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**FOURTH  
AMENDED AND RESTATED  
OPERATING AGREEMENT  
of  
GREEN VIEW REALTY, LLC**

**THE OWNERSHIP AND OTHER UNITS DESCRIBED HEREIN HAVE NOT BEEN REGISTERED UNDER THE US SECURITIES ACT OF 1933, AS AMENDED (“ACT”), NOR HAVE THEY BEEN REGISTERED UNDER ANY STATE SECURITIES LAW.**

**THE TRANSFER OR PLEDGE OF SUCH UNITS IS PROHIBITED EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF THE ACT, PURSUANT TO REGISTRATION UNDER THE ACT, OR PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION, AND HEDGING TRANSACTIONS INVOLVING SUCH UNITS MAY NOT BE CONDUCTED UNLESS IN COMPLIANCE WITH THE ACT.**

**CERTAIN OTHER RESTRICTIONS ON THE TRANSFER OF OWNERSHIP AND OTHER UNITS ARE DESCRIBED HEREIN.**

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of  
GREEN VIEW REALTY, LLC**

This Fourth Amended and Restated Operating Agreement ("Agreement") of Green View Realty, LLC, a Massachusetts limited liability company (the "Company"), is entered into to be effective as of April \_\_, 2012 ("Effective Date") by and between the members (each a "Member" or with any other Member, "Members" which terms includes those subsequently admitted) set out in Schedule A attached hereto and the manager ("Manager") set out in Schedule B attached hereto.

Recitals

WHEREAS, the Company was formed as a Massachusetts limited liability company by the original members ("Original Members") by filing a Certificate of Organization (the "Certificate") with the Secretary of the Commonwealth of Massachusetts;

WHEREAS, the Company has been formed for the purposes set forth in Section 2.6, and

WHEREAS, (a) the Original Members transferred all of their ownership interests in the Company to one of the Members pursuant to that certain Transfer Agreement dated January 3, 2005 and (b) the obligations of the Original Members to contribute property to the Company were terminated by the provisions of the aforesaid agreement,

WHEREAS, following the aforesaid transfer the original Operating Agreement for the Company was amended and restated on three occasions ("Prior Restatements"),

WHEREAS, since the Prior Restatements, new Members have invested in and been admitted to the Company, and

WHEREAS, in anticipation of further investment in the Company, the Members desire to amend and restate the Prior Restatements,

NOW, THEREFORE, the Member and Managers hereby agree that the terms and conditions under which they will own and operate the Company under the Massachusetts Limited Liability Company Act (the "Act") are as set forth in this Agreement.

**Section 1**

**DEFINITIONS**

**1.1 General Definitions.** The following terms shall have the following meanings when used in this Agreement:

- (a) "Act" shall mean the Massachusetts Limited Liability Company Act, as amended from time to time;
- (b) "Actions" shall have the meaning ascribed to it by Section 8.2(a);
- (c) "Bonus Payment" shall mean (i) an amount equal to the aggregate of all Capital Contributions actually received by the Company from Members in respect of the purchase or issuance of Preferred Units multiplied by one of the following factors, as appropriate:
  - (A) one half (.5) if a closing has occurred
  - (B) one (1.0), if a Member was admitted prior to the Fourth Amended Agreement; or
  - (D) zero (0) if no Closing has occurred,less (ii) the aggregate of all amounts distributed to the Members holding Preferred Units pursuant to Sections 7(ii) and 11.2(a)(iii);
- (d) "Business" shall have the meaning ascribed to it by Section 2.6;
- (e) "Business Days" shall mean any day other than Saturday, Sunday, and days which are federal holidays in the United States of America;
- (f) "Capital Account" shall have the meaning as described by Section 6.2;
- (g) "Capital Contributions" shall have the meaning ascribed to it by Section 6.1;
- (h) "Certificate" shall mean the Company's Certificate of Organization filed with the Massachusetts Secretary of the Commonwealth, as amended or restated from time to time;
- (i) "Chapter 40B" means chapter 40B of the Massachusetts General Laws, as amended, or pursuant to any successor thereto;
- (j) "Common Units" shall mean those of the Company's Units representing membership, ownership, distribution, and voting rights, among other things, as described in this Agreement and which have been designated as "Common Units";
- (k) "Closing" shall mean the first to occur of the following: (i) the sale or other transfer of the Property by the Company for compensation, (ii) the sale or transfer of a controlling interest in the Company to any person or entity not currently a Member of the Company, or (iii) the approval by the Manager of a transaction described in clause (i) or (ii) of this Section 1.1(k); provided, however, that if, following such approval, the parties thereto fail to complete such sale or transfer in accordance with their agreement for such sale or transfer, then it shall be deemed that a Closing has not occurred;
- (l) "Code" shall mean the United States Internal Revenue Code of 1986 and the regulations and the rules promulgated thereunder, as amended from time to time, or any successor thereto;
- (m) "Contribution Event" shall mean, at the sole option of the Company, either (i) the obtaining by the Company or its designee of all Permits or (ii) the entering into of an agreement by the Company or its designee with any Person to sell the Permits and the Property to such Person or its designee;
- (n) "Effective Date" shall mean that date set forth in the preamble on page 1 of this Agreement;
- (o) "Family" in respect of any natural person shall mean any of that natural person's spouse, children, siblings, grandchildren, or parents, including any persons so

- related by adoption, but excluding minors;
- (p) "Housing Units" shall mean single family dwellings of any type including, without limitation, dwellings built as free standing houses, town houses, or units of multi-unit buildings, and whether in condominium format or otherwise;
- (q) "Indemnified Costs" shall have the meaning ascribed to it by Section 8.2(a);
- (r) "Indemnified Party" shall have the meaning ascribed to it by Section 8.2;
- (s) "Limited Dividend Organization" shall mean an entity meeting the requirements (i) of the definition of a "limited dividend organization" under § 760 C.M.R. 30.02 promulgated pursuant to Chapter 40B; (ii) of section 21 of Chapter 40B; (iii) of any "regulatory agreement" entered into by the Company pursuant to Chapter 40B; and (iv) generally which enable such entity to have and retain a Permit;
- (t) "Manager" shall mean, at any time, the Person listed on Schedule B attached hereto who shall have the right to manage the Company as more particularly described in this Agreement;
- (u) "Member" shall mean, at any time, a Person listed on Schedule A attached hereto who shall have rights in proportion to the number of Units held;
- (v) "Original Agreement" shall have the meaning ascribed to it in the preamble on page 1 of this Agreement;
- (w) "Permits" shall mean any and all permits, licenses, and other rights, comprehensive or otherwise, required for the construction of subsidized low or moderate income housing pursuant to Chapter 40B;
- (x) "Person" shall mean any natural person, corporation, partnership, limited partnership, limited liability partnership, limited liability company, or other entity organized by the filing of an application, articles, certificate, or like instrument with the authorities of any state or governmental subdivision of any state whether in the United States of America or in any foreign state;
- (y) "Preferred Capital Return" shall mean (i) the aggregate of Capital Contributions actually received by the Company from Members in respect of the purchase or issuance of Preferred Units less (ii) the aggregate of all amounts distributed to the Members holding Preferred Units pursuant to Section 7(i) and 11.2(a)(ii);
- (z) "Preferred Units" shall mean those of the Company's Units representing the distribution rights described in this Agreement and which have been designated as "Preferred Units";
- (aa) "Prior Restatements" shall have the meaning ascribed to it in the preamble on page 1 of this Agreement;
- (bb) "Property" shall mean two parcels of land containing jointly approximately 50 acres of land located at 708 Prentice Street (a/k/a Holliston Assessor Plan, Parcels 7319 and 7322), Holliston, Massachusetts, including an existing ranch-style, single-family dwelling and together with any structures, improvements, appurtenances and fixtures thereon;
- (cc) "Registered Agent" shall mean the person listed on Schedule C as designated pursuant to Section 2.4 or 5.1(e);
- (dd) "Regulation" shall mean a regulation promulgated under the Code;
- (ee) "Securities Act" shall mean (i) the United States Federal Securities Act of 1933, as amended, (ii) the Blue Sky law of any state of the United States of America, and (iii) the securities registration law of any other country, state, or governmental

- subdivision thereof;
- (ff) “Tax Matters Partner” shall be that Member so designated in Schedule A pursuant to Section 10.6; and
- (gg) “Unit” and “Units” shall mean one or more, respectively, of the Common Units and Preferred Units issued by the Company to its Members which represent their respective rights as more fully described in this Agreement.

**1.2 Gender Specific Terms.** The use of the term “he” in this Agreement shall be construed to mean “he”, “she”, or “it” as required by the context and situation.

**1.3 Other Terms.** Capitalized terms not defined in Section 1.1 or otherwise in this Agreement shall have such meaning as described in the Code, if described therein, or by the context of such term’s use in this Agreement.

## Section 2

### ORGANIZATION

**2.1 Organization of Company.** The Company has been organized as a Massachusetts limited liability company by the filing of the Certificate with the Secretary of the Commonwealth of Massachusetts pursuant to the Act.

**2.2 Name.** All Company business shall be conducted under the name “Green View Realty, LLC” or such other names that comply with applicable law as the Members may select from time to time.

**2.3 Term.** The Company commenced on the date the Certificate was filed and shall continue perpetually, unless dissolved pursuant to the terms of this Agreement or the Act.

**2.4 Registered Office and Agent; Principal Place of Business.** The principal and registered office of the Company shall be located at the place specified in Schedule C. The name and address of the Registered Agent of the Company in Massachusetts shall be that specified in Schedule C. The Members may change the principal office or place of business of the Company or the Registered Agent at any time and may cause the Company to establish other offices or places of business in various jurisdictions and appoint agents for service of process in such jurisdictions. In the event of any such change, the Members shall cause Schedule C to be updated and a copy thereof to be delivered to all Members.

**2.5 Qualification in Other Jurisdictions.** The Members shall cause the Company to be qualified or registered under applicable laws of any jurisdiction in which the Company transacts business and shall be authorized to execute, deliver, and file any certificates and documents necessary to effect such qualification or registration.

**2.6 Purposes, Business and Powers.** The purpose and business of the Company shall be:



(a) to own, hold, finance, mortgage, lease, develop, manage, sell, convey, and otherwise deal in every way with real property; and

(b) to undertake all business purposes and to exercise all powers allowed to limited liability companies by law; and

(c) to exercise all powers which are necessary or desirable to carry out the foregoing (collectively the "Business").

When conducted by the Company, all of the activities described above shall be deemed to be in the ordinary course of the Company's business for purposes of the Act. The purposes and Business of the Company may be conducted alone, with other Persons, or through other Persons in which the Company is a partner, joint venturer, shareholder, member, or beneficiary in which the Company holds an ownership, equity, or beneficial interest.

**2.7 Admission of Members.** The persons executing this Agreement as Members are Members of the Company who shall have those numbers of Units as described on Schedule A and hereby do assign to the Company their respective Capital Contributions as set forth on Schedule A. To be a Member, a person must hold at least one Unit.

**2.8 Resignation of Members.** No Member may resign from the Company without the consent of the Members. In the event of a resignation of a Member upon not less than six (6) months prior written notice as provided in section 36 of the Act, the resigning Member shall be entitled to receive an amount equal to any positive amount of the resigning Member's Capital Account plus, when next distributed, the resigning Member's share of distributions pursuant to Section 7 or 11.2 prorated for only that part of the calendar year prior to the effective date of the resignation.

### Section 3

#### UNITS

##### **3.1 Total Capitalization.**

Unless otherwise determined by vote of Members holding a majority of the Common Units, the Company shall have the authority to issue up to two hundred (200) Common Units and One Hundred (100) Preferred Units.

##### **3.2 Issue of Units.**

The Company shall issue those Units set forth beside each Member's name in Schedule A. As directed by the Manager, the Company may issue further Units up to the maximum amount specified in Section 3.1, or as otherwise permitted pursuant to Section 9.2(a)(ii) for such consideration as is deemed appropriate by the Manager. Subject to the foregoing, Units may be issued by the Company to any Person. The Company shall not issue certificates for Units, but shall maintain, at all times, an up to date Schedule A as required by Section 5.1.

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Section 4

ASSIGNABILITY OF UNITS

4.1 Transfer Procedure.

(a) No Member may sell, transfer, assign, pledge, or otherwise dispose of all or any part of his or its Units (whether voluntarily, involuntarily, or by operation of law) or any interest therein, whether economic, voting, or other, unless all of the following conditions shall have been satisfied:

(i) no such assignment shall be made which, in the opinion of counsel to the Company, may result in the termination of the Company for purposes of Section 708 of the Code;

(ii) no such assignment shall be made if, in the opinion of counsel to the Company, such assignment may not be effected without registration under a Securities Act, would result in the violation of a Securities Act (including, without limitation, Regulation D and Regulation S), or would cause the failure of any registration exemption upon which the Company has relied;

(iii) the Manager shall have consented;

(iv) the assignee pays to the Company all costs and expenses incurred by the Company in connection with such assignment including, without limitation, the costs of any opinion referenced in Section 4.1(a)(ii); and

(v) the assignee executes and delivers such instruments, as the Manager may deem necessary or desirable to effect such substitution and to confirm the agreement of the assignee to be bound by all of the terms and provisions of this Agreement.

(b) The Manager's failure or refusal to permit an assignee to become a substitute Member shall not give rise to any cause of action against the Company or the Manager. The refusal of the Manager to consent to any transfer pursuant to Section 4.1(a)(iii) shall not be deemed unreasonable if the proposed transferee directly, or indirectly as an owner, partner, member, director, officer, manager, employee, or agent of any other Person or series of Persons, competes with the Business.

(c) Notwithstanding Sections 4.1(a)(iii) and 4.1(b), the Manager shall not have the power or authority to restrict a transfer or assignment of any Member's Units to a trust established by the Member for the benefit of that Member's Family or to the beneficiaries of any Member or of any trust established by such Member for the benefit of that Member's Family.

(d) In no event shall any Unit, or any portion thereof, be sold, transferred, or assigned to a minor or incompetent, and any such attempted sale, transfer, or assignment shall be void and

ineffectual and shall not bind the Company or any Member or Manager.

(e) The Company shall be entitled to treat the record owner of any Unit as the absolute owner thereof in all respects, and shall incur no liability for distributions of cash or other property made in good faith to such owner until such time as a written assignment of such Unit has been received and accepted by the Company and recorded on its books.

## Section 5

### AMENDMENTS

#### 5.1 Updating Signature Pages and Schedules A, B, and C.

(a) In the event any Member's Unitholdings change for any reason because of the acquisition, transfer, redemption, or other transaction involving a change in Unitholdings, then the Manager shall cause that Member's Unitholdings as described on Schedule A to be updated and shall deliver to all Members listed on that Schedule A, a copy of that updated Schedule A.

(b) In the event any Member ceases to be a Member, the Manager shall cause that Person's listing to be removed from the then current Schedule A and shall deliver to all persons listed on the updated Schedule A, a copy of that updated Schedule A.

(c) In the event any Person not listed on the then current Schedule A acquires one or more Units, then, as a condition of such acquisition, that Person shall be required to execute a counterpart signature page to this Agreement whereby that Person shall become bound by the provisions of this Agreement and the Manager shall cause that Person's name, address, and Unitholdings to be added to Schedule A and shall deliver to all Members then listed on that updated Schedule A a copy of that updated Schedule A.

(d) In the event that the Manager changes, the Company shall cause the then current Schedule B to be updated to reflect such change and shall deliver to all Members, the previous Manager, and the new Manager, a copy of that updated Schedule B. Before any new Manager may act as such, he shall execute a counterpart signature page to this Agreement whereby he agrees to be bound by the provisions of this Agreement.

(e) In the event the Company's Registered Agent, registered office, or other principal office is changed by the Members, the Manager shall update Schedule C and shall cause a copy thereof to be delivered to all Members.

#### 5.2 Amendments to Agreement.

(a) Any amendment of this Agreement other than an amendment of Schedule A, B, or C shall be in writing, dated, and signed by (i) Members holding a majority of the issued and outstanding Common Units, (ii) Members holding a majority of the issued and outstanding Preferred Units, and (iii) the Manager.

(b) If any conflict arises between the provisions of the amendment, or amendments, and the terms hereof, the most recent provisions shall govern and control.

**5.3 Amendments to Certificate.** The Certificate shall be amended whenever required by the Manager. Any such amendments shall be reflected in a certificate of amendment or restated certificate and shall be filed for record by the Registered Agent acting only under the authority and on the direction of the Members, and this Agreement shall also be amended as necessary to reflect such change.

## Section 6

### CAPITAL CONTRIBUTIONS and ALLOCATIONS

**6.1 Capital Contributions.** All amounts paid by any Member in respect of any Unit shall be deemed to be capital contributions ("Capital Contributions"), whether made prior to, simultaneously with, or after the execution of this Agreement. No Member shall be obligated to contribute to the Company any amount in excess of the amount set forth beside that Member's name in Schedule A or as described in any other agreement between that Member and the Company.

#### 6.2 Capital Accounts.

(a) Maintenance of Capital Accounts. A separate capital account ("Capital Account") will be maintained for each Member. The Capital Account of each Member will be determined and adjusted in accordance with the rules which follow.

(i) Each Member's Capital Account will be increased with the Member's Capital Contributions, the Member's distributive share of Profits allocated to the Member under Section 6.3(a), any items in the nature of income or gain that are specially allocated to the Member under Section 6.3(c) or (d), and the amount of any Company liabilities that are assumed by the Member or secured by any Company property distributed to the Member.

(ii) Each Member's Capital Account will be decreased with the amount of cash and the Gross Asset Value of any Company property distributed (or deemed distributed) to the Member under any provision of this Agreement, the Member's distributive share of Losses allocated to the Member under Section 6.3(a) or (b), any items in the nature of deduction or loss that are specially allocated to the Member under Section 6.3(c) or (d), and the amount of any liabilities of the Member assumed by the Company or which are secured by any property contributed by the Member to the Company.

(iii) If any Member's interest in the Company is transferred in accordance with the terms of this Agreement, the transferee will succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

(iv) In determining the amount of any liability for purposes of Section 6.2(a)(i) and (ii) above, Code Section 752(c) and any other applicable provisions of the Code will be taken into account.

(b) Compliance with Code. Section 6.2(a) and the other provisions of this Agreement relating to the maintenance of Capital Accounts have been included in this Agreement to comply with Section 704(b) of the Code and will be interpreted and applied in a manner consistent with those provisions. Without limiting the generality of this Section 6.2(b), the Members holding Common Units and Preferred Units, upon the advice of tax counsel to the Company, may modify the manner in which the Capital Accounts are maintained under this Section 6.2 in order to comply with those provisions, as well as upon the occurrence of events that might otherwise cause this Agreement not to comply with those provisions; provided, however, without the prior written consent of all Members, the Company may not make any modification to the manner by which Capital Accounts are maintained if the effect of such modification would alter the amount or timing of any distribution of Distributable Cash Flow to which any Member would be entitled pursuant to Section 7 and Section 11.2 hereof.

(c) No Member shall be entitled to any distribution or to make withdrawals or transfers from his Capital Account. Distributions shall be made only as described in this Agreement.

### **6.3 Profits, Losses and Distributive Shares of Tax Items.**

(a) Except as provided in Sections 6.3(b), 6.3(c) and 6.3(d), and subject to the requirements of Section 9.1(c), all items of income, gain, loss, deduction, and credit shall be allocated among the Members, in a manner such that if the Company were dissolved, its affairs wound up and its assets distributed to the Members in accordance with their respective Capital Account balances immediately after making such allocation, such distributions would, as nearly as possible, be equal to the distributions that would be made pursuant to Section 7 hereof, provided, however, that in the event of a distribution (that includes assets, other than cash), the Capital Accounts shall be adjusted to reflect the net value of any property distributed in such distribution and the Capital Accounts shall be adjusted to reflect the manner in which unrealized income, gain, loss, and deduction inherent in such property (that has not been reflected in the Capital Accounts previously) would be allocated among the Members if there were a taxable disposition of such property for the net value of such property on the distribution date; provided further that any Partner Nonrecourse Deductions must be allocated in accordance with the provisions of Code Section 1.704-2(b).

(b) Notwithstanding any provision set forth in this Section 6.3, no item of deduction or loss shall be allocated to a Member to the extent the allocation would cause a negative balance in such Member's Capital Account (after taking into account any allocations of loss and deduction reasonably expected to be made during such fiscal year to such Member and any distributions reasonably expected to be made during such fiscal year to the extent they exceed offsetting increases to such Member's Capital Account) that exceeds the amount that such Member would be required to reimburse (and deemed required to reimburse) to the Company pursuant to this Agreement or under applicable law. In the event some but not all of the Members would have such excess Capital Account deficits as a consequence of such an allocation of loss or deduction, the

limitation set forth in this Section 6.3(b) shall be applied on a Member by Member basis so as to allocate the maximum permissible deduction or loss to each Member as reasonably determined by the Members holding Common Units and Preferred Units. All deductions and losses in excess of the limitations set forth in this Section 6.3(b) shall be allocated by the Manager upon the advice of tax counsel. In the event any loss or deduction shall be specially allocated to a Member pursuant to either of the two preceding sentences, an equal amount of income of the Company shall be specially allocated to such Member prior to any allocation pursuant to Section 6.3(a) hereof. All elections, decisions and other matters concerning the allocation of profits, gains, and losses among the Members, and accounting procedures, not specifically and expressly provided for by the terms of this Agreement, shall be determined by the Manager after consultation with tax counsel. Such determination shall be final and conclusive as to all Members.

(c) Special Allocations. Except as otherwise provided in this Agreement, the following special allocations will be made in the following order and priority:

(i) Company Minimum Gain Chargeback. Notwithstanding any other provision of this Section 6.3, if there is a net decrease in Partnership Minimum Gain during any taxable year or other period for which allocations are made, prior to any other allocation under this Agreement each Member will be specially allocated items of Company income and gain for that period (and, if necessary, subsequent periods) in proportion to, and to the extent of, an amount equal to such Member's share of the net decrease in Partnership Minimum Gain during such year determined in accordance with Code Section 1.704-2(g)(2). The items to be allocated will be determined in accordance with Code Section 1.704-2(g). This Section 6.3(c)(i) is intended to comply with the partnership minimum gain chargeback requirements of the Code, will be interpreted consistently with the Code, and will be subject to all exceptions provided therein.

(ii) Member Nonrecourse Debt Minimum Gain Chargeback. Notwithstanding any other provision of this Section 6.3 (other than Section 6.3(c)(i) which shall be applied first), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain with respect to a Partner Nonrecourse Debt during any taxable-year or other period for which allocations are made, any Member with a share of such Partner Nonrecourse Debt Minimum Gain (determined under Code Section 1.704-2(i)(5)) as of the beginning of the taxable year shall be specially allocated items of Company income and gain for that period (and, if necessary, subsequent periods) in an amount equal to such Member's share of the net decrease in the Partner Nonrecourse Debt Minimum Gain during such year determined in accordance with Code Section 1.704-2(g). The items to be so allocated shall be determined in accordance with Code Section 1.704-2(g). This Section 6.3(c)(ii) is intended to comply with the Partner Nonrecourse Debt Minimum Gain chargeback requirements of the Code, shall be interpreted consistently with the Code, and will be subject to all exceptions provided therein.

(iii) Qualified Income Offset. A Member who unexpectedly receives any adjustment, allocation or distribution described in Code Sections 1.704-

1(b)(2)(ii)(d)(4), (5) or (6) will be specially allocated items of Company income and gain in an amount and manner sufficient to eliminate, to the extent required by the Code, the Adjusted Capital Account Deficit of the Member as quickly as possible.

(iv) Gross Income Allocation. Each Member who has a deficit Capital Account at the end of any Company taxable year will be specially allocated items of Company income and gain in the amount of the excess as quickly as possible.

(v) Nonrecourse Deductions. Nonrecourse Deductions for any taxable year or other period for which allocations are made will be allocated among the Members in proportion to their respective Units.

(vi) Partner Nonrecourse Deductions. Notwithstanding anything to the contrary in this Agreement, any Partner Nonrecourse Deductions for any taxable year or other period for which allocations are made will be allocated to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which the Partner Nonrecourse Deductions are attributable in accordance with Code Section 1.704-2(i).

(vii) Code Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset under Code Sections 734(b) or 743(b) is required to be taken into account in determining Capital Accounts under Code Section 1.704-1(b)(2)(iv)(m), the amount of the adjustment to the Capital Accounts will be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis), and the gain or loss will be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted under Code Section 1.704-1(b)(2)(iv)(m).

(viii) Interest in Company. Notwithstanding any other provision of this Agreement, no allocation of Profit or Loss or, item if Profit or Loss will be made to a Member if the allocation would not have "economic effect" under Code Section 1.704-1(b)(2)(ii) or otherwise would not be in accordance with the Member's interest in the Company within the meaning of Code Section 1.704-1(b)(3) or 1.704-1(b)(4)(iv). The Manager, upon advice of tax counsel to the Company, will have the authority to reallocate any item in accordance with this Section 6.3(c)(viii).

(d) Curative Allocations. The allocations set forth in Section 6.3(c) (the "Regulatory Allocations") are intended to comply with certain requirements of Code Sections 1.704-1(b) and 1.704-2. The Regulatory Allocations may not be consistent with the manner in which the Members, intend to divide Company distributions. Accordingly, the Manager, upon advice of tax counsel to the Company, is authorized to divide other allocations of Profits, Losses, and other items among the Members so as to prevent the Regulatory Allocations from distorting the manner in which Company distributions would be divided among the Members under Section 7 and Section 11.2. In general, the reallocation will be accomplished by specially allocating other Profits, Losses and items of income, gain, loss, and deduction, to the extent they exist, among the



Members so that the net amount of the Regulatory Allocations and the special allocations to each Member is zero. However, the Manager, upon advice of tax counsel to the Company, will have discretion to accomplish this result in any reasonable manner that is consistent with Code Section 704 and the related Code provisions.

(e) Tax Allocations-Code Section 704(c). In accordance with Code Section 704(c) and the related Code, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company, solely for tax purposes, will be allocated among the Members so as to take account of any variation between the adjusted basis to the Company of the property for federal income tax purposes and the initial Gross Asset Value of such property (computed in accordance with paragraph (b) of the definition thereof). If the Gross Asset Value of any Company asset is adjusted by the Members in accordance with the provisions of this Agreement, subsequent allocations of income, gain, loss and deduction with respect to that asset will take account of any variation between the adjusted basis of the asset for federal income tax purposes and its Gross Asset Value in the same manner under Code Section 704(c) and the related Code provisions. Any elections or other decisions relating to allocations under this Section 6.3(e) will be made in any manner that the Manager, upon advice of tax counsel to the Company, determines reasonably reflects the purpose and intention of this Agreement. Allocations under this Section 6.3(e) are solely for purposes of federal, state, and local taxes and will not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses or other items or distributions under any provision of this Agreement.

(f) Other Allocation Rules. The following rules will apply to the calculation and allocation of Profits, Losses, and other items:

- (i) Except as otherwise provided in this Agreement, all Profits, Losses and other items allocated to the Members will be allocated among them in proportion to their Units.
  - (ii) For purposes of determining the Profits, Losses, or any other item allocable to any period, Profits, Losses, and other items will be determined on a daily, monthly, or other basis, as determined by the Members holding Common Units and Preferred Units upon advice of tax counsel to the Company, using any permissible method under Code Section 706 and the related Code.
- (g) Unreimbursed Member Expenses. Due to limited or lack of available cash, Members may be required from time to time to pay expenses or provide services on behalf of the Company that become unreimbursed Company expenses. In that event such expenditures may be required and permissible for Members to pay from personal funds and to expense these items on the Members personal income tax return.
- (h) Member Acknowledgement. The Members agree to be bound by the provisions of this Section 6.3 in reporting their shares of Company income and loss for income tax purposes, provided, however, that if a Member is advised in good faith by its tax counsel or other tax advisor that the tax position taken by the Company on any

return or other statement is clearly erroneous, and that such Member's taking a tax position consistent with the provisions of this Agreement will subject the Member to a material risk of fines or other penalties, such Member shall have the right to take a position inconsistent with the provisions of this Agreement, so long as it has given the Company written notice not less than ten days prior to taking any action pursuant to such inconsistent position (unless such Member is required to take such action pursuant to such inconsistent provision less than ten days after receipt of reporting information from the Company with respect to such erroneous position by the Company, in which case such Member shall give the Company such notice that is reasonable under the circumstances).

#### **Section 7**

#### **DISTRIBUTABLE CASH FLOW**

Subject to Section 9.1(c), all cash that is available for distribution by the Company after paying all operating expenses of the Company and establishing such reserves for the Company and its future operating and capital requirements as the Manager shall determine ("Distributable Cash Flow"), shall be distributed to the Members in the following manner and priority:

- (i) first, all available Distributable Cash Flow shall be distributed proportionally to the Members holding Preferred Units in accordance with their relative holdings of Preferred Units until the Preferred Capital Return has been reduced to zero (0);
- (ii) second, all available Distributable Cash Flow shall be distributed proportionally to the Members holding Preferred Units in accordance with their relative holdings of Preferred Units until the Bonus Payment has been reduced to zero (0); and
- (iii) then, the balance of the available Distributable Cash Flow shall be distributed proportionally to the Members holding Common Units in accordance with their relative holdings of Common Units.

#### **Section 8**

#### **LIABILITY**

##### **8.1 Limitation of Liability of Members.**

None of the Members or Manager shall be personally or otherwise liable to the Company or any Member or Manager for any debt, obligation or liability of the Company, any Member, or Manager whether arising in contract, tort or otherwise solely by reason of being a Member or Manager of the Company or for having signing authority on behalf of the Company pursuant to this Agreement for any mistake of fact or judgment or for the doing of any act or the failure to do any act by him or her in conducting the business, operations, and affairs of the Company, which may cause or result in any loss or damage to the Company, any Member, or Manager unless a

Member's or Manager's mistake, act, or failure to act is a breach of this Agreement or the result of that Member's or Manager's fraud or willful misconduct in which case only that Member or Manager who committed such mistake or act, or who failed to do such act, shall be liable to the Company, any Member, or Manager, so damaged. In no case shall a Member or Manager be liable to the Company, any Member, or Manager for any other Member's or Manager's mistakes, acts, or failures to act which arise out of that other Member's or Manager's fraud or willful misconduct. Members and the Manager shall have no duties or obligations to the Company or any other Member unless expressly imposed by this Agreement. In performing their duties, each Member and Manager shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial information, prepared or provided by any attorney, independent accountant, officer, employee, or other agent of the Company, or other person as to matters which that Member or Manager reasonably believes to be within such person's professional or expert competence, unless the Member or Manager has knowledge concerning the matter in question that would cause such reliance to be unwarranted under the circumstances.

**8.2 Indemnification.** The Company shall indemnify, defend, and hold harmless, to the fullest extent permitted by law, each current and future Member and Manager (individually, an "Indemnified Party") their heirs, successors, representatives, and trustees as follows:

(a) The Company shall indemnify and hold harmless, to the fullest extent permitted by law, any Indemnified Party from and against any and all losses, claims, damages, liabilities, expenses (including the advance payment of legal fees and expenses), judgments, fines, settlements, and other amounts ("Indemnified Costs") arising from all claims, demands, actions, suits or proceedings ("Actions"), whether civil, criminal, administrative, or investigative, in which the Indemnified Party may be involved, or threatened to be involved, as a party or otherwise arising as a result of its, his or her status as a Member, Manager, or officer of the Company regardless of whether the Indemnified Party continues in the capacity at the time the liability or expense is paid or incurred, and regardless of whether the Action is brought by a third party, a Member, or by or in the right of the Company; provided, however, no such person shall be indemnified hereunder for any Indemnified Costs which proximately result from the person's fraud or willful misconduct or such person's material breach of this Agreement or any Securities Act as determined by (i) the Manager if disinterested or (ii) disinterested Members holding a majority of the Units then held by disinterested Members.

(b) The Company shall pay or reimburse, to the fullest extent allowed by law and consistent with Section 8.2(a), in advance of the final disposition of the proceeding, Indemnified Costs incurred by the Indemnified Party in connection with any Action that is the subject of Section 8.2(a).

(c) Notwithstanding any other provision of this Section 8.2, the Company shall pay or reimburse Indemnified Costs incurred by an Indemnified Party in connection with such person's appearance as a witness or other participation in a proceeding involving or affecting the Company at a time when the Indemnified Party is not a named defendant or respondent in the proceeding.

(d) An Indemnified Party shall not be denied indemnification in whole or in part under

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this Section 8.2 because the Indemnified Party had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

**8.3 Insurance.** The Company may purchase and maintain insurance on behalf of any Member, Manager, agent, or employee against any liability or cost incurred by such person in any such capacity or arising out of his, her, or its status as such, whether or not the Company would have power to indemnify against such liability or cost.

**8.4 Confidentiality.**

(a) Each Member and Manager recognizes that in its capacity as a Member or Manager it will receive information about the Company and its operations which is confidential and proprietary to the Company. Each Member and Manager agrees to keep all such information confidential and to not disclose that information to any other Person, other than (i) to other Members, the Manager, employees, counsel, accountants, bankers, lenders, agents, and other representatives of the Company as required for the conduct of the Company's Business and affairs; (ii) to officers, directors, employees, counsel, accountants, bankers, lenders, agents, and other representatives of that Member or Manager solely as required for the conduct and management of that Member's or Manager's business and affairs, all of whom shall be directed by the Member or Manager so making the disclosure to treat the information as confidential, on a "need to know" basis; or (iii) disclosures specifically authorized by the Manager or by a court order.

(b) Each Member and Manager agrees that in the event of a breach of Section 8.4(a), monetary damages may be insufficient as a remedy for such breach and that the Company is entitled to seek and be granted any and all types of equitable relief, including, without limitation, injunctions and orders for specific performance, in respect of any such breach.

**8.5 Other Activities.** Except for any business which competes with the Business, the Members and Manager may be employed in or by and may engage in and possess interests in other business ventures and investment opportunities of every kind and description, independently or with others, including serving as directors, officers, stockholders, managers, members and general or limited partners of corporations, partnerships or other limited liability companies. Neither the Company nor any other Member shall have any rights in or to such other ventures or opportunities or the income or profits therefrom.

**8.6 Interested Transactions.**

(a) In the absence of fraud, no contract or other transaction of the Company shall be affected or invalidated by the fact that any of the Members or Manager of the Company are in any way interested in, or connected with, any other party to such contract or transaction, or are themselves parties to such contract or transaction.

(b) Each and every person who is or may become a Member or Manager of the Company is relieved by the means described in Section 8.6(a), to the extent permitted by law, when acting in good faith, from any liability that might otherwise exist from contracting with the

Company for the benefit of him or herself or any person in which he may be in any way interested or with which he may be in any way connected.

## Section 9

### MANAGEMENT

#### 9.1 General Management

(a) The Business and Company shall be managed by the Manager who shall have the sole authority and discretion to (i) exercise all the powers and privileges granted by the Act or any other law or this Agreement, together with any powers incidental thereto, so far as such powers are necessary or convenient to the conduct, promotion or attainment of the Business, trade purposes, or activities of the Company, (ii) take any and all actions on behalf of the Company as the Manager deems in the best interests of the Company; (iii) delegate any of his powers to any other Person or agent, and (iv) take any other action regarding the Company not prohibited under this Agreement, the Act, or other applicable law.

(b) In order to bind the Company, any instrument, certificate, agreement, or other document must be executed by the Manager.

(c) Notwithstanding any other provision of this Agreement, the Company shall at all times be managed by the Manager in a manner which shall cause the Company and any Person retained by the Company to develop the Company's real property to be treated and regarded as a Limited Dividend Organization. The Company and the Manager agree not to take any action or refrain from taking any required action a result of which would be the failure of the Company, or any Person retained by the Company to develop the Company's real property, to be treated or regarded as a Limited Dividend Organization.

(d) The Registered Agent may accept service of process on behalf of the Company and, upon the occurrence of such event shall forthwith deliver such process to the Manager. Except as specifically provided in this Agreement, the Registered Agent shall have no authority to act for or on behalf of the Company and shall have no authority to execute or deliver any instrument, certificate, agreement, or other document on behalf of the Company.

#### 9.2 Member Approval.

(a) Notwithstanding any other provision of this Agreement, the following matters may only be determined by vote or consent of Members holding a majority of the issued and outstanding Common Units:

- (i) the liquidation and/or dissolution of the Company;
- (ii) any decision to issue more Units than the maximum number specified in Section 3.1;

- (iii) the replacement or termination of an existing Manager and the selection of a new Manager; and
- (iv) subject to the requirements of the Code, the selection of a tax matters partner.

(b) The Registered Agent, acting solely pursuant to the authority and direction of the Managers pursuant to Section 9.1(b), shall, on behalf of the Company, execute, acknowledge, deliver, and record any recordable instrument purporting to affect an interest in real property whether to be filed with the registry of deeds or a district office of the land court.

### **9.3 Member Meetings**

(a) Any Member who owns at least 25% of the total number of Common Units authorized to vote on any matter may, from time to time, call for a meeting of the Members. Written notice of such meeting, including the date, time, place and matters to be decided shall, pursuant to Section 12.7, be given by the Members or Member(s) calling such meeting to all Members holding Common Units not less than ten (10) calendar days prior to the date of the meeting and the meeting shall be held at (i) the principal office of the Company, (ii) such other office of the Company which has been designated by the Person calling the meeting, or (iii) such other place anywhere as has been approved by the Members for meetings of Members. Notice of any meeting may be waived if all Members thereat so consent. Members may attend, for the purposes of establishing quorum, and may participate in and vote at meetings by the use of telephone or conference call equipment. Quorum for a meeting of Members shall be Members holding a majority of issued and outstanding Common Units.

(b) Any action required to be taken at any meeting of the Members may be taken without a meeting if Members holding at least the minimum number of Common Units required to approve the action being taken consent in writing. Such consents shall be filed with the Company's records and distributed to all Members.

(c) Preferred Units carry no voting rights; provided, however, that the foregoing shall not restrict the rights of Members holding Preferred Units from approving amendments of this Agreement pursuant to Section 5.2(a) or from giving any consent requested pursuant to any provision of this Agreement specifically referring to Preferred Units or the holders of Preferred Units.

## **Section 10**

### **RECORDKEEPING AND ACCOUNTING MATTERS**

**10.1 Records.** The Company shall keep at its principal place of business any information required by the Act, including the following:

- (a) a current list of the full name and last known business, residence, or mailing address of each Member and Manager, both past and present;

(b) a copy of the Certificate and all amendments thereto, 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 fiscal years;

(d) copies of this Agreement and all amendments hereto, copies of any writings permitted or required under the Act, and copies of any financial statements of the Company for the three most recent fiscal years;

(e) minutes of any meetings of Members and any written consents obtained from Members and/or Managers;

(f) true and full information regarding the status of the Business and the financial condition of the Company;

(g) true and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each Member and of which each Member has agreed to contribute in the future, and the date on which each became a Member; and

(h) any other information required by the Act to be kept.

**10.2 Delivery and Inspection.** Any Company records described in Section 10.1 are subject to inspection and copying at the reasonable request, and at the expense, of any Member during ordinary business hours. A Member's agent or attorney has the same inspection and copying rights as the Member. The right to copy records includes, if reasonable, the right to receive copies made by photographic, photocopying, or other means. The Company may impose a reasonable charge, not to exceed the estimated cost of labor and material for production or reproduction, for copies of any documentation provided to a Member.

**10.3 Reports and Fiscal Year End.** Within a reasonable period of time after the close of each fiscal year, the Company shall cause to be prepared and submitted to each Member financial statements and tax information as at the close of that fiscal year.

**10.4 Fiscal Year End.** The Company's fiscal year shall end on the last day of December each year unless changed by the unanimous consent of all Members.

**10.5 Tax and Accounting Matters.**

(a) Unless otherwise agreed by the Members, and subject to the immediately following sentence, all accounting matters shall, for all purposes under this Agreement, be determined in accordance with generally accepted accounting practices and principles, consistently applied. The revenues and expenses and the operations of the Company may be reported either on the cash or accrual method, for both accounting and tax purposes, as the Members may from time to time

determine.

(b) The Company shall cause to be prepared and timely filed each year, at the expense of the Company, all federal, state, and local tax or information returns required of the Company, and shall cause the Company to pay any and all taxes that may be imposed on the Company as a separate entity from the Members, or for which the Company has a legal obligation to collect and/or remit, when and as such taxes are due. The Company shall cause to be delivered to each Member complete copies of all such returns within 10 days after such returns are filed. The Company also shall provide the Members with K-1's and any and all other information that is required in order for the Members to be able to file their federal and state tax returns within a reasonable period of time after the conclusion of each fiscal year.

**10.6 Tax Matters Partner.** Pursuant to Code Section 6231(a)(7)(A), the Members hereby designate the Member so indicated in Schedule A as the "tax matters partner" for purposes of the Code. The tax matters partner shall act on behalf of the Company in the event of an audit of the Company by the Internal Revenue Service, and may make such decisions and take such actions in the course of any such audit as it deems necessary or desirable in the best interests of the Members. If the selection of the tax matters partner shall change at any time, then the Members shall cause Schedule A to be amended accordingly and shall provide to each Member listed on Schedule A a copy of the amended Schedule A.

## Section 11

### DISSOLUTION AND LIQUIDATION

#### 11.1 Dissolution.

(a) Except as otherwise provided in this Agreement, the Company shall be dissolved and terminated upon the occurrence of any of the following events:

- (i) The sale, condemnation, or other disposition of all or substantially all of the assets and properties of the Company and distribution to the Members of the proceeds of such sale or other disposition;
- (ii) The agreement of the Members holding Common Units to dissolve the Company pursuant to Section 9.2(a)(i); or
- (iii) the entry of a decree of judicial dissolution as provided in the Act.

(b) The incapacity, bankruptcy, death, dissolution, resignation, expulsion, or any event of withdrawal of any of the Members as specified in the Act shall not cause the automatic dissolution of the Company unless Members holding a majority of the Common Units so consent to the dissolution of the Company.



## 11.2 Liquidation and Termination.

(a) If the Company is dissolved, then no further distributions shall be made pursuant to Section 7, an accounting of the Company's assets, liabilities, and operations through the last day of the month in which the dissolution occurs shall be made, and the affairs of the Company shall thereafter be promptly wound up and terminated. The Members holding Common Units will appoint one or more persons to serve as the liquidating trustee of the Company. The liquidating trustee will be responsible for winding up and terminating the affairs of the Company and will determine all matters in connection therewith (including, without limitation, the arrangements to be made with creditors, to what extent and under what terms the assets of the Company are to be sold, and the amount or necessity of cash reserves to cover contingent liabilities) as the liquidating trustee deems advisable and proper to satisfy the duties imposed on the liquidating trustee by the Act and the fiduciary duties owed by the liquidating trustee to the Members. The liquidating trustee will thereafter liquidate the assets of the Company as promptly as is consistent with obtaining the fair market value thereof, and the proceeds therefrom, to the extent sufficient therefor, will be applied and distributed in the following order:

- (i) first, to the payment and discharge of all of the Company's debts and liabilities to creditors, including Members, but not in respect of distributions pursuant to Section 7, in the order of priority as provided by law;
- (ii) second, all remaining proceeds shall be distributed proportionally to the Members holding Preferred Units in accordance with their relative holdings of Preferred Units until the Preferred Capital Return has been reduced to zero (0);
- (iii) third, all remaining proceeds shall be distributed proportionally to the Members holding Preferred Units in accordance with their relative holdings of Preferred Units until the Bonus Payment has been reduced to zero (0); and
- (iv) then, the remaining proceeds shall be distributed proportionally to the Members holding Common Units in accordance with their relative holdings of Common Units.

(b) After all the assets of the Company have been distributed, the Company shall terminate; however, if at any time thereafter any funds in any cash reserve fund referred to in Section 11.2(a) are released because the need for the cash reserve fund has ended, the funds shall be distributed in the same manner as required by Sections 11.2(a)(i) and (iv).

(c) Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Regulation section 1.704-1(b)(2)(ii)(g), if any Member has a deficit or negative balance in the Member's capital account (after giving effect to all contributions, distributions, allocations, and other capital account adjustments for all taxable years, including the year during which such liquidation occurs), the Member shall have no obligation to make any capital contribution, and the negative balance of the Member's capital account shall not be considered a debt owed by the Member to the Company or to any other Person for any purpose whatsoever.

**11.3 Certificate of Cancellation.** Upon the dissolution of the Company, the Manager shall prepare, and shall cause the Registered Agent to execute and deliver to the Secretary of the Commonwealth of Massachusetts, a Certificate of Cancellation in accordance with the Act.

**11.4 Recourse to Assets.** The Members shall look solely to the assets of the Company for the return of their Capital Contributions or returns thereon, including, without limitation, any preferential amounts. If the assets remaining after the payment or discharge of the debts and liabilities of the Company are insufficient to return a Member's Capital Contributions or returns thereon, including, without limitation, any preferential amounts, such Member shall have no recourse against the Company, the other Members, or the officers, if any.

**11.5 Waiver of Partition.** Each Member agrees that irreparable damage would be done to the Company if any Member brought an action in court to dissolve the Company. Accordingly, each Member agrees that it shall not, either directly or indirectly, take any court action to require partition or appraisal of the Company or of any of the assets or properties of the Company, and, notwithstanding any provisions of this Agreement to the contrary, each Member and his successors and assigns accepts the provisions of the Agreement as his sole entitlement on termination or on dissolution and liquidation of the Company and hereby irrevocably waives any and all right to maintain any action for partition or to compel any sale or other liquidation with respect to his interest, in or with respect to, any assets or properties of the Company. Each Member agrees that it will not petition a court for the dissolution, termination or liquidation of the Company.

## Section 12

### GENERAL PROVISIONS

**12.1 Governing Law.** This Agreement and the rights of the parties hereunder will be governed by, interpreted, and enforced in accordance with the laws of the Commonwealth of Massachusetts (without regard to its provisions regarding conflicts of laws). Any claim or dispute arising hereunder shall be brought before a court in Boston, Massachusetts.

**12.2 Binding Effect.** This Agreement will be binding upon and inure to the benefit of the Members, Manager, and their respective distributees, successors, and assigns; provided, however, that nothing contained in this Section 12.2 shall limit the effectiveness of any restriction on transfers of Members' Units contained herein.

**12.3 Headings.** All headings are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

**12.4 Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this Agreement, the provision will be fully severable; this Agreement will be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and the

remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of the illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to the illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

**12.5 Additional Documents and Acts.** Each Member and Manager agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated by this Agreement.

**12.6 No Third Party Beneficiary.** This Agreement is made solely and specifically among and for the benefit of the Members, Manager, and their respective successors and assigns subject to the express provisions relating to successors and assigns, and no other Person will have any rights, interest, or claims or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

**12.7 Notices.** All notices, consents, requests, demands, or other communications to or upon the respective parties shall be in writing and shall be effective for all purposes (a) when received by the recipient if delivered by hand or by a prepaid messenger or nationally recognized courier service, (b) five (5) Business Days after mailing if delivered by prepaid first class mail, (c) when confirmation of the successful transmission has been received by the sender if sent by facsimile transmission, or (d) one (1) Business Day after transmission by electronic mail if no undeliverable notice is received by the sending party, to the addresses or facsimile numbers reflected on Schedule A hereto. Any party may change its address or facsimile number by written notice to all other parties in the manner set forth above. In the case of illegible or otherwise unreadable facsimile or electronic mail transmissions, the receiving party shall promptly notify the transmitting party of any transmission problem and the transmitting party shall promptly resend any affected parts until notice is received of the successful transmission of a legible version.

**12.8 Title to Company Property.** Legal title to all property of the Company will be held and conveyed in the name of the Company or its designee.

**12.9 Waiver.** No waiver of any obligation under this Agreement will be enforceable or admissible unless set forth in a writing signed by the party against which enforcement or admission is sought. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly stated.

**12.10 Entire Agreement; Override Provisions.** This Agreement and the schedules attached hereto contain the entire understanding between the parties and supersede any prior written or oral agreements between them respecting the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement is intended to set forth the entire agreement of the parties and the parties hereby expressly waive all of the so-called "override" provisions of the Act such that their rights and

obligations shall be as expressly set forth herein.

**12.11 Schedules.** The schedules attached to this Agreement shall be deemed to be a part of this Agreement and are fully incorporated herein by this reference.

**12.12 Counterparts.** This Agreement may be executed in multiple counterparts of different dates.

**12.13 Original Agreement.** The Prior Restatements has been amended and restated by this Agreement. The Original Agreement and Prior Restatements have no further force or effect from and after the Effective Date.

**12.14 Waiver and Approval.** With respect to the holdings of all Members as set forth on Schedule A hereto, each Member hereby waives retroactively any participation right under Section 3.2(b) of the Original Agreement or under the Prior Restatements in the issuance of such Units and each Member and the Manager hereby consent to the issuance by the Company of all such Units as if such waiver had been given prior to the issuance thereof.

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IN WITNESS WHEREOF, the Members and Manager have executed this Agreement to be effective as of the Effective Date.

**Members:**

\_\_\_\_\_  
J. Michael Norton

Date: \_\_\_\_\_, 2012

\_\_\_\_\_  
Robert H. Norton

Date: \_\_\_\_\_, 2012

\_\_\_\_\_  
Douglas J. Adamczyk

Date: \_\_\_\_\_, 2012

\_\_\_\_\_  
Christa N. Canavan

Date: \_\_\_\_\_, 2012

\_\_\_\_\_  
Kevin J. Norton

Date: \_\_\_\_\_, 2012

\_\_\_\_\_  
Collin M. Norton

Date: \_\_\_\_\_, 2012

THEMELI BUILDERS, INC.

By: \_\_\_\_\_  
John A. Themeli, CEO

Date: \_\_\_\_\_, 2012

**Manager:**

\_\_\_\_\_  
J. Michael Norton

Date: \_\_\_\_\_, 2012

**SCHEDULE A**

**Members**

<b>Name, Addresses, and Facsimile Number of Members</b>	<b>Number and Class of Units</b>	<b>Capital Contributions</b>
* J. Michael Norton PO BOX 6890 Holliston, MA 01746	200 Common	\$35,000.00
Robert H. Norton 95 Marshall Street Holliston, MA 01746	20 Preferred	\$200,000.00
Douglas J. Adamczyk 1043 Cedarwood Ln Medina, Ohio 44256	2.5 Preferred	\$25,000.00
Christa Canavan 270 Marked Tree Road Holliston, MA 01746	3.5 Preferred	\$35,000.00
Kevin J. Norton 215 Underwood Street Holliston, MA 01746	8.0 Preferred	\$80,000.00
Themeli Builders, Inc. 44 Boynton Road Holliston, MA 01746	12 Preferred	\$120,000.00
Collin M. Norton 7 St Onge Terrace Haverhill, MA 01830-1938	4.0 Preferred	40,000.00

\*This Member shall act as the Tax Matters Partner in accordance with Section 10.6.

END OF SCHEDULE A

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**SCHEDULE B**

**Manager**

Name and Address of Manager

J. Michael Norton  
PO BOX 6890  
Holliston, MA 01746

END OF SCHEDULE B

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SCHEDULE C

Registered Office and Agent

Registered Office

PO BOX 6890  
Holliston, MA 01746

Registered Agent

J. Michael Norton  
PO BOX 6890  
Holliston, MA 01746  
Email: jmn@greenviewrealty.com

END OF SCHEDULE C