

**DBG PROPERTIES LLC  
FIRST AMENDED AND RESTATED OPERATING AGREEMENT**

**THIS AGREEMENT** is made as of this as of this 31<sup>st</sup> day of July, 2018, by Walter O. Grodahl, III ("**Walter Grodahl**"), and Eric Grodahl ("**Eric Grodahl**") as the members of of DBG Properties LLC, a New Mexico limited liability company (the "**Company**"). Walter Grodahl and Eric Grodahl, and any future member of the Company are individually referred to herein as a "**Member**" and are jointly referred to herein as "**Members**."

**The Members** state as follows:

**ARTICLE I  
FORMATION**

**1.1    Name.** The name of the Company is DBG Properties LLC.

**1.2    Purpose.** The Company has been formed:

(a) To purchase, own, develop, operate, lease, sell and otherwise deal with real property.

(b) To exercise all other powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the New Mexico Limited Liability Company Act (the "**Act**"); and

(c) To engage in all activities necessary, customary, convenient or incidental to the foregoing.

**1.3    Term.** The term of the Company will be perpetual, unless the Company is earlier dissolved in accordance with either the provisions of this Agreement or the Act.

**1.4    Registered Agent.** The Company's registered agent for service will be Ava Caruso, whose address is 901 Central Avenue NW, Suite 101, Albuquerque, NM 87102.

**1.5    Place of Business.** The Company's principal place of business is 2164 SW Park Place, Portland, Oregon 97205.

**ARTICLE II  
CAPITAL, PROFITS AND LOSSES, AND DISTRIBUTIONS**

**2.1    Capital Contributions.** The Members have contributed or will contribute to the capital of the Company the amount set forth below, in exchange for the percentage interest in the Company ("**Percentage Interest**") set forth below:

<u>Member</u>	<u>Contributions</u>	<u>Percentage Interest</u>
Walter Grodahl	\$750.00	75%
Eric Grodahl	\$250.00	25%

An individual capital account will be established and maintained for each Member and will be credited with the amount of the Member's capital contribution to the Company. The capital accounts are to be maintained and will comply with the requirements of Section 704(b) of the Internal Revenue Code of 1986, as amended, or any successor provision, and the regulations promulgated thereunder. A Member will not be entitled to interest on the Member's capital contribution, or to withdraw any part of the Member's capital account, or to receive any distribution from the Company, except as specifically provided herein or by law. Additionally, the Company will maintain such other accounts as may be necessary or desirable to comply with the requirements of applicable laws and regulations.

A Member's Percentage Interest will not change based upon a change in the Member's capital or other account.

**2.2 Profits and Losses.** The net profits and the net losses of the Company will be shared by the Members in proportion to their respective Percentage Interests. The profits and losses of the Company will be determined in accordance with accounting principles applied on a consistent basis using the accrual method of accounting, or such other method as may be required by the Internal Revenue Service, with the goal that the Company is treated for federal tax purposes a) as if it did not have a separate existence, for any periods in which the Company has only one member, or b) as a partnership, for any periods in which the Company has two or more members.

**2.3 Distributions.** The Managing Member of the Company will determine the amount of Company cash available for distribution to Members and the time or times of distribution, and in doing so may establish whatever reserves the Managing Member believes are advisable. Such distributions will be made contemporaneously to all Members in proportion to the Members' Percentage Interests.

### **ARTICLE III MANAGEMENT BY MEMBERS; MANAGING MEMBER**

**3.1 Management.** Management of the Company will be vested in its Members. The Members will be required to devote only such time to the Company's business as is reasonably necessary or appropriate. Any actions required to be approved by the Members will be subject to the provisions of Article IV hereof. The parties acknowledge and agree that, although the overall management and control of the Company's business is vested in the Members, as a matter of mutual convenience, decisions with respect to the day-to-day management and operation of the Company's business will be the responsibility of the Managing Member or his designee, as described below. Unless so authorized by Members owning at least fifty-one percent (51%) (a "**Majority**") of the Percentage Interests, no Member except the Managing

Member will, on behalf of the Company, take any action delegated to the Managing Member.

**3.2 Managing Member.** The Managing Member will be responsible for management of the day-to-day business of the Company, for making decisions in the ordinary course of business of the Company, and for carrying out the decisions of the Members. Subject to Section 3.3 hereof, the Managing Member will have full and complete authority, power and discretion to manage, control, to make all decisions and to do all things which the Managing Member deems necessary or convenient to carry out such business affairs of the Company, including but not limited to, the control, employment, compensation and discharge of employees, agents or otherwise. The Managing Member will have the power to enter into contracts for the management of any Company property upon such terms as the Managing Member approves. Except as otherwise provided herein to the contrary, the Managing Member will be authorized to draw checks upon the bank accounts of the Company. The Managing Member will be required to devote only such time to the Company's business as is necessary or appropriate. The Managing Member need not be a Member of the Company. **The initial Managing Member will be Walter O. Grodahl, III.** In the Managing Member's absence, the Managing Member may delegate his duties to a designee.

**3.3 Restrictions on Authority of the Managing Member.**  
[Intentionally Deleted.]

**3.4 Salaries, Expenses and Payments.**  
(a) The Managing Member will be reimbursed by the Company upon proper documentation for all reasonable and proper disbursements made by the Managing Member in carrying on the Company business.  
(b) The Managing Member may be paid for the management of the Company in such amounts and at such times as the Members may establish.  
(c) All Company liabilities, expenses and losses will be paid out of Company assets.

## **ARTICLE IV ACTIONS BY MEMBERS**

The Members may act by consent or in meetings as follows:

**4.1 Meetings.** The Company will have a regular annual meeting on or about the 1st day of August of each year at 1:00 p.m. Additional meetings of Members may be called upon the written request of Managing Member or of Members holding at least a 25% interest in the Company. All Company meetings will be held at the principal office of the Company, unless otherwise stated in the notice of the meeting.

**4.2 Notice.** Except for regular annual meetings, written notice stating the time, place and purpose of a meeting will be delivered by the Managing Member to each Member not less than three days before the date of a Members' meeting.

**4.3 Voting.** The affirmative vote of Members, in person or by proxy, holding a Majority of the Percentage Interests will be the act of the Members, unless the vote or consent of a greater number is required under this Agreement or by the Act.

**4.4 Action Without a Meeting.** Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if consent is given to said action by Members holding a Majority of the Percentage Interests, unless the vote or consent of a greater number is required under this Agreement or the Act.

**4.5 Waiver of Notice.** Whenever any notice is required to be given to any Member, a waiver of the notice in writing signed by the person entitled to the notice is equivalent to the giving of the notice. The attendance of a Member in person or by proxy at a meeting constitutes a waiver of notice of the meeting except when attendance is for the sole purpose of objecting because the meeting is not lawfully called or convened.

**4.6 Interested Parties.** No transaction of the Company will be affected because a Member or employee of the Company is interested in the transaction. Such interested parties will be counted for voting or approval of the transaction.

## **ARTICLE V LIABILITIES OF MEMBERS**

The Members will not be personally liable for the return of a Member's capital account; any such return will be made solely from Company assets. A Member will not be liable to the Company, or to any creditor of the Company, for Company liabilities or losses, except as may be provided in the Act.

## **ARTICLE VI INDEMNITY OF THE MANAGING MEMBER AND OTHERS**

The Company will indemnify the Managing Member against expenses, costs, and attorneys' fees actually incurred in connection with the defense of any action, suit or proceeding, civil or criminal, in which the Managing Member is made a party by reason of being or having been the Managing Member. The indemnification will include any amounts paid to satisfy a judgment or to compromise or settle a claim. Notwithstanding the above, the Managing Member will not be indemnified if the Managing Member has breached or failed to perform Company duties and the breach or failure to perform constitutes fraud, deceit, gross negligence, recklessness, willful misconduct or a wrongful taking by the Managing Member. The Company may indemnify other Members and its employees and other agents who are not Members (unless such persons' actions constitute fraud, deceit, gross negligence, willful misconduct or a wrongful taking) upon approval of Members owning a Majority of the Percentage Interests.

## **ARTICLE VII BANKING AND BOOKS**

The Company will maintain bank accounts in the name of the Company in banks of the Managing Member's selection. Working and reserve funds of the Company will be deposited in Company bank accounts or placed in money market funds or certificates of deposit, as the Managing Member deems appropriate, and subject to Sections 3.1 and 3.3 hereof, withdrawals will be made by the Managing Member or his designee. The Company may retain an independent public accountant for fiscal purposes. The Company's books of account will be maintained at the principal place of business of the Company, or at the office of the independent public accountant then servicing the Company books, and each Member and the Member's representative will have access thereto. The books will be kept on a calendar year basis and closed, balanced and, if requested by Members owning a Majority of the Percentage Interests, audited at the end of each such year. **Walter O. Grodahl, III will act as the tax matters partner.**

## **ARTICLE VIII ADDITIONAL CONTRIBUTIONS**

**8.1 New Capital.** Members will not be obligated to contribute additional capital to the Company. Members will not make additional capital contributions unless all Members elect to make capital contributions in proportion to their Percentage Interests.

**8.2 Default in Contribution.** In the event that the Manager determines that additional funds are appropriate for Company operations, any Member may elect to loan such funds to the Company, on terms not less favorable to the Company than loan terms which would be available at that time from third party institutional lenders.

## **ARTICLE IX NEW MEMBERS**

A new Member may be admitted into the Company only if: (i) Members owning a Majority of the Percentage Interests approve of such admission; and (ii) said new Member executes such instruments as the other Members determine are necessary or desirable to effect such admission and to confirm the agreement of the person or entity being admitted to be bound by all of the covenants, terms and conditions of this Agreement then in effect. Said new Member will receive a Percentage Interest and an interest in the net profits and losses of the Company and will be obligated to make a percentage of future capital contributions, all as determined by Members owning a Majority of the Percentage Interests at the time of said admission.

## **ARTICLE X RESTRICTIONS ON TRANSFER AND ENCUMBRANCE**

**10.1 General.** Except as otherwise specifically permitted pursuant to the provisions of this Agreement, each of the Members agree that he will not, without the prior written consent of all Members, transfer, assign, sell, give, pledge, hypothecate or otherwise encumber (all of which will be included in the term "Transfer" as used herein) any of his interest in the Company (hereinafter "Interest," which term will include a Member's right to receive distributions or return of capital or any right to participate in management or vote). Any attempt to do any of the foregoing without such prior written consent unless specifically permitted by this Agreement, will be null and void and of no effect.

**10.2 Certain Transfers.** [Intentionally Deleted.]

**10.3 Right of First Refusal.** [Intentionally Deleted.]

**10.4 Assignee Not a Substitute Member in Absence of Consent.** Notwithstanding anything contained herein to the contrary, if Members owning a Majority of Percentage Interests do not approve by written consent of the proposed Transfer of an Interest in the Company to a transferee who is not a Member immediately prior to the Transfer, then the proposed transferee will have no right to participate in the management of the business and affairs of the Company, to vote on, consent to or otherwise participate in any decision of the Members, or to become a Member. Such transferee or donee will at most only be entitled to receive the distributions to which the transferor would have been entitled with respect to the Interest assigned if such transferor had not assigned such Interest.

## **ARTICLE XI DISSOLUTION AND TERMINATION**

### **11.1 Dissolution.**

(a) The Company will be dissolved upon the occurrence of any of the following events:

(i) when the period fixed for the duration of the Company will expire pursuant to Section 1.3 hereof;

(ii) by the written consent of Members owning a Majority of the Percentage Interests; or

(iii) upon the death, retirement, resignation, expulsion, insanity, bankruptcy or dissolution of a Member or occurrence of any other event which terminates the continued membership of a Member in the Company (a "Withdrawal Event"), unless the business of the Company is continued by the written consent of remaining Members owning a Majority of the Percentage Interests within 90 days after the Withdrawal Event.

(b) The Members have entered into this Agreement based on their mutual expectation that all Members will continue as Members and carry out the duties and obligations undertaken by them hereunder and that, except as otherwise expressly

required or permitted hereby, no Member will withdraw or retire from the Company, or exercise any power under the New Mexico Limited Liability Company Act to dissolve the Company without the consent of Members owning a Majority of Percentage Interests. Unless such consent is obtained, Member who resigns (a "Resigning Member") or whose Interest is otherwise terminated by virtue of a Withdrawal Event, will be entitled to receive only those distributions to which such Resigning Member would have been entitled had such Resigning Member remained a Member.

## **11.2 Winding Up, Liquidation and Distribution of Assets.**

(a) Upon dissolution of the Company, it will be liquidated (except to the extent the Members may determine to distribute any assets to the Members in kind). The proceeds of liquidation will be distributed as realized in the following order:

(i) To the creditors of the Company (other than the creditors whose obligations will be assumed or otherwise transferred on the sale or distribution of the company assets).

(ii) To the Members (in equal priority) in respect to any loans or advances made by them to the Company.

(iii) To the Members (in equal priority) in accordance with the positive capital account balances of the Members, as determined after taking into account all capital account adjustments for the Company's taxable year during which such liquidation occurs.

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

## **ARTICLE XII MISCELLANEOUS PROVISIONS**

**12.1 Entire Agreement.** This Agreement and the Articles of Organization represent the entire agreement among all the Members.

**12.2 Amendment or Modification of this Agreement.** This Agreement may be amended or modified from time to time only by a written instrument signed by Members holding at least a 75% Percentage Interest in the Company.

**12.3 Rights of Creditors and Third Parties under this Agreement.** This Agreement is entered among the Members for the exclusive benefit of the Company, its Members, and their successors and assignees. This Agreement is

expressly not intended for the benefit of any creditor of the Company or any other person. Except and only to the extent provided by applicable statute, no such creditor or third party will have any rights under this Agreement or any agreement between the Company and any Member with respect to any capital contribution or otherwise.

**12.4 Notice.** Unless otherwise specifically set forth herein, notice will be deemed given when personally delivered or two (2) days after mailed by first class mail, postage prepaid. Notice to the Company will be addressed to its principal office. Notice to a Member will be addressed to the Member at the address reflected in the Company's records unless such Member has notified the Company and the other Members in writing of a different address. Presently, the addresses of the Members are as set forth below their signature blocks hereto.

**12.5 Headings.** Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define or limit the scope, extent or intent of any provision of this Agreement.

**12.6 Severability.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason, such illegality or invalidity will not affect the legality or validity of the remainder of this Agreement.

**12.7 Number and Gender.** All provisions and references to gender will be deemed to refer to masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

**12.8 Binding Effect.** Except as otherwise provided in this Agreement, every covenant, term and provision of this Agreement will be binding upon and inure to the benefit of the Members and their respective heirs, legatees, legal representatives, successors and assigns.

**12.9 Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all such parties executed the same document. All such counterparts will constitute one agreement.

**12.10 Attorneys' Fees and Costs.** In the event of a breach of this Agreement, the breaching party will pay to the non-breaching parties their attorneys' fees and court costs incurred in relation to any such breach.

**12.11 New Mexico Law Controlling.** The laws of the State of New Mexico, including the Act, will govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties hereto.



**IN WITNESS WHEREOF**, this Agreement has been executed as of the date first above written.

*Walter Grodahl*

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Walter O. Grodahl, III

Address:

2164 SW Park Place

Portland, Oregon 97205

*Eric Grodahl*

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Eric Grodahl

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2164 SW Park Place

Portland, Oregon 97205