special allocations of items of income, gain, loss, or deduction pursuant to Paragraphs 6.6.11, 6.6.12 or 6.6.13 of this Appendix 6.6 will be taken into



account in computing subsequent allocations of Company income, gain, loss or deduction pursuant to Article 6 so that the net amount of any items so allocated and all other income, gain, loss, deductions, and items thereof allocated to each Member pursuant to Article 6 will, to the extent possible, be equal to the net amount that would have been allocated to each Member pursuant to Article 6 if the special allocation had not occurred.

6.6.15 *Allocations with respect to Contributed or Revalued Property.* Notwithstanding any other provision of Article 6 of this Agreement, in the event Internal Revenue Code ("IRC") §704(c) or IRC §704(c) principles applicable under Treasury Regulation §1.704-1(b)(2)(iv) require allocations of Company income, gain, loss, or deductions for income tax purposes in a manner different than otherwise provided in Article 6 of this Agreement, the provisions of IRC §704(c) and the regulations thereunder will control such allocations among the Members for income tax purposes. Any item of income, gain, loss, and deduction with respect to any property (other than cash) that has been contributed to the Company by a Member or that has been revalued for Capital Account purposes under this Agreement pursuant to Treasury Regulation §1.704-1(b)(2)(iv) and which is required or permitted to be allocated to such Member for income tax purposes under IRC §704(c) so as to take into account the variation between the tax basis of such contributed or revalued property and its fair market value at the time of its contribution or revaluation will be allocated solely for income tax purposes in the manner so required or permitted under IRC §704(c) using the method described in Treasury Regulation §1.704-3 (or any successor regulation) selected by the Manager.